



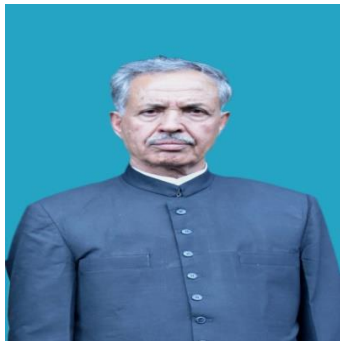
**SELECTED JUDGMENTS OF  
GILGIT-BALTISTAN SERVICE TRIBUNAL  
2017\_2020**



**(Late) Mir AKHLAQUE HUSSAIN**  
**CHAIRMAN**



**Mr. MUHAMMAD KAMAL**  
**MEMBER/ACTING CHAIRMAN**



**DIG(R) ALI SHER, Tst, MEMBER**



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Composed by : **KAMIL HUSSAIN**  
Senior Private Secretary to Hon'ble Chairman  
Gilgit-Baltistan Service Tribunal, Jutial, Gilgit.

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## **NOMINAL INDEX**

<b>S.No.</b>	<b>Titled</b>	<b>Page No.</b>
1.	Muhammad Sharif vs Provincial Government etc...	01
2.	ASI Basharat Hussain etc vs Provincial Government etc....	05
3.	Mst.Masnoona Shehzadi vs Provincial Government etc....	09
4.	Mst.Hussun Zareen etc vs Provincial Government etc....	13
5.	Mst. Sonia etc vs Provincial Government etc....	17
6.	Akhtar Ali Khan vs Provincial Government etc....	22
7.	Shah Khan etc vs Provincial Government etc....	29
8.	Sajid Ahmed vs Provincial Government etc....	36
9.	Muhammad Arif vs Provincial Government etc....	39
10.	Dilbar Khan vs Provincial Government etc....	43
11.	Javed Iqbal vs Provincial Govt etc...	47
12.	Dil Nawaz vs Provincial Government etc....	52
13.	Hussain Abbas vs Provincial Government etc....	57
14.	Muhammad Nasir Khan vs Provincial Government etc....	59
15.	Shah Faisal vs Provincial Government etc....	63
16.	Luqman Wali vs Provincial Government etc....	70
17.	Imam yar Baig etc vs Provincial Government etc....	76
18.	Dr. Qazi Mohd Saleem vs Provincial Government etc....	82
19.	Inam ur Rehman vs Provincial Government etc....	87
20.	Sher Afzal vs Provincial Government etc....	91
21.	Shah Murad Khan vs Provincial Government etc....	96

22.	Dardmand Shah vs Provincial Government etc....	102
23.	Rajab Ali vs Provincial Government etc....	107
24.	Abdul Aziz vs Provincial Government etc....	112
25.	Gul Baz Khan vs Provincial Government etc....	116
26.	Muhammad Sadiq etc vs Provincial Government etc....	121
27.	Ali Jan etc vs Provincial Government etc....	125
28.	Dr. Kaleemullah vs Provincial Government etc....	136
29.	Syed Khalid Hussain vs Provincial Government etc....	147
30.	Sajid Hussain vs Provincial Government etc....	152
31.	Abdul Hakeem vs Provincial Government etc....	157
32.	Zulfiqar Ali vs Provincial Government etc....	161
33.	Attaullah vs Provincial Government etc....	166
34.	Ejaz Ali vs Provincial Government etc....	175
35.	Ghulam Abbas vs Provincial Government etc....	178
36.	Abdullah Khan vs Provincial Government etc....	182
37.	Muhammad Yaqoob vs Provincial Government etc....	184
38.	Saadat Khan vs Provincial Government etc....	190
39.	Dr. Abdul Hakeem vs Provincial Government etc....	201
40.	Syed Hamid Hussain vs Provincial Government etc....	212
41.	Abdul Ghaffar vs Provincial Government etc....	219
42.	Rahimullah vs Provincial Government etc....	222
43.	Hashmatullah Khan vs Provincial Government etc....	226
44.	Umar Khan vs Provincial Government etc....	241
45.	Muhammad Qayyum vs Provincial Government etc....	244
46.	Akhtar Hussain Changazi vs Provincial Government etc....	248

47.	Sanauallah vs Provincial Government etc....	253
48.	Firdous Ali vs Provincial Government etc....	261
49.	Muhammad Naeem vs Provincial Government etc....	267
50.	Dr. Fida Hussain vs Provincial Government etc....	272
51.	FC Abir Hussain vs Provincial Government etc....	277
52.	Shaheen Khan vs Provincial Government etc....	284
53.	Abrar Ahmed vs Provincial Government etc.....	287
54.	ASI Nasir ud Din etc vs Provincial Government etc....	291
55.	Batool Nisa vs Provincial Government etc....	296
56.	Faizan Dukhi vs Provincial Government etc....	306
57.	Anas Safa vs Provincial Government etc....	308
58.	Tanzeel ur Rehman vs Provincial Government etc....	312
59.	Farhan Ahmed vs Provincial Government etc....	324
60.	Nisar Hussain vs Provincial Government etc....	328
61.	Muhammad Hussain vs Provincial Government etc....	335
62.	Imran Khan vs Provincial Government etc....	339
63.	Tahira Begum vs Provincial Government etc....	342
64.	Javed Iqbal vs Provincial Government etc....	346
65.	Kumail Shahid vs Provincial Government etc....	353
66.	Anas Safa vs Provincial Government etc....	358
67.	Sabir Hussain vs Provincial Government etc....	362
68.	Amir Munir vs Provincial Government etc....	367
69.	Hidayatullah vs Provincial Government etc....	373
70.	Ibrahim Shah vs Provincial Government etc....	383
71.	Shah Murad Shah vs Provincial Government etc....	390

72.	Ramzan Ali vs Provincial Government etc....	398
73.	Muhammad Naseem vs Provincial Government etc....	405
74.	Shahid Ali vs Provincial Government etc....	408
75.	Mir Ghazi vs Provincial Government etc....	409
76.	Sadar Wali vs Provincial Government etc....	416
77.	Dr. Fida Hussain vs Provincial Government etc....	423
78.	Nisar Ahmed vs Provincial Government etc....	426
79.	Ghulam Mehdi vs Provincial Government etc....	434
80.	Zameer Abbas vs Provincial Government etc....	438

SELECTED JUDGMENTS DECIDED BY THE  
GILGIT-BALTISTAN SERVICE TRIBUNAL

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Judgment sheet  
**IN THE GILGIT-BALTISTAN SERVICE TRIBUNAL  
GILGIT**

Appeal No. 626/2016.

Date of institution	07-09-2016
Date of hearing	22-11-2017
Date of judgment	27-11-2017

APPELLANT: Muhammad Sharif s/o Muhammad r/o Thalay Tehsil Dagoni District Ghanche Baltistan.

RESPONDENTS: Provincial Government Gilgit-Baltistan through Chief Secretary and 06 others.

BEFORE: Mir Akhlaque Hussain Chairman.

PRESENT: Abdul Wahid Advocate counsel for appellant. Akhtar Jan Law Officer G.B for respondents and Mr. Muhammad Ilyas ADI representative of Education Department.

**JUDGMENT**

**MIR AKHLAQUE HUSSAIN CHAIRMAN:** The instant service appeal has been filed by one Mr. Muhammad Sharif for release of pay as MT teacher BPS-09 with effect from 16-08-2012 till satisfaction of decree and onward.



2. The counsel for the appellant has advanced his arguments stating that the appellant has been appointed in accordance with law and has been performing his duties regularly since his appointment with due diligence and from the very date of appointment the appellant has never been paid his monthly salary which is his legal right. The learned counsel pointed out the recommendation of Deputy Director Education in favor of the appellant which are annexed with instant appeal and prayed that appellant is duly appointed civil servant, his monthly salary may be issued from the date of his appointment.

3. The respondents on the other hand have denied the claim of the appellant and have raised objections on the maintainability of instant appeal. Furthermore, the respondents have denied the genuineness of appointment order of the appellant stating that his appointment has been issued by the Director Education on 16-08-2012 as MT teacher BPS-09 where as the said post had already been abolished in the year 2011 according to the office order dated 14-05-2011 annexed with the parawise comments of the respondents. The respondents further stated that since the appointment of the appellant has been made without fulfilling codal formalities, hence, the same is illegal and void ab-initio and no right accrues on the basis of illegal order, hence, may not be a valid order. The appellant have not been a civil servant thus appeal is liable to be dismissed. The Learned Law Officer cited case law reported as 2000 PLC (C.S) 155 wherein it has been laid down that the appointment made without

advertisement is void. He further stated that the instant appeal has been filed without first preferring departmental appeal in accordance with law he cited 2013 PLC (C.S) 115.

4. I have heard the parties and perused the record. The instant appeal has been filed under section 5 of Gilgit-Baltistan Service Tribunal Act. It is a recommendation of law that no appeal shall be filed before the Court without preferring departmental appeal/representation as provided by rule. In the instant case, the appellant has asserted in para No. 2 of the appeal that the departmental appeal has been preferred in the month of May 2016 but no copy of the same has been attached, hence, the appeal is time barred and hit by provisions of section 5 of Gilgit-Baltistan Service Tribunal Act which was a mandatory requirement of law in terms of section 5(1) (a) of Gilgit-Baltistan Service Tribunal Act. The substance of the said provision dictates that this tribunal has no power to entertain original proceedings and the only jurisdiction of this tribunal is appellate jurisdiction. This appellate jurisdiction is further barred by clause (a) of proviso to subsection 1 of section 5 to the effect that the tribunal shall not exercise its appellate jurisdiction when the order appealed against has not been assailed before departmental appellate authorities. The bar contained in the section 5 is absolute and thus the fact that departmental appeal had been preferred is to be established by the person desirous to invoke the appellate jurisdiction of this tribunal. In the present case, no copy of departmental appeal has been attached with proof that the same was submitted to proper authority. Nevertheless a copy purporting to be a departmental appeal is attached but the same bears no evidence whether the same was submitted or not. Furthermore, the said appeal is addressed

directly to the Chief Secretary. A proper departmental appeal through proper channel, which is a pre requisite for exercise of jurisdiction, is lacking in the instant case. As to the question of limitation if the application/appeal annexed with the instant appeal is considered, the date of submission as stated in para 2 of the instant service appeal is May 2016 while the appeal annexed at page 24 bears date 30-03-2015. The instant appeal, if counted from the date mentioned in pleadings, is about 4 months delayed and if counted from the date mentioned on the application/appeal annexed, is about one and a half years delayed.

5. As to the claim of the appellant, the appointment order has been issued by Director Education who was not the appointing authority and the codal formalities i.e. advertisement and selection process have also not been fulfilled. Hence, such appointment order does not confer any rights on the appellant. Furthermore, when the appointment order of appellant, No. DE (B)-2(11)/2012 dated 16-8-2012 was issued the post of MT BPS-09 was not existing after issuance of the Secretary Education Gilgit Baltistan Notification No. SEC-EDU-2(31)/2009 dated 14-5-2011 according to which the post of MT BPS-09 was abolished with effect from 01-7-2011.

6. In view of the above, I hold the instant appeal liable to be dismissed. Appeal stands dismissed.

7. File be consigned to record after completion.

**Announced:**

27-11-2017

Sd/-  
**CHAIRMAN**

Judgment sheet  
**IN THE GILGIT-BALTISTAN SERVICE TRIBUNAL  
 GILGIT**

Appeal No. 384/2014.

Date of institution	21-05-2014
Date of hearing	30-11-2017
Date of judgment	30-11-2017

APPELLANTS: ASI Basharat Hussain and 39 others.  
 RESPONDENTS: Provincial Govt. through Chief Secretary  
 GB and 48 others.

BEFORE: Mir Akhlaque Hussain Chairman.  
 Mr.Muhammad Kamal Member-I.  
 Mr.Ali Sher Member-II.

PRESENT: Akhtar Jan Law Officer G.B for  
 respondents No.1 to 6, Fida Hussain  
 Jaffary Attorney alongwith M/S Manzoor  
 Ahmed and Shah Faisal Khan Advocates  
 for other respondents.

**JUDGMENT**

**MIR AKHLAQUE HUSSAIN CHAIRMAN:** this appeal in hands has been filed by the appellant against his compulsory retirement from service. As per memo of appeal and arguments of the learned counsel for the appellant, Mr. Saadat Khan was serving in LG & RD Gilgit-Baltistan as D.O. The appellant had kidney problem and had to under go kidney transplantation since he had lost both his kidneys and after a successful operation one kidney was transplanted and after completion of the medical procedure the appellant joined back his

service once again and started performing his duties. It is admitted fact that the appellant after his transplantation, had to keep visiting the Doctors at Karachi and Islamabad

2. The record shows that the present appeal has been filed by appellants who are aggrieved by the seniority lists prepared in the year 2005, 2007, 2008 and 2011. The appellants are the appointees on the basis of initial recruitment vide office order dated 01-10-2005 while the respondents are promotees already serving in police department. As per the averments made by the appellants in the memo of appeal the respondents were promoted on 11<sup>th</sup> October, 2005 from HCs to ASIPs vide order No.IGP-1(1)/8812-23/2005. Later on, a corrigendum was issued on 20-10-2005 vide which the promotion of respondents were made effective from 01-10-2005. The appellants have assailed the seniority lists prepared on the basis of dated of promotion of respondents. As per memo of appeal, the appellants contended that since the promotion orders of the respondents were issued after the appointment of the appellants, as such the subsequent corrigendum dated 20-10-2005 is null and void, hence seniority list prepared on its basis and subsequent promotions of the respondents are also challenged by the appellants.

3. The learned Law Officer, assisted by counsel for respondents, has opposed the appeal and has argued that the appeal is time barred and also baseless and against the law. The appellants have filed the instant appeal against the seniority list which is time barred since the seniority list have been prepared in the year 2005, 2007, 2008 and 2011. The appellants never objected to the said seniority lists and as such appeal is liable to be dismissed. He submits that as per law, the promotees are to be held senior to the probationers. He further submits that the respondents had filed departmental appeal to the competent authority for their seniority over the probationers/appellants on the grounds that the respondents were already waiting for promotion before the appointments of the probationers/appellants. The learned Law Officer and counsel for the respondents have also drawn my attention towards the judgment of Honourable Chief Court dated 08-05-2012 which also supports the contention of the respondents.

4. I have heard the respondents and gone through the record. The matter of the seniority between the probationers and promotees is clear to the extent that promotees are to be senior to the probationers. The provisions of ESTACODE under heading "**Seniority**" at S.No.136 and 147 of General instructions are clear on

the matter, hence the seniority of the respondents is well justified. Furthermore, rule 12.2(3) of Punjab Police Rules which are admittedly adopted in GB, states that the seniority of promotees shall be mentioned above the appointees of the same scale if the promotions and appointments are both of same date.

5. The judgment dated 08-05-2012 of the Honourable Gilgit-Baltistan Chief Court in its para No.7 reflects that the petitioners of that writ petition argued that the seniority list of the year 2007 and 2008 have been prepared in accordance with law. The petitioner No.1 of the said writ petition is appellant No.25 in the present appeal and some other appellants of the present appeal are also petitioners of the said writ petition. Hence, the appellants cannot be allowed to change their stance all together from the one they have taken in the writ petition. The perusal of the record shows that the appellants have not preferred any departmental appeal. The seniority list impugned in the appeal are of the years 2005, 2007, 2008 and 2011 and the instant appeal before this Tribunal has been filed in the year 2014, and that too without preferring departmental appeal.

6. Hence, in the light of the above, we hold the instant appeal time barred, barred under the provisions of Section 5(1)(a) for not preferring departmental appeals and devoid of any substance. The instant service appeal is dismissed.

7. File be consigned to record after completion.

**Announced:**

30-11-2017

Sd/-  
**CHAIRMAN**  
 Sd/-  
**MEMBER-I**  
 Sd/-  
**MEMBER-II**

Judgment sheet  
**IN THE GILGIT-BALTISTAN SERVICE TRIBUNAL**  
**GILGIT**

Miscellaneous No. 54/2016.

Date of Institution	08-12-2016
Date of hearing	07-12-2018
Date of Judgment	07-12-2018

Petitioner: Masnoona Shehzadi, Lady Teacher, BS-09, Primary Girls School Majini Mohallah, Old Polo Ground Gilgit.

Respondents: Provincial Government Gilgit-Baltistan through Chief Secretary and 05 others.

Before: Mir Akhlaque Hussain Chairman.

Present: Petitioner /appellant through attorney with counsel M/S Muhammad Nafees and Shahid Abbas Advocates. Mr. Akhtar Jan learned Law Officer GB for respondent No. 1. Respondent No. 2 to 4 through M/S Muhammad Ilyas rep. of Education department, Aqil Hussain District Inspector of Schools and Kamal Hussain advocate Legal Advisor Education Department.



**ORDER**

**MIR AKHLAQUE HUSSAIN CHAIRMAN:** The case was fixed for arguments on the question of satisfaction of judgment dated 21.9.2015. The petitioner/appellant's counsel and attorney state that the respondents have only paid Rs. 1250330/- (Rupees twelve lac fifty thousand three hundred and thirty only) in compliance of judgment of this Tribunal dated 21.9.2015. The learned counsel for the petitioner states that the posts of MT teachers have been upgraded to BPS-14 with effect from 01-7-2011 but the respondents have paid the arrears of pay according to pay of BPS-09 which is wrong and against the judgment of this Tribunal.

2. The learned law officer assisted by the legal advisor for Education Department argue that the judgment has been duly complied by the respondents and arrears of pay have been paid to the respondents for the period w.e.f 21.6.2011 to 21.12.2016 as BPS-09 since the petitioner/appellant has been appointed in BPS-09.

3. I have heard the learned counsels for parties and perused the record. The judgment of this Tribunal dated 21.9.2015 has directed the respondents to pay the arrears of pay of the appellant/ petitioner from date of her regularization. The para No. 7 of the judgment further states that the appellant had been regularized as MT teacher

BPS-09 and had performed duties as MT teacher BPS-09. The whole judgment does not include a single word regarding the upgradation rather the operative part of the judgment is reproduced hereunder for handy reference:

**“For the above reasons the appeal of the appellant is accepted and respondents are directed to release pay of appellant from the date of her appointment. However respondents are at liberty to conduct an inquiry or other proceeding about the genuineness of the appointment order of the appellant if they so desire.”**

4. The above para is clear to the extent that it only directs the payment of arrears of pay of the appellant. The appellant has admitted in her appeal that she was appointed/adjusted in BPS-09 and has been performing her duties as MT teacher BPS-09. Furthermore, it is admitted fact that the services and pay scale of the appellant was never upgraded to BPS-14. The matter of upgradation of services of the appellant is a question alien to the original appeal filed before this Tribunal as well as judgment of this Tribunal dated 21.9.2015. The respondents in the instant proceedings could be ordered for payment of arrears of pay of BPS-14 only if there was any

order of upgradation of the appellant to BPS-14. In absence of any such order of upgradation, she is a teacher of BPS-09 and nothing more could be read into the judgment dated 21.9.2015 or the original appeal. Parties are always bound to their pleadings and the matter of upgradation finds no mention anywhere in the pleadings. Furthermore, in the present proceedings of implementation, this tribunal cannot travel beyond the four corners of judgment dated 21.9.2015.

5. In view of the above, I have come to the conclusion that the only claim of the appellant/petitioner according to the judgment dated 21.9.2015 is that of arrears of pay of MT Teacher BS-09 and admittedly the respondents have paid the arrears of pay of the appellant/petitioner as MT teacher BPS-09 from date of her appointment. Therefore, the judgment dated 21.9.2015 stands satisfied and due compliance has been made, hence, the instant petition cannot proceed further and the same is disposed as satisfied.

6. File be consigned to record after due completion.

**Announced**  
07.12.2018

Sd/-  
**CHAIRMAN**

Judgment sheet  
**IN THE GILGIT-BALTISTAN SERVICE TRIBUNAL  
 GILGIT**

Appeal No. 560/2015.

Date of institution	28-11-2015
Date of hearing	05-12-2017
Date of judgment	07-12-2017

APPELLANT: Mst. Hussan Zareen Sub Inspector Women Elite Force CPO Gilgit.

RESPONDENTS: Provincial Govt. through Chief Secretary GB and others.

BEFORE: Mir Akhlaque Hussain Chairman.  
 Mr. Muhammad Kamal Member-I.  
 Mr. Ali Sher Member-II.

PRESENT: Asadullah Khan Advocate for the appellant. Akhtar Jan Law Officer G.B for respondents, Raja Muhammad Ayub Attorney with counsel Mr. Shahid Abass Advocate for private respondents

**JUDGMENT**

**MIR AKHLAQUE HUSSAIN CHAIRMAN:** Brief facts of the case are that the appellant was appointed as Sub Inspector Women Elite Force GB on 31<sup>st</sup> October, 1996. The seniority list of the Women Police Officers was being maintained separately from that of male Police Officers. Admittedly, for purpose of providing equal opportunity of promotions it was decided to merge the seniority lists

of the male and female police officers vide office order dated 22-04-2015. Consequent upon the said decision, a seniority list dated 21-05-2015 was issued wherein the name of the merged female police officers have been placed at bottom of the existing seniority list. The name of the appellant in the said list has been shown at S.No.145. The instant appeal is directed against the seniority list dated 21-05-2015.

2. The counsel for appellant has argued in support of the version of appellant and has submitted that the seniority list dated 21-05-2015 has been issued by placing the appellant at S.No.145 of the seniority which is illegal, wrong and against the police rules. He submits that the seniority has to be reckoned from the date of appointment and seniority of the appellant should have been reckoned from her date of appointment i.e 31-10-1996 and not 29-11-2014. The respondents have illegally reckoned the seniority of the appellant w.e.f 29-11-2014. He submits that the respondents be directed to place the appellant at the top of the seniority list in accordance with her date of appointment.

3. The Law Officer dully assisted by counsel for the respondents opposes the contentions of appellant. He submits that the story narrated in the appeal is unfounded and the appeal is meritless. He

submits that the appeal is time barred and hence liable to be set aside. He further submits that the appellant has not challenged the office order dated 22-04-2015 bearing No.IGP-4(64)/3484-85/2015 and that the seniority list has been issued in the light of the said order as it contains condition that the names of the female police officers being merged be placed at bottom of the seniority list.

4. I have heard the counsels for the parties and perused the record. The appellant filed departmental appeal dated 19-06-2015 which has been turned down as time barred vide order dated 02-11-2015. The departmental appeal dated 19-06-2015 is annexed with the instant appeal, the prayer contained wherein is clearly directed against the seniority list dated 21-05-2015, thus departmental appeal against the seniority list dated 21-05-2015 filed on 19-06-2015 is within time. The office order No.IGP-4(64)/3484-85/2015 dated 22-04-2015 is decision made by the high officials of the GB police. We have perused the said order which has only been distributed among high officials and no copy of the same has been distributed to the individual lady police officers being merged. Hence, no question arises for assailing the same before the departmental authority within 30 days. The seniority list which was subsequently framed and issued on 21-05-2015 was dully distributed to individuals concerned hence, the appellant within 30 days of the said seniority list filed her departmental appeal, which was wrongly turned down as time barred without even taking the pain to give reasons as to how the same was time barred. The order dated 02-11-2015 refusing the departmental appeal is in our view a none speaking and wrong order. As to the

matter of seniority, it is admitted that the S.No.1 of the impugned seniority list has been appointed as SIP on 01-08-2003 whereas the S.No.145 of the said list i.e the appellant has been appointed as SIP on 31-10-1996. There is no doubt on the principle that the seniority has to be reckoned from the date of appointment and the appellant clearly falls at S.No.1 of the seniority list according to her date of appointment. It is sadly being observed that the decision of merger of seniority list was taken to provide equal opportunities of promotions to the female police officers but actually the merger has been made so as to worstly affect the female police officer by placing her at the bottom of the list inspite of fact that the female police officer has served for more than 20 years in the same scale. The condition laid down by high ups of the Gilgit-Baltistan Police Department for placing the names of female police officers at the bottom of the list is not only against the law, service rules, but the same is also against the constitution of Islamic Republic of Pakistan and Gilgit-Baltistan Empowerment & Self Governance Order 2009 as it is clearly depriving a female police officer from her right of seniority and promotion solely because of being a female. Such treatment cannot be allowed and we are of the view that the appellant has been discriminated by placing the name of the appellant at S.No.145 in the seniority list dated 21-05-2015 which is wrong and against the law and service rules. While perusing the record we also observed that seniority list has been circulated without fixing any period and inviting objections within that period. A tentative seniority list should have been circulated, inviting objections therein and then the final list should have been issued, which procedure has not been adopted.

5. In view of the foregoing, we accept this appeal and direct the respondent No.1 to 3 to issue seniority list by placing the name of the appellant at S.No.1 of the seniority list while observing the procedure as discussed in para 4 above.

6. File of appeal be consigned to record after completion.

**Announced:**

07-12-2017

Sd/-  
**CHAIRMAN**  
Sd/-  
**MEMBER-I**  
Sd/-  
**MEMBER-II**

Judgment sheet  
**IN THE GILGIT-BALTISTAN SERVICE TRIBUNAL  
GILGIT**

Appeal No. 638/2016.

Date of institution	12-11-2016
Date of hearing	08-12-2017
Date of judgment	08-12-2017

**APPELLANT:** Mst. Sonia d/o Ghulam Abbas r/o Khaplu Kharmang District Ghanche.

**RESPONDENTS:** Provincial Govt. through Chief Secretary GB and 04 others.

**BEFORE:** Mir Akhlaque Hussain Chairman.  
Mr. Muhammad Kamal Member-I.  
Mr. Ali Sher Member-II.

**PRESENT:** Muhammad Issa Senior Advocate for appellant.



Akhtar Jan Law Officer G.B assisted by Kamal Hussain advocate legal advisor with Muhammad Ilyas ADI representative Education department for respondents.

## **JUDGMENT**

**MIR AKHLAQUE HUSSAIN CHAIRMAN:** We intend to dispose off the 16 service appeals through this single judgment which are fixed today for arguments. The perusal of record shows that the matter in hand had been agitated before the learned Civil Court Khaplu Ghanche, in three different civil suits and appeals before the learned District Judge Khaplu. Being aggrieved from the judgments/orders of both the mentioned Courts, the present appellants filed three separate revision petitions before the learned Chief Court Gilgit-Baltistan wherein the said revision petitions were converted into writ petitions and same were allowed vide judgment/order dated 23-5-2013. The respondents of the said writ petitions assailed the judgment dated 23-05-2013 of learned Chief Court GB before the Honourable Supreme Appellate Court Gilgit-Baltistan. The Honourable apex Court was pleased to set aside the judgment of learned Chief Court dated 23-05-2013 vide short order dated 25-05-2016 and judgment dated 21-07-2016 of Honourable Supreme Appellate Court. The case was remanded to this Tribunal for decision on merits within 30 days of receipt of the order.

2. According to the said judgment of Honourable Supreme Appellate Court the case should have been decided by this Tribunal on merits expeditiously but somehow the case has been lingering on till now, which is a saddening fact. The question however arises as to why the judgment/order of the Honourable Supreme Appellate Court could not be complied within the time stipulated in the said order. For the purpose, the Registrar of this Tribunal is called upon for furnishing the date of receipts of the orders of Honourable Supreme Appellate Court. The Registrar present before us with the record, submits that the order were receipt on 12-11-2016.

3. The record of the case before us shows that the appellants in service appeals No.638/16, 640/16, 649/16, 651/16, 646/16, 645/16, 648/16, 647/16, 644/16, 653/16, 652/16, 643/16, 642/16, 650/16, 639/16 and 641/16 had jointly and separately filed the civil suits which was finally remanded by the Honourable Supreme Appellate Court vide order dated 25-05-2016 and judgment dated 21-07-2016.

4. As per the orders of Honourable Supreme Appellate Court in our opinion, the cases filed before the learned Civil Judge 1<sup>st</sup> Class Khaplu and finally decided by the Honourable Supreme Appellate Court were remanded to this Tribunal. This implies that the case files of the civil suits should have been requisitioned and the same should

have been adjudicated upon by this Tribunal within a period of 30 days from the date of receipt of the order of the Honourable Supreme Appellate Court. On our query it reveals that neither the record of the civil suits was requisitioned by our predecessor in Tribunal nor the same have been transmitted to this Tribunal by the learned Civil Court Khaplu rather the instant fresh appeals have been filed separately by respondents of civil appeal No.21/2015 before Supreme Appellate Court.

5. We have carefully perused the orders of the Honourable Supreme Appellate Court and we are of the humble opinion that the instant fresh appeals cannot proceed in presence of the orders of Honourable Supreme Appellate Court, instead we feel it necessary to call for the record of the civil suits of the learned Court of Civil Judge 1<sup>st</sup> Class Khaplu Ghanche. Hence record of the same be requisitioned expeditiously. Since the said suits have been remanded to this Tribunal for decision on merits hence the same shall be adjudicated upon by this Tribunal. As to the instant fresh separate appeals filed by the respondents of the remanded case the same are not maintainable, firstly on account of the fact that the subject matter of the said appeals were agitated vide civil suits which have already been remanded to this Tribunal by Honourable Supreme Appellate

Court, hence the said suits and matter contained therein shall be decided by this Tribunal as such, instant appeals are not maintainable. Secondly, the instant appeals are directed against original orders of departmental authorities while no appeal before the departmental appellate forum has been preferred. Therefore, the instant appeals are hit by the provisions of section 5(1)(a) of the Gilgit-Baltistan Service Tribunal Act 2010.

6. For the above reasons the instant service appeals No. 638/16, 640/16, 649/16, 651/16, 646/16, 645/16, 648/16, 647/16, 644/16, 653/16, 652/16, 643/16, 642/16, 650/16, 639/16 and 641/16 are dismissed as non maintainable, while the record of the case remanded by Honourable Supreme Appellate Court as discussed above be requisitioned expeditiously and office is directed to put up the said record on receipt before the Chairman for orders.

7. A copy of this judgment be placed in the original file of each appeals number mentioned above. These are the reasons for our short order dated 08-12-2017. Files of the instant appeals be consigned to record after completion.

**Announced:**  
08-12-2017

Sd/-  
**CHAIRMAN**  
Sd/-  
**MEMBER-I**  
Sd/-  
**MEMBER-II**

Judgment sheet  
**IN THE GILGIT-BALTISTAN SERVICE TRIBUNAL  
 GILGIT**

Appeal No. 669/2016.

Date of institution	30-12-2016
Date of hearing	08-12-2017
Date of judgment	08-12-2017

APPELLANTS: Akhtar Ali Khan s/o Muzaffar Ali Khan TGT BPS-16 r/o District Gilgit.

RESPONDENTS: Provincial Govt. through Chief Secretary GB and 3 others.

BEFORE: Mir Akhlaque Hussain Chairman.

PRESENT: Mr. Asad Ullah Khan counsel for appellant. Akhtar Jan Law Officer G.B for respondents No.1 to 3, duly assisted by Muhammad Kamal Legal Advisor Education Department.

### JUDGMENT

**MIR AKHLAQUE HUSSAIN CHAIRMAN:** The instant appeal No. 669/2016 has been filed against stoppage/non-payment of conveyance allowance and two other appeals No. 670/2016 and 671/2016 are also identical in nature and hence after hearing all the three identical appeals i.e 669 to 671/2016, I intend to dispose off all three appeals through this single judgment.

2. The brief facts as summarized in the pleadings and averred by the learned counsel for the appellants are that the appellants of all three appeals are teachers BPS-16 in Education Department

Government of Gilgit-Baltistan. According to the learned counsel for the appellants the Government of Gilgit-Baltistan has issued a notification bearing No. Fin-A-3(14)/2010 dated 18.10.2011 wherein the conveyance allowance has been made admissible to Government employees of Gilgit-Baltistan. Further contended that the conveyance allowance is being paid to Government employees of all provinces in the country and referred to a judgment of learned Sindh Service Tribunal in this regards. The grievance of the appellants according to the counsel is that the Government of Gilgit-Baltistan has after paying the conveyance allowance in consequence of the notification dated 18.10.2011, stopped/discontinued the payment of said allowance for the period of summer and winter vacations without any express order for such discontinuation or stoppage whereas the notification dated 18.10.2011 still holds the filed. Hence, stoppage/discontinuation of conveyance allowance for vacations is against law, discriminatory and illegal. The learned counsel for appellants submits that the appellants had also preferred a departmental appeal but the same has been left unattended hence, this appeal against the stoppage of the conveyance allowance for the period of summer and winter vacations.

3. The respondent No. 1 to 3 have submitted their parawise comments wherein the said respondents have controverted the plea of the appellants and have denied the claim of the appellants for entitlement of conveyance allowance during summer and winter vacations. The learned Law Officer Mr. Akhtar Jan has contended that the finance department had issued directions for deduction/discontinuation of conveyance allowance during vacations

and upon the said directions of finance department, the AGPR has rightly deducted conveyance allowance during vacations. He further contends that conveyance allowance is meant for provision of enough financial benefits to the Government servants, so as to cover the expenses of traveling from their residence to the office and from office to their residences. Thus, where there is no such traveling during the vacations there is no entitlement for conveyance allowance. He further submits that the conveyance allowance is deducted in all kinds of leaves except casual leave. Hence, the said allowance is rightly being deducted from the appellants. He requests that the appeals be dismissed as meritless.

4. The respondent No. 4 despite appearing through their representative did not file parawise comments after being give proper opportunity. Moreover, the case was fixed for parawise comments for the first time on 02.01.2017 and a year has passed yet the respondent No. 4 neither filed their parawise comments, nor presented their counsel.

5. With the able assistance of the learned counsels present before me and after going through the pleadings and record of the case, it reveals that the GB Government had issued the notification for payment of conveyance allowance dated 18.10.2011. The said

notification and its contents are not disputed by the parties. It is also the admitted state of the facts that the conveyance allowance is being paid to the appellants and the only dispute is with regard to the deduction of the said allowance in winter and summer vacations. The plea of the appellants that the conveyance allowance cannot be deducted during vacations has been controverted by the respondent No. 1 to 3 on the ground that since the appellants do not have to travel to the school for their duties during vacations, hence, they are not entitled for the allowance.

6. This defence has no strong legal backing. Mere question whether the appellant is actually traveling to the school or not, is not the sufficient to be looked into for the purpose of conveyance allowance as there might be instances where a person has residence at walking distance from his place of work. In such case a person cannot be deprived of a monetary benefit otherwise allowed by the relevant rules. In absence of any such express exclusion in the rules, a person cannot be deprived of conveyance allowance on the grounds that he did not actually have to travel to reach his place of work. The learned Law Officer has also attempted to defend his case by drawing analogy between leaves and vacations in as much as the conveyance allowance is to be deducted during leave, hence, it is also to be



deducted in vacations. The relevant part of para No. 3 of the comments submitted by the respondents is reproduced as under:

**“Further submitted that on the direction of the Finance Department GB, the AGPR Gilgit deducted the convenience allowance from those employees who have granted all kinds of leave i.e earned leave, maternity leave and ex-Pakistan leave including the leave period of winter/summer vacation of schools and college in respect of teachers/lecturers.”**

7. From the bare reading of the above para, it is clear that the respondents have equated the leave with vacations and the directions of the GB Finance Department were actually for leave period of all kinds but the vacations have wrongly been treated as a leave for the purposes of conveyance allowance. Furthermore the copy of such directions of Gilgit-Baltistan Finance Department is also not on the record. If there exist any such direction at all, then such directions are wrong and misconceived to the extent of inclusion of summer and winter vacations and leave. The vacations are not any kind of leave availed by the employee rather the employee can still safely be said to be on duty during the vacations as it is not a day taken off by the employee on his own accord. The vacations can be equated with a

holiday which is altogether different from leave, hence, stoppage of conveyance allowance during vacations by treating vacations as leave is not justified in law.

8. Another aspect of the matter is that there are other departments where vacations are allowed. The learned Law Officer could not point out any vacations department when confronted with the question whether this policy of deduction of conveyance allowance was applied on all other vacation departments. Thus, where it is admitted that employees of all other vacation departments of Gilgit-Baltistan Government are being paid conveyance allowance during summer and winter vacations then deduction of said allowance from the appellants is unequal treatment and discriminatory in nature. It is relevant to mention here that the decision of learned Sindh Service Tribunal has been attached with the appeal, which I have gone through and it is admitted state of facts that the conveyance allowance is not being deducted from teachers in the province of Sindh. The learned Low Officer when confronted with the situation, stated that the Gilgit-Baltistan Government is not bound by the decisions of learned Sindh Service Tribunal nor it is bound by the policies adopted by other provinces. The defence taken by the learned Law Officer does not change the fact that if civil servants in

the province of Sindh or any other province are getting financial benefits while performing same duties and enjoying same status as that of their counterparts in Gilgit-Baltistan Government then it shall be against the spirit of Article 25-A of Constitution of Islamic Republic of Pakistan read with Article 17 of Gilgit-Baltistan (Empowerment and Self Governance) Order 2009. Such unequal treatment among equals cannot be allowed.

9. For the foregoing reasons, the respondents are directed to refrain from deducting conveyance allowance during vacations and the appellants are held entitled to conveyance allowance during vacations from the date when the said allowance became admissible to the appellants. The appeal No. 669/2016, 670/2016 and 671/2016 are accepted. These are the reasons for my short order dated 08.12.2017.

10. File be consigned to record after completion.

11. A copy of this judgment be placed in the appeal No. 670/2016 and 671/2016.

**Announced:**  
08-12-2017

Sd/-  
**CHAIRMAN**

Judgment Sheet  
**BEFORE GILGIT-BALTISTAN SERVICE TRIBUNAL  
 GILGIT**

Service Appeal No. 345/2014

Date of Institution:	08.05.2014
Date of hearing:	14.12.2017
Date of Judgment:	14.12.2017

Appellants: Shah Khan s/o Boli Khan at present Patwari Settlement Office Gilgit & 02 others

Respondents: Provincial Government through Chief Secretary GB & 05 others

Before: Mr. Muhammad Kamal Member-I

Present: Malik Shafqat Wali & Saadatullah Khan Advocates for Appellants.  
 Mr. Akhtar Jan, Law Officer GB for respondents No. 1 to 3.  
 M/s. Mir Zeeshan Akhlaque & Gulbaz Khan Advocates for respondent No. 4 to 6.

**JUDGMENT**

**MUHAMMAD KAMAL MEMBER-I:** Through the instant service appeal, appellants have challenged seniority list of Patwaries prepared on 15.01.2007 by Settlement Officer (respondent No. 3) with the prayers to set aside this seniority list and maintain the seniority lists earlier prepared during the years 1983, 1994 and 2004. The appellants have further asserted that seniority list dated 15.01.2007 has affected their right of promotion as some junior

patwaries (respondents N. 4 to 6) have been declared senior to them through the impugned seniority list.

1. Brief facts giving rise to institution of this service appeal before this Tribunal are that 42 Patwaries were appointed vide Office Order No. SO-3/599-646/83 dated 20<sup>th</sup> November, 1983 in Settlement Office Gilgit. According to Office Order issued on 1983 names of appellants stand at serial No. 10, 11 & 16 respectively. This appointment order is conceived by the appellants to be merit list. Likewise, in the seniority list prepared in the year 1983, names of appellants stand at serial numbers mentioned above while respondents No. 4 to 6 have been shown junior to appellants. Another seniority list was prepared in the year 1994 and was forwarded to ASO/ Tehsildar for its circulation amongst the patwaries, wherein names of appellant were placed at serial No. 5, 6 & 7 respectively. However respondents denied this seniority list to have been circulated to them for submission of objections. The Settlement Officer/ ASO also could not produce any evidence to the effect of its circulation to concerned patwaries from the office of Tehsildar/ ASO till 2003. This version of appellants have been seconded by office of Secretary Home, Services, GAD & Law Department vide letter No. SO(S)-1-4(17)/2003 dated 15<sup>th</sup> December, 2003. When the respondents came to know that a DPC for promotion to some posts of Girdawar/ Office Qanoongos has been scheduled to be convened on 25.07.2003 in the light of 1994 seniority list, respondent No. 4 & 5 submitted applications/ appeals to Chief Secretary and Home Secretary GB for keeping the DPC in abeyance till finalization of seniority list, but before appeals of the respondents could be decided, promotion orders of the three Patwaries were issued by Settlement Officer Gilgit. Against this promotion order,

respondent No. 4 again submitted an appeal to Secretary Home, S&GAD and Law on 11<sup>th</sup> August, 2003 for setting aside the said promotion order until final seniority list is prepared and issued. In reply to the appeals/ applications submitted by respondent No. 4 & 5, Secretary Services, GAD, & Law GB (respondent No. 2) vide letter No. SO(S)-14(17)/2003 dated 15 December, 2003 directed the Settlement Officer Gilgit to maintain seniority list keeping in view the age factor. Another letter was issued bearing even number dated 26<sup>th</sup> January, 2004 stating that appeals of respondents No. 4 & 5 have been accepted by the competent authority (respondent No. 2) thereby directing the Settlement Officer Gilgit to prepare and maintain seniority list taking into account the age factor of patwaries and further directed to keep the promotion orders of Patwaries in abeyance till clearance of seniority position in accordance with the rules. Another tentative seniority list was prepared and issued on 29<sup>th</sup> May, 2004 from the office of Settlement Officer inviting objection from concerned Patwaries that too without adhering to the guidelines/ directives contained in the letter of Secretary Services, GAD, & Law GB (then NAs) referred to herein above. The respondent No. 4 & 5 being aggrieved and dissatisfied with the tentative seniority list, submitted objections to Settlement Officer Gilgit on 12/6/2004 with a copy thereof to Secretary Services, GAD & Law GB (then NAs). The Secretary Services, GAD & Law took notice that still the directives issued from his office has not been complied with while preparing the seniority list. The directives of Secretary Services, GAD & Law GB are reproduced herein below;

**“Seniority of Government servants for the posts in BS-1 to 15 is prepared on the basis of following format:**

- i. Date of joining of the post.**
- ii. In case of being same date of joining of two or more Government Servants, the seniority is determined on the basis of older age”.**

The above version of the Services Department GB has backing of decision of the Hon’ble Supreme Court of Pakistan reported at 1991 SCMR 1130, wherein it has been held that **“old in age formula would apply only when the two had taken over on the same date”**.

2. The appellants No. 1 & 2 seem to have submitted appeals against the directions issued by office of the Secretary Home, S&GAD & Law GB for preparing and maintaining seniority list according to age factor. These appeals were forwarded through Settlement Officer Gilgit on 04.12.2005 which were rejected with directions to the Settlement Officer (respondent No. 3) to comply with decision of the competent authority contained in letter No. SO(S)-14(17)/2003 dated 26<sup>th</sup> January, 2004 vide letter of even number Secretary Home, S&GAD & Law GB letter dated 27.06.2006. Finally, upon repeated reminders issued from time to time from the office of respondent No. 2, his instructions contained in the letter No. SO(S)-14(17)/2003 dated 26<sup>th</sup> January, 2004 were complied with and final seniority list was prepared in the year 2007 by Settlement Officer Gilgit taking into consideration the age factor. Resultantly, in this seniority list, respondents No. 4 to 6 stood senior to the appellants. On the basis of this seniority list, respondent No.4 was promoted to vacant postof

Girdawar BS-09 in Settlement Office Gilgit. The appellant No. 1 & 2 preferred an appeal to Chief Secretary GB on 26.01.2007 against seniority list of 2007 which was rejected and the Settlement Officer was directed to maintain the seniority list of 2007. Stressing on maintenance of seniority list by respondent No. 2 was probably keeping in mind the fact that prior to enactment of Seniority Rule 1993, seniority was meant in the context of older age in case of same appointment orders having number of two or more appointees and same date of joining. It is further added here that in accordance with the seniority lists of 2007 and 2008, respondent No. 4 got promotion.

3. Thereafter, the appellants filed a civil suit in Civil Court Gilgit on 10.03.2008 vide Suit No. 63/2008 praying for setting aside the impugned orders of Secretary S&GAD (respondent No.2) dated 27.06.2006 whereby the departmental appeal of the appellants were rejected and promotion order of respondent No. 4 dated 17.03.2008. Subsequently, this suit was withdrawn by the appellants unconditionally on 18.03.2010 upon entering into compromise; however no record written is available on file. After a period of 7 months from the date of withdrawal of suit from Civil Court, appellants filed a writ petition in the Hon'ble Chief Court GB. The appellants concealed the fact of filing civil suit in Civil Court in their writ petition filed in Chief Court and in the appeal in hand as well. Upon establishment of GB Service Tribunal, the writ petition pending adjudication in the GB Chief Court stood abated and the appellants came to this Tribunal with the instant appeal.

4. Parawise comments were filed on behalf of respective respondents whereby contentions taken by counsel for the appellants



have been denied on facts and grounds. Arguments advanced from both the sides heard at length. Counsels for respondents and learned Law Officer GB tried at first instance to press non-maintainability of appeal of the appellants on the grounds firstly, since appellants have already exhausted the remedy available to them in the Civil Court and before their grievance could be redressed, they withdrew the suit from Civil Court unconditionally, therefore they, by their own acts are debarred themselves from seeking remedy in another Court of law under the principles of "Estoppel". Secondly, joint applications cannot be filed before this Tribunal under Civil Servants (Appeals) Rules.

5. I have given due consideration to the arguments advanced by counsels for respective parties and learned Law Officer, gone through available record, case laws and relevant rules. I feel it imperative that before going into legality of seniority lists of 1983, 1994, 2004, 2007 and 2008 and promotion order of respondent No. 4, I must take up the legal aspects of the appeal in question regarding its maintainability on the grounds so raised by the counsels for respondents and learned Law Officer GB.

6. The counsel for appellants has placed on record two judgments of this Tribunal as precedents with regard to entertainment of joint appeals by this Tribunal. However, the citation of these judgments cannot persuade this Tribunal, as a decision made by a Court overlooking law/ rules, whether deliberately or inadvertently, cannot be made base/ precedent for entertaining other appeals which may cause a chain of repeated mistakes. Under sub-section (1) section 5 of the Civil Servants (Appeals) Rules, 1977 there

is clear bar with regard to filing of joint appeals. For ease of reference, section 5 of the said Rules is reproduced herein below:

**“5. (1)Every person preferring an appeal shall do so separately and in his own name”.**

Only aggrieved civil servant is entitled to file appeal to Tribunal. There is no scope of joint appeal in Service Tribunal, Act, 1973 and Service Tribunal Procedure Rules. PLJ 1997 Tc.C (Services); 1989 PLC (CS) 199.

7. Before establishment of the Service Tribunal GB, the competent forum available to the appellants for determination of seniority of the appellants was Civil Court Gilgit. Accordingly, appellants availed the remedy by filing civil suit in the said Court on 10.03.2008 against the seniority list of 2007, 2008 and promotion order of respondent No. 4. However, on 18.03.2010, the appellants withdrew the said suit unconditionally, hence by their own conduct of withdrawing civil suit from Civil Court Gilgit unconditionally; appellants are debarred from institution of service appeal before this Tribunal on the same ground. The fact of unconditional withdrawal of civil suit from Civil Court Gilgit have been concealed in writ petition filed in the Hon'ble Chief Court and in the appeal in hand for what reasons best known to appellants. Therefore, the appeal in hand is no doubt, hit by the principle of "Estoppel". Reliance has been made by the counsel for respondents 4 to 6 on: (1) 1991 MLD 571 (Pesh) (2) 1995 CLC 88 (3) PLD 2003 SC 110 (4) 1989 SCMR 995. It is necessary that all cases, that first remedy available under the law should be exhausted and resort to legal recourse in other courts of law in the shape of petition, appeals or revisions. But in the appeal in hand, Civil Court

Gilgit was competent court of jurisdiction in the year during which cause of action arose to the appellants where the appellants had already gone but withdrew the suit unconditionally and barred themselves from instituting another case for redressal of the same grievance.

8. For the facts and grounds explained above, the instant appeal, being not maintainable and meritless is hereby dismissed with no order as to costs. These are the reasons for our short order dated 14.12.2017.

9. File be consigned to record after its completion.

Announced:  
14.12.2017

Sd/-  
**Member-I**

Judgment Sheet  
**IN THE GILGIT-BALTISTAN SERVICE TRIBUNAL**  
**GILGIT**  
Service Appeal No. 558/2015

Date of Institution	19.11.2015
Date of hearing	14.12.2017
Date of Order	16.02.2018

APPELLANT: Sajid Ahmed s/o Muhammad Ilyas r/o Gindai Yasin, Tehsil Yasin District Astore.

BEFORE: Mr. Muhammad Kamal Member-I  
Mr. Ali Sher ( TST ) Member-II

RESPONDENTS: Provincial Govt. through Chief Secretary GB and 07 others.

PRESENT: Raja Shakeel Ahmed Advocate for Appellant. Mr. Akhtar Jan Law Officer GB for respondent No. 1 to 7. Mr. Mouzam Ali, Advocate for respondent No.8. Mr. Sardar Ali, Rep. of AGPR (Respondent No.7). Mumtaz Wali, Advocate, Legal Advisor for Agriculture Department, GB.

### **JUDGMENT**

**MUHAMMAD KAMAL MEMBER-I:-** Being aggrieved and dissatisfied with Office Orders No. DA-Estt-1(2)/2015 dated 11<sup>th</sup>, September, 2011 issued by the Director Agriculture Gilgit, the appellant has restored to legal remedy before this Tribunal on 19.11.2015 with the prayers to set aside the said two impugned orders and allow the appellant to continue his services as Budder BS-04 in Agriculture Department, Ghizer instead of Budder in Development Project.

2. Brief facts leading to the appeal in hand are that the appellant was initially appointed/ adjusted against newly created post of Budder(BPS-04) in Agriculture Department District Ghizer in the year 2013 vide Office Order No. DDA/GZR/Estt-1(1)/2009/2013 dated 25.03.2013. On 11.11.2015 the Director Agriculture (Respondent No. 2 ) issued two separate Orders vide even No. DA-Estt-1(2)/2015 whereby the appellant was adjusted against a Development project post of Budder (BPS 04) i.e. "Poverty alleviation in District Ghizer" for the pay purpose in one and secondly Mr. Mubarak Shah, Mali ( Respondent No.8 ) was promoted as Budder (BPS 04) against the resultant vacancy of Budder (BPS-04) to give him pensionary benefits as he was at the verge of retirement. The appellant when came to know about the impugned orders and being aggrieved in loosing his regular post, filed a departmental appeal before the Appellate Authority i.e, Secretary Agriculture, Livestock and

fisheries ( Respondent No.2 on 12.11.2015. The appellant then without waiting for the decision of his departmental appeal, approached this Tribunal and preferred the present appeal on 19.11.2015.

3. We have heard the learned counsels for the parties of their respective contentions and perused all the available record as well. Now we have to determine maintainability of the appeal in hand at the first instance. From the perusal of the available record, it transpired that the appellant filed a departmental appeal to the Secretary Agriculture, Livestock and fisheries (Respondent No. 2) against the impugned orders on 12.11.2015. He then approached this Tribunal on 19.11.2015 just after 07 days and preferred the instant appeal instead of waiting for the decision or elapsing 90 days from the date of his filing of departmental appeal which is a mandatory provision of section 5 of GB Service Tribunal Act,2010. Proviso ( a) of section 5( 1 ) of GB Service Tribunal Act,2010 provides as under:

**“NO APPEAL SHALL LIE TO A TRIBUNAL UNLESS THE AGGRIEVED CIVIL SERVANT HAS PREFERRED AN APPEAL OR APPLICATION FOR REVIEW OR REPRESENTATION TO SUCH DEPARTMENTAL AUTHORITY AND A PERIOD OF 90 DAYS HAS ELAPSED FROM THE DATE ON WHICH SUCH APPEAL, APPLICATION OR REPRESENTATION WAS SO PREFERRED.”**

4. This Tribunal is bound to entertain service appeals of GB Govt. employees under Section 5 of GB Service Tribunal Act, 2010.

5. Hence this appeal being premature and not maintainable is dismissed with no order as to costs. However, Secretary Agriculture, Livestock and fisheries (Respondent No.2) is directed to decide the departmental appeal lying pending in his office on merits. The above are the reasons for our short order dated 14.12.2017.

6. File be consigned to record after completion.

Announced  
14.12.2017

Sd/-  
**Member-I**  
Sd/-  
**Member-II**

Judgment sheet  
**BEFORE GILGIT-BALTISTAN SERVICE TRIBUNAL  
GILGIT**

Service Appeal No. 388/2014

Date of Institution:	27.05.2014
Date of hearing:	15.12.2017
Date of Judgment:	17.02.2018

**Appellant:** Muhammad Arif s/o Rematullah r/o Danyore, Gilgit.

**Respondents:** Provincial Government through Chief Secretary GB & 04 others.

**Before:** Mr. Muhammad Kamal Member-I

**Present:** Mr. Imran Hussain Advocate for appellant. Mr. Akhtar Jan, Law Officer GB for respondent No. 1 to 3. Mr.

Ghulam Nabi, Rep. for respondent No. 4 & 5.

## **JUDGMENT**

**MUHAMMAD KAMAL MEMBER-I:-** The above service appeal has been brought before this Tribunal by one Mr. Muhammad Arif, an employee of Works Department GB, working as Gate Keeper BS-01 at GB House Islamabad seeking relief by way of grant of back benefits and maintenance of service book for an intervening period between his termination and subsequent reinstatement in service.

1- Brief facts giving rise to institution of this service appeal before this Tribunal are that the appellant was appointed as Gate Keeper BS-01 by Works Department on 23 May, 1996 and was performing his duties as Gatekeeper at GB House Islamabad. In the year 1999, appellant remained absent from duty without prior approval of leave for a period of about 25 days on medical ground. Consequently, his pay was stopped and he was issued explanation for remaining absent without leave. Later on, his services were terminated (but no termination letter has been placed on record by either party). On October, 2010 service of appellant was reinstated by Secretary Works GB while the absence period from 07.08.1999 to the date of reinstatement i.e. October, 2010 was treated as leave without pay.

2. After reinstatement in service, appellant started approaching authorities of Works Department GB including Ministry of Kashmir Affairs and Gilgit-Balstistan for release of pay and allowances for the period from termination of his service and reinstatement but his

requests were not attended by any authority seriously, then the appellant approached this Tribunal with the appeal in hand.

3. The appeal came up for arguments on 15.12.2017. Arguments were heard at length. Counsel for appellant argues that appellant is entitled to two remedies; first grant of back benefits for the period from termination and subsequent reinstatement in service as the appellant has been performing his duties during the period in question at GB House Islamabad, (however no termination order could be produced either by appellant or by the respondents on the pretext that record of appellant is burnt due to a fire incident). Secondly, counsel for appellant seeks remedy by way of maintenance of service book of appellant for the whole period from date of appointment till now including the intervening period between termination and reinstatement. However, counsel for appellant could not produce before this Tribunal any proof in support of appellant's claim which could show that appellant has actually performed duties during the intervening period.

4. For the purpose of confirmation and for the sake of saving financial loss to appellant, Incharge GB House Islamabad was also asked by this Tribunal through a written letter to furnish attendance record/ proof regarding performance of duty by the appellant at GB House Islamabad during the intervening period between termination and reinstatement of services of appellant, however, no record / proof has been furnished, which shows that appellant has not performed duty during the intervening period. Therefore, in absence of any proof regarding performance of duty by the appellant, this Tribunal is not inclined to grant back benefits for the intervening



period between termination and reinstatement of services, hence the same is refused. As far as maintenance of service book is concerned, Works Department GB is directed to maintain appellant's service book from the date of his appointment. The intervening period between termination and subsequent reinstatement in service be clearly inserted in service book as "Leave without pay". The counsel for appellant has relied upon two judgments passed by Hon'ble Supreme Court of Pakistan reported at 2006 SCMR 421 & 2005 SCMR 1032. Findings of Hon'ble Supreme Court in these cases do not apply to the appeal in hand as those two cases are different from the case of appellant. In those cases, services of appellants were terminated for no fault on the part of appellants and their back benefits were refused. While in the case of appellant in this appeal, he was terminated from service for absence from duty without leave besides non satisfactory services as his services were being observed.

5. For the facts and grounds discussed above, this appeal is partially accepted with no order as to costs. These are the reasons for our short order dated 15.12.2017.

6. File be consigned to record after completion.

Announced:  
15.12.2017

Sd/-  
**MEMBER-I**

Judgment sheet  
**IN THE GILGIT-BALTISTAN SERVICE TRIBUNAL  
 GILGIT**

Appeal No. 318/2014.

Date of institution	17-05-2014
Date of hearing	06-11-2017
Date of judgment	21-02-2018

APPELLANT: Dilbar Khan s/o Sultan Ali r/o Eid Gah Tehsil and District Astore.

RESPONDENTS: Provincial Govt. through Chief Secretary GB and 05 others.

BEFORE: Ali Sher TST Member-II.

PRESENT: Mr. Johar Ali Advocate for ppellant.  
 Mr. Akhtar Jan Law Officer, G.B for respondents No.1 to 6.

### JUDGMENT

**ALI SHER Tst MEMBER-II:-** This appeal has arisen out of Order No. Acctt-1(17) 2011-3313 dated 21-12-2011 passed by respondent No.4 (Deputy Commissioner Astore) whereby he sent the appellant on LPR. The appellant challenged the said order stating that his date of birth is inserted in service book i.e 03-4-1952 instead of 1957. Through the instant appeal filed on 17-5-2014, appellant has prayed for setting aside the impugned Order No. Acctt-1(17) 2011-3313 dated 21-12-2011, and direct the respondents to correct his date of birth according to his CNIC and Form "B".

2. The respondents submitted their parawise comments dated 19-11-2014 and 27-4-2015, respectively wherein they have totally denied the contention of appellant stating that the appellant has

never submitted any application in the office for correction of his age. The appeal in hand is time barred. The appellant has later on changed his CNIC as 01-1-1957 and made a request for change of his date of birth in service book accordingly. Which has been rejected, since it was not covered under any provision of rules.

3. Counsel for appellant argued that the appellant Dilber Khan was appointed as Naib Qasid on 07-9-1976 in the office of Assistant Commissioner Astore, vide officer order No. A-23/1169-71/76. During the period of his appointment Mr. Sherzad was holding the charge of the office of Assistant Commissioner Astore. The service book of appellant was also recorded and examined in the light of Medical Report, Form "B" and CNIC. As per service book his date of birth is 1957 and appellant is liable to retire in the year, 2017 after completion of 60 years of age. But the Deputy Commissioner Astore, (respondent No. 4) passed an order vide No. Acctt-1(17) 2011-3313 dated 21-12-2011, whereby the appellant has been relieved off from service. Counsel for appellant stated that when appellant approached respondent No. 5 (Assistant Commissioner Astore) appellant, learnt that his original service book has been misplaced by the concerned staffs and relevant service book has fraudulently been prepared and date of birth has been inserted as 03-4-1952 instead of 1957. The service book was signed and verified by Mr. Abdul Qayyum, Assistant Commissioner Astore, who was posted in the year 1987. Thereafter, the appellant submitted an application for correction of his age but the respondent No. 4 and 5 denied and fake date of birth 03-4-1952 has been inserted under the signature of Assistant Commissioner, Mr. Abdul Qayyum, who was posted in the year 1987. The counsel has argued that while the appellant is appointed in the year 1976 in the

tenure of Sherzad Assistant Commissioner, Astore, therefore, the appellant is entitled to discharge his services till 2017. While respondent No. 5 (Deputy Commissioner Astore) has issued order of retirement on 21-12-2011 against the justice and equity.

4. The learned Law Officer on the other hand has denied the contention of the counsel of the appellant and has raised the objection on the maintainability of the instant appeal. The Law Officer contended that the service appeal is time barred and liable to be dismissed under Section 5 of Service Tribunal Act, 2010. The service book was prepared during the period of Assistant Commissioner, Mr. Abdul Qayyum, in the light of service record and pay bills. As per Service Rule, date of birth once recorded in the service book will be final and no change/ alteration is allowed thereafter. The Law Officer highlighted that the appellant never preferred a departmental appeal which is mandatory for appearing before this Tribunal. The appellant reached the age of superannuation on 20-4-2011 and respondent No. 5 has rightly issued Order No. Acctt-1(17)2011-3313 dated 21-12-2011 on the grounds of above mentioned facts. The Law Officer prayed that appeal of the appellant is liable to be dismissed.

5. Arguments of both the counsels representing the parties were heard and the instant appeal and the relevant documents as annexed in the file were examined. It has figured from perusal of service book of appellant, the date of birth has been recorded in the service book with different writings while other entries in first page of service book has been verified and signed by the Assistant commissioner, Mr. Abdul Qayyum, who was posted in the year 1987, as per list of the ACs, furnished by AC office Astore. It is indeed an anomaly that how Mr. Abdul Qayyum, has verified the service book in the year 1976,

while he was not posted at Astore, at that time. Further that as per Medical Certificate, issued to the appellant, at the time of his appointment and joining the service in 1976, age of appellant was 20 years and on Medical Certificate year of appellant's date of birth is 1955 which is also different from that of recorded in service book. Besides, a Medical Board comprising a team of doctors was constituted on 04-8-2011 in order to assess the age of appellant. The Board after detailed examination opined that the appellant's age round about 54 years on the 04-8-2011. In the circumstances, it is evident that the appellant is entitled to discharge his services till 2017. While the respondent No. 4 (Deputy Commissioner Astore) issued a letter of retirement from 2012. The balance of convenience is also in favour of the appellant. It has been noted that the appellant will suffer irreparable loss in the shape of retirement from his service. If seen with the purpose of justice, of appellant. It is very unfortunate on the part of appellant that he simply submitted an application to respondent No. 4 for correction of his age. After being denied as stated by the appellant in para No. 6 of the appeal under reference. The appellant should have preferred a departmental appeal to the authority concerned. But he did not do so.

6. The section 5 of the GB Service Tribunal Act, is a mandatory provision of law in terms of section 5(1)(a) of the Service Tribunal Act. The said provision dictates that this Tribunal has no power to entertain original proceedings and the only jurisdiction of this Tribunal is appellate jurisdiction. This appellate jurisdiction is further barred by clause A of proviso to sub section 1 of section 5 to the effect that Tribunal shall not exercise its, appellate jurisdiction when the order

appealed against has not been assailed before the departmental appellate authority.

7. In the present case no copy of the forum appeal has been attached with proof that the same was submitted to proper departmental authority. Hence, in the light of the above, I hold the instant appeal time barred, under the provisions of Section 5(1)(a) for not preferring departmental appeal and devoid of any substance. The instant service appeal is hereby dismissed.

8. File be consigned to record after completion.

9. No order as to cost.

Announced  
21-2-2018

Sd/-  
**Member-II**

Judgment sheet  
**BEFORE GILGIT-BALTISTAN SERVICE TRIBUNAL**  
**GILGIT**

Service Appeal No.494/2014

Date of Institution:	29.09.2014
Date of hearing:	20.02.2018
Date of Judgment:	07.03.2018

**Appellant:** Javed Iqbal s/o Syed Inayat Shah,  
Plumber Water Supply Chilas District  
Diamer.

**Respondents:** Provincial Government through Chief  
Secretary GB & 06 others

**Before:** Mr. Muhammad Kamal Member-I

**Present:** Mr. Sadatullah Khan Advocate for  
Appellant.  
Mr. Akhtar Jan, Law Officer GB for

respondents No. 1 to 4. Mr. Naeem Akhtar Jan, advocate for respondents No. 7. Mr. Muhammad Farooq Advocate for respondent No. 6. Mr. GhulamNabi, Rep. for respondent No. 4 & 5.

## **JUDGMENT**

**MUHAMMAD KAMAL MEMBER-I:-** Appellant, through the instant appeal, has challenged an Office Order bearing No. E-1/100/Admin/07/2011-12/811 dated 8<sup>th</sup> July, 2014 issued by the office of Chief Engineer Works Department Gilgit Region (hereinafter referred to as respondent No. 3) whereby M/s. Ehsanullah and Miser Khan, Road Inspectors BS-05 (hereinafter will be referred as respondents No. 6 & 7) have been promoted as Supervisors BS-09 in B&R Division Diamer, Chilas. The appellant has prayed that the said impugned order may be cancelled thereby directing respondents No. 1 to 4 to promote the appellant against the post of Supervisor BS-09 in Water Supply Department, B&R Division Chilas.

1. Facts in brief, as narrated by appellant in the memo of appeal and record placed on file as well, are that appellant was appointed as Helper BS-1 on 01.02.2006 on a fixed pay of Rs. 3000/- per month through an Office Order No. Esstt-1(4)/EE/2004/341. Subsequently, vide Office Order No. Esstt-1(13)/EE//2006/510 dated 8<sup>th</sup> March, 2007, post of appellant was re-designated/ adjusted as Plumber BS-05 and his services were brought on the footing of Regular Temporary Employment (RTE). On 2<sup>nd</sup> April, 2012 vide Office Order No. Esstt-1(4)/EE/2010-11/1347, services of appellant, amongst others, were converted into regular footing in light of Finance

Department GB letter No. 1(223)/2009-2010-Dev-F dated 17<sup>th</sup> February, 2011.

3. Two posts of Road Supervisors were fallen vacant in B&R Division Chilas due to retirement of Mr. Arsh Khan on 02.02.2013 and Mr. Mumtaz Khan on 13.04.2013. For filling in these posts through promotion, a Board consisting of officers/ officials of Works Department Chilas was constituted to examine the cases of promotion and recommend eligible incumbents for promotion. The members of board assembled on 09.04.2013 and after board proceedings, recommended M/s. Ehsanullah and Miser Khan, Road Inspectors BS-05 to be promoted against the resultant vacant posts of Supervisors BS-09 in B&R Division Chilas. It was in light of recommendations of Board Proceedings that promotion order of M/s. Ehsanullah and Miser Khan as Supervisors BS-09 was issued from the office of respondent No. 3 (impugned in the appeal). Against this office order, the appellant submitted an appeal to the Secretary Works GB on 16.07.2014. The Secretary Works GB (hereinafter referred as respondent No. 2) vide office letter No. Sec-W-SO-1(38)/2013/1365 dated 18<sup>th</sup> August, 2014 called upon M/s. Ehsanullah and Miser Khan, Road Inspectors BS-05 including the appellant for personal hearing before him. After hearing, the respondent No. 2 on 23<sup>rd</sup> September, 2014 gave decision rejecting appeal of the appellant stating that the appellant has not link or right with the present promotion of Mr. Miser Khan.

4. Another post of Supervisor BS-09 in Water Supply Department B&R Division Chilas fell vacant due to retirement of one Mr. Syed Chattai Supervisor BS-09. To fill the post, amongst others, another



DPC was ordered. The members of DPC assembled on 10<sup>th</sup> April, 2014 in the office of Executive Engineer B&R Division Chilas and after examining the case, recommended the appellant for promotion against the vacant post of Supervisor BS-09 in Water Supply Department, B&R Division Chilas. The DPC recommendations were forwarded by Superintending Engineer GB PWD Diamer Circle to Chief Engineer GB PWD Gilgit region with request to promote the appellant. But, somehow, the appellant could not be promoted to the Supervisor BS-09. Finally the appellant resorted to legal remedy by way of filing of the instant appeal before the Tribunal.

5. Respondents No. 1 to 4 submitted their parawise comments through learned Law Officer GB, respondents No. 6 & 7 submitted their parawise comments through their respective counsels, while respondent No. 5 was struck out being misjoinder to appeal. In their respective parawise comments, the respondents have denied the contentions taken by appellants on the facts and grounds. Appeal came up for arguments on 20.02.2018. Arguments in pro and contra heard.

6. I have given due consideration to the arguments advanced by counsels for respective parties, perused available record on file. After perusal of available record, it reveals that appeal of appellant has been rejected by respondent No. 2 on the ground that appellant has no link or right with the promotion of respondents No. 6 & 7. It is indeed on the ground that B&R and Water Supply are two separate units, though these two units are being dealt with by B&R Division. The appellant is working with Water Supply Unit while respondents No. 6 & 7 are working with Road unit. No seniority list has been

produced by either party which could show that these two units have combined seniority list. Two seniority lists have been submitted which pertains to employees of Water Supply Department only. In these seniority lists, name of appellant stands at serial No. 2. The incumbent, Mr. Shakeer Khan, shown at serial No. 1 of the seniority lists has given withdrawal in favour of appellant by giving a written statement on stamp paper that he has no objection if, appellant is promoted to the post of Supervisor BS-09. The incumbent Mr. Shakeer Khan was also called before DPC who again stated that he has given withdrawal in favour of appellant. It was in consequence of the written statement given by Shakeer Khan as well as verbal statement given before members of DPC that appellant was recommended for promotion to the post of Supervisor BS-09 being next senior most Plumber. However the higher authorities of Works Department did not agree with the recommendations of DPC on the ground that next promotion of appellant is for the post of Foreman BS-07. According to rules, it is admitted that the post of Supervisor Water Supply is to be filled in by 50% promotion amongst Foreman BS-07 having requisite eligibility criteria. But interestingly, it is noted that there is no post of Foreman B-07 in NIS of B&R Division Chilas issued for the years 2016-17. The vacant post of Supervisor BS-09 due to retirement of Mr. Syed Chatai, Supervisor BS-09 Water Supply B&R Division Chilas has not been inserted in the NIS.

7. Non existence of post of Foreman BS-07 in Water Supply Department B&R Division Chilas is not the fault on the part of appellant. Appellant cannot be punished merely on the ground that there is no post of Foreman, rather it is fault on the part of department concerned for not creating post of Foreman in Water

Supply Department B&R Division Chilas so far. Therefore appellant cannot be made waiting and deprived of his right of promotion until the post of Foreman is created.

8. For the facts and grounds discussed above, this appeal is accepted with no order as to costs with directions to the respondents No. 1 to 4 to consider promotion of appellant in light of DPC recommendations dated 10<sup>th</sup> April, 2014 against any first available vacant post of Supervisor BS-09 in Water Supply Department, B&R Division Chilas without affecting seniority/ promotions of respondent No. 6 & 7. These are the reasons for short order dated 07.03.2018.

9. File be consigned to record after completion.

Announced:  
07.03.2018

Sd/-  
**Member-I**

Judgment sheet  
**BEFORE GILGIT-BALTISTAN SERVICE TRIBUNAL  
GILGIT**

Service Appeal No. 596/2016

Date of Institution:	11.03.2016
Date of hearing:	21.02.2018
Date of Judgment:	07.03.2018

**Appellant:** Dilnawaz (Lab Assistant) s/o Shah Nawaz Khan r/o Kashrote Gilgit.

**Respondents:** Provincial Government through Chief Secretary GB & 03 others

**Before:** Mr. Muhammad Kamal Member-I  
Mr. Ali Sher Member-II

**Present:** Mr. Basharat Hussain Advocate for Appellant.  
Mr. Akhtar Jan, Law Officer GB for respondents No. 1 to 4 assisted by Mr. Kamal Hussain Advocate. Mr. Muhammad Ilyas ADI, rep. of Education Deptt. GB. Mr. Sardar Alam, Rep. AG, AGPR Gilgit

## **JUDGMENT**

**MUHAMMAD KAMAL MEMBER-I:**-Through this single judgment, we intend to dispose off Service Appeals No. 594/2016, 595/2016& 596/2016 filed by M/s. Dilnawz, Aziz Ali and Zakia Anwar, appellants in their respective appeals against impugned order dated 28<sup>th</sup> October, 2015 issued by respondent No. 3 (Director Education Academics Gilgit) whereby appellants have been promoted to the post of Lab Assistants BS-09 from Lab Assistants BS-07 with immediate effect instead of giving retrospective effect i.e. from the year 2004 when the posts of Lab Assistants became available.

2. Facts in brief giving rise to institution of these service appeals before this Tribunal are that the appellants were appointed as Lab Assistants BS-07 in Education Department Gilgit in the year 1998, 2000 & 2001 respectively. They joined their duties at the places ordered by the authorities of Education Department GB. After completing length of service of 3 years for promotion from the post of Lab Assistant BS-07 to the post of Lab Assistant BS-09, they submitted applications to authorities of Education Department GB for their respective promotions as Lab Assistants BS-09. But the authorities of Education Department GB did not accede to their requests. On 24<sup>th</sup> February, 2001, Mr. Naseem Akhtar was adjusted against the post of Lab Assistant BS-09. Similarly, on 18<sup>th</sup> December,

2007, 04 candidates were appointed as Lab Assistants BS-07 vide office order No. DD-2(2)/2006 issued by Deputy Director Education (Academics). Through the same office order, they were adjusted against the post of Lab Assistants BS-09 falling vacant in various schools of Gilgit-Baltistan. Furthermore, on 19<sup>th</sup> February, 2010, another Lab Assistant BS-07, namely Saila Shams has also been granted BS-09 from BS-07.

3. On 28<sup>th</sup> October, 2015, appellants were promoted from Lab Assistant BS-07 to Lab Assistants BS-09 that too with immediate effect. The appellants preferred departmental appeal to Secretary Education GB with prayers to give retrospective effect to their promotion orders which remained not responded. Finally, appellants approached this Tribunal with their respective service appeals.

4. The respondents contested the appeals by filing parawise comments in rebuttal and denied the contentions so taken by the appellants in their respective appeals. Learned counsel for the appellants argued that appellants are entitled to promotion with all back benefits from the date when they became eligible having requisite qualification and length of service. The counsel for appellants further argued that some junior Lab Assistants have been given promotion to the post of Lab Assistant BS-09 ignoring the seniority and services rendered by appellants to Education Department GB which is infringement of their legitimate rights. Conversely, learned Law Officer advanced his arguments that the appeals of appellants are not maintainable on the ground that appellants cannot claim their promotion as a right. He further

contends that Lab Assistants who were granted BS-09 is not promotion but was just adjustment for the pay purpose.

5. We have given conscious consideration to the arguments advanced by counsels of respective parties and perused the available record on file. Recruitment rules and seniority list provided by parties have been placed on record. A bare perusal of the recruitment rules, it transpires that the post of Lab Assistant BS-09 is required to be filled in by 100% promotion amongst the senior Lab Assistant BS-07 fulfilling eligibility criteria for the post. Seniority list placed on record shows that names of only Saila Shams and Razi Hussain have been mentioned (these two have been shown junior to the appellants) while names of Suria Begum and Wajiha Anwar are not mentioned in the seniority list. All these four Lab Assistants BS-07 have been adjusted against the post of Lab Assistants BS-09 through a same office order vide No. DE-2(2)/2006 dated 18<sup>th</sup> December, 2007. As per arguments of learned Law Officer GB, even if it is admitted that the above four Lab Assistants BS-07 were adjusted against the post of Lab Assistant BS-09 for the pay purpose only, then there is another office order vide No. DE-5(4)/2010(Admin) dated 19<sup>th</sup> February, 2010 issued by Director Education (Academics) Gilgit whereby Mrs. Saila Shams Lab Assistant BS-07, who is junior to appellants, have been adjusted against the post of Lab Assistant BS-09 again ignoring the seniority of the appellants. Departmental rules are framed, seniority lists are maintained by government departments with a view to regulate the services of employees and protect their rights. In presence of set rules/ regulations, departments are bound to deal with service matters of employees strictly in accordance with

the rules, otherwise, framing of rules/ regulations will prove to be futile exercise.

6. The upshot of the above discussion is that, the Education Department should have followed the existing rules considering 100% by promotion amongst eligible incumbents of Lab Assistants BS-07 against the posts of Lab Assistant BS-09 when fallen vacant against which Mrs. Saila Shams, Mrs. Suria Begum, Miss Wajeeha Anwar and Mr. Razi Hussain were adjusted.

7. For the facts and grounds discussed above, the above mentioned appeals are accepted with no order as to costs with a little modification of prayers of the appellant i.e. Education Department GB is directed to promote the appellants w.e.f. 18<sup>th</sup> December, 2007 with all back benefits instead of 2004, after carrying out all the codal formalities as required under the prevailing recruitment/ promotion rules.

8. File be consigned to record after completion.

9. A copy of this judgment be placed in the appeal No. 594/2016 and 595/2016.

Announced:  
07.03.2018

**Sd/-  
Member-I**

**Sd/-  
Member-II**

Judgment sheet  
**IN THE GILGIT-BALTISTAN SERVICE TRIBUNAL  
GILGIT**

Appeal No. 94/2017.

Date of institution	09-12-2017
Date of hearing	15-3-2018
Date of judgment	15-3-2018

APPELLANT: Hussain Abbas s/o Zarmast Khan r/o Village Jalalabad Tehsil Danyore District Gilgit.

RESPONDENTS: Provincial Government Gilgit-Baltistan through Chief Secretary and 03 others.

BEFORE: Mir Akhlaque Hussain Chairman.  
Mr. Muhammad Kamal Member-I  
Mr. Ali Sher Member-II

PRESENT: Shahid Abbas Advocate counsel for appellant.

**ORDER**

**MIR AKHLAQUE HUSSAIN CHAIRMAN:** Appellant through Counsel present. The case is fixed for preliminary arguments. The counsel for appellant states that the appellant has been discharged from service wrongly and against the principles of natural justice. A police report has been made basis for the said discharge whereas the criminal proceedings pending before the court of law against the appellant have been disposed off by acquitting the appellant. The learned counsel contends that after being acquitted from the criminal



proceedings, the respondents should continue the services of appellant.

2. We have heard the learned counsel and perused the record. The appellant was serving in the NA Scouts (Now GB Scouts) and was discharged from service by concerned authority. We posed the question of jurisdiction to the learned counsel who in response asserted that the matter is triable by this tribunal on the analogy of Pakistan Rangers. Whereas nothing has been brought on record to establish that the NA Scouts is identical and at par with the Pakistan Rangers so as to make it analogous to Pakistan Rangers. The Northern Scouts (now GB Scouts) is armed force and has its own martial Courts. This Tribunal has got no jurisdiction in my view to entertain the service appeal.

3. Furthermore, a letter dated 04-10-2007 addressed to the Superintendent of police Gilgit from Lieutenant Colonel Wing Commander shows that appellant had already been discharged by October 2007 and the appellant has kept mum since then. The departmental appeal attached along with this service appeal is dated as 05-01-2016 and bears no evidence of receiving and same is also filed almost nine years after the discharge. All other applications attached with the appeal are also mere photocopies with no evidence of receiving. An affidavit of the appellant regarding the applications is attached along with the appeal but the same is written on a simple

paper and does not confirm to the requirements laid down by law for an affidavit.

4. In the circumstances, the instant appeal is time barred and barred by the Army Act 1952 and same is, on the face of it, meritless. Therefore, the instant service appeal is dismissed in limine.

5. File be consigned to record after completion.

**Announced:**

15-3-2018

Sd/-  
**CHAIRMAN**  
Sd/-  
**MEMBER-I**  
Sd/-  
**MEMBER-II**

Judgment sheet

**IN THE GILGIT-BALTISTAN SERVICE TRIBUNAL  
GILGIT**

Appeal No. 05/2017.

Date of institution	18-02-2017
Date of hearing	03-4-2018
Date of judgment	03-4-2018

**APPELLANT:** Muhammad Nasir Khan s/o Karamat Shah  
R/o Sandi Tehsil Yasin District Ghizer.

**RESPONDENTS:** Provincial Govt. through Chief Secretary GB  
and 05 others.

**BEFORE:** Mir Akhlaque Hussain Chairman.

**PRESENT:** M/S Rehmat Karim and Amjad Hussain  
Advocates for appellant.

Akhtar Jan Law Officer G.B assisted by Muhammad Ilyas ADI representative Education department for respondents.

## **JUDGMENT**

**MIR AKHLAQUE HUSSAIN CHAIRMAN:** The instant appeal has been filed by the appellant on 18-2-2017 against the sonority list dated 7-11-2016. The appellant has prayed for adjusting him/ declaring him as the most senior teacher in the education department GB on the basis of date of entry into service. The appellant has further claimed ante-dated promotions on the basis of alleged seniority.

2. It is admitted state of facts that the appellant was appointed in BPS-07 in the year 1977 and was given BPS -09 in the year 1991 by way of up-gradation. The appellant claims that he was the most senior from among those who were given BPS-09, but this contention has been denied by the respondents. The appellant has to establish his seniority in the year 1991 but nothing to this effect has been attached with the memo of appeal nor any such evidence has been brought on record.

3. The appellant has further assailed the promotion orders of 17 teachers in the year 2008 on the ground that the same were against

the seniority of the appellant. To establish the said promotions violative of the rules and seniority, the appellant should have placed before me at least a seniority list of year 2008 or prior which has not been done and seniority of the appellant is mere assertion. The promotees have availed the promotions in the year 2008, who have interest in the outcome of this appeal, thus if the promotions were to be challenged then the alleged promotees should have been arrayed as respondents. But even this could not have helped the appellant get relief since the orders of the promotions are of year 2008 and the appellant has kept silent from the year 2008 till 2017 i.e filling of instant appeal which period of delay come to be 08 years and 04 months. The appellant was granted BPS-14 in 05-05-2011, which order was a final order passed by a competent authority and if the appellant genuinely considered himself eligible for promotion to BPS-14 with effect from any prior date the appellant had to move the departmental appellate authorities within 30 days of passing of such order, but the same has not been done by the appellant rather the appellant has directly filed the instant appeal after about six years.

4. The appellant after accepting his promotion orders of BPS-14 kept serving in the same scale until 01-07-2011 when the appellant was given BPS-16. The appellant has alleged that this promotion

order was also violative of the seniority as 17 other teachers were also promoted effecting the seniority of the appellant. The appellant is raising this objection for the first time even in the instant appeal and that too after a period of 05 years 04 months and 09 days which period of delay has not even been sought to be condoned.

5. The respondents on the other hand have totally denied the allegations raised by the appellant by stating that the departmental authorities have maintained the seniority list according to the law and rules.

6. The seniority list impugned by the appellant has not been prepared all of a sudden out of thin air, but the same is based on all the promotion orders mentioned hereinabove and assailed by the appellant in the body of appeal. As discussed above, the appellant has never challenged the said orders before any forum, hence he is now debarred and stopped by law from challenging the same. As to the seniority list assailed by the appellant, the same can not be altered in presence of promotions and appointment orders of the teachers with their respective dates. The list is in accordance with the dates of promotions of the teachers. Furthermore, the appellant claims seniority over 339 teachers whose seniority is to be effected in case of the appeal being allowed. Therefore, the said 339 teachers

were necessary party to the appeal who have been left out by the appellant.

7. In my view, the seniority list challenged by the appellant suffers no illegality while the matter regarding challenging the promotions by the appellant is hopelessly time barred. Hence, this appeal is dismissed.

8. File be consigned to record after completion.

Announced:  
03-4-2018

Sd/-  
**CHAIRMAN**

Judgment sheet  
**IN THE GILGIT-BALTISTAN SERVICE TRIBUNAL**

Appeal No. 565/2015.

Date of institution	11-12-2015
Date of hearing	05-04-2018
Date of judgment	26-04-2018

APPELLANT: Shah Faisal s/o Abdul Saboor r/o  
Chilas District Diamer.

RESPONDENTS: Provincial Govt. through Chief  
Secretary GB and 04 others.

BEFORE: Ali Sher Member-II.

PRESENT: Basharat Ali advocate for the  
appellant.

Akhtar Jan Law Officer GB for the respondents.

## **JUDGMENT**

**ALI SHER MEMBER-II:-** Brief facts, as stated by the appellant in the memo of appeal, are that the appellant was appointed by respondent No.6 in the year of 2006 after fulfilling all codal formalities. The appellant rendered his service regularly and vigilantly till the date of his termination. But, on 31 October, 2006 all of the sudden, the appellant along with his counter parts, mentioned in the impugned office order dated 31<sup>st</sup> October, 2006, was terminated on allegation of being deserter from NA Scouts (now GB Scouts) by the Deputy Inspector General of Police Northern Areas, Gilgit, vide impugned office order No. IGP (NAR) 12073-78/2006 dated 31<sup>st</sup> October, 2006. The departmental representation of the appellant was received by the office of the respondent No. 6 on 08-08-2015. Appellant made several visits of the office of respondent No. 6 time and again besides forwarding subsequent applications for departmental representation, but all went in vain. Finally appellant invoked the jurisdiction of this tribunal by preferring the instant service appeal NO. 565/2015 which was received by the office of this court on 11-12-2015. Appellant prayed for setting aside the impugned office order dated 31-10-2006 and his reinstatement with all back benefits from the date of his termination. The appellant contended in the memo of appeal that he was not deserter from Northern Areas Scout (GB Scouts), but he has been discharged from there. Hence, discharge of any employee does not disqualify him to be appointed in any department of the Government of Pakistan.

2. Respondents except respondent No.3, filed their joint para wise comments, wherein, they denied and opposed the contentions of appellant. Whereas, respondent No. 3 submitted his separate para wise comments wherein, he vehemently opposed the averments, made by the appellant in the memo of the appeal.

3. Learned counsel for appellant argued that the appellant was appointed by competent authority after fulfilling all codal formalities. He argued that once a person is appointed after fulfilling all codal formalities, he can be removed from service only with due process of law. Learned counsel further contended that the appellant is not deserter from Northern Scout but he has been discharged from the service of the Northern Scout. The learned counsel argued that discharge from service entitles the appellant to be appointed in any department of Government of Pakistan. He further contended that the impugned office order dated 31-10-2006 has no legal force of law as it has been passed by the Deputy Inspector General of Police Gilgit who has no legal authority to pass such an order as envisaged in rule 12-21 of police rules, 1934 where, only the superintendent of police can remove police constable from service and that too after due process of law. The learned counsel for appellant further contended that prior to termination of appellant, neither any Departmental inquiry has been conducted nor any show cause notice has been served upon the appellant as such, the impugned office order dated 31-10-2006, is illegal, null and void in the eye of law hence, liable to be set aside. Learned counsel for the appellant further submitted that the impugned order is illegal and void ab initio hence no limitation will run against such order. To corroborate his contention, learned counsel for appellant, placed his reliance on 1986 SCMR 962,PLD



1969 SC 582. The learned counsel for appellant, further argued that one of the foot constables, namely Abdul Hakkem s/o Mazoof Khan who was also terminated on allegation of being deserter from NA Scouts, along with the appellant through the impugned office order dated 31-10-2006. But, later on, for the reasons, best known to the respondent No. 6 the impugned office order was, to the extent of above named constable, recalled by the respondent No.6 and he was allowed to continue his duty in police force. Learned counsel argued that this act of respondent No. 6 depicts sheer discrimination committed in respect of appellant. Finally, learned counsel for appellant prayed for setting aside of impugned office order dated 31-10-2006, and reinstatement of appellant with all back benefits.

4. On the other hand learned law officer GB, appeared on behalf of respondents, opposed the contentions of learned counsel for appellant on various factual and legal grounds. Learned law officer argued that the appellant has been terminated from service on allegation of being deserter from NA Scouts, which was not in the knowledge of appointing authority at a time of appointment. He further contended that the appellant was duty bound to bring the fact of his discharge from NA Scout into knowledge of Departmental Selection Committee (DSC) at the time of his selection, but, he intentionally did not do so hence, the appellant proved to be inefficient and he has been lawfully terminated by the Deputy Inspector General of Police through impugned office order dated 31<sup>st</sup> October 2006. Though learned law officer GB did not press the issue of limitation for filing the instant service appeal, yet he prayed for dismissal of instant service appeal.

5. I heard the arguments, advanced by both learned counsel for appellant and law officer GB for respondents, with due consideration and perused record minutely. From perusal of record, it reveals that the appellant has been terminated by Deputy Inspector General of Police Gilgit under rule 12-21 of police rules, 1934. It is evident from the plain reading of the relevant rule that if a constable is found unlikely to prove an efficient police officer, he may be discharged by the superintendent police at any time within 3 years of enrollment. Schedule I police Disciplinary Rules, 1975 empowers only superintendent police or an officer equivalent grade and rank to remove a constable from service in case of inefficiency. These expressed provisions of police rules have been violated by Deputy Inspector General of police with assumption of jurisdiction not conferred upon him under the prevailing law by terminating the appellant although the DIG had all the options to refer the matter to the concerned superintendent police for disposal under the E&D rules.

6. The appellant has been terminated from service along with other constables whose names have been mentioned in the impugned office order dated 2006. Record shows that one of the victim, namely Abdul Hakeem of the impugned office order, has been allowed to continue his service in police force by respondent No. 6 for the reasons, best known to him by recalling the impugned office order, to the extent of the said constable vide office order No. IGP (NAR) 1372930/2006 dated 28 November, 2006. This act of respondent No. 6 manifests discrimination committed with the appellant where one having no approach has been terminated while the other blue eyed were allowed to continue their services.

7. Under rule 2 of police efficiency and Discipline Rules, 1975 it is mandatory that before termination of any police official, a departmental inquiry must be conducted by an inquiry officer. If an inquiry is not conducted by an inquiry officer, then the aggrieved official must be given an opportunity of personal hearing as well as show cause notice. But, unfortunately nothing has been found from the perusal of the relevant record and perusal of para wise comments. From which it could be inferred that the appellant was given an opportunity of personal hearing and show cause notice to defend himself before his termination. The established rule of "**AUDI ALTARAM PARTAM**" (no one can be condemned un heard) has been not complied with by the respondents. The appellant has been deprived of his indefeasible right of being heard which cannot be excused at all.

8. Respondent No. 3 admitted in para 7 of his para wise comments that the appellant has been discharged from NA Scouts, which is further corroborated by admission of remaining respondents in para 7 of their para wise comments that 114 wing NA Scouts Skardu vide letter No. 1168/631A dated 20 May 2007, pardon the offence, committed by the appellant. If it is admitted, that the appellant has been given pardon and on the basis of which he has been discharged from NA Scouts then under sub-section 6 of section 345 of the Code of Criminal Procedure 1898, such pardon/compromise amounts to acquittal of the appellant. Hence, discharge or acquittal does not disqualify the appellant to be appointed in any Department of the Government of Pakistan.

9. As far as the question of limitation to file this instant service appeal is concerned, though the instant appeal has been file after

lapse of statutory period, yet, limitation will not run against an order which has been passed without giving opportunity of personal hearing and show cause notice to aggrieved a civil servant. This has been discussed by the Hon'ble Supreme Court of Pakistan in its judgment, reported in 1986 SCMR 1962, by holding that if an impugned order has been passed without hearing and notice to a party whose presence is otherwise necessary before authorities concerned, such order will be a nullity in eye of law and no question of limitation would arise. The result is that, the impugned office order dated 31-10-2006 has not only been issued by incompetent authority but also no opportunity of personal hearing and show cause notice has been given to petitioner before his termination, as such, the impugned office order dated 31-10-2006 is nullity in the eye of law having no legal sanctity and cannot be given legal cover by subjecting it to law of limitation.

**10. For the reasons, discussed above, this service appeal No. 565/2015 is hereby accepted, the impugned office order No. IGP (NAR) 12073-78/2006 dated 31<sup>st</sup> October, 2006 is set aside and the appellant is reinstated in service with effect from 31-10-2006. However, the period from 31-10-2006 to 26-04-2018, shall be treated as leave without pay as the appellant has performed no duty during this period.**

11. File be consigned to record after completion.

12. No order as to cost.

Announced  
26-4-2018

-Sd-  
**Member-II**

Judgment sheet

**BEFORE THE GILGIT-BALTISTAN SERVICE TRIBUNAL**Appeal No. 566/2015.

Date of institution	11-12-2015
Date of hearing	05-04-2018
Date of judgment	26-04-2018

APPELLANT: Luqman Wali s/o Badin Khan r/o Darel District Diamer.

RESPONDENTS: Provincial Govt. through Chief Secretary GB and 05 others.

BEFORE: Ali Sher Member-II.

PRESENT: Basharat Ali advocate for the appellant.

Akhtar Jan Law Officer GB for the respondents.

**JUDGMENT**

**ALI SHER MEMBER-II:-** Brief facts, as stated by the appellant in the memo of appeal, are that the appellant was appointed on 10-12-2005 by respondent No.4, Superintendent Armed reserved forces GB, after fulfilling all codal formalities. The appellant rendered his service regularly and vigilantly till the date of his termination. But, on 04 October, 2006 all of the sudden, the appellant along with his counter parts, mentioned in the impugned office order dated 4 October, 2006, was terminated on allegation of being deserter from NA Scouts (now GB Scouts) by respondent No. 4, Gilgit, vide impugned office order No. AIG, ARP-1(2)/1806-10/2006 dated 4<sup>th</sup> October, 2006. The departmental representation of the appellant was received by the office of the respondent No. 4 on 17-09-2015. Appellant paid several

visits of the office of respondent No. 6 time and again besides forwarding subsequent applications of departmental representation, but in vain. Finally appellant invoked the jurisdiction of this tribunal by preferring the instant service appeal No. 566/2015 which was received by office of this Tribunal on 11-12-2015. Appellant prayed for setting aside the impugned office order dated 04-10-2006 and his reinstatement with all back benefits starting from the date of his termination. The appellant contended in the memo of appeal that he was not deserter from Northern Areas Scout (GB Scouts), but he has been discharged from there. Hence, getting discharge does not disqualify him to be appointed in any other department of the Government of Pakistan.

2. Respondents except respondent No.3 filed their joint para wise comments, wherein, they denied and opposed the contentions of appellant. Whereas, respondent No. 3 submitted his separate para wise comments wherein, he vehemently opposed the averments, made by the appellant in the memo of the appeal.

3. Learned counsel for appellant argued that the appellant was appointed by competent authority after fulfilling all codal formalities. He argued that once a person is appointed after fulfilling all codal formalities, he can be removed from service only with due process of law. Learned counsel further contended that the appellant is not deserter from Northern Scout but he has been discharged from the service of the Northern Scout as such, discharge from service entitles the appellant to be appointed in any department of Government of Pakistan. He further contended that the impugned office order dated 04-10-2006 has no legal force of law as it has been passed by Deputy Superintendent Armed Reserve Force Gilgit who does not possess

legal authority to pass such order as is envisaged in rule 12-21 of police rules, 1934 wherein, only the superintendent police can remove police constable from service and that too after due process of law. The learned counsel for appellant further contended that prior to termination of appellant, neither any Departmental inquiry has been conducted nor any show cause notice has been served upon the appellant as such, the impugned office order dated 04-10-2006, is illegal null and void in the eye of law hence, liable to be set aside. Learned counsel for the appellant further submitted that the impugned order is illegal and void ab initio hence no limitation will run against such order. To corroborate his contention, learned counsel for appellant, placed his reliance on 1986 SCMR 962, PLD 1969 SC 582. The learned counsel for appellant, further argued that one of the foot constables, namely Abdul Hakkem s/o Mazoof Khan who was also terminated on allegation of being deserter from NA Scouts, through the impugned office order dated 31-10-2006. But, later on, for the reasons, best known to the respondent No. 6 the above office order was, to the extent of above named constable, recalled by the respondent No.6 and he was allowed to continue his duty in police force. Learned counsel argued that this act of respondent No. 6 depicts sheer discrimination committed in respect of appellant. Finally, learned counsel for appellant prayed for setting aside of impugned office order dated 04-10-2006, and reinstatement of appellant with all back benefits.

4. On the other hand learned law officer GB, appeared on behalf of respondents, opposed the contentions of learned counsel for appellant on various factual and legal grounds. Learned law officer argued that the appellant has been terminated from service on

allegation of being deserter from NA Scouts, which was not in the knowledge of appointing authority at a time of appointment. He further contended that the appellant was duty bound to bring the fact of his discharge from NA Scout into knowledge of Departmental Selection Committee (DSC) at the time of his selection, but, he intentionally did not do so hence, the appellant proved to be inefficient and he has been lawfully terminated by Deputy Superintendent Armed Reserved Forces Gilgit through impugned office order dated 04 October 2006. Though learned law officer GB did not press the issue of limitation for filing the instant service appeal, yet he prayed for dismissal of instant service appeal.

5. I heard the arguments, advanced by both learned counsel for appellant and law officer GB for respondents, with due consideration and perused record minutely. From perusal of record, it reveals that the appellant has been terminated by Deputy Superintendent Arm Reserve Force Gilgit under rule 12-21 of police rules, 1934. It is evident from the plain reading of the said police rule that if a constable is found unlikely to prove an efficient police officer, he may be discharged by the superintendent police at any time within 3 years of enrollment. Schedule I police E & D Rules, 1975 also empowers only superintendent police or equivalent grade and rank to remove a constable from service in case of inefficiency. These expressed provisions of police rules have been violated by respondent No. 4 (Deputy Superintendent Arm Reserve Force Gilgit) with assumption of jurisdiction not conferred upon him under the prevailing law by terminating the appellant.

6. The appellant has been terminated from service along with other constables whose names have been mentioned in the office



order dated 04-10-2006. Record shows that one of the victim, namely Abdul Hakeem of the office order, has been allowed to continue his service in police force by respondent No. 6 for the reasons, best known to him by recalling the office order dated 31-10-2006, to the extent of the said constable vide office order No. IGP (NAR) 1372930/2006 dated 28 November, 2006. This act of respondent No. 6 manifests discrimination committed with the appellant where one having no approach been terminated while the other blue eyed were allowed to continue their services.

7. Under rule 2 of Police Efficiency and Discipline Rules, 1975 it is mandatory that before termination of any police personnel, a departmental inquiry must be conducted by an inquiry officer. If an inquiry is not conducted by an inquiry officer, then the aggrieved person must be given an opportunity of personal hearing as well as show cause notice. But, unfortunately nothing has been found from the perusal of record and para wise comments, from which it could be inferred that the appellant was given an opportunity of personal hearing and show cause notice to defend himself before his termination. The established rule of "**AUDI ALTARAM PARTAM**" (no one can be condemned un heard) has been not complied with by the respondents. The appellant has been deprived of his indefeasible right of being heard which cannot be excused at all.

8. Respondent No. 3 admitted in para 7 of his para wise comments that the appellant has been discharged from NA Scouts, which is further corroborated by admission of remaining respondents in para 7 of their para wise comments that 114 wing NA Scouts Skardu vide letter No. 1168/631A dated 20 May 2007, pardoned the offence, committed by the appellant. If it is admitted, that the

appellant has been given pardon and on the basis of which he has been discharged from NA Scouts then under sub-section 6 of section 345 of the Code of Criminal Procedure 1898, such pardon/compromise amounts to acquittal of the appellant. Hence, discharge or acquittal does not disqualify the appellant to be appointed in any Department of the Government of Pakistan.

9. As far as the question of limitation to file this instant service appeal is concerned, though the instant appeal has been filed after lapse of statutory period, yet, limitation will not run against an order which has been passed without giving opportunity of personal hearing and show cause notice to aggrieved person. This has been discussed by Hon'ble Supreme Court of Pakistan in its judgment, reported in 1986 SCMR 1962, by holding that if an impugned order has been passed without hearing and notice to a party whose presence is otherwise necessary before authorities concerned, such an order will be a nullity in eye of law and no question of limitation would arise. The result is that, the impugned office order dated 04-10-2006 has not only been issued by incompetent authority but also no opportunity of personal hearing and show cause notice has been given to petitioner before his termination, as such, the impugned office order dated 04-10-2006 is nullity in the eye of law having no legal sanctity and cannot be given legal cover by subjecting it to law of limitation.

**10. For the reasons, discussed above, this service appeal No. 566/2015 is hereby accepted, the impugned office order No. AIG, ARP-1(2)/1806-10/2006 dated 4<sup>th</sup> October, 2006 is set aside and the appellant is reinstated in service with effect from 04-10-2006. However, the period from 04-10-2006 to**

**26-04-2018, shall be treated as leave without pay as the appellant has performed no duty during this period.**

11. File be consigned to record after completion.

12. No order as to cost.

Announced  
26-4-2018

Sd/-  
**Member-II**

Judgment Sheet  
**BEFORE GILGIT-BALTISTAN SERVICE TRIBUNAL  
GILGIT**

Service Appeal No. 63/2017&Service Appeal No. 66/2017

Date of Institution:	05.10.2017 07.10.2017
Date of hearing:	11.04.2018
Date of Judgment:	11.05.2018

Appellants: Imam Yar Baig s/o Hazarah Baig and Mr. Abdul Samad, Ex. Principals, Govt. College of Education Jutial Gilgit

Respondents: Provincial Government through Chief Secretary GB & 02 others

Before: Mr. Muhammad Kamal Member-I

Present: Mr. Munir Ahmed Advocate for Appellant Mr. Imam Yar Baig  
Mr. Latif Shah, Advocate for Appellant Mr. Abdul Samad Khan

Mr. Akhtar Jan, Law Officer GB for respondents No. 1 to 3 assisted by Mr. Muhammad Ilyas ADI, rep.of Education

Department. GB.

## **JUDGMENT**

**MUHAMMAD KAMAL MEMBER-I:-** Identical questions of law and the facts are involved in both the above titled appeals, therefore, these are being disposed off through this single judgment.

1. The facts of appeals are that appellant Imam YarBaig in Appeal No. 63/2017 and Abdul Samad, appellant in Appeal No. 66/2017 stood retired from the post of Principal (BS-20), Government College of Education, Jutial, Gilgit one after another as on 28.02.2012 and 26.09.2012 respectively in their own pay scale BS-19 after attaining the age of superannuation. A "4 tier service structure "was introduced by KA/NA Division vide its letter No. III-1(5)(9)/2000 dated 28.01.2002, whereby 04 posts (three posts of Director Education and one post of Principal Elementary College) were upgraded from BS-19 to BS-20. These upgraded posts were to be filled in by 100% promotion in the first instance. Out of these four posts of BS-20, two posts were filled in by promotion of two incumbents, namely M/s. Syed Shahzada Ibrahim and Ch. Khalid Mehmood from BS-19 to BS-20 and the remaining two posts of BS-20 were lying vacant for want of requisite length of service of next incumbents. Three officers in BS-19, who were senior to the appellants, knocked the doors of Education Department GB for promotion against the upgraded posts carrying BS-20 on the basis of 4 tier service structure. The Education Department GB did not accede to their requests on the pretext of having no approved recruitment rules, despite the fact that M/s. Syed Shahzada Ibrahim and Ch. Khalid Mehmood were promoted from BS-

19 to BS-20 without having approved recruitment rules. By that time, those three officers stood retired after attaining age of superannuation during the years 2006, 2007 and 2008 respectively. After approval of recruitment rules, working papers for proforma promotion in respect of the said three officers were prepared and submitted to the Secretary Education for holding DPC meeting, but till 2014 no DPC meeting was held. After exhausting all available forums, these three officers approached this Hon'ble Tribunal with a Service Appeal No. 465/2014 titled "Mir Fazil Shah & 02 others Vs. Provincial Government through Chief Secretary GB 02 others" for grant of ante-dated/ proforma promotion. A full bench of this Hon'ble Tribunal accepted appeal of the appellants and granted them ante-dated/ proforma promotion. The judgment of this Hon'ble Tribunal was assailed before the Hon'ble Supreme Appellate Court GB by way of filing of an Appeal No. 34/2017 in CPLA No. 75/2016 by the respondents. The august Court, upheld judgment of this Tribunal dismissing thereby appeal of the present respondents vide judgment dated 10.08.2017.

2. The appellants submitted an appeal to the Chief Secretary GB for proforma promotion against the post of Principal (BS-20), College of Education Gilgit on 11.03.2014 and 10.07.2017 respectively. The appeals remained under process with Education Department GB but no decisions were taken in the said appeals. On 18<sup>th</sup> March, 2015, office of the Secretary Education GB wrote a letter to Director Education (Academics) Gilgit directing that since recruitment rules for teaching staff of Education Department GB have been approved, therefore all cases of proforma promotions be processed. It was in the light of these directives that a committee was constituted

comprising of Deputy Director (B&A), Assistant Director and Admin Officer of Education Department GB with regard to proforma promotion of appellants. The Committee, after examining the case, submitted its report duly recommending proforma promotion of appellants from 10.02.2008 (Mr. Imam YarBaig) and 16.11.2012 (Mr. Abdul Samad Khan) in the same analogy of judgment passed by this Tribunal in Appeal No. 465/2014 "Mir Fazil Shah & 02 others Vs. Provincial Govt. etc". However, the Committee recommended for waiting till decision by the Hon'ble Supreme Appellate Court GB, as the present respondents had challenged judgment of this Tribunal before the august Court. The apex Court, upheld the judgment of this Tribunal. After upholding the judgment of this Tribunal by the apex Court, the Education Department GB had no option but to proceed with recommendations of committee, but authorities of Education Department GB did not implement their own recommendations and compelled the appellants to approach this Tribunal with the appeals in hand.

3. I have heard the arguments of both the parties in considerable length as well as perused all the available records including parawise comments of the concerned department in both the above titled appeals. The learned Law Officer mainly contended in his arguments in both the appeals that there is a prohibition on ante-dated/ proforma promotion after retirement under the service law and rules. The appellants have been retired in BS-19 after attaining the age of superannuation, hence they cannot claim proforma promotion under law. These objections were denied by the learned counsels for the appellants and referred a case law reported at 1997 SCMR 515 which is directly applicable to the appeals in hand; observed as follows:

***“On behalf of Govt., it is contended that no Civil Servant has a right to claim that he should be promoted from a back date even though a vacancy may be existing on the date from which the promotion is being claimed. This no doubt true but here there are no orders by the Government that the respondents should be held up for some time. The delay in making the promotions occurred entirely due to the reason that the official of the Education Department could not carry out a fairly simple exercise within a reasonable period. In the circumstances it will not be appropriate for the court to interfere with the order of the learned Tribunal. Leave is refused”***

I have given due consideration to the facts of both the service appeals and to the record produced before me and found that apart from what has elaborately been discussed above, there are two judgments, one passed by this Hon'ble Tribunal and the other passed by the Hon'ble Supreme Appellate Court GB in appeals by Mir Fazil Shah etc. which are identical in facts and grounds to the appeals of the appellants. The proforma promotion of appellants pended till the decision by Hon'ble Supreme Appellate Court in an appeal filed by present respondents against judgment of Service Tribunal. The fate of promotion of appellants were linked with decision in favour of Mir Fazil Shah etc. by Hon'ble Supreme Appellate Court. Ultimately, decision came in favour of Mir Fazil Shah etc Thus in the light of

judgment of this Hon'ble Tribunal and Hon'ble Supreme Appellate Court GB as well, Education Department GB had no alternatives but to proceed with proforma promotion case of appellants and others, but it did not do so and the appellants were compelled to come to this Tribunal sustaining thereby financial loss and mental agony to the persons who served a considerable length of their lives to Education Department. There is a very relevant judgment passed by the Hon'ble Supreme Court of Pakistan reported at 1996 SCMR 1185 wherein it has been held that:

***"If FST or Supreme Court of Pakistan decides a point of law relating to terms and conditions of a civil servant which covers not only the case of a civil servant who litigated, but also of other civil servants who may have not taken any legal proceedings, in such a case, the dictates and rule of good governance demand that the benefit of such judgment by FST/Supreme Court be extended to the civil servants, who may not be parties to the litigation instead of compelling them to approach the Service Tribunal."***

4. For the reasons and grounds stated above and in the light of judgment of this Tribunal, Supreme Appellate Court GB and recommendations of Inquiry Committee, appeals of the appellants are partially accepted with direction to the Education Department GB for putting up the working papers of proforma promotion of appellants subject to fulfillment of length of service by appellants which is prerequisite for promotion to the upgraded post of BS-20 Principal College of Education, Gilgit with effect from their respective dates of



assumption of charge against Principal BS-20, College of Education Gilgit instead of from the dates prayed for, with all back benefits/ arrears of pay and allowances.

5. Parties to bear their own costs.
6. File be consigned to record after completion.

Announced:  
11.05.2018

Sd/-  
**Member-I**

Judgment Sheet  
**BEFORE GILGIT-BALTISTAN SERVICE TRIBUNAL  
GILGIT**

Service Appeal No. 477/2014

Date of Institution:	10.07.2014
Date of hearing:	09.05.2018
Date of Judgment:	23.05.2018

**Appellant:** Dr. Qazi Muhammad Saleem Principal  
HRDC Skardu Health Department  
Gilgit-Baltistan

**Respondents:** Provincial Government through Chief  
Secretary GB & 05 others

**Before:** Mr. Muhammad Kamal Member-I  
DIG(r) Ali Sher TST Member-II

**Present:** Mr. Sadat Ullah Advocate for  
Appellant.  
Mr. Akhtar Jan, Law Officer GB for  
respondents No. 1 to 4 assisted by  
Mr. Attaullah Assistant Director  
Health Department, GB.

## JUDGMENT

**MUHAMMAD KAMAL MEMBER-I:-** Through this judgment, we intend to dispose off the above service appeal filed by Dr. Qazi Muhammad Saleem, Principal HRDC, Health Department GB for promotion against the post of Principal Medical Officer BS-20 in Health Department GB.

1. Facts gleaned out from memo of appeal as well as according to available record on file, appellant was initially inducted as Medical Officer BS-17 on 21.07.1985. Subsequently, appellant was promoted to the post of Senior Medical Officer BS-18 on 06.11.2006. Thereafter on 15.05.2009, appellant was further promoted to the post of Additional Principal Medical Officer BS-19 in Health Department GB.

2. A Notification vide No. SO(S)-1-I(8)/2006 dated 30<sup>th</sup> April, 2010 was issued by the Services Department GB whereby 33 doctors were promoted including respondent No. 5 and 6 (Dr. Muhammad Afzal and Dr. Muhammad Irshad Hussain) who were promoted against the post of Principal Medical Officer BS-20 in Health Department GB. These two doctors have been impleaded as party to the appeal in hand. The appellant is aggrieved by this notification as the respondents No. 5 and 6 have been promoted against the post of Principal Medical Officer (BS-20) on the basis of simple seniority as they did not possess the required qualification at the time of their promotion as per the then prevailing Recruitment Rules of Health Department i.e. SRO of 2009 and 2011. The appellant contended that respondent No. 5 and 6 were not entitled to be promoted against the post of Principal Medical Officer BS-20 as they did not possess the

required qualification laid down in the SRO of 2009 i.e. Postgraduate higher/ Lower Diploma in Public Health/ Health Services Administration/ Hospital Administration or equivalent. The appellant further claims that he was entitled to be promoted against the Principal Medical Officer BS-20 because he possessed the required qualification under the SRO, thus he was deprived of the lawful entitlement of promotion. The respondents No. 5 and 6 were promoted provisionally under the draft recruitment rules while there is no provision in the SRO for provisional promotions or concept of promotions under draft recruitment rules in the laws/ rules. To this effect, the appellant submitted a departmental appeal to the Secretary Health GB followed by certain appeals to Chief Secretary and Chief Minister GB as well.

3. Examination of the appeal file reveals that after having received no fruitful action in favour of the appellant by the authorities to whom the appellant had submitted appeals, appellant resorted to legal remedy by way of filing a writ petition No. 55/ 2010 before the Hon'ble Chief Court GB for redressal of his grievances. The Hon'ble Chief Court GB dismissed the petition on the ground that since the petition pertains to terms and conditions of services, therefore it did not have the jurisdiction to entertain such petitions. Against this order, the appellant approached the Hon'ble Supreme Appellate Court with a CPLA, as at that time GB Service Tribunal did not come into existence. Later on, upon establishment of GB Service Tribunal, the said CPLA was withdrawn with permission of the Hon'ble Appellate Court and came with the instant appeal before this Tribunal.

4. Parawise comments have been filed by respondents No. 1 to 4 through learned Law Officer GB while the private respondents

through their respective counsels wherein they have respectively denied the contentions so taken by the appellant.

5. The learned Law Officer contented on behalf of respondents No. 1 to 4 that the department has made lawful promotion of the respondent No. 5 and 6 keeping in view the then draft rules. He also argued that appellant being junior to the private respondents 5 and 6, is ineligible and cannot claim promotion against the post appealed for thereby bypassing senior incumbents. He further argued that the appeal of appellant is time barred hence cannot be entertained besides having not fulfilled the requirements laid down in GB Service Tribunal Act 2010. He also contented that the respondents No 5 and 6 have been promoted after fulfilling the codal formalities.

6. Arguments heard in pro and contra and have gone through the available record on file. We have given due consideration to the arguments advanced from both the sides. Approved Recruitment Rules of 2009 and 2011 have been examined. From examination of these approved rules, it is crystal clear that for promotion from Additional Principal Medical Officer BS-19 to Principal Medical Officer BS-20, the incumbent must have possessed the required qualification i.e. "***Postgraduate higher/ Lower Diploma in Public Health/ Health Services Administration/ Hospital Administration or equivalent***". The department concerned drafted an amended recruitment rules in 2009 whereby omission of prescribed qualification/ experience for promotion to the post of Principal Medical Officer (BS-20) were proposed and placed with the FPSC for concurrence. Soon after submission of draft rules and before finalization thereof by the FPSC, the official respondents promoted

provisionally the respondents No. 5 and 6 who had not possessed the qualification/ experience as prescribed in the then existed recruitment rules. The appellant was carrying this qualification, which eventually made him a suitable candidate for promotion against the said post at the time when the respondents No. 5 and 6 were promoted provisionally. Seniority alone is not enough which is to be considered for promotion as a right. Fitness is also an important consideration and has to be co-exist with seniority. Approved Recruitment Rules/ SRO 2009 and 2011 were authentic and prevalent documents which warranted for strict adherence while dealing with promotion cases during the years from 2009 to 2011, however the concerned department did not do so and bypassed these authentic rules by provisionally promoting respondent No. 5 and 6 on the basis of simple seniority without considering fitness. It must be appreciated that there is no provision of promotion under draft recruitment rules or concept of provisional promotions. Although in the eyes of law, the promotions of respondents No. 5 and 6 were quite contrary to the prescribed rules so prevailed, but both the officers (respondents) have been retired from their services on attaining the age of superannuation. Now, if we interfere with the impugned promotion order at this stage considering the same as discriminatory, it will lead to unavoidable administrative complications to the department concerned besides causing financial hardship to the respondents No. 5 and 6 who have already gone on retirement. Therefore, we hold that without interfering impugned order for the reasons mentioned above, the appellant may be extended at least his right of promotion to the next higher grade enabling him to meet with pensionary benefits before his retirement due on 31.07.2018 by accepting the appeal in hand partially.

7. The upshot of what has been discussed above is that certainly the appellant has been meted out with injustice and has been denied his lawful right of promotion under the prevailing approved recruitment rules of 2009 and 2011 and compelled him to sustain loss in terms of money and unnecessary litigation. Therefore, official respondents are directed to extend retirement benefits to the appellant either by promoting him against any vacant post of BS-20 or upgrading the post to BS 20 in terms of person specific before his retirement i.e. 31.07.2018.

8. Parties to bear their own costs.

9. File be consigned to record after completion.

Announced:  
23.05.2018

Sd/-  
**Member-I**  
Sd/-  
**Member-II**

Judgment sheet  
**BEFORE THE GILGIT-BALTISTAN SERVICE TRIBUNAL**

Appeal No. 612/2016.

Date of institution	25-06-2016
Date of hearing	15-05-2018
Date of judgment	13-06-2018

APPELLANT: Inam ur Rehman s/o Syed Aman r/o  
Thak Chilas District Diamer.

RESPONDENTS: Provincial Govt. through Chief  
Secretary GB and 05 others.

BEFORE: Mr. Ali Sher Member-II.

PRESENT: M/S Basharat Ali Advocate for the appellant.

M/S Akhtar Jan Law Officer GB.

### **JUDGMENT**

**ALI SHER MEMBER-II:-** Brief facts leading to the instant service appeal are that the appellant was terminated from service by respondent No. 1 on 14-10-2006. Appellant preferred service appeal No. 278/2014 to this Hon'ble Tribunal which was accepted vide judgment dated 28-04-2015 with reinstatement of the service of appellant from the date of his termination i.e 14-10-2006. However, the period from termination dated i.e 14-10-2006 to reinstatement dated 28-04-2015 was treated as leave without pay as the appellant performed no duty during the said intervening period. Respondent No. 1 reinstated the appellant to his service in compliance with judgment dated 28-04-2015 of this Hon'ble Tribunal, but no increment from the date of termination to reinstatement was given to appellant by respondent No. 1. Appellant made departmental representation on 16-03-2016 for grant of his yearly increment but, was not entertained. Finally, appellant preferred the instant service appeal with prayer to grant him yearly increment from 2006 to 2014.

2. Respondent No.1 filed para wise comments whereby the contention of appellant was vehemently opposed on legal and factual grounds by stating that the appellant was reinstated to his service by Hon'ble GB Service Tribunal whereby the intervening period has been

treated as leave without pay. Therefore, appellant is not entitled for the benefit of fixation of yearly increment.

3. Learned counsel for appellant submitted that since the service of appellant has been reinstated from the date of his termination, therefore, he is entitled for yearly increment. Learned counsel further contended that when a civil servant is allowed leave without pay or reinstated to his service, he is entitled for yearly increment. Therefore, the appellant is entitled for fixation of increment. Finally, learned counsel for appellant, prayed for grant of increment from 2006 to 2014 to appellant to meet the ends of justice.

5. Learned Law Officer GB, appearing on behalf of respondents, strongly opposed the contention of counsel for appellant by stating that when a civil servant is reinstated or allowed leave without pay, he is not given benefit of yearly increment. He further submitted that since the appellant performed no duty during intervening period therefore, he is not entitled for benefit of yearly increment. Finally learned Law Officer prayed for dismissal of instant service appeal with cost.

6. I have heard the arguments pro and contra with due consideration and perused record minutely. From perusal of the record, it reveals that the appellant was, after his termination from service, reinstated by this Hon'ble Tribunal vide Judgment dated 24-04-2015 whereby the period from termination to reinstatement of the appellant was ordered to be treated as leave without pay. It is not disputable that the appellant has performed no duty during intervening period therefore, he is neither entitled for any salary nor



for any increment. Increment always follows salary if no salary is given to any civil servant he cannot claim for any yearly increment.

7. It is admitted state of affairs, that the appellant was reinstated to his service in compliance of the judgment dated 24-04-2015, passed by this Hon'ble Tribunal, which was accepted by the appellant to the extent of his reinstatement but to the extent of fixation of increment, the said judgment was impugned by the appellant through filing the instant service appeal. Legally, service appeal can be filed against any original or appellate departmental order but perusal of the record shows that no such departmental order is available on record against which the instant service appeal has been preferred. Only under the umbrella of the judgment of this Hon'ble Tribunal, the instant service appeal has been preferred by the appellant which is illegal in law as the appellant cannot be allowed to first approbate the said judgment and then re-appropriate it.

8. If the appellant was not benefited from the judgment dated 28-04-2015 passed by this Hon'ble Tribunal, he should have filed review to this forum or leave to appeal to higher forum. But, unfortunately, appellant did not do so even after the expiry of statutory period. Resultantly, the judgment dated 28-10-2015 passed by this Hon'ble Tribunal is binding upon the appellant. This law point has been discussed by Hon'ble Supreme Court of Pakistan in its judgment reported in 2007 SCMR 507 that remedy against incorrect or wrong decision is provided by way of appeals, revision and reviews if such remedies are not invoked, then the order even if erroneous, will be binding upon the parties.

9. For the reasons, discussed above, the instant service appeal is hereby dismissed being meritless.

10. No order as to cost.

(Announced)  
13-06-2018

Sd/-  
**Member-II**

Judgment Sheet  
**BEFORE GILGIT-BALTISTAN SERVICE TRIBUNAL  
GILGIT**

Service Appeal No. 477/2014

Date of Institution:	19.03.2015
Date of hearing:	07.06.2018
Date of Judgment:	22.06.2018

**Appellant:** Sher Afzal s/o Abdul Sadiq Ex. UDC  
Finance Department Gilgit Baltistan  
Secretariat, Gilgit

**Respondents:** Provincial Government through Chief  
Secretary GB & 03 others

**Before:** Mir Akhlaque Hussain Chairman  
Mr. Muhammad Kamal Member-I  
DIG(r) Ali Sher TST Member-II

**Present:** Mr. Basharat Ali Advocate for Appellant.  
Mr. Akhtar Jan, Law Officer GB for  
respondents No. 1 to 4

**JUDGMENT**

**MUHAMMAD KAMAL MEMBER-I:** Through the instant appeal, the appellant has called in question the order dated 06.09.2011

issued by the Deputy Secretary S&GD whereby the appellant has been dismissed from service in Finance Department, GB.

2. The concise facts are that the appellant was appointed as UDC(BS-9) in Finance Department GB vide office order No SO (S)-I-1 (1)/2006 on 15.06.2006. In the year 2008, the appellant applied for study leave to achieve higher educational qualifications. The Secretary Finance GB (Respondent No.2) sanctioned 02 years Extra Ordinary Leave (EOL) without pay in favor of the appellant instead of study leave applied for, vide office Order No F&R-A-1(25)/2006 dated 11.09.2008 because the appellant did not qualify the required length of service i.e. 05 years which is mandatory to eligibility for study leave. The appellant accepted and availed EOL so granted with effect from 1<sup>st</sup> Nov. 2008.

2. According to memo of appeal, the appellant took admission in MA at NUML University, Islamabad. On expiry of 02 years EOL, the appellant applied for further extension of EOL for a period of another 02 years w.e.f 01.11.2010 to 30.10.2012 for completion of his study. The application of the appellant for the extension of EOL was processed and finally terminated the services of appellant vide impugned order dated 06.09.2011. On the other hand the appellant continued his study without obtaining prior permission/sanction of leave from the competent authority. After completion of study, he came back to resume his duties in Finance Department (Date not mentioned) and then came to know about his termination from services. The Appellant then filed a representation to the same authority i.e. Secretary Services, GB on 14.04.2014, who previously terminated his service vide impugned Order dated 06.09.2008, for re-

instatement of his service. The appellant after elapse of 11 months with having no final order, came up to this Tribunal praying for setting aside the impugned Order dated 06.09.2011 and to re-instate him in his service.

3. We heard arguments advanced by the learned Counsels of both the parties and available record of the case has also been perused minutely.

4. The learned Counsel for the appellant mainly contented that respondent No. 2 did not follow the mandatory provisions laid down in Civil Service Rules while terminating the services of appellant. The appellant never received any notice/charge sheet, nor was he given opportunity of personal hearing, thus the dismissal order itself stands *void* and liable to be set aside. In support of his contention he also referred case laws, as well as relevant rules of ESTACODE wherein it is mandatory to adopt prescribed procedure before issuing dismissal order/ punitive measures to a Civil Servant.

5. Conversely, it is contented by the learned Law Officer that on denying the application of appellant for the extension of EOL, the authorities concerned have issued notices to him to rejoin his duties, through available sources as the appellant deliberately did not mention his postal address nor he himself bothered to visit personally in his Department to pursue his application. The act of the appellant without obtaining prior permission of competent authority and remaining absent from duty was proved to be guilty of misconduct thus he was rightly dismissed from service.

6. We have carefully considered the arguments advanced from both sides and have gone through the available records as well as case laws referred to with their able assistance. Resultantly it was found that the appellant after expiry of 02 years EOL, sent an application for extension of further 02 years to the Secretary Finance (Respondent No.2). He did not wait for its sanction and continued stay away to avail self granted leave instead of obtaining proper permission of competent authority. The authority concerned refused his extension of EOL and issued notices to him to resume his duties through different available sources as he had not mentioned his actual address in his application for the reason best known to him. Every possible effort was made by the Department to procure his attendance but in vein. Although the department should have done publication on print media as a last resort to get the appellant associated with the proceedings but at the same time careless and insensible approach of the appellant cannot be appropriated. The appellant admittedly had not joined his duties after availing 02 years EOL but sought 02 years more extension in his leave which was never sanctioned and absence of the appellant has rightly been treated as willful absence. How such deliberate absence from duty could have been ignored. It is difficult to believe that the appellant has been terminated from service in the year 2011 and he came to know about his termination in the year 2014. He then filed a representation for his reinstatement in the service before the same authority i.e. Secretary Services GB on 21.01.2014 who has already terminated him vide impugned order date 06.09.2011 instead of filing appeal to the next higher authority i.e. Chief Secretary GB. The appellant could not furnish any lawful justification to stay away for a sufficient long period from his duties without obtaining permission since his expiry of

EOL dated 01.11.2010 upto his termination of service issued on 06.09.2011. His filing of departmental appeal as on 24.04.2014 after 31 months of his dismissal is also liable to call in question. The appellant filed the instant appeal before this Tribunal against the impugned order dated 06.09.2011. If we consider his departmental representation dated 24.04.2014 as review, even then the instant appeal is lying with an inordinate delay of 11 months and thus, not maintainable being time barred. There is a very relevant ruling by the Hon'ble Supreme Court of Pakistan reported at 2009 SCMR 1121. Relevant part thereof is reproduced below:

**“Even otherwise it is well-settled principle of law that mere submission of application for leave by an employee to his department would not mean that leave has been granted in his favour and he is duty bound to enquire from the department himself about the fact of his request for grant of leave. In the case in hand, the petitioner did not even bother to contact his department himself or through his agent to know as to whether leave has been sanctioned or not.....It is settled principal of law that when appeal of the employee was time barred before the appellate authority then the appeal before the Tribunal was also not competent on that count in view of the various pronouncements of this Court including the following judgments”.**

7. In view of what has been discussed above, appeal in hand is dismissed being time barred, meritless and not maintainable with no order as to costs.

8. File be consigned to record after its completion.

Announced:  
22.06.2018

Sd/-  
**Chairman**  
Sd/-  
**Member-I**  
Sd/-  
**Member-II**

Judgment sheet  
**IN THE GILGIT-BALTISTAN SERVICE TRIBUNAL  
GILGIT**

Appeal No. 563/2015.

Date of institution	08-12-2015
Date of hearing	22-6-2018
Date of judgment	26-6-2018

**APPELLANT:** Shah Murad Khan s/o Sono r/o Village District Ghizar, Ex-Director Education Baltistan Region.

**RESPONDENTS:** Provincial Govt. through Chief Secretary GB and 02 others.

**BEFORE:** Mir Akhlaque Hussain Chairman.  
Mr. Muhammad Kamal Member-I.  
Mr. Ali Sher Member-II.

**PRESENT:** M/S Amjad Hussain, Shahid Abbass Advocates for appellant.  
Akhtar Jan Law Officer G.B assisted by Muhammad Ilyas ADI representative Education department for respondents.

## JUDGMENT

**MIR AKHLAQUE HUSSAIN CHAIRMAN:** Brief facts of the instant case are that the appellant has filed service appeal for setting aside of the impugned order dated 26.3.2015. According to which after conducting an inquiry against the appellant major penalty of compulsory retirement from service was imposed and the appellant has been retired from service compulsorily. Appellant further prayed that the service of appellant may be restored with all back benefits and inquiry report and impugned order for compulsory retirement may be declared null and void, based on malafide. Respondents filed parawise comments and denied the claim of appellant. We have heard the learned counsel for the appellant as well as the learned Law Officer counsel for respondents in length and perused the record minutely with the able assistance of both the learned counsel.

2. Counsel for appellant argued that the appellant served in education department as Director Education of Baltistan region from July, 2011 to February, 2013. On 23.3.2014 respondent No. 1 vide Officer Order No. sec. edu-2(14)/2014 directed the appellant to relinquish the charge of Director Education Baltistan region and report in Directorate of Education Gilgit, the appellant accordingly complied the order of competent authority. Counsel for appellant further



contended that on 06<sup>th</sup>, February, 2014 vide Office Order No.3(25)/2014-ESTT-III- SECRETERIES . The respondent No. 1 appointed Dr. Atta ur Rehman Secretary Home & Prisons Gilgit-Baltistan and Mr. Abid Ali Deputy Director Education Skardu as inquiry officers against appellant. Who started inquiry by serving Charge Sheet dated 25<sup>th</sup>, February,2014 against appellant and the appellant submitted reply to inquiry officer accordingly. The inquiry officer after conducting inquiry proposed / recommended major penalty of compulsory retirement from service, but the inquiry report when presented before the Hon'able Chief Minister for approval or otherwise. The Chief Minister returned the same with the observation to give opportunity of hearing before passing adverse order against appellant. Then the Service Department vide office order No. 7(28)/2014-Estt-III- Services dated 18<sup>th</sup>, November, 2014 appointed Professor Dr. Mir. Ahmad Jan BPS-20 as hearing Officer who again conducted inquiry and submitted his inquiry report with the recommendations for conversion of Major penalty into minor penalty by withholding two annual increments. The counsel for appellant further contended that the respondents by violating the recommendations of the 02<sup>nd</sup> Inquiry /hearing officer imposed major penalty of compulsory retirement. Counsel for appellant further submitted that the appeal in hand is within time and prayed that

impugned order dated 26.3.2015 passed by respondents may be set aside, the service of appellant may be restored with all back benefits and inquiry report and impugned order may be declared null and void.

3. On the other hand the learned Law Officer representing the respondents vehemently argued raising preliminary objections that the instant appeal has not been framed under the parameters of Law, hence is not maintainable and is liable to be dismissed. The appellant has no cause of action to file the instant appeal against the respondents, hence same is liable to be rejected under Order 7 Rule 11 CPC. He further objected that the appellant has no *locus standi* to file the instant appeal, hence is liable to be rejected. The learned Law Officer further objected that the appellant was found involved in illegal appointments of teachers in education department which was proved in the inquiry report conducted by the inquiry officer under Gilgit-Baltistan Efficiency & Disciplinary Rules. The competent authority agreed to the report proposed to award the major penalty of compulsory retirement of the appellant further more the appellant failed to file appeal against the compulsory retirement before this Hon'able Tribunal within the time frame, therefore the appeal is liable to be dismissed. The learned Law Officer next objected that the NAB also charged a case against appellant which is under process hence the instant appeal is not maintainable and is liable to be dismissed.

4. The learned Law Officer argued the case on facts and contended that it was necessary for the government to conduct an inquiry against the appellant to probe into the illegal appointments.

Hence Dr. Syed Atta ur Rehman the then Secretary Home and Prisons was appointed as inquiry officer, who conducted proper inquiry as per rules and submitted his report with recommendations to panelize the appellant and proposed compulsory retirement as major penalty. The report was sent to honourable Chief Minister for approval but the then Hon'able Chief Minister returned the report with direction to appoint a hearing officer giving opportunity to the appellant for personnel hearing. Accordingly on 18<sup>th</sup>, November, 2014 Professor Dr. Mir Ahmad Jan BPS-20 Director Colleges was appointed as hearing officer and He conducted personal hearing of the appellant and submitted his report with recommendations for conversion of major penalty into minor withholding two annual increments of the appellant in his first report. The learned Law Officer further contended that this report was not justified, because the personnel hearing officer had no power and authority to recommend anything in favour or against the appellant. The personal hearing officer's duty was to only submit his facts finding report after hearing before the inquiry officer. The 1<sup>st</sup> report of the hearing officer dated 29.12.2014 was beyond his power, hence was not accepted and returned the said report on 13.01.2015 with remarks that "The report may be rectified accordingly and re-submit to the Services Department Gilgit-Baltistan within 07 days". The learned Law Officer next contended professor Dr. Mir Ahmad Jan was appointed as personal hearing officer while the then Secretary Food Gilgit-Baltistan Mr. Tariq Javed Malik has never been appointed as personal hearing officer to conduct personal hearing of the appellant. The learned Law Officer further submitted that in the light of final report dated 21.01.2015 after hearing the appellant submitted by Dr. Mir Ahmad Jan, the major penalty of compulsory retirement of the appellant was upheld by the authority

competent and issued notification dated 26.3.2015 accordingly. The learned Law Officer representing the respondents prayed that the instant appeal may be dismissed being meritless, baseless and unfounded.

5. We have taken into consideration contentions raised by the learned counsel for the appellant as well as the learned Law Officer representing the respondents and perused the record available on case file. Appellant was panelized and retired from government service compulsorily on 26.3.2015 against which the appellant submitted departmental appeal on 23.4.2015 which was decided and passed the decision order on 19.10.2015 according to which the appellant was advised to file the departmental appeal in proper forum ( which could not be treated as final order ). After this order the appellant preferred the instant appeal before this Tribunal on 05.12.2015. After lapse of one month and 16 days which is time barred by 16 days. As for as the contention of counsel for appellant about receiving of the order dated 19.10.2015 by the appellant on 18.11.2015 is concerned. the copy provided in proof has not been certified by the relevant authority, is not admissible as per rules and is also not a final order. Furthermore, in the instant appeal the appellant made impugned the compulsory retirement order dated 26.3.2015 and prayed for setting aside the same. The instant appeal

of the appellant if the limitation counted from the impugned order dated 26.3.2015 then the instant appeal is clearly time barred by 08 months and 19 days. Further the record clearly shows that the inquiry against the appellant has been conducted as per relevant Law, procedure and rules providing the appellant full opportunities to disprove the charges leveled against him. We found no any illegality and irregularity and infirmity in the inquiry proceedings. Hence, the instant appeal is dismissed as meritless and time barred. Order announced in the open Court.

File be consigned to record after completion.

Announced:  
26-6-2018

Sd/-  
**CHAIRMAN**  
Sd/-  
**MEMBER-I**  
Sd/  
**MEMBER-II**

Judgment sheet  
**IN THE GILGIT-BALTISTAN SERVICE TRIBUNAL**  
**GILGIT**

Appeal No. 656/2016.

Date of institution	24-11-2016
Date of hearing	28-6-2018
Date of judgment	28-6-2018

APPELLANT: Dardmand Shah s/o Ameer Shah, Ex-Levy Assistant Commissioner Office Punial Ishkoman r/o Ishkoman Khas, District Ghizar.

RESPONDENTS: Provincial Govt. through Chief Secretary GB and 05 others.

BEFORE: Mir Akhlaque Hussain Chairman.  
Mr. Muhammad Kamal Member-I.  
Mr. Ali Sher Member-II.

PRESENT: Mr.Rehmat Karim Advocate for appellant.  
  
Mr. Akhtar Jan Law Officer G.B for respondents.

### **JUDGMENT**

**MIR AKHLAQUE HUSSAIN CHAIRMAN:** Precisely the facts of the case are that the appellant has brought the appeal for setting aside of the impugned order No. SO(H)-10(1)/2014 dated 04.10.2016 issued by respondent No. 2 and office order No. EXT-1(85)/425-41 dated 27.1.2016 issued by respondent No. 4 whereby the appellant was dismissed from government service under section 4(b)(v) of Gilgit-Baltistan Civil Servants ( Efficiency and Disciplinary) Rules 2011. Stating that both the impugned orders are liable to be set aside being in utter violation of service laws and rules. Respondents filed their written parawise comments and denied the claim of the appellant.

2. During the course of arguments the learned counsel for appellant contended that the appellant was appointed on 22<sup>nd</sup> June, 2002 vide office order No. Estt-1(70)/4119-22 after fulfillment of codal formalities i.e test and interview. The counsel for appellant further contended that the appellant performed his duties at his level

best to the entire satisfaction to his superiors and there is no complain or adverse remarks against the appellant and the service of appellant is remained unblemished except the impugned orders. The appellant never absented from his duty at his service record except when he got injuries from a road accident during his duty and doctors advised his bed rest for 20 days but the application for leave on medical grounds was rejected. The counsel for appellant further contended that the respondent No. 4 terminated the service of appellant without prior notice or show cause notice. Hence the impugned order is null and void. The service of appellant was terminated on 27.10.2016 against which the appellant preferred departmental appeal which was dismissed on 04.10.2016. Hence the appeal is within time. Lastly, the counsel for appellant prayed that the impugned order may kindly be set aside considering it against law, facts and rules and the services of the appellant may be restored with all back benefits.

3. On the other hand the learned Law Officer argued that the instant appeal is not maintainable and is liable to be dismissed under order 7 Rule 11 CPC. He further contended that the instant appeal is barred under section 56(d) of Specific Relief Act as such the same is to be rejected and the appellant has no *locus standi* against the respondents and as such the instant appeal is not maintainable and is liable to be dismissed. The Law Officer further argued that the

appellant has come to this Hon'able Court with unclean hands, malafide intention and ulterior motives, hence the instant appeal is liable to be dismissed. The appeal is hopeless time barred. He further submitted that the appeal is barred/ hit under the Article 114 of Qanoon-e- Shahadat Order, as such the same is liable to be rejected due to Doctrine of Estopple. The learned Law Officer further contended that the appellant has not performed his duties properly from the initial stage of his service. The appellant was habitually remained absent from his duties without intimation and without justification. The conduct of appellant was also highly objectionable during his entire service till dismissal. Furthermore the appellant was also performing private job in stat life insurance corporation against law and in this regard several explanations and show cause notices were also issued time and again but the appellant badly failed to reform himself till his dismissal from service. The learned Law Officer further submitted that as far as the alleged story of road accident is concerned, the appellant got a road accident rather the receipt and prescription of doctors are forge and fabricated documents which were produced by appellant after issuance of summons for inquiry. Thus the said application for leave was rightly rejected. He further contended that before the dismissal from service the respondent No.4 appointed respondent No. 5 as inquiry officer and the inquiry officer initiated inquiry as per service laws. The appellant also appeared before inquiry officer and submitted his written reply but the appellant badly failed to disprove the allegations/ charges levelled against him. The respondent No. 3 on the basis of recommendation of inquiry officer rightly dismissed the appellant from service. He prayed that this Hon'able Court may be pleased to dismiss the appeal with cast being meritless and not maintainable under the law.



4. We have considered the arguments and have gone through the record. The instant appeal has been brought under section 5 of Gilgit-Baltistan Service Tribunal Act. The provisions of which clearly indicates that no appeal shall lie before this Tribunal without preferring departmental appeal/ representation before the departmental appellate authority. In the instant case the appellant has stated in para 10 of the memo of appeal that he has preferred the departmental appeal on 27.10.2016 against the dismissal order dated 27.1.2016(while the dismissal order was issued on 27.1.2016) However the departmental appeal has been preferred on 22.2.2016 which has been directly addressed to the Home Secretary not through proper channel. A proper departmental appeal through proper channel which is a pre requisite for exercise of jurisdiction is lacking in the instant case. As to the question of limitation if the appeal annexed with the instant appeal is considered, the date of dismissal of same is 04.10.2016 against which instant appeal has been preferred before this Tribunal on 24.11.2016 after lapse of one month and twenty days, hence the instant appeal is time barred. As far as the claim of the appellant that the dismissal order is against law, facts and rules is concerned, the record shows that a proper inquiry has been conducted by the competent authority as per law/rules and

adapting relevant procedure and seems no irregularity or illegality is committed by the inquiry officer in conducting inquiry.

5. In view of the above, we hold that the instant appeal is liable to be dismissed. Appeal stands dismissed. File be consigned to record after completion.

**Announced:**

28-6-2018

Sd/-  
**CHAIRMAN**  
Sd/-  
**MEMBER-I**  
Sd/-  
**MEMBER-II**

Judgment sheet

**IN THE GILGIT-BALTISTAN SERVICE TRIBUNAL  
GILGIT**

Appeal No. 08/2017

Date of institution	22-02-2017
Date of hearing	28-06-2018
Date of judgment	04-7-2018

**APPELLANT:** Mr. Rajab Ali s/o Hassan, Grade-I Primary School Singkarmo and 06 others.

**RESPONDENTS:** Provincial Govt. through Chief Secretary GB and 05 others.

**BEFORE:** Mir Akhlaque Hussain Chairman.

**PRESENT:** Muneer Ahmed and Akhtar Ali Advocates for appellants.

Akhtar Jan Law Officer G.B assisted by Kamal Hussain advocate legal advisor with

Muhammad Ilyas ADI representative  
Education department for respondents.

### **JUDGMENT**

**MIR AKHLAQUE HUSSAIN CHAIRMAN:** The instant Service Appeals have been filed through an attorney and counsel under section 5 of the Gilgit-Baltistan Service Tribunal Act. 2010. I intend to dispose off all the seven appeals bearing No. 08/2017, 10/2017, 11/2017, 12/2017, 13/2017, 14/2017 and 15/2017 through this single judgment. Brief history of all the seven appeals as narrated in the memo of the appeal and during arguments are that the appellants were appointed in Education Department Baltistan Region against various Grade-I posts in various schools of various Union Councils, the appellant in appeal No. 08/2017 was appointed as Grade-I in primary school Singkarmo on 01-3-2013, appellant of appeal No. 10/2017 in primary school Shigar Kallan Skardu on 06-02-2012, appellant of appeal No. 11/2017 in primary school Dambo Das on 09-7-2013, appellant of appeal No. 12/2017 in high school Kushmarah on 31-10-2012, appellant of appeal No. 13/2017 in primary school Dambo Das on 06-02-2012, appellant of appeal No. 14/2017 in A.D.I Office Skardu on 16-5-2011 and appellant of appeal No. 15/2017 in Girls middle school Harpo on 19-10-2011 was appointed. They have served about more then 04 or 05 years and no salary has been paid

to the appellants. Now the vacancies held by the appellants have been advertised in "daily K-2" dated 27-12-2016 to appoint some other candidates which is injustice. The counsel for the appellants further argued that the appellants filed their departmental appeals well within time no decision what so ever is given, and the statutory period has lapsed, hence the instant appeals. On the other hand the law officer filed written comments on behalf of the respondents and vehemently denied the averments of all the seven service appeals and argued that the appellants have no cause of action to file the instant appeals as such not maintainable and are liable to be dismissed, the counsel for respondents further submitted that the appointments the appellants have been made from back door channels i.e without adopting of codal formalities i.e test/interview and in grass violation of rules, hence the appeals in hand are liable to be dismissed. The counsels for the respondent next argued that the present advertised vacant posts of Grade-I have been created against completed development scheme's through PC-4 during the year 2015 which are to be filled at Union Council level and priority will be given to land donors under the recruitment policy of the department hence the instant all seven appeals are to be dismissed, as the recruitment process for appointments have already been completed on 14-11-2017. The law officer and the legal advisor of Education Department

on behalf of the respondents further agitated that an identical case of Baltistan Region Skardu titled " Syed Konain and others vs Provincial Government and others. " has been dismissed on 27-9-2017 by the honourable Supreme Appellate Court Gilgit-Baltistan. Hence the appeals in hand are not maintainable and are liable to be dismissed. The counsel for respondents further submitted that since the appointments were made on backdoor channels and without test/ interview and without any vacancy available, hence the pay of appellants could not be released up till now by the respondents, and their names could not be reflected in the NIS. The learned law officer and the legal advisor of Education Department prayed for dismissal of all the seven instant appeals.

2. I have heard the parties and perused the material available in case files and come to the conclusion that the appellants stated that the posts they held have been advertised in "daily K-2" dated 27-12-2016 for appointment of some other candidates against the posts they held, and the copy of the advertisement of "daily K-2" dated 27-12-2016 has been placed with all the appeals by the appellants, wherein no any post claiming by any of the appellant is advertised, as such this claim of appellant is against the facts. The counsel for appellants further submitted that the appellants have filed Departmental appeals and the statutory period lapsed but the appeals have not been decided so far hence the instant appeals. But the record shows that the appellants placed a not certified copy of an

application (so called departmental appeals) addressed to the D.D Education without any proof about presentation/ filing the same before any authority and later on another copy of such an application placed as additional documents in all the appeals by the appellants. The said copies are also without any proof about the filing of the same before any authority i.e there shows no any initial of any authority or the official stamp fixed on the applications. Further the copies submitted later on have been certified by a Town Engineer of Municipal Committee Skardu who is irrelevant and unauthorized to certify the record of Education Department District Kharmang. For the reason in my view no Departmental appeal or representation has been made by any of the appellants. And without exhausting the departmental appellate forum the appeals before Service Tribunal are incompetent and without jurisdiction. Moreover the appeals have been filed through an attorney but the power of attorney itself is illegal because the judicial stamp paper of power of attorney has been purchased in the name of attorney while according to relevant law it should be in the names of appellants as such the instant appeals have been filed without legal authorized attorney. Further it is admitted fact that the appellants were appointed without fulfillment of mandatory codal formalities i.e advertising the posts, and without test and interview, in such like a situation the honourable Supreme Appellate Court Gilgit-Baltistan has held in his judgment in Civil Appeal No. 58/2017 in CPLA No. 134/2016 that those employees who were appointed without fulfillment of Codal formalities can not be considered as the employees of concerned department.

3. In view of the above discussions I find that there is no merit in the instant appeals as such all the seven appeals are dismissed accordingly.

4. An attested copy of this judgment be placed in the case files of Service Appeals No. 10/2017, 11/2017, 12/2017, 13/2017, 14/2017 and 15/2017 and all seven files be consigned to record after completion.

**Announced:**  
04-7-2018

Sd/-  
**CHAIRMAN**

Judgment sheet  
**IN THE GILGIT-BALTISTAN SERVICE TRIBUNAL  
GILGIT**

Appeal No. 09/2017.

Date of institution	22-02-2017
Date of hearing	28-6-2018
Date of judgment	04-7-2018

APPELLANT: Abdul Aziz s/o Hussain, Grade-I Primary School, Gavis Kharmang and other.

RESPONDENTS: Provincial Govt. through Chief Secretary GB and 05 others.

BEFORE: Mir Akhlaque Hussain Chairman.

PRESENT: M/S Muneer Ahmad and Akhtar Ali advocates for appellants.

M/S Akhtar Jan Law Officer G.B,  
Kamal Hussain Legal Advisor and  
Muhammad Ilyas ADI  
representative of Education  
Department for respondents.

## **JUDGMENT**

**MIR AKHLAQUE HUSSAIN CHAIRMAN:** I intend to dispose off the two service appeals bearing No 09/2017 and 16/2017 through this single judgment. The arguments on both the appeals were heard on 28.06.2018 and today the cases were fixed for orders. The instant appeals have been filed by the appellants under Section 5 and 7 of Gilgit-Baltistan Service Tribunal Act 2010.

2. Brief facts of both the appeals as narrated by the counsel for the appellants are that the appellants were appointed in various Schools as Grade-1 in their respective Union Councils of Gavis Kharmang on 10.10.2011 and in Girakh Bala on 01.4.2013 respectively and have rendered their services continuously. But no salary is paid to the appellants. According to the counsel for appellants, the respondents have advertised the vacancies held by the appellants in news paper Daily K-2 dated 27.12.2016 to appoint some other persons which is injustice. He further submitted that the appellants were appointed as grade-1 in Education Department in Baltistan Region in lieu of their land acquired for construction of



schools. The counsel for appellants next submitted that the appellants filed departmental appeals but of no avail hence these appeals.

3. On the other hand the Law Officer assisted by the legal advisor Education Department on behalf of respondents submitted parawise comments and vehemently denied the averments' of both the appeals and argued that the appellants have no cause of action to file the instant appeals. Hence are liable to be dismissed under Order 7 Rule 11 CPC. The appeals are not framed under the parameters of Law and appointments of the appellants have been made from back door channels, without adopting of codal formalities i.e test and interview and in gross violation of rules. The counsel for the respondents next argued that presently the posts advertised have been created against completed development scheme through PC-4 during the year 2015, which are to be filled at Union Council level and priority will be given to land donors under the recruitment policy of department. Hence, the appeals in hand are not maintainable and are to be dismissed as the recruitment process has already been completed on 14.11.2017. The Law Officer and Legal advisor Education department further submitted that an identical case of Baltistan Region Skardu titled " Syed Konan & others versus Provincial government and others" has been dismissed on 27.9.2017 by the Honourable Supreme Appellate Court of Gilgit-Baltistan. They further argued that the appeals are hopelessly time barred and are liable to be dismissed. The counsel for the respondents next argued that the salaries could not be paid to the appellants, because of at the time of their appointments the posts were not available and the appointments of appellants were made

from back doors, without fulfillment of codal formalities hence the appeals are liable to be dismissed.

4. I have heard the parties at length and perused the record of the case files and am in considered view that admittedly the appellants were appointed without advertise the vacancies and without conducting any test or interview and according to the respondents the vacancies were also not in existence at that time also. In such a situation, where any appointment made without fulfillment of codal formalities the appointments have been declared illegal by the Honourable Supreme Appellate Court Gilgit-Baltistan in its judgment in Civil Appeal No. 58/2017 in CPLA No. 134/2016. Further the counsel for the appellants argued that the posts held by the appellants i.e Grade-1 in primary school in Union Council Govice Kharmang and Grade-1 in middle school of union council Girakh bala have been advertised, in daily K-2 dated 27.12.2016 while the record shows that in the said daily news paper, there is no any post of grade-1 in primary school of union council Govice Kharmang and grade-1 in middle school of union council Girakh bala have been advertised, this claim of appellants is against the facts. Further the appellants have placed in both their case files copies of their applications( so called departmental appeals) addressed to the Deputy Director Education district Kharmang requesting to adjust the appellants against any post and release their salaries, but there is no any proof that the said applications have been presented before the Deputy Director Education district Kharmang and the said copies have been certified by the town engineer of Municipal Committee Skardu, who is a stranger and irrelevant person to C.T.C the record of Education Department District Kharmang. Hence, it reveals that in

fact no applications/appeals have been filed before appropriate departmental authority by the appellants. And in any case where the appeals filed before the Service Tribunal, without filing the appeals before the departmental appellate authority at the first instance are not entertainable before the Service Tribunal. As for as the submission of appellants that they were appointed in Education Department in lieu of their lands acquired by the department is concerned, there is no any proof about this contention of appellants also. The office orders of both appellants on the record shows no such facts. This statement of the appellants is also against the facts.

5. Resultantly both the appeals lacking in merit stand dismissed. An attested copy of this judgment be placed in the case file of Service Appeal No.16/2017 also and both case files be consigned to record after completion

**Announced:**

04-7-2018

Sd/-  
**CHAIRMAN**

Judgment sheet  
**IN THE GILGIT-BALTISTAN SERVICE TRIBUNAL  
GILGIT**

Appeal No. 632/2016.

Date of institution	31-10-2016
Date of hearing	05-7-2018
Date of judgment	10-7-2018

APPELLANT: Gulbaz Khan s/o Abdul Munaf r/o  
Basin, Ophthalmology Technician  
(BPS-09), DHQ Hospital Gilgit.

RESPONDENTS: Provincial Govt. through Chief Secretary GB and 03 others.

BEFORE: Mir Akhlaque Hussain Chairman.

PRESENT: Raja Shakeel Ahmad Advocate for appellant.

M/S Akhtar Jan Law Officer G.B with Ishtiaq Ahmed Superintendent representative of Health Department for respondents.

### **JUDGMENT**

**MIR AKHLAQUE HUSSAIN CHAIRMAN:** I intend to dispose off the two service appeals bearing No 632/16 and 633/16 through this single judgment. The arguments on both the appeals were heard on 05.07.2018 and today the case was fixed for orders. The instant appeal has been filed under Section 5 of Gilgit-Baltistan Service Tribunal Act 2010 against the impugned notification No. 5(5)/2013-Estt-IV-Services Dated 10.02.2016 where by the posts held by the appellants have been re-designated

2. Brief history of both the appeals are as stated by the counsel for the appellants are that the appellants were appointed as nursing assistants (BS-04) after proper DPC proceedings in the year 2001 vide office orders dated 11-06-2001. After three months of their appointments, the appellants were sent for 1 year training as

Ophthalmology Technicians and the appellants successfully completed the said training and joined back at the DHQ Gilgit where the appellants performed their duties as Ophthalmology Technicians, but in their own pay scales (BS-04) till the year 2009. On 31.07.2009 the appellants were promoted to BS-09 as Ophthalmology Technicians and prepared a seniority list vide which the appellants were the only two senior Ophthalmology Technicians entitled for promotion against the newly created posts of the Ophthalmology technicians BS-12 which have been created for comprehensive Eye Care Center vide letter NO. 1(223)2014-2015-Dev-F dated 03.03.2015. The counsel for the appellants further stated that the respondents with malafide intention re-designated three posts i.e. Chief Ophthalmology Technician (BS-16) into Chief X-Ray Technician (BS-16), Ophthalmology Technician (BS-12) into MCH Technician (BS-12) and junior Ophthalmology Technician (BS-09) into Junior Medical Technician (BS-09) while the post of the senior Ophthalmology Technician (BS-14) was deleted, this action of respondents is illegal. The appellants submitted the departmental appeals to the respondents but till now no decision what so ever has been made even the stipulated time of 90 days for the disposal of the departmental appeal has expired. The counsel for the appellants lastly prayed that by accepting this appeal the impugned order No.

5(5)/2013-Estt-IV-Services dated 10.02.2016 may be set aside declaring it to be illegal without jurisdiction.

3. On the other hand the learned Law Officer on behalf of respondents filed written parawise comments and denied the claims of the appellants and vehemently argued that the instant appeal is not maintainable as such the appellants have not filed departmental appeals within time and the instant appeal is time bared. He further submitted that initially 35 posts of various categories were created for the Comprehensive Eye Care Centers and female/child wing City Hospital Gilgit but not reflected in the NIS, at that time and re-designated the post by the competent authorities vide Finance Department GB on need basis due to acute shortage of paramedics in the both health facilities. He prayed for dismissal of the instant appeals for the reasons, he stated.

4. The parties heard and perused the record. The record indicates that the impugned notification about re-designation of the posts was issued on 10.02.2016 by the Secretary Services Gilgit Baltistan against which the appellants filed a joint appeal addressed to the secretary Health through M.S. DHQ Hospital on 26.04.2016, the secretary Health was not the authority competent to entertain the same rather the competent authority was the next higher authority of

the authority issuing the impugned notification, who was the Chief Secretary Gilgit-Baltistan. The departmental appeals against the impugned notification were to be filed before the Chief Secretary Gilgit-Baltistan by the appellants within 30 days of the issuance of the impugned notification. Admittedly the appellants failed to do so. The appeal filed before The Health Secretary is also time barred by 1 month and 16 days. And the instant appeal before this Tribunal has been filed on 26.10.2016 against the impugned notification dated 10.02.2016 after lapse of 08 months and 16 days without any plausible explanation. Admittedly no civil servant has unfettered choice to file a representation or appeal irrespective of time limit. The aggrieved employ is necessarily required to agitate his grievances before the appropriate forum within prescribed period.

5. The Honourable Apex Court of Islamic Republic of Pakistan in 2011 SCMR-8 it was also held that "Question of Limitation cannot be considered a "Technicality" simplicitor as it has got its own significance and would have substantial bearings on its merits of case."

6. In view of the above discussions I am of the considered view that both the instant appeals are hopelessly time barred and the appellants had also not filed the departmental appeals before the proper appellate authority within the stipulated period of limitation

and the delay cannot be overlooked, hence both the appeals being time barred are dismissed. Order announced in the open Court.

7. An attested copy of this judgment be placed in the case file of Service Appeal No. 633/2016 also and both case files be consigned to record after completion.

**Announced:**

10-7-2018

Sd/-  
**CHAIRMAN**

Judgment sheet

**IN THE GILGIT-BALTISTAN SERVICE TRIBUNAL  
GILGIT**

Appeal No. 471/2014.

Date of institution	21-05-2014
Date of hearing	04-7-2018
Date of judgment	10-7-2018

**APPELLANT:** Muhammad Sadiq s/o Muhammad Nazir r/o Chongrah, District Astore and 12 others.

**RESPONDENTS:** Provincial Govt. through Chief Secretary GB and 04 others.

**BEFORE:** Mir Akhlaque Hussain Chairman.  
Mr. Muhammad Kamal Member-I.  
Mr. Ali Sher Member-II.

**PRESENT:** Mr. Latif Shah Advocate for appellants.

Mr. Akhtar Jan Law Officer G.B with Muhammad Ilyas ADI representative of Education Department for respondents.



## **JUDGMENT**

**MIR AKHLAQUE HUSSAIN CHAIRMAN:** This joint service appeal has been brought by the appellants for setting aside the impugned order No. DE-2(2)/2013(Admin) Dated 03.01.2014. According to which the appointment orders of the appellants have been cancelled after conducting a departmental inquiry about the illegal appointments in the Education department.

2. After hearing the counsels for parties in detail and perusal of the record with the able assistance of the counsel for parties, we are in considered view that the appellants admittedly were appointed on contract basis without fulfillment of all codal formalities i.e. advertisement of the vacancies, test and interview of the candidates which were mandatory for appointment orders as such the appointment orders of appellants are illegal. Further the contract employees are not come within the ambit of Provincial Civil Servants and this Tribunal has no jurisdiction to entertain the appeals of those employees who are not Provincial Civil Servants. The Honorable Supreme Appellate Court Gilgit-Baltistan has also taken this view in the Civil Appeal No. 58/2017 in CPLA No. 134/2016 operative part of the judgment is as under:

**“We have heard the learned counsel for the respective parties at length, perused the material on record and gone through the impugned order. Admittedly, the petitioners were appointed illegally, unlawfully and without fulfilling the requisite codal formalities by the respondents, therefore, they can not be considered as the employees of Education Department. In our considered view, the impugned order is well founded as no infirmity has been pointed out by the learned counsel for the petitioners.”**

Further the appellants are failed to file proper departmental appeals as per provision of the relevant Law/Rules. A not certified copy of the joint appeals against the order dated 03.1.2004 (while the record shows that there are no any such order was issued on the quoted date) is placed on case file addressed to Secretary Education but there is no proof that the said appeal was presented before the Secretary Education. Further the impugned order has also been issued by the Secretary Education there for the appeal had to be addressed and presented before the next higher authority “The Chief Secretary Gilgit-Baltistan”. Further the power of attorney provided to

file the instant appeal on judicial stamp paper is also against the Law. The stamp paper has been purchased by the attorney on his own name, while it should be purchased by the appellants as such the copy of the departmental appeal as well as the power of the attorney are not admissible as per relevant law, hence it can safely be said that no departmental appeal has been preferred before the authority of the appeal and where no departmental appeal has been preferred before the departmental authority, the appeal before the Service Tribunal is incompetent on that account. Further the impugned order was issued in result of proper inquiry and scrutiny after fulfillment of the formalities required under Law/Rule and there seems no illegality committed in the process of inquiry and the cancellation order has rightly been issued. Therefore, in the light of the above discussions and in accordance with the Honorable Supreme Appellate Court's judgment in Civil Appeal No. 58/2017 in CPLA No. 134/2016. The instant appeal is dismissed as not maintainable and meritless.

File be consigned to record after completion.

**Announced:**

10-7-2018

Sd/-  
**CHAIRMAN**  
Sd/-  
**MEMBER-I**  
Sd/-  
**MEMBER-II**

Judgment sheet  
**BEFORE GILGIT-BALTISTAN SERVICE TRIBUNAL  
 GILGIT**

Service Appeal No. 50 /2017

Date of Institution:	25.08.2017
Date of hearing:	28.06.2018
Date of Judgment:	17.08.2018

Appellant: Ali Jan Ex. Principal BS-19 College of Education Gilgit& 39 others.

Respondents: Provincial Government through Chief Secretary GB & 05 others

Before: Mr. Muhammad Kamal Member-I

Present: M/S Amjad Hussain & Shahid Abbass Advocates for Appellants.  
 Mr. Akhtar Jan, Law Officer for respondents No. 1 to 3GB assisted by Mr. Kamal Hussain, legal advisor & Muhammad Ilyas rep. of Education Department GB. Haji Muhammad Alam, AAO, rep. of AGPR Gilgit.

### **JUDGMENT**

**MUHAMMAD KAMAL MEMBER-I:-** Appellants, through the instant appeal, have sought relief by way of extending benefits of a Circular issued with approval of Prime Minister of Pakistan vide No. F.-1-1/2011-EDU dated October 14, 2011 in respect of timescale for teachers from basic pay scales 17 to 21 w.e.f.01.01.2011.

1. Facts as set out in memo of appeal as well as the facts which came into notice of this Tribunal during the course of arguments are

that Prime Minister of Pakistan, vide Circular No. F.-1-1/2011-EDU dated October 14, 2011, was pleased to grant timescale for school teachers for basic pay scales from 17 to 21 which was further circulated to all provinces of Pakistan including AJK and GB for implementation. Government of Gilgit-Baltistan implemented/ approved Timescale Formula in favour of teachers in BS-17 and above on 10.6.2014 which was actualized w.e.f. 1<sup>st</sup> July, 2014 instead of 1<sup>st</sup> January, 2011. The said circular was implemented by GB Govt. according to its own choice and convenience; firstly, by granting time scale for teachers from BS16to BS 20 vide Circular No. Sec-Edu-2(31)/2014 dated 10<sup>th</sup> June, 2014that too with prospective effect instead of retrospective effect i.e. from 2014 instead of 2011. Some teachers got benefits of the circular who retired after 2014whilethe remaining teachers who stood retired during the intervening period from 2011 to 2014 were not extended the benefits of the circular as claimed by the appellants. The present appellants claim to have not been given the benefits of this circular. The leftover teachers, excluding the appellants, somehow succeeded in getting benefits of the circular through Courts of Law. Hence, being aggrieved and dissatisfied with the partial treatment of Government of Gilgit-Baltistan met out with the appellants, they have approached this Tribunal with the appeal in hand. The appellants have stood retired from different schools of Gilgit-Baltistan on different dates, who first approached their concerned department for redressal of their grievances and then came up before this Tribunal.

2. A similar appeal, having identical facts and grounds and seeking a same relief, was also filed in this Tribunal titled "Asghar Shah & 52 others Versus Government of Gilgit-Baltistan & others".

That appeal was decided in favour of appellants directing the Education Department GB to extend benefits of circular of 2011 to all those teachers included in the said appeal. The judgment in that appeal was assailed by government before the Hon'ble Supreme Appellate Court GB and the honorable august Court was pleased to uphold the judgment of this Tribunal, however, setting out some conditions therein, which will be discussed in coming paras below.

3. Parawise comments were filed by Provincial government through learned Law Officer Mr. Akhtar Jan wherein the government has denied the relief sought by appellants on facts and legal grounds as well.

4. The appeal came up for final arguments on 28.06.2018. Counsel for appellants argued that according to circular issued in the year 2011 by the Federal Government which, later on, was adopted by Government of Gilgit-Baltistan, the appellants are equally entitled to timescale from their respective dates of eligibility with a view to treat them equally, as the teachers who have been given the benefits of circulars mentioned in preceding paras, have similar status and were rendering same duties to the Government. More vehemently, he stressed upon a judgment passed by the Hon'ble Supreme Appellate Court GB in an appeal by Asghar Shah versus Prov. Government. The learned counsel for appellants construes that judgment to be in *remand* further conceives the same to be applicable to all teachers, who have similar cause of action. The learned counsel for appellants advanced further arguments that since the facts and grounds narrated in the appeal of Asghar Shah & others and those taken in

the appeal in hand are similar and identical in nature, therefore, in light of judgment of the Hon'ble Supreme Court of Pakistan reported at 1996 SCMR 1185, the appellants must have been extended the benefits of 2011 circular without compelling them to resort to legal remedies in the Court of law. For the sake of ready reference, operative part of the said judgment is reproduced below:

**“If FST or Supreme Court of Pakistan decides a point of law relating to terms and conditions of a civil servant which covers not only the case of a civil servant who litigated, but also of other civil servants who may have not taken any legal proceedings, in such a case, the dictates and rule of good governance demand that the benefit of such judgment by FST/ Supreme Court be extended to the civil servants, who may not be parties to the litigation instead of compelling them to approach the Service Tribunal.”**

The above quoted judgment of the Hon'ble Supreme Court of Pakistan provides sound reasons which apply to the appeal in hand in *strictosensu*, as this Hon'ble Tribunal and Supreme Appellate Court GB have decided a matter arising out from non-implementation of the same Circular. He further relied on 2003 SCMR 1030, 1987 SCMR 1698, 2005 SCMR 499. The judgment of the Hon'ble Supreme Court of Pakistan reported at 1987 SCMR 1698 is another one, which has direct relevance to the appeal in hand. The relevant part of judgment is reproduced below:

**“Lastly, it was urged that as the Settlement Department had not appealed against the impugned judgment but had filed a suit, the judgment had become final so far as the Settlement Department was concerned. But this arguments cannot in the way as under Order XLI, Rule 33 of the Code of Civil Procedure as well as under Article 187 of the Constitution, the benefit of the relief can also be extended to the non-appealing party for doing complete justice, and such is the case here.**

5. The learned Law Officer on the other hand, contended that since the appellants have remained in deep slumber over their rights for a long period and woke up after judgment by the Hon'ble Supreme Appellate Court GB, therefore they cannot claim benefits of timescale at this belated stage. The learned Law Officer candidly denied the interpretation of judgment of the Hon'ble Supreme Appellate Court so made by the learned counsel for appellants and argued that judgment of the Hon'ble Supreme Appellate Court is not meant to be construed as judgment in *rem*, (as there is no explicit word “judgment in *rem*”) in the said judgment rather the august Court has restricted the benefit of its judgment to those 53 appellants included in that appeal only and the august Court has plainly made it clear that this judgment may not be made as a precedent. The learned Law Officer further reiterated and agitated the facts and legal grounds taken in parawise comments and in support of his contention, relied on 2015 PLC (C.S.) 695 with regard to time barred appeal wherein it has been held that: **“The aggrieved employee is**



**necessarily required to agitate his grievances before the appropriate forum within prescribed period. Any delay caused in approaching the appropriate/ prescribed forum beyond the specified period without sufficient cause is obviously detrimental. The appellant has also filed application for condonation of delay alongwith the appeal wherein no reasonable ground has been taken as such; we are not inclined to condone the delay”** On the point of time barred appeal, he further relied on 1995 SCMR 1505, 2005 SCMR 980, 2005 SCMR 1205, 2004 PLC 9C.S.) 858, 2008 PLC (C.S.) 311 wherein it has been held that time barred service appeals are not maintainable. The learned Law Officer GB further advanced his arguments averring that since this is a joint appeal and under section 5(a) of Civil Servants (Appeals) Rules, 1977 therefore this is being a joint service appeal cannot be maintainable. *He also cited a case reported at 2005 PLC (C.S.) 1395 with regard to filing of joint appeal.* The relevant portion is reproduced as **“So far seniority list is concerned, the appellant before filing the instant appeal, challenged the same before the departmental appellate forum by way of a joint appeal alongwith 10 of his other colleagues. The said departmental appeal in view of sub-rule (2) of Rule 3 of the Sindh Civil Servants (Appeal) Rules, 1980, was not competent. It is well settled principle of law that if law provides that a particular thing is to be done in a particular manner/ way it is to be done either in the same way or not at all”.**

6. It has been observed that some other appellants (who are also retired teachers) in similar joint appeal have got relief from this

Tribunal which has been upheld by the Hon'ble Supreme Appellate Court GB (referred to above in Asghar Shah etc.'s appeal), thus it would not be fair and judicious that the remaining appellants be denied the same relief treating them on other way. If a Circular is issued by executive authority of the country i.e. Primer Minister of Pakistan giving some benefits in the shape of up-gradation/ timescale etc. to a specific class/ category of employees, the same becomes applicable to that category of employees/ beneficiaries irrespective of the fact that at which part of country they perform their duties. Unfortunately, authorities of GB Government, play with such circulars issued by Executive authority at Federal Government level according to their own choice and convenience instead of implementing those circulars in their true spirit, which acts on the part of government hierarchy leads to create resentment and discrimination amongst govt. employees, besides creating unnecessary hassle for Courts to try such matters brought before them, while the law warrants equal treatment amongst equals which is ensured by the Constitution of Pakistan. Such circulars issued by the executive authority of the country cannot be treated in a way to benefit some beloved ones amongst the employees of same class/ category while others would be left to face consequences in the Courts of law by sustaining mental agony and loss of money for no fault on their part which amounts to discrimination as well as violation of Article 25 of the Constitution of Islamic Republic of Pakistan. As far as arguments advanced by learned Law Officer GB regarding the appeal being time barred, it is not fair and just to apply this contention to the present appeal, as this is not an appeal brought a fresh before this Hon'ble Tribunal, rather it is an appeal of implementation nature of a circular of executive authority of the country to the extent of the appellants in

this appeal. The circular was meant to be equally applicable to all beneficiary teachers, but the government authority of GB treated the teachers according to their own choice and left the appellants unattended. If mere technicalities are taken into account, it would be completely against the substantive justice. As far as plea as to limitation of this appeal is concerned, it would be more appropriate to cite a case law in a judgment of the Punjab Service Tribunal reported at 2002 PLC 2002 PLC (C.S.) 950 which although has a persuasive effect. Relevant part thereof is reproduced herein below:

**“Coming to the question of limitation, canvassed by the appellant, I am more prone in the instant case to do substantial justice, as head of the appellant was placed on the chopping block for no fault of his. Undoubtedly, Limitation Act is penal in nature and rights accrued cannot be taken away unless sufficient cause is shown. However, technicalities of law should not stand in way of a person who has been singled out rather persecuted without knowing as to what crime or sin he has committed”.** In this judgment, the Hon’ble Punjab Service Tribunal has also cited a judgment of the Hon’ble Supreme Court of Pakistan reported at PLD 1992 SC 825 wherein it has been held that: **“that in the matters of promotions and other emoluments cause of action recurring. Limitation does not foreclose the right”.**

7. As far as non-submission of departmental appeal by the appellants argued by the learned Law Officer GB (although they have submitted the same) I am convinced with the arguments of

learned counsel for appellants that a departmental appeal is required where there is an adverse order by the appellate authority, but in the appeal in hand, there was no adverse order, rather it was an implementation issue of circular, which the department were not willing to do so (though not in writing). The learned counsel for appellants further argued that the matter, being a pecuniary one, does not involve limitation as in such matters cause of action arises with every passing day.

8. I have consciously given due consideration to the arguments advanced by counsels for parties, perused record & previous judgment passed by Full Bench of this Hon'ble Tribunal in appeal of Asghar Shah & others, case laws cited by learned Law Officer and counsel for appellants and judgment passed by the Hon'ble Supreme Appellate Court GB. The same judgments of this Tribunal have duly been upheld by the Hon'ble Supreme Appellate Court GB. The interpretation of judgment of Hon'ble Supreme Appellate Court GB by the learned counsel for appellants and learned Law Officer GB is not convincing. My sense of interpretation of the said judgment, as I have understood, is that the august Court has neither given the judgment in *rem* which could apply to all beneficiaries of the timescale circular, including the appellants in that appeal nor has bound the other beneficiaries of the said Circular from getting remedy from other Courts of law by way of filing appeals, petitions etc. Perusal of the said judgment gives a sense that the remaining beneficiaries appears to have been left at liberty to approach other Courts of law for seeking remedy of their grievances. The judgment of the august Court is not a judgment in *rem* rather the Court has

confined that judgment to the extent of those 53 appellants before the Hon'ble Court in the appeal of Asghar Shah etc.

9. Apart from what has been elaborated above, the appeal also effectively involves the rule of consistency. This is so because in similar nature of appeals having similar grievances arising out from non-implementation of the same Circular in the appeal of Asghar Shah etc. where this Tribunal has allowed the benefits of Timescale Circular 2011, which has further been upheld/ maintained by the Hon'ble august Supreme Appellate Court. The appellants in this appeal also seek benefit of the same circular, therefore rule of consistency demands that prayers of the appellant be acceded to. This Tribunal cannot deviate from its own view taken in the above referred appeal on the principles of consistency. The timescale circular for teachers issued by the Prime Minister of Pakistan became applicable to all beneficiaries who fall within ambit of eligibility criteria immediately after issuance thereof in black and white. The same must have been extended immediately. Issuance of further notification by provincial authorities does not confer any right on the said authorities to deny, alter or vary the said directives of chief executive of the country, however if any delay occurs due to any reason, the same can be covered at the time of issuance of further notification giving effect from the original date of notification. The delay in extending the benefits is on the part of government not on the part of appellants as nowhere in the circular it has been mentioned that benefits of the said circular can be availed by personal efforts or through Courts of law by the beneficiaries. The Supreme Court of Pakistan has also condoned the delay in a matter involving points in similarity. The case is reported at **2002 PLC (C.S) 286**. The relevant

paragraph is: ***“In the interest of justice and similarity of the point involved in all the cases the delay in filing Civil Appeals..... is condoned”***. The Hon’ble Supreme Court of Pakistan in a case reported at **2006 SCMR 1087** under the principle of consistency allowed leave to appeal. The relevant part thereof is reproduced as: **“Be that as it may, we have examined the cases of the appellants. In view of the observations of this Court in judgment, dated 02.11.2001 announced in Civil Appeals Nos. 720 to 725 of 1999, cases of appellants are not, in any manner, different from the cases which have already been decided by this Court. Therefore, following the reasons, instant appeals have to be allowed, in view of the principle of consistency”**. The question of limitation and joint appeals have been discussed in the appeal of Asghar Shah etc., which involves the same facts and grounds in these appeal and the grievance has arisen out from the said Circular, therefore on the basis of rule of consistency, this Tribunal cannot deviate from its view taken in that appeal. As far as condonation of limitation is concerned, the Hon’ble Supreme Court of Pakistan in a case reported at 2010 SCMR 442 held that: ***“Question of condonation of delay squarely falls within jurisdictional domain of Service Tribunal and no restriction has been imposed by any law...Condonation of delay can be granted in suitable cases and question of suitability is to be assessed by Service Tribunal itself”***. This view has also been taken by the Hon’ble Supreme Court of Pakistan in a case reported at **2010 PLC (C.S.)**. Therefore, this is a case of suitability for condonation of delay on the principle of consistency. The case laws cited by learned Law Officer, although has relevance, but does not override the case laws cited at paras No. 6 to 9. This is not being a

case of proforma promotion, as the appellants were in service when the Circular was issued as well as in view of rule of consistency.

10. The outcome of the above is that the present appellants, if being beneficiaries of Timescale Circular issued on 2011 cannot be treated differently, particularly in light of judgment passed by this Tribunal which was maintained by the Hon'ble Supreme Appellate Court and keeping in view the rule of consistency. In various cases, in view of rule of consistency, delay has been condoned by apex Courts. The appellants being retired teachers of Education Department of GB are equally entitled to the benefits of the said Circular on the same analogy of judgment referred to herein above. Hence there appears no reason for denial of benefits of the said circular to appellants. The appeal in hand is accepted with the direction to extend the benefits of 2011 Timescale Circular of 2011 to the appellants subject to fulfillment of eligibility criteria. Order accordingly.

11. Parties to bear their own costs.

12. File be consigned to record after completion.

**Announced:**

17.08.2018

Sd/-  
**Member-I**

Judgment sheet  
**BEFORE GILGIT-BALTISTAN SERVICE TRIBUNAL  
GILGIT**

Service Appeal No. 57/2017

Date of Institution:	30.10.2017
Date of hearing:	15.08.2018
Date of Judgment:	20.08.2018

<b>Appellant:</b>	Dr. Kaleemullah s/o Abdul Karim r/o Karim House Sakarkoi, Gilgit
<b>Respondents:</b>	Provincial Government through Chief Secretary GB & 02 others
<b>Before:</b>	Mr. Mir Akhlaque Hussain, Chairman Mr. Muhammad Kamal, Member-I Mr. Ali Sher, Member-II
<b>Present:</b>	M/S Muhammad Saleem Khan & Shahid Abbass Advocates for Appellants. Mr. Akhtar Jan, Law Officer for respondents No. 1 to 4 assisted by Mr. Ishtiaq Ahmed, Superintendent, Rep. of Health Department GB.

## **JUDGMENT**

**MUHAMMAD KAMAL MEMBER-I:-** Through this single judgment, we intend to dispose off three service appeals bearing Service Appeal No. 57/2017 titled Dr. Kaleemullah Vs. Prov. Govt. GB etc alongwith two appeals, Service Appeal No. 517/2014 Dr. Khawar Suleman Vs. Prov. Govt. GB etc and Service Appeal No. 611/2016 Dr. Muhammad Taqi Vs. Prov. Govt GB etc. as the facts, grievances and relief sought in the above appeals are common and identical in nature.

1. Facts as gleaned out from memo of appeals as well as those came into notice of this Tribunal during the course of arguments is that, all the three doctors were appointed as Medical Officers BS-17 on different dates upon recommendation of Federal Public Service



Commission Islamabad. Further notifications as to their appointments were followed by Services Department GB. Dr. Khawar Suleman was notified as M.O. BS-17 vide Notification No. SO-1-1(8)/2013 dated 27<sup>th</sup> November, 2013, Dr. Muhammad Taqi was notified as M.O. BS-17 vide notification of even number dated 28<sup>th</sup> October, 2013 and similarly Dr. Kaleemullah was notified as M.O. BS-17 vide notification No. SO-1-1(8)/2013 dated 27<sup>th</sup> November, 2013. In compliance with these notifications, all these three doctors joined their respective duties in Health Department GB.

2. After joining their respective duties in Health Department GB, they applied for Extra Ordinary Leave without pay for doing specializations in various medical disciplines/ fields from medical institutions at down country as these facilities are not available at GB. Dr. Khawar Suleman, M.O. applied for leave without pay to Secretary Health GB through proper channel on 7<sup>th</sup> July, 2014 for completing FCPS Part-II as he was already enrolled in College of Physicians and Surgeons Pakistan from where he had already completed FCPS Part-I prior to induction in Health Department as M.O. Likewise, Dr. Muhammad Taqi applied for EOL which was duly forwarded by District Health Officer Ghanche to Director Health Services GB as he was already enrolled with King Edward Medical University Lahore in MS Anesthesia. Dr. Kaleemullah had also completed Part-I of FCPS from College of Physicians and Surgeons Pakistan and required to complete FCPS Part-II. The applications submitted by the doctors for leave without pay for completing the remaining parts at the disciplines mentioned hereinabove remained in Health Department GB for months without any action thereon. After sometime, the authorities of GB Secretariat took notice of absence of doctors from

their duties and quickly resorted to penalize the doctors which led to termination of their services. Record shows that the authorities competent at the hierarchy at GB Secretariat remained silent for months over absence of these doctors and then all of sudden came in action. The action was so quick that those authorities forgot to remember that there are some rules and regulations for dealing with such cases and then go ahead for taking such stern action.

3. The Provincial Govt. GB filed its comments through the learned Law Officer and denied almost all the averments so taken by appellants in their respective appeals on legal and factual grounds. We have heard counsels for respective parties, learned Law Officer, have gone through the files, postgraduate training policies of 2004 and 2012 and relevant rules etc. as well.

4. It would be more appropriate to discuss at first instance the Post Graduate Training Policy in Health Department, GB 2004 wherein various terms and conditions have been laid down for regularization of services of doctors and paramedics of Health Department GB. The learned Law Officer contended in parawise comments that the said policy contains a clear condition that before applying for leave without pay for post graduate trainings in medical disciplines, desirous incumbent must have served at least 03 years in Health Department. We are agreed with the contention of learned Law Officer however, after a bare perusal of the said policy it is noted that the learned Law Officer has overlooked the very next para (B) of the said policy. For ease of reference, para (B) of the policy is reproduced herein below:

**“ B. INELIGIBILITY:**

Candidates having the following conditions shall not be eligible for training:

1. Probationers till the termination of probation period **except those doctors who have qualified FCPS Part-I earlier he/ she shall be nominated for Part-II training on EOL (without pay)”**.

5. Perusal of the above lines of Post Graduate Training Policy in Health Department, GB 2004 makes it crystal clear that probationer doctors can be deputed for post graduate training on EOL (without pay) subject to the condition that they have already completed FCPS Part-I. Exactly, same is the situation in the case of appellants as the appellants in these appeals have already cleared FCPS Part-I and are enrolled with Medical Institutions for completing training in their respective disciplines. Another policy titled “Training Policy 2012 Health Department Gilgit-Baltistan” was also circulated from Health & P.W. Secretariat Gilgit on 10.07.2013 which also contains a para identical to para (B) of the Policy 2004 mentioned hereinabove. Relevant sub-para of Para 6 is reproduced as under:

**“6. INELIGIBILITY CRITERIA:**

- v. Employee, who has passed FCPS part-I prior to his/ her induction in GB Health department or who is already under Training in a field of specialty which is needed for the department presently or in the very

near future will be eligible to undergo or complete the said training on without pay basis only”.

The above two Post Graduate Training Policies makes the position clear to the satisfaction of this Tribunal as well as Health Department GB that probationer doctors can also be deputed to complete the remaining parts of trainings in their respective disciplines. Now we are turning to the point of termination of services of doctors/ appellants. Before imposition of a major penalty on civil servants, there are some set rules/ procedures laid down in Civil Servant (Efficiency and Discipline) Rules which are mandatory to be applied before taking any sort of action. Before proceeding against an employee, these procedure/ rules must be followed. But in the appeals in hand, for the reasons not known why the GB Secretariat authorities were so quick which compelled them to bypass these rules/ procedures and issue termination orders in a very hasty manner. Before imposition of such a harsh penalty, the law requires the authorities to issue explanation to delinquent incumbents followed by show cause notices, publication of proposed actions in local newspaper and at the end holding of a regular inquiry. It is again reiterated here that it is mandatory under the law that action proposed by the competent authority must be communicated to the appellants in the prescribed modes. Even then, if the doctors did not come or respond to the said notices, the last option was to publish notices in daily newspapers. As per requirements under the Government Servants (Efficiency & Discipline) Rules, 1973, before imposition of such a harsh punishment, a regular inquiry should have been conducted, but the record shows that the authorities of GB Secretariat has badly failed to apply these provisions of law before proceeding against the doctors. The termination orders

of the appellants are not speaking orders as in absence of fulfillment of these mandatory requirements, the termination orders can be called void *ab-initio*. The Hon'ble Supreme Court of Pakistan in a case reported at 2007 SCMR 152 held that matter could not be decided without holding regular inquiry. The relevant part thereof is reproduced below:

**"4. We have considered the submission of learned counsel for the parties and perused the record. It is an admitted fact that appellants had passed the impugned order on 31.07.1998 against the respondent without holding regular inquiry. In case the contents of show cause notice and reply of show cause notice be put in a juxtaposition, then it is crystal clear that matter could not be decided without holding regular inquiry. It is pertinent to mention here that competent authority had not passed the speaking order against the respondent without holding regular inquiry in terms of rule 5 of the Government Servants (Efficiency and Discipline) Rules, 1973.**

6. Apart for what has been discussed above, the Chief Minister of Gilgit-Baltistan realized the importance and acute shortage of specialized doctors and directed the Health Department of GB to move a summary for regularization of services the sacked doctors including appellants. Hence, vide their letter No. Sec-H-1(20)/2016 dated 9<sup>th</sup> February, 2017, the Health Department asked the Secretary Services and Secretary Law & Prosecution GB for initiating a summary

for regularization of terminated doctors. The entire letter is reproduced as under:

**GOVERNMENT OF GILGIT-BALTISTAN  
HEALTH & POPULATION WELFARE DEPARTMENT  
GILGIT-BALTISTAN**

*No. Sec-H-1(20)/016  
Dated 9<sup>th</sup> February, 2017*

To

1. *The Secretary  
Services, General Administration Department  
Gilgit-Baltistan, Gilgit*
2. *The Secretary  
Law & Prosecution Department,  
Gilgit-Baltistan, Gilgit*

**Subject:** **CHIEF MINISTER'S DIRECTIVES ISSUED DURING MEETING WITH HEALTH DEPARTMENT GILGIT-BALTISTAN**

*I am directed to refer to the Services, General Administration, Information and Cabinet Department Gilgit-Baltistan letter No. SO-1-1(8)/2016 dated 27<sup>th</sup> December, 2016 on the subject cited above and to say that this Department has initiated a case for regularization of terminated doctors in the light of Chief Minister's Directives to the services Department GB for reinstatement of following terminated doctors of Health Department Gilgit-Baltistan.*

<b>S#</b>	<b>Name of doctor</b>	<b>Designation</b>	<b>BP S</b>	<b>Date of termination</b>
1.	<i>Dr. Fareed Akhter Baig</i>	<i>Medical Officer</i>	17	<i>11.06.2011</i>
2.	<i>Dr. Zulfiqar Ali</i>	<i>Medical Officer</i>	17	<i>14.02.2014</i>
3.	<i>SyeddahHoor</i>	<i>Lady Med. Officer</i>	17	<i>07.05.2011</i>
4	<i>Dr. Nasir Hussain</i>	<i>Medical Officer</i>	17	<i>26.11.2014</i>
5.	<i>Dr. M. Sajid Hussain</i>	<i>Medical Officer</i>	17	<i>26.11.2014</i>
6.	<i>Dr. Muhammad Taqi</i>	<i>Medical Officer</i>	17	<i>26.11.2014</i>
7.	<i>Dr. Muhammad Jail</i>	<i>Medical Officer</i>	17	<i>20.11.2014</i>
8.	<i>Dr. Kaleemullah</i>	<i>Medical Officer</i>	17	<i>29.01.2015</i>
9.	<i>Dr. LutffullahGhaznavi</i>	<i>Medical Officer</i>	17	<i>14.02.2013</i>
10	<i>Dr. KhawarSuleman</i>	<i>Medical Officer</i>	17	<i>26.11.2014</i>

*In connection to the query by Services & GAD GB, it is pertinent to mention here that all the doctors were terminated from Government service (copies of Notifications of Services Department GB are attached for ready reference) and appeals for restoration of services of terminated doctors are also attached.*

*This department has submitted requisitions of the posts of doctors/ specialist several times against to Services Department GB and the FPSC, Islamabad kept the requisition due to stay orders issued by Supreme Appellate Court Gilgit-Baltistan and after lifting of Supreme Appellate Court stay orders, the Health Department again sent the requisitions to the Services Department GB, the Services department Gilgit-Baltistan returned the same with the observation that the draft rules may be notified in the gazette of Pakistan, but the rules are not published by Pakistan Printing Press Islamabad, and lying in Services & General Administration Department GB which may be published by Pakistan Printing Islamabad on the request of Services & General Administration Department GB.*

*As far as reinstatement of sacked doctors is concerned, the terminated doctors mentioned in the summary have done, MCPS and FCPS in various specialties and one of the terminated doctor has been working on contract basis as consultant cardiology (BS-18) at DHQ Hospital Gilgit and the higher qualification and ample experience of other terminated doctors will be useful for Health Department GB. The Health Department has been facing shortage of Medical Officer/ Lady Med. Officers/ Dental Officers (BS-17) and consultant (BS-18) of various specialties to cope with the requirements in far flung hard areas of Gilgit-Baltistan. In these circumstances, a case of reinstatement of terminated doctors has been initiated by this*

*Department to Services Department GB for reinstatement of their services in Health Department GB on the directives of Chief Minister Gilgit-Baltistan.*

*Hence, the Chief Minister Gilgit-Baltistan has issued directives (copy is attached) that the "Secretary Health, Secretary Services and Secretary Law) may move a summary for promulgation of an ordinance by Governor GB duly relaxing rules regarding re-appointment of terminated/ dismissed doctors. Parliamentary Secretary Law shall also move a case in the Assembly accordingly.*

*It is requested, that the process of reinstatement of doctors may be expedited in the light of Chief Minister's Directives enabling this department to facilitate the public of the area please.*

**ABDUL SALAM  
SECTION OFFICER  
(HEALTH)**

7. It is very strange to note that on the one hand, the Health Department terminates services of these doctors while on the other hand, vide Health Department GB office letter No.Sec-H-I (32)/2012 dated 25.02.2015 written to Directors Health Services Gilgit & Baltistan has indicated acute shortage of professional doctors in the region and has directed the Directors to nominate doctors for specialization in the field of specialties i.e. Anesthesia Specialist, Medial Specialist, Surgical Specialist, Neurological Specialist and Psychiatrist.

8. Termination of services of specialized doctors not only affects the doctors but also affects the whole people of the region simultaneously. Acquisition of specialties in medical disciplines by



doctors is an integral part and parcel of their profession and the people of region stand direct beneficiaries of doctors' specialties. Thus in this way, harsh punitive measures deprives the doctors of their benefit in general and people of the area in particular.

9. The learned Law Officer and the departmental representative has failed to prove that before proceeding against the doctors, which led to a harsh punishment of termination, the mandatory requirements under the law have been fulfilled. Every civil servant who commits misconduct has a right to be dealt with strictly in accordance with the law/ rules prescribed for that purpose. But in the appeals in hand, some doctors have been issued explanation/ show cause notices, that too have been sent at the addresses of their place of posting despite knowing the fact that they are not present at their place of duty. These notices/ explanation/ show cause notices could have been sent at the address of their Institutions where they were under training and their home address as well. Besides the above, in this digital era, it cannot be said that appellants could not be contacted, certainly they could have been contacted over telephone and informed them about the proposed action, but did not do so. The applications submitted by the appellants for extraordinary leave without pay were kept pending for months without taking any action thereon. Action must have been taken on their applications thereby communicating the fate thereof to the doctors in time.

10. The upshot of what has been discussed above, it is found that Health Department GB has not gone through its own Post Graduate Policy 2004 and 2012 referred to hereinabove, which entitle the doctors to undergo the specialty trainings even during the probation

period who have qualified Part-I. Secondly, action has been taken in a very hasty manner without fulfilling mandatory requirements. For the reasons explained in preceding paras above, the instant appeals are accepted by setting aside the impugned order (Notification) No. SO(A&E)-9(8)/2014-Services dated 6<sup>th</sup> November, 2014 issued by Services Department GB and Notification No. Sec-H-I(32)/2014 dated 19<sup>th</sup> January, 2015 issued by Health Department GB. The appellants are reinstated into services from the date of their termination. The intervening period shall be considered as leave without pay. Back Benefits claimed by one appellant Dr. Muhammad Taqi in Appeal No. 611/2016 is hereby refused as during the period of leave without pay no back benefits for that period can be granted. Order accordingly. Parties to bear their own costs. These are the reasons for our short order dated 20.08.2018.

11. File be consigned to record after completion.

Announced:  
20.08.2018

Sd/-  
**Chairman**  
Sd/-  
**Member-I**  
Sd/-  
**Member-II**

Judgment sheet  
**BEFORE THE GILGIT-BALTISTAN SERVICE TRIBUNAL**  
**GILGIT**  
Appeal No. 61/2017

Date of institution	05-04-2017
Date of hearing	07-08-2017
Date of judgment	28-08-2018

APPELLANT: Syed Khalid Hussain s/o  
Syed Ibrahim Shah r/o  
Gupis District Ghizer.

RESPONDENTS: Provincial Govt. through  
Chief Secretary GB and 10  
others.

BEFORE: Mr. Ali Sher Member-II.

PRESENT: M/S Muhammad Yasin.

M/S Akhtar Jan Law Officer  
GB assisted Mr. Advocate  
Zahid Ali Baig council for  
respondents No. 6 to 11.

## **JUDGMENT**

**ALI SHER MEMBER-II:-** Brief facts as stated in the memo of appeal, are that, the appellant, along with the respondents No. 6 to 8 were appointed as Accounts Assistant BPS-11, in Population Welfare Department Gilgit Baltistan on 03-05-2006. While respondent No. 9 and 10 were appointed in the year 2010. Respondent No.11 who was a contract employee (as Account Assistant) was regularized in the year 2009. After the appointment, the appellant was directed to perform his duties in Reproductive Health Service-A (RHS)-A center Gahkuch Ghizer, under Directorate of Population Welfare GB. Since then, the appellant has been performing his duty in respective area. On 26-11-2011, the post of Account Assistant was upgraded from Account Assistant BPS-11 to Accountant BPS-16 and then further redesignated from Accountant BPS-16 to Superintendent BPS-17 on 02-12-2016 whereby only the respondents No. 6 to 11 were benefited from the aforesaid upgradation/redesignation and the appellant was

intentionally deprived of the same upgradation/redesignation. Presently appellant holds post of Account Assistant BPS-11 while his batch fellows respondent No. 6 to 11 are Superintendents in BPS-17. Appellant filed Departmental representation but in vain. Appellant prayed for upgradation of his post of Account Assistant BPS-11 to Accountant BPS-16 w-e-f 01-07-2010 and further upgradation/redesignation of Accountant BPS-16 to Superintendent BPS-17 w-e-f 02-12-2016 on the grounds that the respondents No. 6 to 8 were appointed through same advertisement on same date and in the same post (Account Assistant BPS-11) in the same department of Population Welfare GB.

2. Respondents filed para wise comments whereby they denied almost all the averments, made by appellant in the memo of appeal on legal and factual grounds. It has been contended in para wise comments that the appellant has been appointed against the post of Account Assistant BPS-11 in Reproductive Health Service which is just component/unit of Population and Welfare Department of Gilgit Baltistan where as Respondent No. 6 to 11 were appointed as Account Assistant BPS-11 in District Welfare Offices and Directorate of Population Welfare GB. Therefore, only the respondent No. 6 to 11 are entitled for upgradation/redesignation. Finally respondents prayed for dismissal of the instant service appeal with cost.

3. Learned counsel for appellant contended that the appellant was appointed as Account Assistant BPS-11 in Population Welfare Department GB along with the respondents No. 6 to 8 after fulfilling all codal formalities. Since then, the appellant has been performing his duties efficiently, dedicatedly and sincerely. He further submitted that the appellant stood first in written test and interview of the said

post of Account Assistant BPS-11 whereas the remaining respondents were listed below in the merit list of the said post. He further argued that the appellant has been malafidely deprived of the upgradation of the post of Account Assistant and then redesignation of the post of Accountant. He further submitted that the Reproductive Health Service-A-Centre is one of the components of Population Welfare Department GB and not a separate Department, therefore, the appellant is entitled for upgradation/redesignation of the said post of Account Assistant. Finally, learned counsel for appellant prayed for upgradation of appellant from the post of Account Assistant BPS-11 to Accountant BPS-16 w-e-f 01-07-2010 and further redesignation of a post of Accountant BPS-16 to Superintendent BPS-17 w-e-f 02-12-2016 to meet the ends of justice.

4. Learned Law Officer GB, assisted by Learned Counsel for respondent No. 6 to 11, Zahid Ali Advocate, contended that the case of respondents No. 6 to 11 is different from that of appellant as the appellant has been appointed against the post of Reproductive Health Service-A-Center whereas the respondents No. 6 to 11 were appointed as Account Assistant against the post of District Health Offices and Directorate of Population and Welfare Department GB. Learned Law Officer further submitted that the approved PC-1 covers only those post of Account Assistants who are working in the District Health Offices and Directorate of Population Welfare Department GB. Hence, RHS-C is not covered by the approved PC-1, Therefore, appellant is not entitled for what he claims. Finally, Law Officer as well as Counsel for respondent No. 6 to 11 prayed for dismissal of instant service appeal being meritless with cost.

5. I heard the arguments, advanced by learned counsel for appellant and Law Officer GB, with due consideration and perused the relevant record minutely. From perusal of the record, it revealed that the appellant and respondents No. 6 to 8 have been appointed as Account Assistant BPS-11 on 03-05-2006 while respondents No. 9 and 10 were appointed in the year 2010 where as the services of the respondent No.11 was brought to regular footing in the year 2011. Final merit list also shows the appellant on the top of the serial No. of the merit. It is also an admitted fact that the appellant as well as respondents No. 6 to 11 were appointed by competent authority in Population and Welfare Department GB.. On a question, whether RHS-C is an independent Department or a component/unit of the Population and Welfare Department of GB. It became evident from the record/facts of the case that RHS-C is component of Population and Welfare Department of GB. it is not a separate department and as such is headed by the same Secretary and Director.

6. It is also on record that on departmental representation of the appellant, Mr. Deedar Karim Assistant Director Population Welfare Department GB, vide his letter No. DPW-2(2)/ESTAB/2010/189 dated 22<sup>nd</sup> November, 2011, requested the then Secretary Population and Welfare Department GB to consider the case of the appellant to avoid any discrimination. In response to this, the then secretary mentioned on the back side of the page of said letter that department may initiate the case to this effect with the quarter concerned for rectification of this anomaly/discrepancy and requested finance department for necessary amendment in PC-1 scope. It thus, transpires that respondent No. 2 admitted the discrimination/discrepancy alleged by appellant as done by the

respondent's No. 1 to 5 by giving the benefit of the upgradation to respondent's No. 6 to 11 while depriving the appellant of his legal right of upgradation/redesignation.

7. The constitution of Islamic Republic of Pakistan, 1973 also guarantees justice and equity with all citizens. Respondents No. 1 to 5 have, no doubt, committed sheer discrimination by depriving the appellant of his legal right of upgradation/redesignation.

8. ***In the light of what, has been discussed above, this instant service appeal 61/2017 is hereby accepted subject to the condition that the appellant will not be entitled for any back benefits from the date of upgradation/redesignation. However, seniority of the appellant shall be counted from the date of upgradation/redesignation of other six batch mates of the appellant where his standing falls in the combined seniority.***

10. Filed be consigned to record after due completion.

11. No order as to cost.

**Announced**

28-8-2018

Sd/-  
**MEMBER-II**

Judgment sheet  
**BEFORE THE GILGIT-BALTISTAN SERVICE TRIBUNAL  
GILGIT**

Appeal No. 62/2017.

Date of institution	05-04-2017
Date of hearing	07-08-2017
Date of judgment	28-08-2018

APPELLANT: Sajid Hussain s/o Ghulam Hussain  
r/o District Skardu.

RESPONDENTS: Provincial Govt. through Chief  
Secretary GB and 10 others.

BEFORE: Mr. Ali Sher Member-II.

PRESENT: M/S Muhammad Yasin.

M/S Akhtar Jan Law Officer GB  
assisted Mr. Advocate Zahid Ali Baig  
council for respondents No. 6 to 11.

### **JUDGMENT**

**ALI SHER MEMBER-II:-** Brief facts, as stated in the memo of appeal, are that the appellant, along with the respondents No. 6 to 8 were appointed as Accounts Assistant BPS-11, in Population Welfare Department Gilgit Baltistan on 03-05-2006. Respondent No. 9 and 10 were appointed in the year 2010. Respondent No.11 who was a contract employee (as Account Assistant) was regularized in the year 2009. After the appointment, the appellant was directed to perform his duties in Reproductive Health Service-A (RHS)-A) center District Skardu, under Directorate of Population Welfare GB. Since then, the appellant has been performing his duty in respective area. On 26-11-2011, the post of Account Assistant was upgraded from Account Assistant BPS-11 to Accountant BPS-16 and then further redesignated from Accountant BPS-16 to Superintendent BPS-17 on 02-12-2016 whereby only the respondents No. 6 to 11 were benefited from the aforesaid upgradation/redesignation and the appellant was intentionally deprived of the same upgradation/redesignation. Presently appellant holds post of Account Assistant BPS-11 while his



batch fellows respondent No. 6 to 11 are Superintendents in BPS-17. Appellant filed Departmental representation but in vain. Appellant prayed for upgradation of his post of Account Assistant BPS-11 to Accountant BPS-16 w-e-f 01-07-2010 and further upgradation/redesignation of Accountant BPS-16 to Superintendent BPS-17 w-e-f 02-12-2016 on the grounds that the respondents No. 6 to 8 were appointed through same advertisement on same date and in the same post (Account Assistant BPS-11) in the same department of Population Welfare GB.

2. Respondents filed para wise comments whereby they denied almost all the averments, made by appellant in the memo of appeal on legal and factual grounds. It has been contended in para wise comments that the appellant has been appointed against the post of Account Assistant BPS-11 in Reproductive Health Service which is just component/unit of Population and Welfare Department of Gilgit Baltistan where as Respondent No. 6 to 11 were appointed as Account Assistant BPS-11 in District Welfare Offices and Directorate of Population Welfare GB. Therefore, only the respondent No. 6 to 11 are entitled for upgradation/redesignation. Finally respondents prayed for dismissal of the instant service appeal with cost.

3. Learned counsel for appellant contended that the appellant was appointed as Account Assistant BPS-11 in Population Welfare Department GB along with the respondents No. 6 to 8 after fulfilling all codal formalities. Since then, the appellant has been performing his duties efficiently, dedicatedly and sincerely. He further argued that the appellant has been malafidely deprived of the upgradation of the post of Account Assistant and then redesignation of the post of Accountant. He further submitted that the Reproductive Health

Service-A-Centre is one of the components of Population Welfare Department GB and not a separate Department, therefore, the appellant is entitled for upgradation/redesignation of the said post of Account Assistant. Finally, learned counsel for appellant prayed for upgradation of appellant from the post of Account Assistant BPS-11 to Accountant BPS-16 w-e-f 01-07-2010 and further redesignation of a post of Accountant BPS-16 to Superintendent BPS-17 w-e-f 02-12-2016 to meet the ends of justice.

4. Learned Law Officer GB, assisted by Learned Counsel for respondent No. 6 to 11, Zahid Ali Advocate, contended that the case of respondents No. 6 to 11 is different from that of appellant as the appellant has been appointed against the post of Reproductive Health Service-A-Center whereas the respondents No. 6 to 11 were appointed as Account Assistant against the post of District Health Offices and Directorate of Population and Welfare Department GB. Learned Law Officer further submitted that the approved PC-1 covers only those post of Account Assistants who are working in the District Health Offices and Directorate of Population Welfare Department GB. Hence, RHS-C is not covered by the approved PC-1, Therefore, appellant is not entitled for what he claims. Finally, Law Officer as well as Counsel for respondent No. 6 to 11 prayed for dismissal of instant service appeal being meritless with cost.

5. I heard the arguments, advanced by learned counsel for appellant and Law Officer GB, with due consideration and perused the relevant record minutely. From perusal of the record, it revealed that the appellant and respondents No. 6 to 8 have been appointed as Account Assistant BPS-11 on 03-05-2006 while respondents No. 9 and 10 were appointed in the year 2010 where as the services of the

respondent No.11 was brought to regular footing in the year 2011. It is also an admitted fact that the appellant as well as respondents No. 6 to 11 were appointed by competent authority in Population and Welfare Department GB. On a question, whether RHS-C is an independent Department or a component/unit of the Population and Welfare Department of GB. It became evident from the record/facts of the case that RHS-C is component of Population and Welfare Department of GB. it is not a separate department and as such is headed by the same Secretary and Director.

6. It is also on record that on departmental representation of the appellant, Mr. Deedar Karim, Assistant Director Population Welfare Department GB, vide his letter No. DPW-2(2)/ESTAB/2010/189 dated 22<sup>nd</sup> November, 2011, requested the then Secretary Population and Welfare Department GB to consider the case of the appellant to avoid any discrimination. In response to this, the then secretary mentioned on the back side of the page of said letter that department may initiate the case to this effect with the quarter concerned for rectification of this anomaly/discrepancy and requested finance department for necessary amendment in PC-1 scope. It thus, transpires that respondent No.2 admitted the discrimination/discrepancy alleged by appellant as done by the respondent's No. 1 to 5 by giving the benefit of the upgradation to respondent's No. 6 to 11 while depriving the appellant of his legal right of upgradation/redesignation.

7. The constitution of Islamic Republic of Pakistan, 1973 also guarantees justice and equity with all citizens. Respondents No. 1 to 5 have, no doubt, committed sheer discrimination by depriving the appellant of his legal right of upgradation/redesignation.

8. ***In the light of what, has been discussed above, this instant service appeal 62/2017 is hereby accepted subject to the condition that the appellant will not be entitled for any back benefits from the date of upgradation/redesignation. However, seniority of the appellant shall be counted from the date of upgradation/redesignation of other six batch mates of the appellant where his standing falls in the combined seniority.***

9. Filed be consigned to record after due completion.

10. No order as to cost.

**Announced**

28-8-2018

Sd/-  
**MEMBER-II**

Judgment sheet  
**BEFORE GILGIT-BALTISTAN SERVICE TRIBUNAL  
GILGIT**  
Service Appeal No279/2014

Date of Institution:	02.05.2014
Date of hearing:	18.08.2018
Date of Judgment:	17.09.2018

**Appellant:** Abdul Hakeem son of Abdul r/o District Astore, working as Naib Qasid PWD office Astore.

**Respondents:** Provincial Government through Chief Secretary GB &08 others.

**Before:** Mr. Muhammad Kamal  
Member-I

**Present:** Manzoor Ahmed, Shah Faisal and Saqib Hassan Advocates for Appellant.  
Mr. Akhtar Jan, Law Officer GB for respondents No. 1 to 8 assisted by Mir Alam advocate Legal advisor GBPWD Astore. Mr. Naeem Akhtar Jan, Advocate for respondent No. 9.

### **JUDGMENT**

**MUHAMMAD KAMAL MEMBER-I:** Appellant has challenged appointment order of respondent No. 9 by way of this appeal contending that respondent No. 9 has been unlawfully adjusted against the post of Ferro Printer BS-05 ignoring appellant's right of promotion against the said post in view of his seniority and length of service.

1. Brief facts emerged from perusal of file record shows that vide Office Order No. SED-(2)/EST/2006/14/2276 dated 21.Nov.2006 appellant has been appointed as Naib Qasid BS-01 in GBPWD Office Astore and is working in the same capacity since then. After death of an employee of GBPWD Astore, a post of Ferro Printer BS-05 fell vacant. Vide Office Order No. E-I/101/Admin/6/2010/1447 dated 29.10.2010, issued by PWD authorities, appellant was promoted/adjusted against the post of Ferro Printer, but subsequently without superseding the appellant's adjustment/ promotion order, vide another Office Order No. Sec-W-SO-1(7)/2012/602 dated 30.May.2013 issued from the office of GB Secretariat Works Department GB, respondent No. 9, who is real son of deceased employee (Ferro Printer) PWD Office Astore, was adjusted against the said post without fulfilling codal formalities. The appellant felt dismay

and resorted to approach high authorities of Works Department GB for remedy of his grievances, but to no avail. However, salary of respondent No. 9 was stopped for some time, which later on was released. The appellant contends that the late Ferro Printer was also initially appointed as Chowkidar and later on was promoted to Ferro Printer despite the fact that the department did not have its own recruitment rules which could regulate such posts.

2. The appeal in question involves only two questions: first whether the appellant can claim promotion against the post of Ferro Printer BS-05 in absence of approved recruitment rules merely on a precedent that deceased Ferro Printer was promoted against the said post from the post of Chowkidar and secondly, whether the PWD Department can adjust a person against the post of Ferro Printer directly without fulfilling the codal formalities of test/ interview. Obviously, answer to these questions is in negative.

3. Parawise comments have been filed by provincial government through Law Officer GB. Lastly, the appeal came up for arguments on 19.06.2018. Arguments in pro and contra heard. Counsel for appellant argued that since the post of Ferro Printer is meant to be filled in by promotion as was done previously in the case of deceased Ferro Printer, therefore order of direct adjustment of respondent No. 9 may be cancelled and respondent may be directed to promote the appellant against the said post. On the other hand, counsel for respondent No. 9 opposed this version and argued that appellant cannot claim promotion against the post of Ferro Printer as his line of promotion is for the post of LDC against 10% quota not to the post of Ferro Printer. He further contended that respondent No. 9 has been

performing his duties against the said post for a long time getting proper monthly salary thus, legal right has accrued to respondent No. 9. Learned Law Officer GB assisted by Mr. Mir Alam, legal advisor Works Department, Astore also supported/ seconded the version of the learned counsel for respondent No. 9, however the counsel for respondent No. 9 and learned Law Officer could not satisfy this Tribunal as to whether a legal right accrues against an illegal order.

4. In order to clarify the position, Chief Engineer Diامر-Astore Division was summoned to make appearance before this Hon'ble Tribunal. However, the Chief Engineer deputed a SDO as his representative owing to his own preoccupations in connection with official affairs of Works Department. The SDO concerned stated that the line of promotion of appellant is against LDC BS-11 in view of 10% promotion quota while process of promotion of appellant is in progress with Head Office of Works Department GB which will be completed in due course of time. The legal advisor of Works Department Astore also seconded this version of SDO/ Departmental Rep. of Works Department. The learned Law Officer GB did not oppose their version/ statement.

5. Although neither the appellant can claim promotion against the post of Ferro Printer BS-05 without having approved recruitment rules merely on a wrong precedent set by the PWD authorities Astore nor the respondent No. 9 can stand on the legs of an illegal order. However, I am not in favour of disturbing both the litigants. If I touch the merit both appellant and respondent No.9 will lose their respective interest, more importantly, the respondent No. 9 will suffer as he will lose his job and will not be in a position to sustain the

sufferings at all. Hence, in the circumstances of the case, sorting out a midway remedy would be more workable. Therefore, in the circumstances as well as on the basis of statements of departmental representative (SDO) and legal advisor of Works Department, the Works Department GB is directed to consider promotion of appellant against the post of LDC BS-11 if he is eligible under 10% quota reserved for Naib Qasids/ Chowkidars through DPC which is under process with head office Works Department GB according to the statement of representative (SDO) and legal advisor Works Department Astore while the respondent no 9 will continue his duties as usual.

6. In the above terms, the appeal in hand is disposed off with no order as to costs.

7. File be consigned to record after its completion.

Announced:  
17.09.2018

Sd/-  
**Member-I**

Judgment sheet  
**IN THE GILGIT-BALTISTAN SERVICE TRIBUNAL  
GILGIT**

Appeal No. 475/2014.

Date of institution	08-05-2014
Date of hearing	25-09-2018
Date of judgment	

APPELLANT: Zulfiqar Ali s/o Ghulam Baqar r/o  
Eid Gah, District Astore.

RESPONDENTS: Provincial Govt. through Chief  
Secretary GB and 05 others.



BEFORE: Mir Akhlaque Hussain Chairman.  
Mr. Muhammad Kamal Member-I.  
Mr. Ali Sher Member-II.

PRESENT: Mr. Abdul Hameed Haider Advocate  
for appellant. Mr. Akhtar Jan Law  
Officer, G.B assisted by Mr. Kamal  
Hussain Advocate, legal advisor  
with Muhammad Ilyas ADI  
representative of Education  
Department GB.

### **JUDGMENT**

**ALI SHER MEMBER-II:-** Brief facts, as stated by the appellant in the memo of appeal, are that the appellant was initially appointed as LDC BPS-7 as contingent paid Employee in Boys High School Thin Bala Astore, whose service was brought to regular footing vide office order No. DE-2(2)/2011 Admin dated 21-05-2011. After the regularization of his service the appellant has been performing his duties in respective areas. On 10-03-2014, in pursuance of the decision of the special recruitment committee, constituted to determine the eligibility/fitness of different employees of Education Department GB, the respondent No. 2 issued the impugned office order dated 10-03-2014 whereby the appellant was said to be ineligible/unfit for the post he held. The appellant filed departmental appeal on 14<sup>th</sup> March, 2014. Finally, appellant filed instant service appeal which was received by the office of this Tribunal on 08-05-2014. Appellant prayed for reinstatement of his service by setting aside the impugned office order dated 10-03-2014 to meet the end of justice.

2. Respondents No. 1 to 5 filed joint para wise comments on 11-03-2015 whereas no para wise comments were submitted by respondent No. 6. Respondents No. 1 to 5 denied almost all the averments, made by the appellant in the memo of appeal. Respondents prayed for dismissal of the instant service appeal being meritless.

3. Learned Counsel for appellant contended that the impugned office order dated 10-03-2014 is illegal and unlawful as there is no provision in the law to constitute any recruitment committee to determine the eligibility of any Government servant who is once appointed by the competent authority, he further submitted that the appellant was not given an opportunity of hearing by the constituted Recruitment committee which is against the golden rule of "**AUDI ALTRAM PARTAM**" as no one can be condemned unheard. Learned counsel for appellant, further argued that according to the doctrine of **Locus Poenitentiae**, once a person is appointed by competent authority, a vested right accrues in his favour and his appointment order cannot be recalled just on the basis of assumptions and surmises. Learned counsel for appellant placed his reliance on 2015 SCMR 1418. Finally, learned counsel for appellant prayed for reinstatement of the service of appellant by setting aside the impugned order dated 10<sup>th</sup> March, 2014 being void ab initio.

4. Learned Law Officer, assisted by legal Advisor of Education Department GB, Mr. Kamal Hussain Advocate, argued that the impugned office order dated 10-03-2014 is legal and lawful as it was issued after deep scrutiny of eligibility and documents of the appellant. Learned law office further contended that since the contingent paid appointment and regularization of the service of the

appellant was illegal due to which special recruitment committees were constituted to determine the suitability/eligibility of the different employees in Education Department GB. He further submitted that appellant participated and appeared before the said recruitment committee but miserably failed to show his eligibility for the said post. Therefore, the appellant is stopped by doctrine of Estoppel to challenge the decision of the committee by filing the instant service appeal. Finally learned law office prayed for dismissal of the instant service appeal being meritless with cost.

5. We heard the arguments advanced by the learned counsel for the parties with due consideration and perused record minutely. From perusal of the available record, it reveals that a Special Recruitment committee has been constituted to determine the eligibility/suitability of the different employees of Education Department who were said to be appointed without adopting prescribed procedure appellant is also victim of the decision of the said recruitment committee. On the question, whether the appellant was appointed after fulfilling all codal formalities and prescribed rule, it is evident from the record that the appellant claimed himself to be initially appointed as contingent paid employee but no office order of such appointment is available on record. It is astonishing to state that the appellant has placed an office order dated 21<sup>st</sup> May, 2011 which is a regular order of the post of LDC of appellant but mischievously the appellant mentioned the above said regular date of appointment i.e 21<sup>st</sup> May, 2011 as his date of contingent paid appointment.

6. It is also evident from the record that there is neither any proof available on the record of the advertisement nor any test and interview of the said post of LDC. Furthermore, a contingent paid

employee cannot claim to be appointed on regular footing just on the basis of contingent appointment. If any person is appointed initially or his services brought to regular footing by the competent authority without adopting prescribed rules, such appointments cannot be given legal cover just blindly in compliance of the doctrine of **Locus Poenitentiae**. This golden doctrine is applicable only in the case where any appointment is made in accordance with prescribed rule but unfortunately that is not the case with the appellant.

7. It is evident from para-5 of the instant service appeal that the appellant did not object when the said special recruitment committee was ordered to be constituted by the office order dated 21<sup>st</sup> August, 2013. Furthermore, in the said para appellant just stated the said committee, test and interview which it conducted as against the basic principle of law and justice without providing any proof of to substantiate his contention. And that too when appellant was declared as unfit and ineligible for the said post by the recruitment committee. From the plain reading of the said para-5 of the service appeal, it reveals that appellant, has no doubt, participated and appeared before the said recruitment committee but failed to show his eligibility for the said post. If the constitution of the said committee was illegal, then the appellant should not have participated and appeared before it and should have challenged the office order dated 21<sup>st</sup> August, 2013 through which the said committee was constituted which resulted in issuance of the impugned office order dated 10<sup>th</sup> March, 2014. Hence, the appellant is stopped by doctrine of Estoppels to impugn the decision of the said recruitment committee.

8. It is mandatory under Gilgit Baltistan Service Tribunal Act, 2010 to file departmental appeal before filing service appeal for redressal of any departmental grievance. In the memo of the instant service appeal, the appellant claimed to file departmental appeal but neither the respondents admitted it in the para wise comments nor any receiving confirmation is found on the copy of the departmental appeal which the appellant has annexed to the instant service appeal. If it is presumed that the appellant has filed departmental appeal on 14<sup>th</sup> March, 2014, then the instant service appeal is premature as it has been filed before this tribunal on 08-05-2014.

**9. For the reasons, discussed above, the instant service appeal No. 475/14 is hereby dismissed being meritless and premature.**

10. No order as to cost.

11. File be consigned to record after due completion.

Announced  
03-10-2018

Sd/-  
**Chairman**  
Sd/-  
**Member-I**  
Sd/-  
**Member-II**

Judgment sheet  
**IN THE GILGIT-BALTISTAN SERVICE TRIBUNAL**  
**GILGIT**

Appeal No. 07/2017.

Date of institution	22-02-2017
Date of hearing	17-10-2018
Date of judgment	18-10-2018

APPELLANT: Attaullah S/O Amanullah R/O Satellite Town Tehsil and District Skardu, Lab Assistant BPS-9 Government Boys High School Haji Gam Skardu.

RESPONDENTS: Provincial Govt. through Chief Secretary Gilgit-Baltistan, Gilgit and 04 others.

BEFORE: Mir Akhlaque Hussain Chairman.

PRESENT: Mr. Safdar Ali Advocate for appellant.

Mr. Akhtar Jan Law Officer G.B for respondent No. 1 to 4.

### **JUDGMENT**

**MIR AKHLAQUE HUSSAIN CHAIRMAN:** The brief facts of the case as narrated in pleadings of the parties are that the appellant was appointed on the post of Lab Assistant BPS-09 which was advertised vide advertisement in daily K-2 dated 13.7.2011. Consequent upon which the appellant has joined his duties on 05.3.2012 in pursuance of the appointment order No. DE (B) -1 (03)/2011 dated 10.12.2011. The appellant has been performing his duties since his joining till date but the appellant has not been paid his salary from his joining till date. The respondents have denied that appointment of appellant has been made in pursuance of advertisement rather the appointment is void ab-initio and has been made without codal formalities and that

the appellant has been appointed due to fake letter of creation of post while no such post exists.

2. The counsel for the appellant argues that the appellant has been appointed after submitting his documents as per required by the advertisement and the department has issued the appointment order and taken and accepted the joining report of the appellant and the appellant has performed his duties regularly from the date of joining till now. The appellant submitted various applications, representations, and appeals but no orders have been made till now. The Goshwar/ PMIS of institutions in respect of employees BPS-1 to BPS-19 attached with the memo of appeal at page 10 to 12 of the appeal reflects the name of appellant and PMIS at page 11 for quarter ending June-September 2015 mentions the post of Lab Assistant BPS-9 as sanctioned strength and reflects the name of appellant. The appellant has also attached certificates of performance of duty. That even otherwise the appellant is eligible and qualified for the post and had filed applications for his pay whereupon the Director Education was directed to furnish detailed report and specific recommendations but the same has not been done and the Director Education Baltistan has omitted complying the directions given to him vide letter No. Sec-Edu-2(14)/2016 dated 01.12.2016 in the matter of

release of pay. The appellant before filing the instant service appeal, filed departmental appeal to the secretary education on 22.11.2016. He prays that the appeal be accepted.

3. The learned Law Officer controverts the contentions of the counsel for appellant and has raised objection of limitation on the instant service appeal. He further contends that the appeal is not maintainable and is hit under order 7 rule 11 CPC and the appellant has no cause of action or locus standi. The learned law officer relies on the judgment of Hon'able Supreme Appellate Court Gilgit-Baltistan in case titled " Syed Konain and others vs Provincial government and others" Civil appeal No. 58/2017 in CPLA No. 134/2016 and states that since the appellant has been appointed in violation of codal formalities and against a non-existing vacancy hence his appeal may be dismissed.

4. I have heard the learned counsels and perused the record of the case and case laws presented by the learned counsels. The advertisement annexed with the appeal on page 24 shows that the post of Lab Assistant BPS-9 for Baltistan region had been advertised as existing vacant position on 13.7.2011 by the director education Baltistan region. There is nothing on the record to prove the said advertisement fake or bogus or forged and the respondents have not



given any explanation regarding the said advertisement except making mere assertion that the appointment of the appellant has not been made under the said advertisement. If so was the situation then there must be somebody else, who would have been appointed under the said advertisement no such appointments of any other candidate has been brought on record, hence it stands established that the appellant was appointed under the said advertisement. Now once it has been established that the post was advertised then there remains no space for the plea that the post of Lab Assistant BPS-9 was non-existing. Moreso, when the PMIS in 2015 and even 2016 reflects the name of appellant. In para No. 6 of the appeal the appellant has averred that, the appellant is still performing his duties from date of joining. The said para has been replied in the written comments in para 5 of facts as under:

**“That para No.6 of the instant appeal is also to be proved by the appellant under a legal appointment order instead of illegal appointment order. ”**

The above para reflects that the respondents have clearly avoided specific denial of the performance of duties by appellant and such is apparently admission of the fact that the appellant has been

regularly performing his duties from date of joining. Furthermore, the documents attached with the application under order 13 rule 2 are attendance sheets 2014 through 2016. At page 17 of the appeal an office order No. DE-(B)-4(14)/2016/1679 dated 17.5.2016 is attached wherein the deputy director education (admin) has constituted a committee for purpose of shifting the lab apparatus from the boys school Hajigam (The school where appellant is working as Lab Assistant) to Girls school Hajigam. The said committee constituted by the deputy director includes the name of appellant which shows that the appellant was duly performing his duties and his appointment is endorsed by the department by entrusting assignments and tasks of purely official matters to the appellant. As to the judgment of the Hon'able Supreme Appellate Court Gilgit-Baltistan in case titled "Syed Konain etc vs provincial government etc" the matter in that case is different and not applicable in the instant case. The petitioners/appellants in that case were teachers who were left out of the service and the special recruitment committees and their services were terminated while the appellant in the instant case has not been terminated even till now. Hence, the facts of the said case are different from the one in hand. On the other hand case titled as "Masnoona Shehzadi vs provincial government etc" decided by this tribunal vide judgment dated 21.9.2015 and upheld by the Hon'able

Supreme Appellate Court Gilgit-Baltistan vide judgment dated 24.3.2016 in CPLA No. 112/2015 titled "Chief Secretary Gilgit-Baltistan vs Masnoona Shehzadi" is identical with the case in hands. The counsel for the appellant has referred the case titled "Shabnum Riaz vs Provincial government etc" civil appeal No. 19/2016 in CPLA No. 105/2015 but the same cannot be considered as precedent in the instant case as the Hon'able Supreme Appellate Court Gilgit-Baltistan has partially reviewed the said judgment and held that the case of Shabnum Riaz will not be referred as precedent. However, the case of Masnoona Shehzadi already decided by this Tribunal vide judgment of this tribunal dated 21.9.2015 is similar to the instant case. The said judgment of this tribunal has been upheld by the full bench of Hon'able Supreme Appellate Court Gilgit-Baltistan in CPLA No. 112/2015 vide judgment dated 24.3.2016.

5. Thus, where the department has advertised the post and a candidate has been appointed and nothing is available on record that he has done any thing unlawful to secure the post then such candidate is entitled to the pay and other perks related to the post, moreso when such candidate has given his joining which has been accepted without any objection and further he has been assigned various tasks and assignment by higher authorities in addition to his normal duties. In such a case, if the department has any how reason to believe that the appellant has done anything unlawful and has

illegally secured the position then there must be a final order against the appellant after due process of inquiry and hearing etc. In absence of any adverse findings of a competent authority based on solid evidence and a subsequent termination order, the stoppage of pay of a civil servant is totally unjustified and unlawful. The service of a civil servant is governed by the civil servants act and the rules framed thereunder and without following the prescribed procedure, a civil servant cannot be made to suffer merely because somebody in the department thinks that the appointment of the civil servant is illegal, rather there must be some inquiry and finding of fact to that effect and the order of the competent authority and that too is strictly subject to the procedure prescribed by the rules and principle of natural justice. The respondents could not point out any defect in the appointment of the appellant. Any administrative lapses on the part of the department is not the fault of the appellant but the respondents are themselves responsible for their actions. The appellant has been performing his duties since his joining and bears no adverse remarks and is eligible and qualified for the post and even till date he is performing his duties. Therefore, the appellant is a civil servant entitled to his pay and privileges and since it is constitutionally guaranteed fundamental right of the appellant to be dealt with in accordance with law, hence his service shall not be disturbed otherwise than as prescribed by law. Reliance is placed on 2004 SCMR 158, 2004 SCMR 1077, 2011 PLC (C.S) 331, 2008 PLC (C.S) 715, PLJ 2009 Lahore 309.

6. As to the objection of limitation on the departmental appeal and the instant service appeal, it is correct that where the

departmental appeal is time barred the service appeal is also incompetent but that is so when there is a final order against the civil servant and he has been indolent in challenging the same before departmental appellate authority. In the present case there is no adverse order against the civil servant hence he cannot be expected to challenge something which is non-existent. When there is a final order, the starting point of limitation is from the date of order or the date of knowledge, in the present case, the appellant is entitled to agitate the matter at any time since the matter of pay is recurring one and is renewed everytime when the civil servant is deprived of his pay or is even paid less. Moreover, the question of limitation regarding the departmental appeal is only relevant before this tribunal when the departmental appeal is held time barred by the departmental authorities which has not been done in the instant case. The requirements of law cannot be used by the respondents to protect the arbitrary and unwarranted actions of the government functionaries who are entrusted with sacred responsibilities and duties. I hold the instant appeal well within time. Reliance is placed on 1995 SCMR 950, 1996 PLC (C.S) 1224, 2006 PLC (C.S) 1124 and 2004 SCMR 527.

7. In view of the foregoing, the appeal in hand is accepted and the respondents are directed to release the salary from date of joining and onwards and the appellant shall remain in service as per law and unless he is otherwise dealt with by a competent authority in accordance with law. Appeal disposed accordingly.

8. File be consigned to record after due completion.

**Announced:**

18-10-2018

Sd/-  
**CHAIRMAN**

Judgment sheet  
**IN THE GILGIT-BALTISTAN SERVICE TRIBUNAL**  
**GILGIT**  
Appeal No. 28/2017.

Date of institution	11-5-2017
Date of hearing	16-10-2018
Date of judgment	18-10-2018

APPELLANT: Ejaz Ali s/o Muhammad G-I Middle School Chunda District Skardu.

RESPONDENTS: Provincial Govt. through Chief Secretary GB and 06 others.

BEFORE: Mir Akhlaque Hussain Chairman.

PRESENT: Mr. Yasin Baltistani Advocate for appellant.

Akhtar Jan Law Officer G.B for respondent No. 1,2,3,4 and 7.

**JUDGMENT**

**MIR AKHLAQUE HUSSAIN CHAIRMAN:** Appellant, a civil servant of BPS-1 appointed on 01-02-2013 in education department Gilgit-Baltistan, has filed the instant service appeal for arrears of his pay. The counsel for appellant argued that the salary or the monthly pay is a right of the appellant and stoppage of pay of the appellant without any reason or justification is clear violation of the rights of appellant. The appellant is entitled to get arrears of pay with effect from August 2013 to June 2014 (total 11 months).

2. The respondents, in their written parawise comments, have not denied the factum of non-payment of pay from the Month of August 2013 to June 2014. The learned law officer argued that since the appointment of the appellant has been made without fulfilling the codal formalities and without inclusion of name of appellant in the NIS, hence the stoppage of pay was not intentional rather due to non-inclusion of name of appellant in the NIS.

3. The arguments heard and record perused. The status of the appellant as civil servant is not denied and the same is admitted. The factum of stoppage of pay for the claimed eleven (11) months is also admitted. The question of inclusion of name in the NIS has got nothing to do with a civil servant on his part. The appointment order

has not been forged by the appellant rather his appointment has been made by the department and the same has been endorsed by the department in that the department has allowed the appellant to perform his duties and he is admittedly serving till date. Even the appellant has admittedly been serving for the claimed eleven months. The matter of pay of civil servant, especially those of lower pay scales, cannot be ignored on the basis of an excuse as lame as one taken by the department of education in the instant case. The appellant is by all means entitled to get the arrears of the pay as claimed since it was not the fault of the appellant that his name was not reflected in the NIS.

4. The appellant has filed the instant appeal after filing departmental appeal which is well within time and even otherwise the matter being one of arrears of pay, limitation could not be a hurdle in the way of appellant.

5. The instant appeal is, therefore, allowed and the respondents are directed to arrange immediate payment of arrears of pay of the appellant without any further delay.

6. File be consigned to record after due completion.



Sd/-  
**CHAIRMAN**

Judgment sheet  
**IN THE GILGIT-BALTISTAN SERVICE TRIBUNAL**  
**GILGIT**  
Appeal No. 39/2017.

Date of institution	10-5-2017
Date of hearing	15-10-2018
Date of judgment	18-10-2018

**APPELLANT:** Ghulam Abbas S/O Ahmed MT  
Teacher BPS-9 Primary School  
Shila Sermik District, Kharmang.

**RESPONDENTS:** Provincial Govt. through Chief  
Secretary GB and 06 others.

**BEFORE:** Mir Akhlaque Hussain Chairman.

**PRESENT:** Mr. Muhammad Yasin Baltistani  
Advocate for appellant.

Akhtar Jan Law Officer G.B for  
respondent No. 1,2,3,4 and 7.

**JUDGMENT**

**MIR AKHLAQUE HUSSAIN CHAIRMAN:** The appellant in the present appeal seeks, firstly, arrears of pay for eleven months w.e.f August 2013 to June 2014 and secondly, upgradation from BPS-9 to BPS-14 as MT Teacher.

2. The appellant has averred in the memo of appeal that the monthly salary for eleven months has not been paid w.e.f August

2013 to June 2014. The claim of appellant has been admitted in the parawise comments and the respondents have admitted the liability of payment of arrears of salary as claimed by the appellant. The only explanation advanced vide the written comments is that the Education Department has forwarded a letter to finance department. Although, Secretary Finance is also a party to the appeal but no explanation on his behalf can be found anywhere in the written comments. Thus an admitted claim is still being with held on lame pretext which cannot be allowed as the appellant has performed duties and the same is also admitted.

3. As to the second relief, that of upgradation from BPS-9 to BPS-14 w.e.f 16.01.2013, the date of acquiring professional degree, the counsel for the appellant argues that the colleagues of the appellant have been upgraded and some of them have been upgraded during the pendency of service appeals before this Tribunal, the appellant is equally entitled to be upgraded with all back benefits.

4. The learned Law Officer attempted to contest the matter of upgradation to some extent verbally but he cannot be permitted to deviate from the written comments filed on behalf of the department duly signed by him. Given the matter of upgradation has, nowhere in the comments, been denied by the respondents. The only ground for

still not upgrading the appellant is stated in para No. 5 facts of the comments as follows:

**“That para No. 5 of the appeal is that the respondents have invited a initiated a consolidated case to the higher authorities for up gradation of Matric Teacher BPS-09 to BPS-14, who are still working as MT BS-09 in different Schools in education department subject to the fulfilling the condition of professional qualification/eligibility and verification of degree by concern institution etc, which is under process”**

The bare reading of above para and other related paras makes it clear that the respondents admit the claim of the appellant to extent of upgradation but subject to the professional qualification. Now as to the question of professional qualification, the appellant has attached graduation and B. Ed certificates alongwith the appeal as stated in the appeal which has neither been denied nor objected. Thus, the only matter remaining is the verification of the said certificates from the institutions which was a task to perform by the respondents and the appellant cannot be made to suffer on the part

of inaction of respondents. The respondents should have completed the verification of the credentials immediately after the upgradation was notified but omitted to do so without any reason. The written comments filed on behalf of respondents totally admit the claim of the appellant.

5. It is admitted that the MT-Teachers BPS-9 have been given upgradation to BPS-14 and the appellant is also a MT-Teacher BPS-9 hence he cannot be left out and is also entitled to upgradation w.e.f date of eligibility i.e 16.01.2013.

6. The consequence of the above discussion is that the appeal of appellant is allowed and the respondents are directed to upgrade the post of appellant from BPS-9 to BPS-14 w.e.f 16.01.2013 with back benefits and also arrange payment of arrears of salary from August 2013 to June 2014 immediately.

7. File be consigned to record after due completion.

**Announced:**  
18-10-2018

Sd/-  
**CHAIRMAN**

Judgment sheet  
**IN THE GILGIT-BALTISTAN SERVICE TRIBUNAL  
 GILGIT**

Appeal No. 667/2016.

Date of institution	23-12-2016
Date of hearing	10-10-2018
Date of judgment	24-10-2018

APPELLANT: Abdullah Khan s/o Gujloo, Grade-1  
 Primary School Manishani Khanbari  
 District Diامر.

RESPONDENTS: Provincial Govt. through Chief  
 Secretary, Gilgit-Baltistan Gilgit and  
 5 others.

BEFORE: Mir Akhlaque Hussain Chairman.

PRESENT: Mr. Shahid Abbas Advocate for  
 appellant. Mr. Akhtar Jan Law  
 Officer G.B for respondent No.1.  
 Respondent No. 2 to 5 through Mr.  
 Muhammad Ilyas ADI  
 representative of Education  
 Department GB. Respondent No. 6  
 through Islam-ud-Din Advocate  
 Legal Advisor with Haji Muhammad  
 Alam representative of AG GB.

**JUDGMENT**

**MIR AKHLAQUE HUSSAIN CHAIRMAN:** The appellant has filed  
 the instant appeal for release of his salary. The counsel for appellant  
 and respondents both presented their arguments. Before going into  
 the merits of the case it was brought into my notice that the same  
 matter by the same appellant has already being agitated before this

Tribunal vide appeal No. 607/2016 which was dismissed in limine vide order dated 03.6.2016 passed in the said appeal No. 607/2016. The counsel for the appellant were confronted with the fact, could not explain the same and stated that he is unaware of the same and the appellant had not disclosed any such fact before him. The learned counsel stated that he has filed the instant appeal with bonafides the statement of the learned counsel seems genuine, but the appellant is at fault in concealing such an important and material fact. The concealment of such fact shows misconduct of the appellant.

2. Apart from it, the previous order reflects that the appellant was directed by this Tribunal to seek remedy before Secretary Education and in case of any grievance he may approach this Tribunal after fulfilling the requirements of section 5 Gilgit-Baltistan Service Tribunal Act 2010. The appellant has even as of now, omitted to file departmental appeal before Chief Secretary being appellate authority against the Secretary Education Gilgit-Baltistan.

2. For what has been discussed above, the instant appeal is without going into merits, dismissed with no order as to costs.

4. File be consigned to record after completion.

**Announced:**

24-10-2018

Sd/-  
**CHAIRMAN**

Judgment sheet  
**IN THE GILGIT-BALTISTAN SERVICE TRIBUNAL  
GILGIT**

Appeal No. 628/2016.

Date of institution	07-10-2016
Date of hearing	08-10-2018
Date of judgment	31-10-2018

**APPELLANTS:** Muhammad Yaqoob s/o Muhammad Ayoub r/o Dashkin, presently employee at B & R Division Astore, District Astore.

**RESPONDENTS:** Provincial Govt. through Chief Secretary, Gilgit-Baltistan Gilgit and 7 others.

**BEFORE:** Mir Akhlaque Hussain Chairman.

**PRESENT:** M/S Deedar Aman Shah and Ahmed Alam advocates for appellant. Akhtar Jan Law Officer G.B for respondent No.1.Mr. Naeem Akhtar Jan advocate for respondent No. 7 and 8.

**JUDGMENT**

**MIR AKHLAQUE HUSSAIN CHAIRMAN:** The appellant assailed an office order dated 13.01.2016 which is appointment order of the respondent No. 7 and 8 as supervisors BPS-09. He further claims

entitlement for "appointment/ up-gradation as supervisor BPS-09" through the instant appeal. The relief prayed for in the head note of appeal is as under:-

**"Appeal U/S 5/7 of Gilgit-Baltistan service tribunal act, 2010 to the effect that the appellant, being senior and being in upper scale as compare to respondents No. 7 & 8, is entitled to be appointed / upgraded as supervisor (BS 9) in B & R division Astore, the respondents no. 1 to 5 appointed respondents to 7 & 8 as supervisor (BS9) in PWD B&R division Astore vide order No SED-1(2) /2015-16/39 dated 13-01-2016 illegally, unlawfully and without cogent reason the same order may kindly be set aside and the salary of the respondents No. 7 and 8 be stopped till the final disposal of the appeal. Furthermore, the respondents No. 1 to 5 may kindly be directed to appoint/upgrade the appellant in the vacant post of supervisor (BS9) in B and R division Astore to meet the ends of justice.**

2. The counsel for appellant argues that the appellant has been working on temporary basis since 2004 in BPS-05 as work munshi



and on 1<sup>st</sup> June 2007 the appellant was allowed running pay scale as work munshi BPS-05. The learned counsel has mentioned different instances where the appellant was given additional charge on various occasions for certain periods. He contends that the respondent No. 7 and 8 have been appointed as supervisor in BPS-09 while they have been working on temporary appointments under the supervision and subordination of the appellant prior to their regular appointments vide impugned order dated 13.01.2016. He prays for setting aside the said appointment order and also prays for "appointment/up-gradation" and stoppage of pay of respondent No. 7 and 8. He presents 2006 SCMR 1938.

3. On the other hand the learned Law Officer assisted by Legal Advisor PWD and counsel for respondent No. 7 and 8 filed their respective parawise comments. The learned Law Officer and the learned Legal Advisor through their written comments have admitted the temporary service and additional charges given to the appellant and have denied his claim of appointment/ up-gradation and have alleged that the respondent No. 7 and 8 have been regularized after fulfilling codal formalities. The counsel for respondent No. 7 and 8 while concurring the arguments of learned Law Officer adds that the respondent No. 7 and 8 are of different cadres than that of the

appellant, and the regular appointments have been made after preparing cadre wise seniority lists. The appeal of the appellant is not maintainable and as such its dismissal is prayed.

4. I have heard the learned counsels and perused the record. The appellant has filed the instant appeal on 06.10.2016 against order dated 13.01.2016. The appellant had filed a civil suit before learned senior Civil Judge Astore and then filed a civil first appeal before the learned District and Sessions Judge Astore who has dismissed the appeal No. 17/2016 filed by the present appellant as "withdrawn" by holding it infructuous while directing the learned Civil Judge Astore to dispose of the case pending before him accordingly. The withdrawal of the matter from a court of law without any condition or any permission to file fresh is an "unconditional withdrawal" and the same cannot be agitated again.

5. The appellant was required by law to file departmental appeal before filing the service appeal within 30 days of the impugned orders. The appellant has annexed an application which could have been treated as departmental appeal but the same is a mere photocopy. The certified copy later on submitted by the appellant at the time of final arguments is placed at file but on its back side it reflects that it has been submitted on 04.8.2016 i.e after a period of

more than six (6) months which delay was never explained before us nor its condonation has been sought. Another documents which has been presented by the counsel for appellant on the day of final arguments is an application to the Superintendent Engineer but it is a mere photocopy and further it cannot be treated as departmental appeal since the impugned order has been issued by Superintendent Engineer himself on the approval of Gilgit-Baltistan Cabinet. The Superintendent Engineer is not appellate authority against the Gilgit-Baltistan Cabinet, hence the said photocopy of the application cannot be treated as departmental appeal. The appellant has failed to establish the factum of filing a departmental appeal within prescribed limitation, hence the instant service appeal is not maintainable on this score and also time barred. As to the merits of the case, the appellant has prayed for his up-gradation which is not a right of any civil servant to claim for up-gradation on the grounds that he has rendered temporary service. Secondly, the appellant has prayed for the setting aside of the order dated 13.01.2016. The said order is not regarding the terms and conditions of the service of appellant. The said impugned order is initial appointment order of the respondent No. 7 and 8, and not a promotion bypassing any seniority of appellant as the question of seniority would arise in case of promotion. Further, the appellant has no right to invoke the jurisdiction of this tribunal

since at the time of issuance of the impugned order, the appellant was not a regular civil servant. The appellant himself has been appointed in regular service on 29.7.2016 that is after six (6) months. The case law presented by the counsel for appellant is regarding promotion of a civil servant on a post on which he has been already working on acting charge which is not the case of appellant as he was not a civil servant at the time of impugned order or at the time of additional charges. If the appellant considers himself a candidate for the appointments made in the impugned order, then once he has been left unappointed he is not entitle to agitate before this tribunal regarding the post on which he was not appointed. The jurisdiction of this tribunal could be invoked on any matter regarding terms and conditions of service after appointments. Evidence can be sought this principle from 1998 SCMR 1911.

6. In view of what has been discussed, the appeal in hand is dismissed as not maintainable, time barred and meritless.
7. Order announced in the open court.
8. File be consigned to record after completion.

**Announced:**  
31-10-2018

Sd/-  
**CHAIRMAN**

Judgment sheet  
**IN THE GILGIT-BALTISTAN SERVICE TRIBUNAL**  
**GILGIT**

Appeal No. 461/2014.

Date of institution	24-5-2014
Date of hearing	04-10-2018
Date of judgment	31-10-2018

**APPELLANTS:** Saadat Khan s/o Muhammad, Ex-Development Officer, Local Bodies & Rural Development Department c/o Mehboob Hotel, Hospital Chowk Gilgit.

**RESPONDENTS:** Provincial Govt. through Chief Secretary GB and 07others.

**BEFORE:** Mir Akhlaque Hussain Chairman.  
Mr.Muhammad Kamal Member-I.  
Mr.Ali Sher Member-II.

**PRESENT:** Mr. Amjad Hussain advocate for appellant. Akhtar Jan Law Officer G.B for respondents No.1 to 6, and 8 Haji Muhammad Alam representative of Accountant General Gilgit-Baltistan for respondent No.7.

**JUDGMENT**

**MIR AKHLAQUE HUSSAIN CHAIRMAN:** The appeal in hands has been filed by the appellant against his compulsory retirement from service. As per memo of appeal and the arguments of the learned counsel for the appellant, Mr. Saadat Khan was serving in LB & RD

NAs (now LG & RD Gilgit-Baltistan) as Development Officer. The appellant had developed kidney problem and had to under go kidney transplantation since he had lost both his kidneys and after a successful operation one kidney was transplanted and after completion of the medical procedure the appellant joined back his service once again and started performing his duties. It is admitted fact that the appellant after his transplantation, had to keep visiting the Doctors at Karachi and Islamabad and was on medication, the reimbursement for which expenses was claimed by the appellant regularly under the rules as per his entitlement. On 22.9.1993 the Deputy Director LB & RD NAs (now LG & RD Gilgit-Baltistan) referred the case of the appellant to MS. DHQ Hospital Gilgit for opinion of medical Board on the ground that the medical expenses of the appellant were financial burden for the department. The MS DHQ forwarded the medical report to the LB & RD department NAs (now LG & RD Gilgit-Baltistan) on 10.11.1993 wherein only one surgical specialist has opined that the appellant's general health is satisfactory and he has to take medication of worth about Rupees six to eight thousands per month. The LB & RD after the said report kept the appellant in service but the medical reimbursement claimed by the appellant was not paid and kept pending. However, it is admitted in the memo of appeal that the said financial liabilities on account of

medical reimbursement have been now paid in the year 2009 and no dues are remaining unpaid. The counsel for appellant, however, points out a letter dated 17.6.1998 wherein the Deputy Director LB & RD has, while approving his medical expenses, remarked that the appellant should find some way to stop visiting doctors in future. The learned counsel for the appellant contends that such remarks depict unwillingness of department to allow the appellant to look after his health, while being in service which is a negative attitude. As per learned counsel the department once again approached MS DHQ on 22.2.1999 for fresh opinion of medical Board on the ground that the expenses on the medical checkup and continuous medication is posing a continuous financial hardship to the department. The appellant expecting the collusion of department and the medical Board had avoided appearing before the said board but the department issued written instructions to the appellant and forced him to appear before the said Board. The appellant contends that he was kept unaware of the report of the medical Board and the impugned retirement order was issued on 26.8.1999, wherein retirement of the appellant was ordered and his name was struck off from the strength of the department. The appellant filed departmental appeal to Federal Minister KA & NA on 15.9.1999. The said appeal was rejected on 23.4.2013 which order has also been

impugned by the appellant being the final order of the appellate authority. The appellant prays for setting aside the impugned order of retirement and re-instatement into service with back benefits with effect from date of impugned retirement i.e 22.7.1999.

2. The appellant's contentions are totally denied and controverted by the respondents through written parawise comments and arguments presented before us. Mr. Akhtar Jan, the learned Law Officer while arguing for the respondents laid much stress on the contentions of the respondents raised in the comments that the appeal of the appellant is time barred and a delay of almost 15 years has occurred which goes unexplained and the condonation cannot be granted for such a lengthy period. The appellant should have waited for period of ninety days after filing departmental appeal and then he should have approached the court for redressal of his grievances, but since he omitted to approach the courts within time, hence, his appeal is not maintainable before this Tribunal. He further contends that the absence of the appellant exceeds 4 years which reveals from letter of Deputy Director LB & RD NAs (now LG & RD Gilgit-Baltistan) dated 18.5.1999. Further the appellant was rendered unfit due to failure of both the kidneys, and transplant of one kidney, therefore, the medical board consisting of three Doctors was constituted which



after assessment presented its report and in the light of the said report the appellant was retired well in accordance with rules. The Board constituted at the DHQ Hospital by the MS was lawful and impartial and all such cases were dealt by such board in that time and no other board existed then for dealing with such cases. The learned law officer argued that the medical board's report should have been challenged by the appellant within 7 days before Director Health which the appellant omitted to do, hence the findings of medical board have gained finality, and cannot be set aside. The learned Law officer relied on PLD 2002 Karachi 457 wherein it has been reiterated that when a particular procedure is prescribed for doing something, then the thing must be done according to that procedure otherwise entire proceeding would be illegal or irregular. He further presented 2013 PLC (CS) 115 and 2004 PLC (CS) 858. Both these judgments are relied upon by the learned Law Officer to substantiate his contention that the appeal being time barred is liable to be dismissed and further that in absence of departmental appeal, no service appeal lies before this Tribunal. Lastly the Law Officer prays that the appeal of the appellant be dismissed holding the same non maintainable and time barred.

3. The learned counsel for the appellant and the Law Officer for the respondents have also assisted us in perusal of the record and with their able assistance, we have gone through the relevant provisions of law. It is an admitted fact that the appellant was in service as Development Officer in department of LB & RD NAs (now LG & RD Gilgit-Baltistan). It is admitted that the appellant underwent kidney transplant after losing both his kidneys. However the respondents have contended at the time of retiring of the appellant that his transplanted kidney is diseased which allegation has been denied by the appellant. We are not convinced that the appellant's transplanted kidney is diseased since there is no such evidence and the appellant is still surviving till now without any alleged major health problem, hence in absence of any evidence to contrary the transplanted kidney can not be assumed to be diseased. Further, it is also admitted that the appellant after his transplant joined the service again which the medical Board reported in favour of the appellant vide letter of MS DHQ Gilgit Dated 10-11-1993. The said report as reproduced in para 5 of the appeal has not specifically been denied on any solid ground. The respondents have generally denied the para 5 of appeal through their written comments, but the case of appellant was referred to MS DHQ by the department itself vide letter dated 22-9-1993 and the report was accepted and the appellant was kept in service from there on. Thus the said report is fully established. It is also admitted that the deputy Director LB & RD had again referred the case of appellant to MS DHQ for medical assessment and report on 22.2.1994. It has not been however explained whether the Deputy Director was competent to refer the case for medical board or not. We have perused the relevant letters of the Deputy Director LB & RD NAs (now LG & RD Gilgit-Baltistan). The letter addressed to MS DHQ

dated 22-2-1999 whereby the case of appellant is referred for decision of medical board is issued by the then Deputy Director and the letter nowhere even states or mentions that the same is being issued with the approval of competent authority. The legal consequences of such letter by the Deputy Director, in our opinion is nothing but violation of F.R.10-A (a) which restricts the power to refer to medical examination shall vest in the authority competent to fill the post of civil servant. The provisions of F.R 10-A (a) are reproduced here for handy reference.

**“F.R.10-A (a): The authority competent to fill the post held by the civil servant may require to him to appear before a medical authority for medical examination, if in the opinion of the competent authority the Govt. servant is suffering from a disease which renders him unfit for proper and efficient discharge of his duties or from a disease which is communicable and is likely to endanger the health of other Govt. servant.”**

4. The above rule is clear that the Deputy Director LB & RD NAs (now LG & RD Gilgit-Baltistan), not being the authority competent to fill the post held by the appellant, was not competent to refer his case to medical board. The appointing authority in the year 1999 being the Chief Secretary NAs (now Gilgit-Baltistan) the letter issued by the

Deputy Director LB & RD NA's (now LG & RD Gilgit-Baltistan) is without authority un-lawful jurisdiction and in violation of F.R.10-A (a).

5. It is requirement of F.R.10-A (c) that where a Govt. servant is declared permanently incapacitated for service, the findings of the medical authority be communicated to the Govt. servant immediately which has not been done in the case of the appellant, thereby, depriving him of the opportunity of 2<sup>nd</sup> medical board for reviewing the findings rendered by the first medical board. The respondent without any such intimation, issued retirement order bypassing the procedure laid down in F.R. 10-A.

6. Although the case of the appellant was referred to the medial board without any authority or jurisdiction, a final order on the basis of such illegal referral was passed in the shape of retirement of the appellant. The appellant when served with the retirement order, could not be expected to file objections against the medical board since the objections are to be filed for purpose of reviewing the opinion and findings of medical board prior to the issuance of the final order of the retirement, hence, whole procedure from the very beginning was without lawful jurisdiction, in violation of fundamental rules and merely to misuse and exploit the spirit of provisions relating to the retirement on basis of medically verified permanent in capacity of a Civil Servant. The whole exercise came out by the Deputy Director is void being without lawful authority and thus all subsequent super

structure built upon void actions of an authorized officer comes to ground. The exercise of powers of appointing authority by a deputy director can not be overlooked and if there was any reason to request for constitution of medical board then the appointing authority was supposed to decide whether or not the medical board be requested for examination of a civil servant, such is the requirements of law under F.R.10 and it is settled law that when a particular manner has been prescribed for a particular thing then that thing can only be done in the particular manner prescribed and none else.

7. As to the question of limitation, retirement order has been issued on 26-8-1999 and admittedly the appellant has filed the departmental appeal to Chief Executive NAs/Federal Minister KA & NA Division on 15-9-1999 which is well within the period of 30 days from the final order passed by the respondents.

8. The factum of filing of the departmental appeal on 15-9-1999, is also established from a letter No. SO (S)-1-1 (28)/2010 dated 26-10-2010 issued by Deputy Director services to the secretary LG & RD department Gilgit-Baltistan where in it has been affirmed and admitted that the appellant had submitted a departmental appeal on 15-9-1999 which was pending undecided.

9. The law requires from a civil servant that he must file a departmental appeal against a final order within thirty days and nothing more can be expected from a civil servant. Rather it is the

duty of the appellate authority to apply their conscious mind to such order and passed a well reasoned order immediately or at least within ninety days. If the appellate authority does not adjudicate upon the appeal within the period of ninety days, then the civil servant may approach the service tribunal within a further period of 30 days. In the instant case, the appellant submitted the appeal in accordance with law but the same was kept undecided. Normally if the appeal was kept undecided the appellant would lose his right to remedy after the expiry of the period of a total 120 days. The same would have been the position if the departmental appeal of the appellant was undecided till now. The appellant has annexed an order No. CM-Sectt.1 (4) /2010 dated 23-4-2014 whereby the appeal dated 15-9-1999 has been regretted after almost fourteen years. This order in our view provides fresh cause of action and hence fresh period of limitation to the appellant and therefore, the instant service appeal filed within six months of establishment of this Tribunal is within time. It is, however, astonishing that it took the appellate authority more than a decade to issue orders on the departmental appeal of the appellant, but once the appeal has been decided by the appellate authority, a fresh cause of appeal is accrued to the appellant and thus a fresh period of thirty days against the rejection of appeal is available to the appellant for filing service appeal before Service

Tribunal. The instant service appeal has been filed before this Tribunal on 21.5.2014 after the rejection of the departmental appeal vide impugned order dated 23.4.2014. The departmental appeal had to be filed within thirty days of the impugned order of the retirement which has been done by filing departmental appeal before the then appellate authority (Federal Minister KA & NA) against the order of Chief Secretary and the service appeal has to be filed within thirty days of order of appellate authority which has also been done by the appellant. The delay of a period more than a decade is in our view not attributable to the appellant. The departmental appeal should have been decided by the appellate authority within the stipulated period but strangely after about 15 years an order on the departmental appeal has been passed. The departmental authorities and the appellate authorities seems more at fault regarding the question of delay, hence, the question of limitation in the peculiar circumstances does not come in way of the instant appeal.

10. In view of the foregoing reasons we find the constitution of the medical board and the consequent retirement order illegal, un-lawful and without jurisdiction, hence the same is hereby set aside by reinstating the service of the appellant from date of his illegal retirement. However, the period from date of illegal retirement till the

date of institution of appeal before this tribunal shall be treated as EOL without pay and he shall be presumed to be on duty from the date of institution of service appeal before us and financial back benefits from date of institution of instant appeal be granted to him. As to the pension and other emoluments already granted to the appellant, the same shall be deducted from the final retirement/pensionary emoluments as shall be admissible to the appellant at the time of his final retirement.

11. Order announced in the open court.

12. File be consigned to record after completion.

**Announced:**

31.10.2018

Sd/-  
**CHAIRMAN**  
Sd/-  
**MEMBER-I**  
Sd/-  
**MEMBER-II**

Judgment sheet  
**BEFORE GILGIT-BALTISTAN SERVICE TRIBUNAL**  
**GILGIT**

Service Appeal No. 610/2016

Date of Institution:	13.06.2016
Date of hearing:	26.09.2018
Date of Judgment:	31.10.2018

**Appellant:**

Dr. Abdul Hakeem s/o Abdul Shakoor  
r/o Prince Abad, Tehsil Danyore  
District Gilgit at present research



scholar at Lubbock Texas United States of America (USA)

**Respondents:** Provincial Government through Chief Secretary GB & 03 others

**Before:** Mr. Mir Akhlaque Hussain Chairman  
Mr. Muhammad Kamal Member-I  
Mr. Ali Sher, Member-II

**Present:** Mr. Muhammad Faqeer Shakir, Advocate for appellant. Mrs Saima Aziz Attorney for Appellant  
Mr. Akhtar Jan, Law Officer GB for respondent 1-3 assisted by Mr. Muhammad Alam representative AGGB.

### **JUDGMENT**

**MUHAMMAD KAMAL MEMBER-I:-** Through this judgment, we intend to dispose off above titled Service Appeal filed by one Doctor Abdul Hakeem son of Abdul Shakoor against impugned order No. SO(A/E)-9(7)/2014-Services dated 2<sup>nd</sup> February, 2016 issued by Services, General Administration, Information and Cabinet Department, GB (respondent No. 2) whereby services of the appellant were dismissed on the ground of absence from duty.

1. Facts as gleaned out from memo of appeal amongst others are that the appellant was granted 27 months study leave to undergo graduate programme in USA by availing Full Bright Scholarship on 29<sup>th</sup> June, 2004. Upon expiry of the said leave, on the request of the appellant, the Agriculture Department GB sanctioned/ extended further leave for a period of 5 years from February, 2008 to January 2013. However, he was advised that no further leave shall be granted

once this extended leave comes to an end. The appellant during and after expiry of the extended leave stayed abroad in connection with completing the remaining trainings and research work relating to Ph.D. Thus with a view to complete the remaining research work in connection with his Ph.D he required further leave and again initiated a request with the concerned department for extension of leave till May, 2016. However, this time the department did not accede to his request and the appellant was served with a show cause notice on 9<sup>th</sup> June, 2014 directing him to explain the reasons for remaining absent without leave. The appellant replied to this show cause notice wherein he again requested for extension of leave for 36 months till May, 2016 for the purpose of completing his academic training. The department did not give any reply to his request and another show cause notice was served upon him on 31<sup>st</sup> October, 2014 proposing a major penalty of dismissal upon him which resulted in his dismissal from government service on 2<sup>nd</sup> February, 2016.

2. Two Show cause Notices were issued one after another. The first one was issued on 9<sup>th</sup> June, 2014 and the other on 31<sup>st</sup> October, 2014 at the address of his parent department in Pakistan. However, being abroad, notices and their replies were also exchanged through e-mails. The first notice as appears from the e-mail to have been sent on 17.06.2014 and its reply has been submitted by the appellant through the same e-mail on 24.06.2014 (the replies are in the shape of attachments). The second notices, as it appears from the e-mail, has been sent on 27.11.2014 and its reply has been received from the appellant on 11.12.2014 (again the same in the form of attachments). The appellant got a request letter forwarded by Dr. Megha N. Parajulee, Professor, Faculty Fellow, and Regents Fellow of

the training Institute/ University where the appellant was undergoing training. The request letter has been addressed to the Chief Secretary GB highlighting the importance of trainings towards betterment of Agriculture Department GB being undergone by the appellant and supported the request of appellant for extension of leave for two years more with a view to complete the remaining trainings related to Ph.D degree of appellant, however the said request letter of his professor failed attract any reply from the GB government. Before proceeding to impose major penalty of dismissal from service, as a last resort, appellant was afforded personal hearing by appointing a Hearing Officer, Mr. Sana Ullah, the then Secretary Education GB. After hearing, the Hearing Officer was supposed to submit his reply to Services Department GB within a period of 10 days. Finally his services came to end on 2<sup>nd</sup> February, 2016. The appellant submitted an appeal to the Chief Minister GB against the dismissal order on 29<sup>th</sup> February, 2016 but the same remained not responded. Then the appellant came before this Tribunal by way of filing of the instant appeal.

3. The Provincial Govt. GB filed its comments through the learned Law Officer and denied almost all the averments so taken by appellant on legal and factual grounds. The appeal finally came up for arguments on 26<sup>th</sup> September, 2018. Arguments pro and contra heard and we have also gone through the record available on file.

4. Scrutiny of file shows that neither appellant nor the department has attached the first leave sanctioning letter either with the appeal or with parawise comments. The first leave for 27 months for graduate programme in accordance with the law as every civil

servant who has completed the required length of service prescribed in the Leave Rules is eligible for study leave. However, the leave can be restricted to the period mentioned in the leave rules and adherence to preconditions annunciated therein. However, the department initially sanctioned study leave to the appellant for 27 months for undergoing a graduate programme in USA on Full Bright Scholarship which period came to end by beginning of 2008. Thereafter, the appellant applied for extension of further leave for a period of 5 years for the purpose of doing Ph.D, which was granted from 2008 to 2013.

5. There is no record in the file to ascertain as to what happened during the period from 2008 onwards except stoppage of pay of appellant in 2010, issuance of some show cause notices in the year 2011 and publication of one of the said show cause notices in the daily newspaper. Thereafter, all of sudden, the competent authority was merciful to grant 5 years further leave in favour of the appellant from 2008 to 2013 for doing Ph.D with a condition that no further leave would be granted to the appellant after expiry of the 5 years extended leave period. The total leave granted as study leave to the appellant comes to a total of 7 years 7 months. Directly or indirectly it reveals that the department left the appellant at liberty to complete Ph.D and its related trainings/ research work. A question arises that while extending further the leave, did the department think the appellant to be entitled to such a leave for a period of 7 years 7 months. The purpose behind extension of leave for a further period in favour of the appellant was to complete Ph.D. At that time, the department did not consider that Ph.D degree besides involving time for academic course, may consume further time in connection with

other components relating to Ph.D i.e. research work, trainings and theses etc., otherwise the incumbent could not be able to get a Ph.D. degree. The department imposed a condition that no further leave will be granted after expiry of 5 years extended leave, however, whether the appellant had accepted this condition. The department should have obtained an undertaking from the appellant that he will not ask for further leave after expiry of the said extended leave, then the department would have a right to proceed against the appellant, otherwise, as stated above the legs of appellant cannot not be pulled at a time when his experience/ expertise was at the verge of ripping, which experience could be better availed by department concerned in general and whole agriculture community of GB in particular. The whole region of Gilgit-Baltistan entirely depends on livestock and agriculture products as there no other means of livelihood in GB. In absence of other sources of livelihood as available in down countries, the whole region of GB is left with the livestock and agriculture sources only. In these two fields too, owing to lack of experience/ expertise, the general populace cannot get the required results of their labour and investment/ expenses. The whole region severely requires agriculture and livestock experts, who have better hands on these two areas, who could train and share their experience/ expertise with the local populace of the region to enhance and produce quality products from their respective field to earn some cash for bread and butter of their families.

6. As stated above, acquisition of such a degree in a scientific field is not only in the interest of individual concerned but it is in the best interest of agriculture department in general and whole agriculture community of Gilgit-Baltistan in particular. Disturbing the

appellant at the middle of his course of Ph.D or its related components is not understandable. If authority concerned does not adhere to prescribed rules while allowing study leave/ leave without pay and accords leave at his own to a government servant, then the authority does not have a right to impose any condition which is not prescribed in law/ rules. Keeping in view the deteriorated economic condition of the region and lack of expertise in the field of agriculture, the department should have supported the appellant to complete his trainings relating to Ph.D instead of pulling his legs in the middle of his studies and then the department could be in a position to retrieve the results from his expertise/ experience.

7. The file contains an Order dated 15<sup>th</sup> December, 2014 issued from the office of Secretary Services that a personal hearing has been afforded to the appellant by appointing a Hearing Officer, Mr. Sana Ullah, the then Secretary Education GB and he was advised to submit his report within a period of 10 days after hearing. But no record in black & white exists on file, which could show that the appellant was actually heard and report thereof was sent to him. However, as per his own statement of appellant in his appeal to Chief Minister GB that he was heard telephonically by the Hearing Officer and the appellant was assured that he (the Hearing Officer) will communicate positive recommendation to the competent authority. It appears that neither written report regarding personal hearing has been prepared nor the outcome of personal hearing has been communicated to the appellant. As per advice of competent authority, appellant was telephonically heard in 2014 while till 2016 no progress took place. The department did not explain the reason of remaining silent from

December, 2014 to February, 2016. In this way, appellant conceived that personal hearing has brought something positive to the satisfaction of the competent authority, thus he rest assured till sudden termination order was issued to his sadness.

8. The learned Law Officer states that showcause notices were sent to the appellant asking him to submit replies thereto within stipulated time but the appellant failed to submit replies after expiry of stipulated period. The record shows that neither hard copies of show cause notices nor their replies have been exchanged through manual modes rather show cause notices from the department and their replies from the appellant have been exchanged through e-mails. The printed out hard copies of e-mail make it clear that the show cause notices have been sent after lapse of couple of days from the dates mentioned on hard copies of show cause notices etc. while their replies have been furnished by the appellant within the stipulated time. The learned law officer further contended that the appeal of the appellant is time barred, however, perusal of record shows that appeal of the appellant is within time. He further submits that absence of appellant from his duty is willful and habitual and cited the case law reported at 2006 PLC (C.S) 405. However, in order to establish a misconduct of willful and habitual absence from duty, proper inquiry is required to be conducted, which could prove his misconduct of willful and habitual absence from duty. However no inquiry has been conduct even did not propose to be conducted. Learned law officer further relied on various case laws reported at 2012 SCMR 136, 2006 SCMR 10, 2011 PLC (C.S) 162, 2005 PLC (C.S) 1377, PLD 2002 Karachi 457, and 2009 SCMR 1121.

9. The crux of the above story is that either competent authority should not have granted further leave of 5 years to appellant to continue with his Ph.D. degree or if once the leave is extended for another term of 5 years, then further leave should have let be extended till completion of remaining trainings, research work etc. to acquire the Ph.D degree in consistent with the previous leaves granted. Logically, it is very difficult for a man to quit his studies prematurely who studies abroad a scientific expertise which is wholly and solely related to his nature of job for about 8 years with proper permission of department concerned that too in the best interest of department concerned. It is not just and fair to compel a civil servant, who proceeds abroad for study with permission of the department to put his entire career at stake just for the sake of satisfaction of ego of department. Sacking such an expert/ experienced employee of his field tantamount to deprive the whole population of the region from the benefits of a man who has very much expert/ experienced hands on the agriculture field.

10. Besides above, there are procedural flaws on the part of department while dealing with the case of appellant. After 27 months leave, no further leave should have been granted to the appellant and directed him to report back after completing the graduate programme on full bright scholarship. If once, further leave was granted for Ph.D, then the appellant should have been permitted to complete the remaining trainings related to his Ph.D. First action was required to be taken after expiry of the initial period of 27 months leave, while the department remained silent from 2008 till end of 2011 except issuance of few show cause notices and failed to bring this action to



an end. Then all of sudden appellant was granted further leave for 5 years in 2012 from 2008 to 2013. Then the department remained in deep slumber for a period from 31.01.2013 till June, 2014 i.e. around 1 and half years. During this period no action appears to have been taken. The department could not show, what were the reasons that compelled the department to remain silent during this period. Although the appellant was heard telephonically by an authorized officer, who assured the appellant that he (Hearing Officer) will communicate positive recommendations to the Chief Secretary. No results/ recommendations of Hearing Officer were communicated to the appellant either verbally or in written form. Had there any adverse remarks/ recommendations in the report, the appellant would have been in a position to defend his case, but the appellant was not informed about the outcome of his personal hearing till February, 2016. In this way the appellant remained assured that no further action is going to be taken against him. Astonishingly, it is noted that after personal hearing in December 2014 no further action took place for about 2 years. Neither a formal inquiry has been proposed before imposition of such a harsh punishment nor has final show cause notice been issued to the appellant. The departments concerned have badly failed to deal with such a case in accordance with the law. Therefore, punishment of statutory procedural flaws and leniency on the part of departments concerned cannot be awarded to the appellant. No willful absence is established on the part of appellant because the above situation makes it clear that it is the concerned department who directly or indirectly extended leniency to appellant for overstaying abroad to complete the remaining trainings of Ph.D by not taking action for long intervals. If any action is proposed to be taken, the same should be taken in proper sequence. In this case, the

department took some action and forgot to continue with the same action for long intervals, which shows that the department concerned was not serious enough to take action against the appellant, then all of sudden brushing aside all procedural statutory requirements went on to give an end to services of appellant after remaining in deep slumber for about 2 years from the date of personal telephonic hearing. A number of case laws have been cited by the counsel for appellant on the points of non-affording of personal hearing and holding of proper inquiry proceedings against the appellant. The case law cited with regard to non-affording of personal hearing cannot be given consideration, as opportunity of personal hearing (although telephonic being the appellant abroad) was afforded to the appellant. However, the outcome/ recommendation of hearing was not communicated to the appellant. The case law cited by the learned counsel for appellant reported at 2007 SCMR 152 has some relevance, relevant part whereof is reproduced herein below:

***"4. We have considered the submission of learned counsel for the parties and perused the record. It is an admitted fact that appellants had passed the impugned order on 31.07.1998 against the respondent without holding regular inquiry. In case the contents of show cause notice and reply of show cause notice be put in a juxtaposition, then it is crystal clear that matter could not be decided without holding regular inquiry. It is pertinent to mention here that competent authority had not passed the speaking order against the respondent without***

***holding regular inquiry in terms of rule 5 of the Government Servants (Efficiency and Discipline) Rules, 1973".***

11. In view of what has been discussed above, appeal of the appellant is accepted and the Office Order No. SO(A/E)-9(7)/2014-Services dated 2<sup>nd</sup> February, 2016 is set aside. The period spent by the appellant abroad in connection with his Ph.D and its related trainings etc. after lapse of the extended period of 5 years is treated as leave without pay.
12. Parties to bear their own costs.
13. File be consigned to record after completion.

Announced:  
31.10.2018

Sd/-  
**Chairman**  
Sd/-  
**Member-I**  
Sd/-  
**Member-II**

Judgment sheet

**BEFORE THE GILGIT-BALTISTAN SERVICE TRIBUNAL**

Appeals No. 635/2016,636/2016,637/2016,662/2016.

Date of institution	11-11-2016 and 19-12-2016
Date of hearing	26-09-2018
Date of judgment	31-10-2018

**APPELLANT:** Syed Hamid Hussain Ex Foot Constable District Police Gilgit, Police Department Gilgit Baltistan.

**RESPONDENTS:** Inspector General Police and four others.

**APPELLANT: Muhammad Shah Ex Foot Constable District Police Gilgit.**

RESPONDENTS: Inspector General Police and four others.

**APPELLANT: Ali Shah Ex Foot Constable District Police Gilgit.**

RESPONDENTS: Inspector General Police and four others.

**APPELLANT: Kifayat Hussain Ex Foot Constable District Police Gilgit.**

RESPONDENTS: Inspector General Police and four others.

BEFORE: Mir. Akhlaque Hussain Chairman  
Mr. Muhammad Kamal Member-I  
Mr. Ali Sher, Tst. Member-II.

PRESENT: M/S Amjad Hussain Advocate for the appellants.  
Mr. Akhtar Jan Law Officer GB for respondents.

### **JUDGMENT**

**ALI SHER, Tst. MEMBER-II:-** All the above titled service appeals bearing No. 635/2016,636/2016,637/2016,662/2016 are identical in nature therefore, we intend to dispose of the same through this single judgment.

The brief facts, stated in the memo of appeals, are that the appellants were appointed as Foot Constables in Police Department of Gilgit Baltistan in the years, 1988, and 1990. After appointment, appellants were terminated during their probation period and later reinstated to services but then again removed for second time from service in pursuance of recommendation of committee whereby the

reinstatement of the appellants were stated to be illegal and time barred.

2. The appellant of appeal bearing No. 635/2016 namely Syed Hamid Hussain was appointed as foot constable on 13-06-1988 was terminated on 09-08-1990 under 12.21 police rule. On departmental representation the appellant was reinstated on 13-03-2005 vide office order No.IGP-1(77)/1405-07/2005. On 24-06-2016 the reinstatement order dated 10-03-2005 was withdrawn by respondent No. 1 and 2 vide impugned office order dated 24-06-2016 and 27-07-2016. Appellant filed departmental representation which remained unattended. Finally appellant filed the instant service appeal which was received by office of this Tribunal on 11-11-2016.

The appellant of appeal bearing No. 636-2016 namely Muhammad Shah was appointed as FC in police department of GB on 03-08-1988 and terminated on 09-08-1990 under 12.21 police rule. On departmental representation, the appellant was reinstated to service on 14-03-2012 vide office order No. IGP-1(77)/2235-37/2012. On 24-06-2016 the reinstatement order of appellant dated 14-03-2012 was withdrawn by respondent No.1 and 2 through impugned office orders dated 4-06-2016 and 27-07-2016. Appellant filed departmental representation which remained unattended. Finally appellant filed the instant service appeal which was received by office of this Tribunal on 11-11-2016.

The appellant of appeal bearing No.637 namely Ali Shah was appointed as FC in police department of GB on 13-06-1988 and terminated on.05-1991 under 12.21 police rule. On departmental representation, appellant was reinstated to service on 06-08-2015

vide office order No. IGP-(77)/E-V/7179. On 24-06-2016 the reinstatement order of appellant dated 06-08-2015 was withdrawn by respondent No.1 and 2 through impugned office order dated 24-06-2016 and 27-07-2016. Appellant filed departmental representation which remained unattended. Finally appellant filed the instant service appeal which was received by office of this Tribunal on 11-11-2016.

The appellant of appeal bearing No.662/2016 namely Kifayat Hussain who was appointed as FC in police department on 16-05-1990 vide office order No. SP-2(11)/12736-4/90. Appellant was terminated on 22-11-1993 under 12.21 police rule. On departmental representation appellant was reinstated to service on 14-03-2012 vide office order No.GP-1(77)2235-37-2012. On 24-06-2016 the reinstatement order of appellant was withdrawn by respondent No.1 and 2 through impugned office order dated 24-06-2016 and 27-07-2016. Appellant filed departmental representation which remained unattended. Finally appellant filed the instant service appeal which was received by office of this Tribunal on 19-12-2016.

3. Respondents filed para wise comments wherein they vehemently opposed the contentions of appellants on legal and factual grounds. Respondents contended in the para wise comments that the appellants were initially terminated under 12.21 police rule during their probation period therefore, neither they were entitled to file departmental representation nor concerned authority empowered to reinstate the appellants to their services. It has been stated in para wise comments that the appellants were terminated almost in the year 1990 and reinstated in the year 2015, 2012, 2005 respectively and such reinstatement is miserably time barred which has been

corrected by the respondent No. 1 and 2 by withdrawal of their reinstatement orders. Respondents stated in the parawise comments that reinstatement orders were obtained by misleading the facts and with practice of fraud by appellants.

4. Learned counsel for appellants submitted that the appellants after their reinstatement to services, served more than 03 years therefore, respondent No. 1 and 2 are not empowered to remove them from services without serving any show cause notice. Learned counsel for appellant further argued that the appellants were not given an opportunity of hearing to defend their position before removal which is against the prevailing rules and natural justice. Learned counsel submitted that once a public servant is appointed after fulfilling all codal formalities, a valuable right accrues in his favour and he cannot be removed at once which is against the principle of **LOCUS POENITENTIAE**. Learned counsel for appellants further submitted that once an employee is appointed by a competent predecessor authority he cannot be removed from service by successor authority. Learned counsel for appellant submitted that the appellants have been malafidely removed from service by the respondent No. 1 and 2 just on basis of wrongful presumption of bar of limitation for reinstatement of appellants. Finally learned counsel prayed for reinstatement of appellants by setting aside the impugned office orders dated 24-06-2016 and 27-07-2016.

5. Learned Law Officer GB appearing on behalf of respondents submitted that the appellants, after their initial appointments, failed to prove themselves efficient which resulted in their removal from service under 12.21 police rule. He further submitted that the

appellants were removed under 12.21 police rule around in the year 1990 and allegedly reinstated in the years 2015, 2012 and 2005 respectively. He further submitted that the appellants got the reinstatement orders by misrepresentation and practice of fraud. He further submitted that there is no record of note sheet of approval of reinstatement order of competent authority which shows that the reinstatement order has been obtained illegally/fraudulently and that too after span of almost 22 years of removal. He further submitted that in most of the cases Registrar has been stated to reinstate the appellants who is not competent authority to reinstate without approval of concerned competent authority. Finally learned law officer prayed for dismissal of the instant service appeals with cost.

6. We heard the arguments, advanced by learned counsels for parties with due consideration and perused record minutely. From perusal of record, it reveals that the appellants were appointed in the year 1988 and 1990. The appellants were terminated during their probation period under 12.21 police rule. The appellants were reinstated to their services in the years 2015, 2012 and 2005. When the order of reinstatement was made as precedent by other sacked employees of police department of GB by filing several departmental representations, the concerned competent authority constituted a committee to look in to the matter and submit its recommendations. The said committee prepared its recommendations and submitted the same to respondent No 1. in pursuance of the recommendations, the reinstatement orders of appellants were withdrawn as the same were said to be issued by incompetent authority and after lapse of more than a decade of the removal of the appellants from service. On a question whether concerned authority empowered to discharge the



respondents under 12.21 police rule and whether any departmental representation/review lies against an order which is passed under 12.21 police rule. For ready reference 12.21 police rule is hereby reproduced.

**12.21 Discharge of inefficient.** A constable who is found unlikely to prove an efficient police officer may be discharged by the Superintendent at any time within 03 years of enrollment. **There shall be no appeal against an order of discharge under this rule.**

From the plain reading of above mentioned 12.21 police rule, it is evident that the competent authority is empowered to discharge any police officer within probation period. It is also crystal clear that no departmental appeal shall lie against an order passed under 12.21 police rule. The assumption of jurisdiction by concerned authority has expressly been barred by the above cited 12.21 police rule. It means that even the competent authority too is not empowered to entertain departmental representation/review against an order passed under 12.21 police rule. Appellants have been reinstated to their services with illegal assumption of jurisdiction, not vested in the authority and that too after more than 22 years of removal of appellants.

7. Furthermore, section 21 General clauses Act empowers competent authority to amend, vary or rescind any order or notification, issued by said authority. Respondents No. 1 and 2 have committed no illegality by withdrawing the reinstatement orders passed by their predecessors which resulted in removal of the appellants from their services.

8. For the reasons, discussed above, the instant service appeals bearing No. 635/2016, 636/2016, 637/2016, and 662/2016 are hereby dismissed being merit less.

9. Order as to no cost.

10. Files be consigned to record after due completion.

Announced  
31-10-2018

Sd/-  
**CHAIRMAN**  
Sd/-  
**MEMBER-I**  
Sd/-  
**MEMBER-II**

Judgment sheet  
**BEFORE GILGIT-BALTISTAN SERVICE TRIBUNAL  
GILGIT**

Service Appeal No. 61/2018

Date of Institution	04.09.2018
Date of hearing	05.11.2018
Date of Order	05.11.2018

**Appellant:** Abdul Ghaffar PET BS-16 c/o  
Deputy Director Education Gilgit.

**Before:** Mr. Muhammad Kamal Member-I

**Present:** M/s Mir Zeeshan Akhlaque and  
Zulfiqar Ali advocates for  
appellant.

**ORDER**

**MUHAMMAD KAMAL MEMBER-I:-** In view of similarity of facts, grounds of appeals, question of law and with the consent of learned counsel for the appellant, I propose to dispose off following Service Appeals through this single order:-

1. S.A 49/2018 Muhammad Umer vs Provincial Government and 02 others
2. S.A 50/2018 Talib Hussain vs Provincial Government and 02 others
3. S.A 51/2018 Syed Kalamud Din vs Provincial Government and 02 others
4. S.A 61/2018 Abdul Ghaffar vs Provincial Government and 02 others

Preliminary arguments on maintainability of appeals advanced by learned counsel Mir Zeeshan advocate heard in length. Record of the appeals also minutely perused. Counsel for appellants contended that the appellants had been appointed as Teachers (OT) in BS-09 during the years, 1990, 2000,2001 and 2002, while the said posts have been upgraded to BS-14 vide Finance Division (Regulations Wing) OM No. F.IX (2)/R.I/91-762 dated 18<sup>th</sup> July 1991. The Education Department GB vide their Office Order DE-3(4)/2010 (Admin) dated 04.02.2011 upgraded the appellants to BS-14 with effect from 31.01.2010 instead of their respective dates of appointments. Some of their colleagues Naeemud Din and 09 others OT Teachers filed a writ petition before the Honorable Chief Court for grant of upgradation to BS-14 with retrospective effect instead of 31.03.2010 which was allowed by the Honorable Chief Court vide judgment dated 06.05.2013. Now the present appellants have approached this Tribunal with their above mentioned individual appeal for extending the same benefits of

notification dated 18.07.1991 and in the light of judgment of Honorable Chief Court dated 06.05.2013, just like other colleagues of the appellants.

From perusal of the record it transpired that the above appellants after lapse of more than 07 years have designed fabricated departmental appeals just to find a way to approach this Service Tribunal.

The departmental appeals in question, if presumed to be legitimate, even then the appellants remained in deep slumber for more than 07 years in filing their departmental appeals before the competent forum i.e Chief Secretary, GB which are clearly time bared and the long delay cannot be overlooked. No plausible justification could be furnished by the counsel for appellants for the delay except that question of limitation was nothing more but a technicality which was an incorrect approach. In this respect, I reply on 2012 PLC (C.S) 939, it was held that:-

**“Service Tribunal had rightly dismissed the appeal as his departmental appeal was time barred. No irregularity or illegality was pointed out warranting interference by Supreme Court in the judgment passed by Service Tribunal. Leave to appeal was dismissed”**

**Reliance is also placed upon the judgment of honorable Supreme Court cited at 2012 T.D (Services) 126, as under:-**

**“Appeal before Service Tribunal would be incompetent when departmental appeal was time barred. Dismissal of such incompetent appeal by Service Tribunal upheld by Supreme Court by refusing its leave to appeal against such judgment of Service Tribunal”.**

In view of the above discussion, I am of the considered view that all the above appeals are hopelessly time barred and not maintainable. Hence, dismissed in limine. Order accordingly.

File be consigned to record after completion.

Announced:  
05.11.2018

**Sd/-  
Member-I**

Judgment sheet

**IN THE GILGIT-BALTISTAN SERVICE TRIBUNAL  
GILGIT**

Appeal No. 521/2015.

Date of institution	09-03-2014
Date of hearing	02-10-2018
Date of judgment	05-11-2018

**APPELLANT:            Rahim ullah s/o Muhammad Sharif r/o District Astore at present Noor Colony Jutial Gilgit.**

**RESPONDENTS:** Provincial Govt. through Chief Secretary GB and 05 others.

**BEFORE:** Mir Akhlaque Hussain Chairman.  
Mr. Muhammad Kamal Member-I.

Mr. Ali Sher, Tst. Member-II.

PRESENT: M/S Anees-Ullah Khan and Zahid Ali Baig Advocate for appellant. Mr. Akhtar Jan Law Officer GB.

### **JUDGMENT**

**Mr. ALI SHER, Tst. MEMBER-II:-** Brief facts, as stated by the appellant in the memo of appeal as well as during arguments, are that the appellant was initially appointed as UDC BPS-9 as contingent paid staff in Excise and Taxation Department Gilgit Baltistan vide office order No. SEC(R) (admin)-(10)/2010 dated 20<sup>th</sup> October, 2011. Later on, the appellant was adjusted against the vacant post of UDC BPS-9 vide office order No. SECY-REV-(admin) 1(23)/2012 dated 2<sup>nd</sup> July, 2013. The service of the appellant was terminated vide officer order No. SECY (R) / ESTT-(12)/2014 dated 27<sup>th</sup> January, 2014 in pursuance of recommendations, made by the Chief Minister's inspection team, constituted to inquire into the illegal appointments of employees, made in Excise and Taxation Department of GB. Appellant made departmental representation but in vain. Finally, appellant filed the instant service appeal before this Tribunal with prayer for setting aside of impugned office order dated 27<sup>th</sup> January, 2014 and reinstatement of the appellant to his post with all back benefits.

2. Respondents filed para wise comments wherein they vehemently opposed the contentions, made by appellant in the memo of service appeal. Respondent contended in para wise comments that the appellant was a contingent paid employee and as such he could not claim his regular appointment as a right unless he qualifies the written test and interview process. Respondents prayed for dismissal of instant service appeal being meritless and with cost.

3. Learned counsel for appellant contended that the appellant has been adjusted against the regular post of UDC-BPS-09 after fulfilling all codal formalities by the competent authority. He further submitted that the appellant performed his duty honestly and regularly till the date of his termination. He further argued that the case of appellant does not fall within the ambit of illegal appointments, made in Excise and Taxation Department GB. Learned counsel for appellant further submitted that the concerned authority is competent to adjust a contingent paid employee against any vacant post without holding test and interview of the same. Learned counsel further submitted that once a person is appointed by a competent authority a valuable right accrues in his favour and he cannot be terminated at once without serving show cause notice. He further contended that the respondent terminated the appellant malafidely and without giving opportunity to the appellant to defend his position. Finally learned counsel for appellant prayed for reinstatement of the appellant with all back benefits by setting aside the impugned office order dated 27<sup>th</sup> January, 2014.

4. Learned law officer GB, assisted by legal advisor for Excise and Taxation Department GB, opposed the contentions of learned counsel for appellant with submission that the appellant has been terminated from service in pursuance of recommendations of the CM inspection team, constituted to inquire all illegal, irregular appointments of employees, made in the Excise and Taxation Department GB. He further contended that the appellant was a contingent paid employee as such he cannot claim his adjustment against regular post unless he meets the required procedure of service rules. Learned law officer further argued that the appellant was adjusted against the regular

post of UDC BPS-09 which is against the service laws as contingent paid employee cannot be adjusted against the regular post unless such employee qualifies the test and interview. Learned law officer prayed for dismissal of the instant service appeal.

5. We heard the arguments, advanced by counsels for respective parties at length and perused the record minutely. From perusal of the record, it reveals that the appellant was initially appointed as contingent paid staff as UDC who later on adjusted against a vacant post of UDC on 2<sup>nd</sup> July, 2013. When illegal and irregular appointments, made in Excise and Taxation Department of GB, were brought into the knowledge of the competent authority, resultantly an inspection team was constituted to probe into the alleged irregularities and submission of its recommendations. And according to the recommendations of the CM Inspection team, the adjustment of appellant against the said regular post of UDC has been stated an illegal act, as the same post has neither been created by the Finance Department of GB nor included in NIS. But this fact has not been disproved by the appellant by providing cogent evidence about creation of post he held and its inclusion in NIS. Furthermore, a contingent paid staff cannot claim to be adjusted against a regular post mere on the basis of being a contingent paid employee unless post is created by the finance department, included in NIS and he may not undergo the recruitment process competing with other candidates and qualify test/interview conducted by the DSC. Which is a mandatory requirement for a regular post.

**6. For the reasons, discussed above, the instant service appeal is hereby dismissed being meritless.**



7. No order as to cost.
8. File be consigned to record after due completion.

(Announced)  
05-11-2018

Sd/-  
**CHAIRMAN**  
Sd/-  
**MEMBER-I**  
Sd/-  
**MEMBER-II**

Judgment sheet  
**BEFORE GILGIT-BALTISTAN SERVICE TRIBUNAL  
GILGIT**

Service Appeal No. 277/2014

Date of Institution:	21.04.2014
Date of hearing:	28.09.2018
Date of Judgment:	08.11.2018

**Appellant:** Hashmatullah Khan (Retired) AIG  
G.B. Police r/o Noor Colony, Jutial  
Gilgit.

**Respondents:** Provincial Government through  
Chief Secretary GB & 02 others

**Before:** Mr. Muhammad Kamal Member-I  
Mr. Ali Sher, Member-II

**Present:** Mr. Anisullah Khan, Advocate for  
Appellant  
Mr. Akhtar Jan, Law Officer GB for  
respondents No. 1 to 2 assisted by  
Mr. Fareedullah DSP Legal, rep. of  
Police Department. GB.

**JUDGMENT**

**MUHAMMAD KAMAL MEMBER-I:-** Through the instant appeal, appellant has prayed that (a) Declare the order of Respondent No. 1 dated 06.10.2011 null and void and devoid of legal effect alongwith all arrears of pay and allowances (this order is with respect of rejection of his appeal); and (b) Direct the Respondents to consider Petitioner for ante-dated/ proforma promotion in BPS-19 w.e.f. 27.04.2005 and then in BPS-20 w.e.f. 27.04.2007 alongwith all back benefits/ arrears of pay and allowances.

1. Facts emerging for institution of instant appeal are that appellant was initially appointed as ASI and enjoyed promotions from time to time and retired from the post of AIG BS-19 from Police Department GB on 6<sup>th</sup> June, 2008 on attaining the age of superannuation. From the year 2003 to 2005 aiming at enhancing and improving capabilities and strengthening police manpower in GB, various branches/ wings in Police Department GB were created by KA&NA Division Islamabad alongwith posts. Amongst those posts, three posts of AIGs BS-19 and one post of DIG-BS-20 were also created. These posts, according to a Notification circulated and published in Gazette of Pakistan under the Northern Areas Rules of Business, 1994 read with FPSC Ordinance, 1977, fall within 100% promotion quota and are required to be filled in from amongst respective senior most SPs BS-18 and AIGs BS-19 of GB subject, however, to relevant rules prescribing required terms and conditions for promotion to those posts. With creation of posts, officers were from down country were also posted against those posts. The details are that upon recommendation of IGP GB (then Northern Areas) Mr.

Farman Ali (BS-19) a PSP officer was posted against the post of DIG in his own pay and scale, Mr. Malik NasimulHaq a PSP Officer BS-18 was posted against the post of AIG, CID in his own pay and scale and Mr. Muhammad Dilpazir, SP BS-18 was posted against the post of AIG HQ in his own pay and scale. In the year 2006, one Lt. (Rtd) Pervaiz Ahmed a PSP officer upon his promotion from BS-17 to BS-18 was also posted to Northern Areas. Likewise, one Jan Muhammad a grade 18 PSP Officer was also transferred to Northern Areas and posted against the post of AIG Special Branch in May, 2005. Similarly in March, 2006, one Mr. Najaf Quali Mirza, posted as SP Skardu was promoted to BS-19 and was directed to be remained in posted in Northern Areas and was further allowed to draw salary against the post of AIG Reserve Force. In this way, all the newly created posts of DIGs and AIGs were filled in. File record shows that the appellant was eligible for promotion to the post of AIG BS-19 by the year 2003 when his case was forwarded to KA&NA Division Islamabad alongwith the panel of Mr. Muhammad Hanif, SP on 1<sup>st</sup> January, 2004. Being senior to the appellant, Mr. Muhammad Hanif was promoted to AIG BS-19.

2. It is interestingly noted that right from 2004 onwards, neither the appellant made efforts for promotion against the posts of AIG nor even agitated against transferring PSP officers from down country against his quota of promotion. He should have record his agitation or submitted application in this regard. But the result here is naught.

3. Prior to promulgation and enforcement of Gilgit-Baltistan rules of Business 2009, powers as to promotion to the posts carrying BS-18 and above were being exercised by Minister Kashmir Affairs and

Northern Areas in the capacity of Chief Executive GB (then Northern Areas) under the then Northern Areas Rules of Business 1994. Consequently, all cases involving promotions to the posts from BS-18 and above were being sent to Minister for KA&NA Division Islamabad for promotions by C.S.B. When the post of AIG BS-19 was created in the year 2005, the appellant was expectant having completed required length of service of 12 years to his credit as required under rule for promotion SSP BS-18 to AIG BS-19 and required training as well. However, on the ground of there being a NAB case against him, he was posted as OSD and probably his case/ documents were not initiated with KA&NA Division Islamabad with the panel for promotion till the year 2006 on this score alone. In the mid 2006, some police officers junior to the appellant were recommended to C.S.B for promotion excluding the appellant, but that case was returned by KA&NA Division Islamabad with the direction to submit promotion cases of those senior police officers of GB irrespective of their involvement in the NAB cases. From the year 2006, the appellant started struggling for his promotion from BS-18 to AIG BS-19 with application/ appeals to quarters concerned, but to no avail. Lastly, he was promoted from SSP BS18 to AIG-BS-19 in the year 2008 against his expectations of being promoted from the year 2005. Being aggrieved by and dissatisfied with non-consideration of his case from the year when the post fell vacant i.e the year 2005, the appellant filed a writ petition in the Hon'ble Chief Court Gilgit-Baltistan in 2008 which remained pending adjudication there and upon establishment of Gilgit-Baltistan Service Tribunal, the writ petition stood abated and the same has been brought before this Tribunal in the shape of the appeal in hand.

4. File record shows that immediately after promotion of appellant in the year 2008 as AIG BS-19, he submitted an appeal to the Chief Secretary GB in June, 2008 for granting ante-dated promotion as AIG BS-19 on the ground that as per seniority, required length of services, having other prerequisites and availability of post of AIG-BS-19 in the year 2005, he was eligible for promotion from the year 2005 when the post of AIG became available. The appeal remained not responded till the year 2011. Such an appeal was also submitted to the Chief Minister GB in February, 2011 containing similar request, however decision as to fate of his appeal is not known. Another request was made to the Chief Secretary GB for deciding his appeal awaiting decision from June, 2006. This time he was responded by rejecting his appeal by the Chief Secretary GB on October, 2011. The sole reason for non-submission of appellant's panel for promotion to the post of AIG-19 appears to be the NAB case against him in respect of fake registration of vehicles in the year 2004. However, the National Accountability Bureau, somehow took notice of such cases, and wrote a letter to the Chairman, FPSC, Islamabad with copies thereof to all Chief Secretaries vide letters No. 5(48)/2003/I.M-10/NAB dated 29.03.2003 and 3(20) Gen-COS-2006 (NAB) dated 17<sup>th</sup> April, 2006 with the clear recommendation to consider promotion cases of civil servants whose cases are pending with NAB without affecting their rights/ career progression. Despite these clear directions of NAB authorities, case of appellant was not forwarded to C.S.B. for holding proper promotion proceedings.

5. The Government of Gilgit-Baltistan through Mr. Akhtar Jan Law Officer assisted by representative Mr. Fareed Ullah Khan, Police Department contested the appeal by submitting parawise comments.

The respondent No. 3 (Inspector General of Police GB) submitted his separate comments to the appeal which were relied upon by the remaining respondents, however, with addition of some legal objections. The respondent No. 3 has raised two grounds; first that against the two posts of AIG BS-19, two officers were posted from down country to tackle with the deteriorated law and order situation in GB. Thus, both the posts were being held by the officers posted from down country. Second contention taken by the respondent No. 3 is that no civil servant can claim ante-dated/ proforma promotion after retirement. In rebuttal to these contentions of respondents, counsel for appellant vehemently argued the cases denying the contentions taken by respondents. The counsel for appellant in support of his arguments cited various rules and dictums laid down by superior courts of Pakistan on the cases having similarity to the present appeal.

6. The appeal, after completing all formal proceedings came up for arguments on 28.9.2018. Arguments pro and contra heard, perused the case file, relevant rules and case laws cited by both the parties. In order to clarify as to whether a civil servant can or cannot claim ante-dated/ proforma promotion after retirement, we take up this legal question first. Before we put our view, it would be more appropriate to consult the relevant rules at first hand as under:

*clause "h" of Sub Section 1 of Section 2 of GB Civil Servants Act 2011 which recognizes the proforma promotion of the retired civil servants in case of accruing their rights of promotion before attaining the age of superannuation reads as under :-*

## **2. Definitions**

1. (h) "*Proforma promotion*" means predating of promotion of civil servant or retired civil servant with effect from the date of regular promotion of his junior, for the purpose of fixation of pay and payment of arrears as may be prescribed"

Sub Section 4 of Section 8 of the **GB Civil Servant Act 2011** which recognizes the entitlement of proforma promotion of a civil servant from an earlier date, reads as under:

### **8. Promotion**

(4) A civil servant shall not be entitled to promotion for an earlier date ***except in the case of Proforma promotion.***

7. Apart from above quoted rules, as per Federal Government policy duly approved by the Prime Minister of Pakistan, the guidelines for FR-17(1) in respect of committees to consider the cases of proforma promotion has been amended vide office memorandum F. No.4(6) Imp/FR-17/2013-277 dated 18<sup>th</sup> September, 2015 wherein Para-I has declared the civil servant to be promoted from a particular date who for no fault of his own has been wrongfully prevented from rendering service to the Federation in the higher post and such civil servant has been held entitled to get the arrears of pays and allowances of such higher post through proforma promotion or up-gradation arising from the ante-dated fixation of his seniority. Moreover a new clause (a) (1) has been inserted in Para-iv of the said M.O whereby the Departmental Promotion Committees have been

declared to be under obligation to consider the cases of civil servants for proforma promotion to next higher post in their own cadre of the cases of retired civil servants who could not be considered for promotion for no fault of their own and retired on attaining the age of superannuation. The relevant rule is reproduced herein below:

**"F.R. 17(1) .....**

**Provided that the appointing authority may, if satisfied that a civil servant who was entitled to be promoted from a particular date was, for no fault of his own, wrongfully prevented from rendering service to the Federation in the higher post, direct that such civil servant shall be paid the arrears of pay and allowances of such higher post through pro forma promotion or upgradation arising from the ante-dated fixation of his seniority"**

8. It is indeed, an admitted fact of law that no civil servant can claim promotion after retirement, but situations vary from case to case. The rules governing a specific issue regarding terms and conditions of service require to be read and understood as a whole and not partly. Interpretation of this sentence literally means that if there did not exist any post at the time of retirement of a civil servant, who stood retired from his post on attaining age of superannuation, he cannot claim ante-dated/ proforma promotion against any post which happens to be vacant or created after his retirement. Contrarily,(a) if there exists post before retirement of a



civil servant;(b)he was by all aspects eligible for promotion; and (c) he was not considered for promotion against that post for no fault on his part, then the right accrues to the civil servant to claim ante-dated/ proforma promotion against the said post lying vacant prior to his retirement. Now we are turning to second question as to adjustment of two PSP officers from down country against the newly created posts. Adjustment of such police officers from down country outside their prescribed quota cannot be made at the cost of other police officers of any region/ province merely on the pretext of law & order situation. This version of respondent No. 3 shows that there were no officers of caliber/ capabilities who could have been promoted against those two posts of AIG to tackle with the law and order situation in GB. In support of entitlement of proforma promotion, the learned counsel for appellant has cited three judgments passed by the Hon'ble Supreme Appellate Court GB in **(i)**(Provincial Govt. through Chief Secretary & others Vs. Dr. Johar Ali **reported at 2016 GBLR 108**)(**ii**) (Provincial Govt. through Chief Secretary & others Vs. Dr. Muhammad Zaboore **reported at 2016 GBLR 106**) and **(iii)**(Provincial Govt. through Chief Secretary & others Vs. Muhammad Anwar Khan (Retd). SP **reported at 2016 GBLR 35**) which are identical in facts and grounds to the present appeal. For ease of reference, relevant portion from one of the judgments is reproduced herein below:

**2016 GBLR 108**

***"10.(sic) That nutshell of the above discussion is that a civil servant has a fundamental right to be promoted even after his retirement through proforma promotion provided his right***

***of promotion accrued during his service and his case for promotion could not be considered for promotion for no fault of his own and retired on attaining age of superannuation. The respondent being a qualified and senior most specialist the concerned officials in respect of delay in deciding the seniority dispute and failure of holding departmental promotion committee meeting till his retirement”.***

In addition to above rulings by the Hon'ble Supreme Appellate Court GB, similar rulings have also been given by the Hon'ble Supreme Court of Pakistan at various cases reported at 1985 SCMR 1394, 2013 PLC (C.S.) 786, 2010 SCMR 1466, 1997 SCMR 515. Perusal of all these case laws shows that these citations have also direct relevance to the appeal in hand in favour of the appellant.

9. The appellant had 12 years continuous services in BS-18 by the year 2005 when the post of AIG BS-19 was created besides having one year training from Police Training Institute/ Academy which is a condition attached to promotion for the post of AIG, as such he was eligible for promotion to BS-19. Instead of importing officers from down country on the pretext of deteriorated law and order situation in GB, the eligible officers in GB Police roll should have been considered for promotion. Posting of officers from down country outside the quota can cause to bring a resentment and disappointment to the police officers of GB who are doing their jobs dedicatedly by putting their precious lives at very risk. Such an act

superseding GB police officers tantamount hamper performance of GB police officers who put their career at stake. The respondents have taken further plea that there was no vacant post against which the appellant could be promoted, probably they mean that in the year 2005 no post of AIG-BS019 was vacant because all those posts were held by the PSP officers. However, in the year 2005 amongst others, a post of AIG had also been created vide Kashmir Affairs and Northern Areas Division letter No. F.4/7/2000-NA-II dated 27<sup>th</sup> April, 2005. If for the sake of arguments it is admitted that there was no post available in the year 2005, posts of AIG appear to have vacant in the year 2006 as is evident from the letter of Inspector General of Police written to the Home Secretary, GB. The substantiate the fact that posts were available in the year 2006, the same letter is reproduced herein below:

**QUOTE**

*NO. IGP—(6)/9661 /2006 DATED THE 21<sup>ST</sup> AUGUST,  
2006*

*GOVERNMENT OF PAKISTAN  
OFFICE OF THE INSPECTOR GENERAL OF POLICE  
NORTHERN AREAS GILGIT*

*To*

*The Secretary Home,  
S&GAD & Information & Revenue Deptt.  
Northern Areas, Gilgit*

*Subject: **PROMOTION TO NEXT RANK/ GRADE***

*Reference Home Department letter No. SO(S)-I-1(35)/2006-I, dated 21.07.2006 on the above noted subject.*

*2. The cases of the following two officers have already been forwarded to Home Department N.As vide this office Memorandum No. IGP-1(6)/4647/2006 dated **24.05.2006** alongwith CR dossiers.*

- i. *Mr. Muhammad Dilpazir AIG HQs (BS-18) (S. No. of seniority list)*
  - ii. *Mr. Muhammad Ali Khan Wazir (SP BS-18) (S. No. of seniority list)*
3. *Following documents in respect of M/s. Hashmatullah Khan (S. No. 1 of the Seniority List and ShaukatRasshid (S. No. 2 of the Seniority List) presently posted as OSD in a NAB case are enclosed herewith.*
- 4.....
- 5.....

*INSPECTOR GENERAL OF POLICE  
NORTHERN AREAS, GILGIT*

**UNQUOTE**

9. From perusal of the above quoted letter, it reveals that posts of AIGs were vacant against which the panel was recommended much before 24.05.2006. If there were no posts of AIG before 24.05.2006, then what was the purpose of sending Panel of police officers to KA/NA Division. Hence this plea of non-availability of post at that time by the respondent is not tenable. A letter was initiated by IGP, GB, (then NAs) in the year 2003 alongwith required documents to Chief Secretary requesting him to send panel of police officers to KANA Division/ Selection Board for promotion consisting Mr. Muhammad Hanif Khan and the appellant against one post of AIG-BS-19 which was further forwarded by the Home Department GB with KA&NA Division Islamabad in the year January 2004 recommending said two officers for promotion of one of them against the post of AIG BS-19. As a result whereof, one Mr. Muhammad Hanif was promoted against the post of AIG-BS-19. Thereafter another post of AIG BS-19 was created in the year 2005.

This is another question that this post was filled in by transfer of PSP officers from down country, otherwise being most senior police officers in BS-18 on GB police roll and securing his seniority on the top of seniority list, appellant was entitled to be promoted against the said post.

10. Now we come to question of eligibility of appellant for proforma promotion. Perusal of judgments rendered by the Hon'ble Supreme Appellate Court GB in the above three cases as well as judgments passed by the Hon'ble Supreme Court of Pakistan in similar cases quoted above, it is cleared beyond any doubt that the present appeal is in all aspect similar and identical to those three quoted judgments of Hon'ble Supreme Appellate Court GB and other judgments of the Hon'ble Supreme Court of Pakistan as well. It is again reiterated here that when the post of AIG BS-19 was created in the year 2005, in view of seniority and length of service, the appellant was eligible for promotion against the said post, but the department on the pretext of there being a NAB case against the appellant, did not forward his documents to C.S.B, despite clear recommendations of NAB authorities vide their letters bearing No. 5(48)/2003/I.M-10/NAB dated 29.03.2003 and 3(20) Gen-COS-2006 (NAB) dated 17<sup>th</sup> April, 2006. File record contains a note portion prepared at CPO GB quoting therein the same directions of NAB authorities for processing the promotion of those officers whose cases are under investigation with NAB. The relevant portion of Note is reproduced herein

***"Furthermore, it may not be out of place to mention here that the two officers, namely M/s. Hashmatullah Khan and Shaukat Rashid were***

***involved in a NAB case during 2004 and their case also is subjudice in NAB Court Rawalpindi and these officers request to send their case for consideration by CSB in the light of National Accountability Bureau letters No. 5(48)/2003/I.M-10/NAB dated 29.03.2003 and 3(20) Gen-COS-2006 (NAB) dated 17<sup>th</sup> April, 2006”.***

11. The above para from Note Portion prepared in CPO on 7.4.2007 reveals that the appellant was constantly pursuing to get his case recommended to CSB for promotion against the post of AIG BS-19 from very beginning. As such, fault of delay/ inaction rests on the shoulders of department concerned while the appellant was pursuing his promotion case rigorously. In the circumstances of the case, it appears that it was the concerned department who delayed in processing promotion case of appellant. it will be injustice and unfair to bite the appellant from both ends as denial of relief by this Tribunal will put the appellant to sustain double jeopardy. However, holding of posts of AIG by PSP Officers from country come in the way of granting whole relief that is because the posts of AIGs were somehow held by the PSP officers or otherwise. If Tribunal grants him ante-dated promotion with back benefits/ arrears from 27.04.2005, there will be an awkward position as against one post two salaries cannot be drawn simultaneously as the post of AIG against which the appellant claims promotion appears to be held by some other police officers either from down country or from GB and drew salaries against the said posts. It would not be fair enough to put the department to initiate a lengthy process by going back to the year

2005 for recovering salaries from the officers who, by now would have retired. Therefore, in order to avoid complications both for appellant and department as well, it is not practicable to grant him proforma promotion from 27.04.2005.

12. In the light of what has been elaborately discussed above, we are inclined to accept the appeal partially to the extent of granting promotion to the appellant from the date when he was given the charge of AIG Operations (BS-19) i.e. **16.12.2006** with all back benefits including proforma promotion to the next higher grade (BS-20) with pensionary benefits if there was existed any post vacant in Police Department before retirement of the appellant through holding a Departmental Promotion Board (DPB) on the basis of seniority-cum-fitness as laid down in prescribed promotion rules/policy. Order accordingly.

13. No order as to costs.

14. File be consigned to record after completion.

Announced:  
08.11.2018

Sd/-  
**Member-I**  
Sd/-  
**Member-II**

Judgment sheet  
**BEFORE GILGIT-BALTISTAN SERVICE TRIBUNAL**  
**GILGIT**

Service Appeal No. 40/2018

Date of Institution:	15.05.2018
Date of hearing:	11.10.2018
Date of Judgment:	27.11.2018

**Appellant:** Umer Khan s/o Zabar Khan r/o Govt. Colony Konodass Gilgit, employee of W&P Department, GB

**Respondents:** Provincial Government through Chief Secretary GB & 04 others

**Before:** Mr. Muhammad Kamal Member-I

**Present:** Mr. Nasim Akhtar Mian, Advocate for Appellant  
 Mr. Akhtar Jan, Law Officer GB for respondent No. 1. Mr. Behram Khan, Advocate, legal advisor W&P Deptt. for respondents No. 2 to 5.

### JUDGMENT

**MUHAMMAD KAMAL MEMBER-I:-** This judgment shall dispose off Service Appeal No. 40/2018 filed by appellant Mr. Umer Khan, an employee of Water & Power Department GB performing his duties as Driver BS-07 with the prayers for change of cadre from driver to that of Foreman BS-07 and then promotion as Supervisor BS-09 in W&P Department GB.

2. Facts giving rise for institution of appeal in hand are that the appellant was appointed as Driver and has been performing the same duties in BS-07 in Water & Power Department GB and intends to get



his cadre changed from driver BS-07 to that of Foreman/Supervisor BS-09 on the same analogy as has been done in the cases of his other colleague drivers including some employees of different cadre by the authorities of W&P Department GB vide Office Order No.CE-2/200/Admin/DPC/4/2013/785 dated 4<sup>th</sup> July, 2013. The appellant also desires to be treated alike that too, at the verge of his retirement as he is already on LPR and will be retired in the month of December, 2018. To this effect, he has submitted various applications/ appeals to W&P Division authorities which remained in their offices moving from one office to another office and finally the appellant appears to have been denied his request. Resultantly, the appellant first approached the Hon'ble Chief Court GB and subsequently, consequent upon establishment of this Tribunal, the appeal stood abated and the appellant came to this Tribunal with the appeal in hand.

3. Respondents filed parawise comments through learned Law Officer GB wherein they have taken certain pleas for rejection of this appeal on the grounds that those employees whose cadres have been changed were not regular employees of the department rather they were RTE staff who were later on adjusted against the respective vacant posts mentioned in the afore noted office order as per the regularization policy of government in 2013, hence there cannot be question of change of cadre or promotion. The respondents have next contended that there are no rules for change of cadre from driver to other cadres in W&P Division. The rules appended with the appeal show that the post of Supervisor BS-09 falls within 50% direct and 50% promotion quota and the feeding post for promotion to this post is Foreman BS-07 subject to meeting the required eligibility criteria.

Similarly, as per rules, the post of Foreman BS-07 requires to be filled in by 75% promotion quota and 25% direct quota and the feeding post for this post is Elect/ Mech. Operator BS-06. In this way, there is no provision in the rules which could allow the appellant to change his cadre or promote him against a post which is meant for a specific quota. The appellant is a regular driver from his initial appointment. On the analogy of an illegal order/precedent, the appellant also wished that his post may also be redesignated but under what rules, merely on a past practice/ precedent of maintenance staff. Even if it is assumed that the Water & Power authorities have changed cadre/ re-designation of the two regular drivers alongwith other employees shown in the above office order, this action cannot be termed as a legal action and similarly the same cannot be made a base for other employees to claim re-designation/ promotion.

4. Argument pro and contra heard. Perused the available record. After considering all aspects of the appeal, I have come to the conclusion that according to the GB Service Tribunal Act, 2014, the Tribunal is under obligation to entertain appeals brought before it where right of any employee regarding terms and conditions have been infringed. But in the case in hand, no right with regard to the terms and conditions of service of appellant is infringed rather the appellant feels aggrieved for non consideration of his case for re-designation merely on a wrong past practice/ precedent set by W&P Department and notwithstanding the fact that there is no provision in the rules which could justify/ legalize the claim of appellant as saying goes "two wrongs do not make one right". A department like W&P Department GB having a huge manpower cannot be run just on the basis of past practices/ precedents. This tribunal does not deem it

appropriate to pass directions to the department concerned to consider a case by stepping outside the rules. Therefore, having found no merit/ base in this appeal, I have left with no option but to dismiss the appeal being meritless/ baseless. Accordingly, the appeal stands dismissed with no order as to costs.

5. File be consigned to record after completion.

**Announced:**  
**27.11.2018**

Sd/-  
**Member-I**

Judgment sheet  
**IN THE GILGIT-BALTISTAN SERVICE TRIBUNAL**  
**GILGIT**

Appeal No. 405/2014.

Date of institution	07-5-2014
Date of hearing	19-11-2018
Date of judgment	05-12-2018

APPELLANT: Mr. Muhammad Qayyum S/O  
Muhammad Karim Rtd (A)  
Superintendent of Police R/O Jutial  
Gilgit.

RESPONDENTS: Provincial Govt. through Chief  
Secretary GILGIT-BALTISTAN and  
03 others.

BEFORE: Mir Akhlaque Hussain Chairman.  
Mr.Ali Sher Member-II.

PRESENT: M/S Muhammad Saleem Khan,  
Shahid Abbas and Yasir Sherazi  
Advocates for the appellant.

Akhtar Jan Law Officer G.B for  
respondent No. 1, 2 and 4.

### **JUDGMENT**

**MIR AKHLAQUE HUSSAIN CHAIRMAN:** The facts of service appeal No. 405/2014 are that the appellant Mr. Muhammad Qayyum who was serving as DSP-BPS-17 in Gilgit-Baltistan Police was promoted on acting charge basis from DSP to SP (BPS-18) on 02.01.2012 and the appellant assumed the charge of SP (BPS-18) on 06.01.2012. The appellant kept serving as SP on acting charge basis till his retirement on 05.10.2013. The appellant claims that the post of SPs were vacant and available and the appellant was otherwise eligible for regular promotion but the Gilgit-Baltistan Police Department has instead of granting regular promotion through Departmental Promotion Committee, granted BS-18 on acting charge.

2. The respondents have filed parawise comments wherein they have denied the claim of appellant to the extent of the entitlement to proforma promotion but they have admitted the fact that the appellant was promoted on acting charge basis and have also not denied the fact that the posts of SPs were vacant at the time when

the appellant was promoted on acting charge basis. The respondents have also stated that the regular promotion could not be made because of a pending litigation before the learned Gilgit-Baltistan Chief Court. They have prayed for dismissal of appeal.

3. We have heard the learned counsels for the parties and perused record.

4. It is not denied that the posts of SPs were vacant at the time of the promotion of the appellant and it is also admitted that the appellant was otherwise eligible for promotion. As to the question of litigation before the learned Gilgit-Baltistan Chief Court, admittedly that was not the fault of appellant and the respondents have not brought before us any order of learned Gilgit-Baltistan Chief Court regarding the vacant posts of SPs in the year 2012 and 2013. The appellant was eligible with required length of service and had no adverse remarks on his service record. The appellant was promoted on acting charge instead of regular promotion and admittedly the appellant has discharged his duties as SP till his retirement after relinquishing charge of DSP on 05.01.2012. The promotion on acting charge basis means that the civil servant has to perform duties of higher post and has to bear responsibilities of the higher post. Where the civil servant is expected to perform such duties of higher post

then he must also be conferred the higher status. A civil servant cannot be expected to perform duties of higher post while keeping him on a lower post. The acting charge cannot be made substitute for regular promotion by permitting departments to grant acting charge instead of regular promotion to civil servant who is otherwise eligible for regular promotion and vacant posts are also available. The state functionaries are mandated to act within reasonable time in the matter of granting promotions, which is lacking in the instant case. Once a civil servant has acquired the requisite qualifications and has completed necessary length of service, then he had a legitimate expectancy of promotion in presence of vacant posts. The appellant had also acquired a legitimate expectancy of promotion in the year 2012 and the regular promotion could not be granted not because of any fault of the appellant but because of the fact that the department had not taken the case of regular promotion of the appellant before a duly convened meeting of departmental promotion committee. Thus the appellant could not be made to suffer for inaction of the departments. Reliance in this regard is placed on 1997 SCMR 515 and 2006 SCMR 1938.

5. The respondents have, through their written comments and arguments attempted to take cover under the question of limitation

by asserting that the claim of the appellant is time barred hence the appeal may be dismissed as barred by limitation. We do not concur with the learned Law Officer and the respondents on the point of limitation in the instant appeal. The matter in hands pertains to promotion from back date with financial back benefits. Such matters are not strictly subject to the law of limitation and the courts have always shown tendency to ignore the question of limitation in matters of pay and promotion etc. Reliance in this regard is placed on 1994 PLC CS 411, 2007 PLC CS 1388 and 1996 PLC CS 832.

6. In view of the above, instant appeal is allowed and appellant is entitled to promotion to BPS-18 as SP w.e.f date of his appointment as SP on acting charge basis with all back benefits.

7. File of appeal be consigned to record after completion.

**Announced:**

05.12.2018

Sd/-  
**CHAIRMAN**  
Sd/-  
**MEMBER-II**

Judgment sheet

**IN THE GILGIT-BALTISTAN SERVICE TRIBUNAL  
GILGIT**

Appeal No. 508/2014.

Date of institution	08-12-2014
Date of hearing	03-12-2018
Date of judgment	05-12-2018

APPELLANT: Akhtar Hussain Changazi s/o Haji Sher Muhammad Retired in Acting SP(PPM) Gilgit-Baltistan.

RESPONDENTS: Provincial Govt. through Chief Secretary GB and 03 others.

BEFORE: Mir Akhlaque Hussain Chairman.  
Mr. Ali Sher, Tst. Member-II.

PRESENT: M/S Muhammad Saleem Khan Advocate for appellant. Mr. Akhtar Jan Law Officer GB for respondents.

### **JUDGMENT**

**ALI SHER, Tst. MEMBER-II:-** The instant service appeal was heard on 03-12-2018 by DB, headed by Mir Akhlaque Hussain (late) the then Chairman GBST. The hearing of this service appeal was concluded and the short order was pronounced in the open court in favour of the appellant on 05-12-2018. However before issuance of detailed judgment, Mir Akhlaque Hussain, passed away from this metrial world. Thus causing delay in issuance of this judgment.

2. Brief facts, as stated by the appellant in the memo of appeal are that the appellant is an ex-employee of police department of GB who was promoted to the post of DSP BS-17 vide office order No. SO(S)-1-1(10)2009 dated 13<sup>th</sup> March 2009 and later on appellant was given acting charge of AIG Logistics vide office Order dated 12<sup>th</sup> January 2012 and then assigned current charge of SP BPS-18 vide order No. IGP-1(6)/6095-7013 dated 25<sup>th</sup> April, 2012. The appellant kept serving with his full devotion as SP on acting charge till the date of his retirement. Appellant claims that despite of a clear vacant post of SP, he was given only acting charge where as he was otherwise



eligible for regular promotion to the same post. Appellant prays for his anti-dated promotion from the date of his assumption of his acting charge of the post of SP with all back benefits.

3. The respondents filed parawise comments whereby they admitted the claim of appellant to the extent of giving him acting charge of SP but denied the right of appellant for regular promotion to the same post with submission that the appellant was given merely the acting charge by the respondent just to run the official routine work and as per rules no individual can claim the promotional benefits of higher post as a right admissible to higher rank on the basis of acting charge.

4. The learned counsel appearing on behalf of appellant argued that the appellant served in police department with full devotion, dedication and honesty. There is no endorsement of an adverse remarks on the record during his entire service, completed by the appellant. He further contended that the respondents' malafide intent deprived the appellant of his legal right of regular promotion to the said post of SP by giving him acting charge. Learned counsel for appellant further submitted that the respondents instead of giving acting charge of SP should have given regular promotion to the appellant as at the time of giving acting charge the vacancy of regular post of SP was vacant. He further argued that whenever any vacancy of regular post lies vacant in any department the concerned authority is duty bound to fill the vacancy within the stipulated time through induction of deserving candidates either by direct recruitment or through promotion. Learned counsel for appellant finally prayed for anti-dated promotion of appellant with all back benefits to meet the ends of justice.

5. Learned Law Office GB, appearing on the behalf of respondent, submitted that the appellant was not legally entitled for regular promotion to the post of SP as he was given acting charge of the same in order to run the routine affairs in the department as is usually the business of the government departments. He further submitted that on the basis of acting charge, no public servant can claim his regular promotion to the post which he willingly accepted as acting charge. Learned Law Officer GB further submitted that the appellant is not entitled for the promotion to the said post as he was junior to other SP's who were promoted to the regular posts. He further argued that since the directly appointed DSP's filed writ petition before the Honorable Gilgit-Baltistan Chief Court thus no departmental promotion committee could be convened. Finally Law Officer GB prayed for the dismissal of the instant service appeal with cost.

6. We heard the arguments, advanced by the counsel for the parties and perused record minutely.

7. From perusal of record it transpires that the post of SP's were vacant at the time of promotion of the appellant and it is also a fact that the appellant was otherwise eligible for regular promotion. As for as the question of litigation before the Learned Gilgit-Baltistan Chief Court is concerned, admittedly that was not the fault of appellant and the respondents have not brought before us any order of the Hon'ble Gilgit-Baltistan Chief court regarding the vacant post of SP's in the year 2012 and 2013. The appellant was eligible with the required length of service and had no adverse remarks on his service record. The appellant was promoted on acting charge instead of regular

promotion and admittedly the appellant has discharged his duties as SP till his retirement. The promotion on acting charge basis means that the civil servant has to perform the duties of higher post and has to bear responsibilities of higher post. Where the civil servant is expected to perform such duties of higher post then he must also be conferred the higher status. A civil servant cannot be expected to perform duties of higher post while keeping his actual benefit as that of a lower post. The acting charge cannot be made substitute for regular promotion by permitting departments to grant acting charge instead of regular promotion to the civil servant who is otherwise eligible for the regular promotion and while the vacant posts are also available. The state functionaries are mandated to act within reasonable time in the matter of granting promotion which is lacking in this instant case. Once a civil servant has acquired the requisite qualifications and has completed necessary length of service, then he has a legitimate expectancy of promotion in respect of vacant post. The appellant had also acquired a legitimate expectancy of promotion at the relevant time and the regular promotion could not be granted to him not because of any fault of appellant but due to the fact that the department had not taken the case for his regular promotion before a duly convened meeting of departmental promotion committee. Thus, the appellant could not be made to suffer for inaction, committed by the concerned department. Reliance in this regard is placed on 1997 SCMR 515 and 2006 SCMR 1938.

8. For the reasons, discussed above, the instant appeal is hereby allowed and appellant is entitled to be promoted to the post of SP BPS-18 w.e.f date of his appointment as SP on basis of acting charge with all back benefits.

9. No order as to cost.
10. File of appeal to be consigned to record after due completion.

**Announced**  
**05-12-2018**

Sd/-  
**Member-II**

Judgment sheet  
**BEFORE THE GILGIT-BALTISTAN SERVICE TRIBUNAL**

Appeals No.03/2017,04/2017.

Date of institution	19-01-2017
Date of hearing	05-12-2018
Date of judgment	07-12-2018

APPELLANT: **Mr. Sana Ullah Ex- Foot constable Gilgit Baltistan Police R/o Darel District Diامر.**

RESPONDENTS: Inspector General Police and four others.

APPELLANT: **Mr. Arash Khan Ex- Foot constable/Driver Gilgit Baltistan Police R/o Tangir District Diامر.**

RESPONDENTS: Inspector General Police and four others.

BEFORE: Mir. Akhlaque Hussain Chairman.  
Mr. Muhammad Kamal Member-I.  
Mr. Ali Sher, Tst. Member-II.

PRESENT: Mr. Shahid Abbas Advocate for the appellants.

Mr. Akhtar Jan Law Officer GB for respondents.

### **JUDGMENT**

**ALI SHER, Tst. MEMBER-II:-** The above titled service appeals bearing No. 03/2017, & 04/2017 are identical in nature therefore, we intend to dispose of the same through this single judgment.

Brief facts, leading to filing the instant service appeals, state that both the appellants were foot constables in GB police Department who were performing their duties in District Diamer till their dismissal. On 17<sup>th</sup> March, 2016 on receipt of information, the Law Enforcing Agencies (LEAs) launched an operation against Proclaimed offenders/terrorists, namely, Hazrat Noor and Shah Faisal residence of Darel District Diamer. Reportedly, the terrorists were present at their residents that were cordon off and raided by LEAs. The terrorists opened indiscriminate fire which resulted in shahadat of two soldiers, bullet injuries to three personnel while five vehicles were also damaged. During the operation, one terrorist, namely Hazrat Noor blew himself up causing death of his wife and daughter. It was alleged that the appellants being employees of disciplined force, failed to help and cooperate with LEAs during and before the operation and thereby helped the terrorists by leaking the secret information. Resultantly, JIT was constituted by competent authority to investigate into the matter and submit its report. JIT submitted its report wherein suspension of the services of appellants was recommended due to their dubious character and usage of house of

appellant Sana Ullah by terrorist namely Shah Faisal who opened fire at security personnel from the said house and injured three soldiers during the operation. Appellant namely Arash Khan was present at his home, which is near to the place of occurrence, and failed to cooperate with the security forces and allegedly shared information about the operation with terrorists.

2. In pursuance of the report, submitted by JIT, the services of appellant were placed under suspension vide office order No. SPO-1(7)2132-34/2016 dated 13-04-2016 and Mr. Ameer Ullah, DSP HQ Chilas, was appointed as inquiry officer to probe the matter and submit his report within seven days. The said inquiry officer probed the matter and submitted the same wherein the appellants were recommended to be exonerated from the allegations, leveled against them. Being dissatisfied from the said report, respondent No. 3 rejected the same and appointed Mr. Aftab Alam, DSP legal Diamer to probe the matter and submit report within seven days. The said inquiry officer submitted his report on 13<sup>th</sup> August, 2016 wherein he recommended the appellants to face the departmental action due to failure of their professional responsibilities which caused losses to security apparatus. In the light of the said recommendations, show cause notice was served to appellants by respondent No. 3 on 13<sup>th</sup> August, 2016 vide office order No. 1(7) 5564/2016 whereby the appellants were asked to reply and personally defend the allegations within three days of receipt of show cause notice. On 15<sup>th</sup> August, 2016 respondent No. 3 issued the impugned office order No. SPD-1(11)/5578-85/2015 whereby appellants were dismissed from service on allegations that appellant namely Sana Ullah intentionally let his house to be used by terrorist Shah Faisal for terrorist activities who

opened fire at security forces during the operation and appellant Arash Khan was negligently did not come out his house at the time of operation without helping the security forces.

3. Learned counsel for appellants submitted that the appellants have nothing to do with the said terrorists and respondents No. 1 to 3 implicated the appellants in the case just to hide their own inefficiency in tracing and neutralizing the terrorists. He further contended that the appellants have been exonerated from all allegations by first inquiry report, submitted by Ammer Ullah, DSP HQ Chilas. Learned counsel for appellant further argued that in presence of such a detailed and comprehensive report, prepared after giving an opportunity to appellants of being heard, by the first inquiry officer, the appointment of second inquiry officer and his inquiry report is against the law and justice as a person cannot be punished just on basis of allegations. He further submitted that the second inquiry officer did not inquire the matter himself nor provided any opportunity to appellants to defend the allegations. Learned counsel for appellant further argued that the inquiry report of second inquiry officer has been prepared by him in a slip shod manner and as such cannot be made basis to award major punishment. Finally, learned counsel for appellant prayed for reinstatement of appellants with back benefits by setting aside the impugned office order 15-08-2016 to meet the end of justice.

4. Learned law officer GB appearing on behalf of respondents, vehemently opposed the contentions of appellants by submitting that the appellants being part of disciplined force, were duty bound to prevent the offences and share information with their officials before any criminal mishap takes place but they deliberately did not do so

despite of the fact that the terrorists namely Shah Faisal is not only first cousin of appellant Sana Ullah but also used his house for terrorist activity. He further submitted that it has been proved from the JIT report that at the time of the said operation appellant Arash Khan was present at his home but he did not help the security forces, conducting operation against the terrorist, within the vicinity of the house of the appellants which is situated at a stone throw distance. Law officer further argued that the terrorist activities by terrorists were within the knowledge of appellants before launching of operation by security agencies. He further submitted that it is unimaginable to believe that the house of one appellant is used for terrorist act and the other appellant was sitting in his house during the operation but the appellant remain oblivious of what was going on. Learned law officer GB further submitted that the appellant being member of disciplined force miserably failed to discharge their professional duties and as such they have been rightly dismissed from the service by respondent No. 3. Finally, learned law officer prayed for dismissal of instant service appeals with cost being merit less.

5. We heard arguments, advanced by both the parties, at length and perused record minutely. From perusal of record, it reveals that Law Enforcement Agencies launched an operation in Darel, District Diامر in order to neutralize the terrorists and maintain law and order in the area. After the operation, JIT constituted to probe the issue and departmental inquiry against the appellants due to their dubious and suspicious activities during the time of operation. Following the JIT report, respondent No. 3 appointed Mr. Ameer Ullah, DSP HQ Chilas as inquiry officer and ordered him to inquire the matter and submit his report. The said inquiry officer, after



conducting the inquiry, submitted his report wherein the appellants were recommended to be exonerated from the leveled allegations. Being dissatisfied from the said inquiry report, respondent No. 3 appointed Mr. Aftab Alam DSP legal, as inquiry officer and ordered him to submit his report within seven days positively. The said officer submitted his report wherein he recommended departmental action against the appellants. Resultantly, respondent No. 3 issued show cause notice against appellants on 13-8-2016 and asked them to reply the same within three days of receipt of the show cause notice. On 15-8-2016, respondent No. 3, through the impugned office order dated 15-8-2016 dismissed the appellant from service. Questions were also put forth by representing parties/appellants whether respondent No. 3 is empowered to appoint second inquiry officer when a detailed inquiry report has already been submitted by a prior inquiry officer. And whether the second inquiry officer inquired the matter as the law required by giving an opportunity to appellants to defend the allegations. It was also questioned whether the second inquiry officer himself inquired the matter or merely relied on JIT report. As far as power of the respondent No. 3 to appoint second inquiry officer is concerned, under the law and police rule, the respondent No. 3 (an authorized officer) is empowered to do so. As far as the question regarding the second inquiry report is concerned, during the proceeding of the instant service appeals, the Tribunal deemed it fit to call upon the said second inquiry officer, Mr. Aftab Alam, DSP legal, now PSO to IGP GB, to appear before this Tribunal and get his statement recorded. Accordingly, the said officer appeared in person before this Tribunal and his statement was recorded on oath and the same was reduced to writing and placed on file. In his statement, the inquiry officer admitted that he himself did

not inquire the matter due to deficiency of allowed time as he was given only one day to complete the inquiry, therefore, he relied on JIT report and submitted his report to respondent No.3. During cross examination, the said inquiry officer admitted a report, signed by Raji Rehmat SDPO, IP Darel, to be a JIT report which is available on record and on which he relied and submitted his report. It shows that the second inquiry officer himself did not inquire the matter nor he gave any opportunity to appellants to defend against the allegations. Furthermore, there is sheer contradiction in the statements of the said inquiry officer as he took the stance before this Tribunal that he was given only one day by the respondent No. 3 to complete the inquiry whereas in office order No. SPD-1(7)5453-55-2015 dated 11<sup>th</sup> August, 2016 he has been given seven days to furnish his findings. If it is presumed that the said inquiry officer relied on JIT report and submitted his recommendation still it is astonishing to mention here that the appellant namely Sana Ullah has not been directly interrogated as reflected by the JIT report and the appellant Arash Khan was said to have mere friendship with a person namely Alam, Imtiaz and Bilal r/o Tangir District Diامر. The said JIT report is ambiguous as it has not directly implicated the appellants in any terrorist activity which was to be determined by second inquiry officer but he did not do so and blindly relied on JIT report, thus he submitted his findings which paved the way for dismissal of appellant from their services.

6. Respondent No. 3 also acted in hurry as he issued show cause notice on 13-08-2016 against appellants and ordered them to reply within 3 days of the receipt of show cause notice. Instead of waiting of lapse of three days till 16<sup>th</sup> August, 2016, the respondent No. 3

dismissed the appellants from service through the impugned office order on 15-08-2016. It may be inferred from the impugned office order dated 15-08-2016 that no an opportunity of personnel hearing has been given to the appellants by respondent No. 3 before their dismissal and such personnel hearing is unfettered and legal right of appellants.

7. Moreover, it is inferred from the record of the case that both the officials/appellants have not been arrested for their alleged abetment/involvement in the terrorist incident that took place in Darel to determined the actual role of both the officials/appellant in the investigation of the criminal case registered vide case FIR No. 11/16, 324-353-427-186-140-149 PPC read with section 6/7 ATA police station Darel. As regard the Departmental action is concerned. It should have been conducted side by side. But from the perusal of the record this has not been done which was pre-requisite to criminal administration of justice however, this is not the case with the appellant as such this is lets the judicial mind to presume the appellants in the presumption of innocence.

8. An outcome is that the appellants have been implicated in the disciplinary case and dismissed from service without lawful cause and justification. As there can be no cavil that the principle of natural justice i.e. "**AUDI ALTRAM PARTAM**" is of immense importance a non should be condemned unheard.

9. **For the reasons, discussed above, the instant service appeals are hereby accepted, the impugned office order No. SPD-1(11)/5578-85/2015 dated 15<sup>th</sup> August, 2016**

**is set aside and appellants are reinstated to their services with back benefits.**

10. Order as to no cost.

11. Files be consigned to record after due completion.

**Announced**

07-12-2018

Sd/-  
**CHAIRMAN**  
Sd/-  
**MEMBER-I**  
Sd/-  
**MEMBER-II**

Judgment sheet  
**BEFORE GILGIT-BALTISTAN SERVICE TRIBUNAL  
GILGIT**

Service Appeal No. 69/2017

Date of Institution:	01-07-2017
Date of hearing:	28-11-2018
Date of Judgment:	12-12-2018

**Appellant:** Firdous Ali (Rtd) Additional Deputy Commissioner, Gilgit, Resident of Gilgit.

**Respondents:** Provincial Government through Chief Secretary GB and 02 others.

**Before:** Mr. Muhammad Kamal Member-I

**Present:** Mr. Shahid Abbas Advocate for appellant. Mr. Akhtar Jan Learned Law Officer GB for respondents.

## JUDGMENT

**MUHAMMAD KAMAL MEMBER-I:-** The instant appeal has been filed against impugned office letter No. SO(S)-1-I(35)/2016 dated 3<sup>rd</sup> January, 2017 issued by the office of Secretary Services and General Administration GB (respondent No. 2) whereby application submitted by the appellant for ante-dated/ proforma promotion from BS-17 to BS-18 has been rejected. Hence the appellant has prayed for issuing directions to the respondents to promote him from the date he assumed the charge of the post of Additional Deputy Commissioner (G) Gilgit (BS-18) on current charge basis with all back benefits/ arrears of pay and allowances.

2. Facts giving rise for institution of instant appeal are that appellant had been rendering his services as Additional Deputy Commissioner Gilgit on his own pay scale (DMS/BS-17 Assistant Settlement Officer Gilgit) and stood retired in the same pay and scale i.e. BS-17 on 05.07.2016 on attaining the age of superannuation. Before his retirement, on 02.06.2016 (one month before retirement) the appellant submitted an application to the Chief Secretary GB for promotion to next grade of 18, but that application met with the fate of rejection vide letter No. SO(S)-1-I(35)/2016 dated 3<sup>rd</sup> January, 2017 which was communicated to the appellant through Chief Minister Office on 1<sup>st</sup> June, 2017. Thereafter, the appellant approached this Tribunal with the prayers to redress his grievances.

3. The Government of Gilgit-Baltistan (respondents herein) contested the appeal by submitting parawise comments through learned Law Officer wherein it is contended that firstly, under rules

the appellant cannot claim ante-dated/ proforma promotion after retirement and secondly there were no post of BS-18 available at the time of retirement of appellant. They have further contended that when a DPC was convened on 24.04.2014 for promotion against two (02) posts of DMS, the appellant could not be promoted as he was standing at serial No. 10 of the seniority list. Similarly another DPC was convened on 04.10.2016, but by that time the appellant was retired. Learned counsel for appellant contends that before retirement of appellant, posts of BS-18 were available but the respondents with malafide intentions did not convene DPC which caused the appellant to sustain loss in terms of grade and its benefits.

4. The appeal was argued at length. Both learned counsel for appellant and learned Law Officer reiterated the facts and grounds as narrated in the preceding para. In support of their respective versions submitted case laws/ rulings of apex Courts. I have perused the relevant documents contained in the file, case laws/ rulings and also have given due consideration to the arguments advanced from both sides.

5. The learned Law Officer has contended that no civil servant can claim promotion after retirement. It is indeed, an admitted fact of law that no civil servant can claim promotion after retirement, but situations vary from case to case. The rules governing a specific issue regarding terms and conditions of service requires to be read and understood as a whole and not partly. Interpretation of this legal aspect literally means that if there did not exist any post at the time of retirement of a civil servant, who stood retired from his post on attaining age of superannuation, he cannot claim ante-dated/

proforma promotion against any post which happens to be vacant or created after his retirement. Contrarily, (a) if there exists post before retirement of a civil servant; (b) he was by all aspects eligible for promotion; and (c) he was not considered for promotion against that post for no fault on his part, then the right accrues to the civil servant to claim ante-dated/ proforma promotion against the said post lying vacant prior to his retirement. Now I am turning to second question regarding non-availability of posts of BS-18. Immediately after retirement of appellant, a DPC was convened whereby 06 DMS officers were promoted to next grade of BS-18. It is not known whether those posts were lying vacant prior to retirement of the appellant or those posts became vacant all of sudden. In order to ascertain as to whether there were or were not the posts of BS-18 at the time of retirement of appellant, respondent No. 2 (Services Department GB) on a number of dates was asked to provide the vacancy position on or before retirement of the appellant but despite repeated directions, respondent No. 2 failed to clarify the position. This act of not providing the vacancy position by respondent No. 2 shows that those posts against which 6 other officers were promoted immediately after retirement of appellant were lying vacant before retirement of appellant. Non provision of the information further casts doubt that appellant was deliberately not considered for promotion. The respondents opted to wait for retirement of appellant and then immediately after his retirement convened DPC meeting to promote other officers, 02 of whom were junior to the appellant vide Notification No. SO(S)-I-1(35)/2016 dated 5<sup>th</sup> October, 2016. This act on the part of respondents smells malafides, especially when the respondents failed to provide the vacancy position asked for, despite repeated directions of this Tribunal. The respondents have taken plea

that no civil servant can claim promotion after retirement, but it may be well known to them that the appellant had requested them to promote him during his service period. It was not a fault on the part of appellant rather it was the department concerned who delayed in processing the case of appellant. In case of non-availability of posts or other administrative issues, the application of the appellant should have been decided and informed him before his retirement but the respondents did not do so. Learned Counsel for appellant in support of his contentions, has relied upon two judgments reported at 2010 SCMR 1466 2004 PLC (C.S.) 835. In rebuttal, the Learned Law Officer contented that promotion from back date to a civil servant cannot be granted. He relied upon 2005 PLC (CS) 1400 and 2015 PLC (CS) 1278. The facts and circumstances of the judgment referred by the learned Law officer do not match with the present case. The appellant before his retirement, approached the authorities for promotion to next higher grade which he already held and performing the duties of that higher post i.e Addl. Deputy Commissioner(G) since 16th May, 2016 but the authorities concerned kept his application pending for about 7 months and then rejected it with the observation that ***"The request of the applicant has been examined and observed that there is no provision in the rules for promotion of an employee after his retirement for the purpose of pensionary benefits"***. It was known to the authorities that the appellant had requested for promotion during his service period not after retirement, but in order to apply this provision of law/ rules, the authorities waited for retirement of appellant and deprived him of his lawful right of promotion for no fault on his part. It is pertinent to mention here that Appellant was assigned the duties of Additional Deputy Commissioner(G) Gilgit (BS-18) vide Notification N0.SOS(S)-1-



2(39)/2016 dated 16th May,2016 and he has been performing the duties of that higher post with full responsibilities after relinquishing the charge of Assistant Settlement Officer (BS-17) till his retirement.

6. In addition to case laws relied upon by the learned counsel for appellant I am also cognizant with a judgment of the Honourable Supreme Appellate Court GB upon a case of provincial Government through Chief Secretary GB VS Dr. Muhammad Zaboora reported at 2016 GBLR 106 which is direct applicable to the appeal in hand. For ease of reference, relevant portion of the judgment is reproduced below:-

**"Employee was assigned the duties of Director Animal Husbandry on current charge basis and he retired after about one year from said assignment on attaining the age of superannuation in the post of Deputy Director. Service Tribunal while accepting appeal of the employee directed the department to prepare working paper for promotion of the employee from the date of assigning the duties of Director Animal Husbandry to the date of his retirement alongwith all back benefits ---Judgment by the service Tribunal was well reasoned and well founded --- No interference was warranted in the said judgment --- petition for leave to appeal was converted into appeal and was dismissed in circumstances "**

7. In view of what has been discussed above, appeal of the appellant is accepted with the direction to the respondents to promote the appellant to BS-18 from the date when he was transferred against the post of Additional Deputy Commissioner Gilgit i.e. 16<sup>th</sup> May, 2016 with all back benefits. Order accordingly.

8. No order as to costs.

9. File be consigned to record after completion.

**Announced**

12-12-2018

Sd/-  
**Member-I**

Judgment/ sheet  
**BEFORE GILGIT-BALTISTAN SERVICE TRIBUNAL  
GILGIT  
Service Appeal No. 68/2017**

Date of Institution:	26.03.2017
Date of hearing:	06.11.2018
Date of Judgment:	12.03.2019

**Appellants:** Muhammad Naeem s/o  
Muhammad Ghulam etc. Foremen  
at GPWD Gilgit.

**Respondents:** Provincial Government through  
Chief Secretary GB & 08 others

**Before:** Mr. Muhammad Kamal Member-I

**Present:** Mr. Zafar Iqbal Advocate for  
Appellants.  
Mr. Akhtar Jan, Law Officer GB for  
respondents No. 1 to 6 assisted  
by Mr. Behram Khan, Advocate,

Legal Advisor W&P Gilgit.  
Mr. Shahid Abbass Advocate for  
respondents No. 7 to 9.

## **JUDGMENT**

**MUHAMMAD KAMAL MEMBER-I:** The appellants in this appeal jointly claim promotion/ adjustment against the post of Foreman BS-09 in the same way as has been done in the case of other employees of Water & Power Department GB who have been promoted/ adjusted against the post of Supervisors BS-09 in Water & Power Department GB. The appellants too want to be treated in the same way by promoting them against the post of supervisors BS-09.

1. Brief facts contained in memo of appeal as well as those unearthed during the course of proceedings/ arguments are that the appellants are working as Foremen in Water & Power Department GB. Respondents No. 7 to 9 have been adjusted/ re-designated against the posts of Supervisors BS-09 on 4<sup>th</sup> July, 2013 by Chief Engineer Water & Power Department GB. Prior to the regularization, these respondents were appointed on work charge basis on different cadre. When the respondents were adjusted/ redesignated, the appellants felt aggrieved as they claim to be entitled for adjustment/ promotion against the posts of Supervisors BS-09 on seniority basis. The appellants submitted an application to the Secretary Water & Power Department GB against the redesignation/ adjustment of respondents No. 7 to 9 by ignoring the appellants on the basis of seniority. The Secretary Water & Power Department GB constituted a Committee for conducting an inquiry and to submit its findings/ report. The Committee, after conducting inquiry, submitted its report wherein charges/ claim of appellants have been held to be baseless.

Accordingly, the Secretary Water & Power Department GB confirmed redesignation/ adjustment of respondents No. 7 to 9 with issuance of warning to the appellants not to level such type of baseless charges in future. Thereafter the appellant approached this Tribunal by way of a joint appeal in hand.

2. Upon admission of appeal, notices were issued to the respondents including respondents No. 7 to 9. The respondents submitted their respective parawise comments; respondents No. 1 to 6 through learned Law Officer, while respondents No. 7 to 9 by their counsel wherein all the respondents have categorically denied relief claimed for by the appellants. After completing all codal formalities, the appeal finally came up for arguments on 06.11.2018.

3. Arguments in pro and contra heard, perused the available record and case law cited by both the parties in supports of their arguments as well. Before going into the merit of the appeal, legal position must be cleared to avoid unnecessary hassle. There are some mandatory requirements under GB Service Tribunal Act, 2010 which are essentially required to be adhered to before invoking jurisdiction of this Tribunal. The Service Tribunal, under the law is an appellate Court, therefore, this Tribunal can only entertain matters brought before it in the shape of appeal against any final order original or appellate. In the appeal in hand, the appellants have not filed any departmental appeal against confirmation of redesignation/ adjustment of respondents No. 7 to 9 by respondent No. 2 (Secretary Water & Power). The application as claimed by the appellant to be departmental appeal cannot be termed as a departmental appeal rather that is a simple application. The appellants did not submit any

departmental appeal before appellate forum i.e. authorities next higher to the Secretary Water & Power Department GB. Besides, even if the said application is treated to be a departmental appeal, appeal of the appellants is hopelessly time barred, regarding which no application for condoning the delay has been filed by the appellants. The Secretary Water & Power Department GB confirmed the redesignation/ adjustment of respondents No. 7 to 9 on 08.03.2017 while the appeal has been filed before this Tribunal on 22.09.2017 i.e. 6 months 14 days later. Under the provisions of GB Service Tribunal Act, 2010, every appellant is required to file appeal before Service Tribunal within a period of 120 days from the date of submission of departmental appeal. Hence, it is obvious that no proper departmental has been filed. Without prejudice to the above legal position, it is further stated that under section 5 of Civil Servants (Appeals) Rules, 1980, there is a clear bar with regard to filing of joint appeal before Service Tribunal. It is mandatory obligation upon the aggrieved civil servant that before invoking jurisdiction of this Tribunal mandatory requirements under GB Service Tribunal Act, 2010 and other laws be fulfilled. This Tribunal is bound to protect provisions of the GB Service Tribunal Act, 2010 and entertain grievances of civil servants which are brought strictly in accordance with the provisions of this Act and other laws in accordance with the prescribed manner, otherwise action taken in matters which do not fall within the ambit of GB Service Tribunal Act, 2010 or other relevant law or overlooking its provision, will stand nullify in the eyes of law. It is settled principle of law that if law provides that a particular thing is to be done in a particular manner/ way, it is to be done either in the same way or not at all. The case law cited by counsel for respondents No. 7 to 9, being judgments of FST and Sindh Service

Tribunal, though have persuasive effect but are relevant to the appeal in hand with regard to joint appeal. The same are reported as 2005 PLC (C.S.) 1395 PLJ 1997 Tr.C (Services) 441. The learned counsel for appellants has cited a judgment of the Hon'ble Chief Court GB in Writ Petition No. 76/2012. The decision in this petition is regarding a case where the petitioner has been overlooked for promotion while his junior one has been promoted. The decision has been challenged before the Hon'ble Supreme Appellate Court and what happened after its filing before the Hon'ble Supreme Appellate Court is not known. Therefore this decision in this petition cannot be equated with the present appeal. The present case is of re-designation/ adjustment of respondents from work charge footing. Since the instant appeal is suffering from various legal/ procedural flaws, therefore these legal/ procedural flaws cannot be overlooked/ ignored altogether.

4. In the view of foregoing position, the appeal stands dismissed for the reason that firstly, it is a joint appeal; secondly, there is no departmental appeal before approaching this Tribunal; and thirdly the appeal is barred by time. Consequently, appeal stands dismissed with no order as to costs.

5. File be consigned to record after its completion.

**Announced:**  
**12.03.2019**

Sd/-  
**Member-I**

Judgment sheet  
**BEFORE GILGIT-BALTISTAN SERVICE TRIBUNAL  
 GILGIT**

**Service Appeal No. 43/2018**

Date of Institution:	28.06.2018
Date of hearing:	14.12.2018
Date of Judgment:	15.03.2019

Appellant: Dr. Fida Hussain ENT Specialist BS-18  
 DHQ Hospital Gilgit-Baltistan, Gilgit

Respondents: Provincial Government through Chief  
 Secretary GB & 03 others

Before: Mr. Muhammad Kamal Member-I

Present: Ms. Mir Zeeshan Akhlaque and Zulfiqar  
 Hussain, Advocates for Appellant  
 Mr. Akhtar Jan, Law Officer GB  
 assisted by Mr. Ishtiaq Ahmed, Rep. of  
 Health Department GB.

**JUDGMENT**

**MUHAMMAD KAMAL MEMBER-I:-** Through the appeal in hand, the appellant seeks relief by way of promotion as SMO BS-19 by setting aside and declaring null a void the impugned Notification No. SO(S)-I-1(35)/2016 dated 9<sup>th</sup> June, 2016 issued by Services Department, GB whereby the appellant instead of promoting to APMO BS-19 has been transferred against the post of ENT Specialist BS-18 while his other colleague doctors have been promoted to the post of APMO BS-19.

2. Facts giving rise for institution of instant appeal are that appellant has been inducted in Health Department GB as Medical

Officer BS-17 in the year 1998 through FPSC. He was promoted to the post of Senior Medical Officer BS-18 in the year 2008. The appellant got specialization in ENT in the year 2003. In the year 2010, the appellant applied for change of cadre from SMO BS-18 to that of ENT Specialist BS-18 through an application addressed to the Secretary Health GB. No action on his application appears to have been taken by the concerned authorities. This application was followed by another application in the year 2011 that too remained unattended. The appellant submitted another application in the year 2013 containing the same request as was contained in his previous two applications. However, on 29<sup>th</sup> September, 2014 the appellant was informed that the Chief Secretary GB agreed to the change of cadre through a DPB as and when convened. A DPB was convened on 9<sup>th</sup> June, 2016 whereby 25 SMOs BS-18 and MOs BS-17 have been promoted to BS-19 and BS-18 respectively while the appellant was transferred to specialist cadre in his own grade BS-18 instead of promoting him to BS-19. This action on the part of Health Department and Services Department aggrieved the appellant as he was put to sustain double jeopardy that is so because on the one hand, he lost his promotion from SMO BS-18 to Additional Principal Medical Officer BS-19 at the verge of his promotion and on the other hand, by transferring at this belated stage, he stood junior to other Specialists of BS-18 in the seniority list of Specialists. The appellant was at serial No. 7 of the seniority list of SMOs, while junior SMOs have been promoted to BS-19 by superseding the appellant. Against this act of injustice on the part of the concerned departments, the appellant first resorted to file a departmental appeal which remained not responded then he approached this Tribunal with the appeal in hand.



3. Upon admission of appeal and issuance of notices to the parties, the provincial government (Respondents) submitted their parawise comments through learned Provincial Law Officer wherein the plea/ version taken by appellant in support of his claim has been vehemently denied on facts and grounds. The learned Law Officer contends that the appellant cannot claim promotion against the post of SMO BS-19 as his cadre was changed as ENT Specialist BS-18 on his own request besides his appeal is time barred. On the other hand, the learned counsel for appellant contends that the departments concerned have deliberately deprived the appellant from availing promotion against the post of Additional Principal Medical Officer BS-19 by transferring him to the post of ENT Specialist BS-18 that too when the appellant had become eligible against the post of APMO BS-19 being senior amongst other SMOs. He further contends that through a notification referred to hereinabove, 25 doctors have been promoted, while through the same notification, instead of promoting the appellant, he has been transferred/ posted to the post of ENT Specialist BS-18. He further maintains that even if the appellant was to be considered against the post of ENT Specialist on his own request (which request was made in the year 2010), he should have been transferred/ posted as ENT Specialist BS-19 with retrospective effect instead of ENT Specialist BS-18 or even his posting/ transfer should have been actuated from back date so that the appellant could have secured his better position in seniority list of the Specialists.

4. After having gone through the record contained on file and considering the arguments advanced from both the sides, I have come to the conclusion that appellant has been treated unfairly in a fair manner on a technical pretext. There is no doubt that the

appellant has been deliberately dragged out from the seniority list of SMOs by transferring to the post of ENT Specialist BS-18 and placed his seniority at the bottom of junior specialists. Furthermore, though his cadre has been changed, but he still performs the duties of SMO BS-18 which on the face of it smells *malafide* on the part of concerned departments. After issuance of notification, the appellant should have been issued separate order containing place of posting, but not. The Pay Slips issued by AGPR attached with the appeal still show nomenclature of post of appellant as SMO BS-18. In addition to above, the appellant had made request for change of cadre in the year 2010. What were the circumstances which compelled the authorities concerned to consider application for change of cadre after a long period of 6 years that too when the appellant was at the verge of availing next higher position i.e. APMO BS-19. Meanwhile, he was technically pulled out and posted as ENT Specialist BS-18 without extending any benefit, ironically from BS-18 to BS-18. In this way he was put to sustain double jeopardy as he has been made to sustain loss in term of grade and losing seniority position amongst Specialists BS-18 as well.

5. I am not convinced by the arguments of learned Law Officer and plea taken by the respondents in their parawise comments that there was no any post of ENT Specialist at the time of submission of application by the appellant against which the appellant could have been adjusted. It is evident from the letter of FPSC that a post of ENT Specialist for GB was being advertized but the same was going vacant due to non-availability of ENT Specialists from GB Region. The appellant had completed diploma in the year 2003 and was ready to serve in that field but it was the department who did not accede to

his request. It appears to be an obvious discrimination and injustice done to the appellant that amounts to play with his self-respect by depriving him from next higher grade of 19 and further placing him at the bottom of his junior specialist of BS-18 in the seniority list. Astonishingly, when the DPB meeting convened, the appellant stood at serial No.7 in seniority list of SMO Cadre where through a single Notification Vide No. SO(S)-I-1(35)/2016 dated 9<sup>th</sup> June, 2016, 25 doctors (SMOs) were promoted to BS-19 while the appellant being in the same cadre and standing at the serial No. 7 (senior to other promotees) in the same seniority list was placed in transfer to specialist cadre in his own grade(BS-18) instead of promoting him to BS-19.

6. The legal ground taken by the learned Law Officer GB of being the appeal time barred is not sustainable. Perusal of file record shows that the appellant has approached this Tribunal exactly within the prescribed time. The learned Law Officer as well as departments concerned in their parawise comments further submit that it was the appellant who himself had requested for change of cadre, hence whatever the departments did has been done in accordance with wishes/ choice of appellant. To this effect it is not denied, but he had not made the request in the year 2016 rather the same was made in the year 2010. If the department was so sincere with the appellant, his application could have been decided immediately after its submission in the year 2010. I am unable to find any weight in the submissions of learned Law Officer and the departments concerned rather a blind man can also see the blatant injustice/ discrimination done to the appellant. In view of above situation, there leaves no corner for hesitation to hold that it is a plain matter of blatant

*malafide* and biased, it would be more appropriate to say, poisoned intentions of the departments concerned that the appellant has been deliberately compelled to sustain losses from both ends i.e. depriving him from granting next higher position as APMO BS-19 and transferring his services against the post of ENT Specialist BS-18 at a very belated stage which placed seniority position of appellant below to the position of his junior ENT Specialists BS-18. It is not understood why the departments concerned pulled out the appellant from a better position in the seniority list and resorted to promote his juniors ignoring legitimate right of promotion of the appellant.

7. In view of foregoing discussion, appeal of the appellant is accepted with the direction to the concerned departments to promote him as Additional Principal Medical Officer BS-19 in accordance with his seniority position SMOs BS-18 w.e.f. 9<sup>th</sup> June, 2016 with all back benefits. No order as to costs.

8. File be consigned to record after completion.

**Announced:**  
**15.03.2019**

Sd/-  
**Member-I**

Judgment sheet  
**BEFORE THE GILGIT-BALTISTAN SERVICE TRIBUNAL**

Appeal No. 49/2017.

Date of institution	04-10-2017
Date of hearing	13-03-2019
Date of judgment	25-03-2019

APPELLANTS: 1. FC Abir Khan S/O Sadiq R/O Gupis Thesil Gupis District Ghizer serving as FC in KKSF in Gojal Khyber  
 2. Muhammad Yaqoot Shah S/O Murad Shah R/O Yaseen presently serving in KKSF  
 3. FC Ijlal Hussain S/O Ghazan R/O Summal Gupis Tehsil Gupis District Ghizer  
 4. FC Iqbal Hussain S/O Asman Shah R/O Golodass Tehsil Punial Serving in KKSF  
 5. FC Batiyar Khan S/O Shookur Khan R/O Ishkoman Tehsil Ishkoman District Ghizer serving in KKSF.

RESPONDENTS: Provincial Govt. through Chief Secretary GB and 08 others.

BEFORE: Mr. Ali Sher, Tst. Member-II

PRESENT: Mr Asad Ullah Khan Advocate for appellants.

M/S Akhtar Jan Law Officer GB for respondent No. 1 to 4 and Mr. Naeem Akhtar Jan advocate for Respondents No. 5 to 9.

## **JUDGMENT**

**ALI SHER, Tst. MEMBER-II:-** Through this instant joint service appeal, the appellants assailed the impugned office order No. SST/GZR-1(3) 2854-60/2017 dated 1<sup>st</sup> March 2017, whereby the respondent No. 5 to 9 have been promoted to the posts of HCs (BPS-07 by respondent No. 4. Appellants stated in the memo of appeal that they are most seniors to mentioned respondents except respondent

No. 8 who although was appointed in the year 1999 but completed his lower school course in the year 2015 whereas the appellants were appointed in the year 2003 and completed their lower course in the year 2013. Appellants stated that the impugned office order is based on mala fide, intent and injustice thus prayed for setting aside the same by declaring the appellants seniors to respondent No. 5 to 9 with all back benefits according to B & C list, issued by the respondent No. 4 in the year 2013.

2. Respondents filed their separate parawise comments whereby they vehemently opposed the contentions of appellants by stating that mere seniority cannot be claimed as matter of right for promotion and list C varies from time to time according to efficiency and performance of incumbent. Respondents stated that promotion of respondent No. 5 to 9 is in accordance with law and police rules and no injustice has been committed by respondent No. 4 in promotion of respondent No. 5 to 9. Respondent prayed for dismissal of instant service appeal being meritless and time barred.

3. Learned counsel for appellant argued that appellants being senior are entitled for promotion to the posts of HCs. He further submitted that appellants are not only seniors to respondent No. 5 to 9 but also, except respondent No. 8, who was appointed in the year 1999 but he completed his lower school course in the year 2015, completed their lower courses before respondent No. 5 to 9. Learned counsel for appellants contended that list C which has been issued by respondent No. 4, contains the names of appellants at the top of the list but despite these appellants have been mala fidely deprived of their right of promotion by respondent No. 4. He further submitted that the said list C and B gains finality and still intact since it has not

been replaced by another. Therefore, only appellants are entitled for promotion to the posts of HCs. Finally learned counsel for appellant prayed for setting aside the impugned office order dated 1<sup>st</sup> March 2017 by declaring appellants senior to respondents No. 5 to 9 with all back benefits.

4. Learned law officer GB assisted by counsel for respondents No. 5 to 9 argued that respondent No. 5 to 9 have been promoted to HCs by respondent No. 4 in accordance with law and after fulfilling all codal formalities. No discrimination has been committed in this regard hence claim of the appellants is baseless and false. He further submitted that seniority cannot be claimed as base for promotion, and there are other requirements that have to be met by incumbent. He submitted respondent No. 5 to 9 were qualified and eligible in all respect and promoted accordingly. He further argued that the claim of the appellant is baseless, concocted and based on mala fide intent. He submitted that appellants have no cause of action against respondents. The learned Law Officer GB further submitted that the instant service appeal is miserably time barred as it has been instituted before this tribunal after more than four months of departmental appeal. He submitted that this appeal is not maintainable as being time barred and meritless. He argued that appellants have been negligent in presenting the instant service appeal within prescribed/stipulated period as the law aids vigilant not indolent. Finally learned law officer GB prayed for dismissal of the service appeal with costs.

5. I heard the arguments, advanced by the counsels for parties, with due consideration and perused record minutely. From perusal of record, it transpires that appellants were appointed in the year 2003

vide office order No. SP/GZR-1(2) /1867 -167 /03 dated 8<sup>th</sup> April 2003. Appellants completed their lower school course in the year 2012 and 2013 respectively. List B and C have been issued by respondents No. 4 and attested by DSP Crime Branch Gilgit. In the said list C, the name of appellants are appearing in the serial No. 5 to 9 whereas no names of respondents, except name of respondent No. 7, are appearing in the said list. Furthermore, this said list C has neither been rebutted or disproved nor replaced by respondents. It is also established, that except respondent No. 6, who completed his lower course in the year 2015, the appellants completed their courses in the year 2012 and 2013, the mentioned respondents have not even submitted their alleged lower course certificates which are prerequisite for promotion, alongwith parawise comments. It shows that appellants are not only seniors to respondents (except respondent No. 7 who though appointed in the year 1999 but also completed lower course in 2015) but also completed their lower course before respondents.

6. Police force is a discipline force no favoritism should be given to anyone. All personnel should be treated equally by concerned authority. If any personal shows extra ordinary performance he should be appreciated by the reward or award. Respondent No. 5 to 9 no doubt might have showed extra ordinary performance it does not mean that they will violate seniority in service of other appellants, who otherwise are eligible for promotion. No out of turn promotion should be given to police personal on the basis their extra ordinary performance as such out of turn promotion is depriving of those who are legally entitled for promotion by meeting the seniority cum fitness criteria. This view has been discussed by the honorable Supreme



Court of Pakistan in its judgment reported as 2017 SCMR 206 whereby the larger bench of the honourable apex court of Pakistan has held that out of turn Promotions were inherently destructive to the rights of other officers who, though senior and entitled to be considered for promotion before the beneficiaries of out of turn Promotions, were bypassed as a result of such out of turn Promotions. Each out of turn Promotion necessarily had are responding effected officers, who suffered due to such exercise despite of being completely blameless. Out of turn Promotion is not only against constitution but also against the injunctions of Islam. Reward or award should be encouraged for meritorious public service but should not be made basis for Out of Turn Promotion. In others identical cases i.e Muhammad Nadeem Arif vs IG of police reported as 2011 SCMR 408 in the case of Ghulam Shabbir vs Muhammad Munir Abbasi reported as PLD 2011 SC 516 it was held that brunt of out of turn promotions were always borne by the individual officers who were bypassed.

7. The honourable apex court of Pakistan was also pleased to hold in case titled Aman Ullah vs Government of Baluchistan and two others reported as 2017 SCMR 192 that act of extending favour and conferring benefits of promotions was not only against fundamental rights of promotions of appellant's peer's on merit but was also of glaring example of nepotism and undue favour.

8. **The honourable Gilgit-Baltistan Supreme Appellant Court in its judgment in SMC No. 10/2017 titled shoulder/ out of turn promotions in GB Police**, dated 05-04-2018 has held that the promotions to the Civil servants could only be granted on the basis of their seniority cum fitness after completing certain legal

formalities by the competent authority as prescribed by Civil servant rule as well as Police service rules. The terms life and liberty is significant as it covers all the facets of human existence. The inhabitation against its deprivation extends to all those limbs and faculties by which life is enjoying the term life includes reputation, status, and all other ancillary privileges which the law confers upon the citizen.

9. As for as the question of limitation for filing this instant service appeal before this tribunal after laps of time is concerned, the instant service appeal has been filed after laps of statutory period yet such delay has been condoned and ignored by superior judiciary of Pakistan on the ground that suits should not be dismissed on technical grounds but be decided on merit. Honourable Supreme Court of Pakistan in its judgment, reported as PLD 2003 SC 724 held that decision of the cases on merits always to be encouraged instead non-suiting the litigants for technical reasons including on limitation. Similarly, appellants filed their service appeal jointly instead of separate appeal, however this tribunal has decided many such appeals of the appellants who filed their service appeal jointly, such as in a service appeal titled Asghar Shah, which was decided by this Tribunal and has also been up held by the Hon'ble Supreme Appellate Court GB as referred to above in Asghar Shah, and 52 others.

10. For the reasons, discussed above, the instant service appeal is hereby decreed, the impugned office order No. SST/GZR-1(3) 2854-60/2017 dated 1<sup>st</sup> March 2017 is set aside and respondents No. 1 to 4 are directed to promote the appellants to the posts of HCS BPS – 07 being senior FCs to the respondents No. 5 to 9 alongwith all back

benefits. However, respondents No. 5 to 9 be considered for promotion on priority basis subject to availability of posts/vacancies.

11. No order as to cost.
12. File be consigned to record after due completion.

Sd/-  
**Member-II**

Judgment sheet  
**BEFORE GILGIT-BALTISTAN SERVICE TRIBUNAL**  
**GILGIT**  
**Service Appeal No. 39/2018**

Date of Institution:	05.05.2018
Date of hearing:	06.03.2019
Date of Judgment:	05.04.2019

Appellant: Shaheen Khan LDC BPS-11 GB  
Police

Respondents: Provincial Government through  
Chief Secretary GB & 05 others

Before: Mr. Muhammad Kamal Member-I

Present: M/S. Mir Zeeshan Akhlaque and  
Zulfiqar Advocates for Appellant  
Mr. Akhtar Jan, Law Officer GB  
for respondents assisted by rep  
Mr. FaridUllah DSP Legal Police  
Department GB.

**JUDGMENT**

**MUHAMMAD KAMAL MEMBER-I:-** This judgment shall dispose off the above tilted appeal filed by the appellant against the impugned Order No. IGP-I(20) EX-1/68-72/2017 Dated 01.01.2018

whereby an order changing cadre of the appellant has been cancelled and the appellant has been reversed to this previous position.

2. Brief facts narrated in memo of appeal are that the appellant was initially appointed as FC/Computer Operator in Basic Pay Scale (BPS)-05 and later on his services were transferred from executive cadre to ministerial cadre as LDC BS-07 on 15.05.2014 in the year 2016, later on the post was further upgraded to BS-11. Since then he has been performing his duties as LDC in Police Department GB. However, on 01.01.2018, office order whereby services of the appellant were transferred from executive cadre to that of ministerial cadre was withdrawn, purportedly upon recommendation of inquiry committee but no inquiry report has been produced or placed on record. The appellant claims that there are other FCs whose cadres have also been changed from executive cadre to ministerial cadre and are still working in the same ministerial capacity while he has been pinpointed and malafidely dragged out from the ministerial cadre. The appellant has placed on record two such precedents, one regarding Waseem Abbas and another one is Abid Hussain by providing office orders supported with their pay slips under which both the officials were similarly transferred from the executive cadres (FCs) to ministerial cadre (LDCs) but still they are enjoying the ministerial positions. The appellant submitted appeal to the respondents for reviewing the decision taken against him but the same remained unattended.

3. Upon admission of appeal, notices were issued to the respondents. The respondents submitted their parawise comments through learned Law Officer wherein they categorically denied the

relief claimed for, by the appellant on various legal grounds. The appeal finally came up for arguments on 06-03-2019.

4. Arguments pro and contra heard in considerable length. Perused the available record and case laws cited by both the parties in supports of their arguments as well. As explained in para-2 above, cadre of three constables were changed from executive to ministerial cadre (LDC) in the year 2014 by authorities of Police department GB through issuing different orders. In compliance with that office orders, the employees started performing their respective duties accordingly. On 1<sup>st</sup> Jan 2018, office order in respect of the appellant has been withdrawn from the date of its issue through an office order impugned in this appeal. This action was taken by the department concerned without informing the appellant. Surprisingly, the appellant was directed to explain his position after 15 days of withdrawal of office order (impugned). The appellant should have been dealt with in accordance with law by issuing him show cause notice, affording him opportunity of personal hearing to explain his position before he is proceeded against. While in the case in hand the Police authorities have failed to adhere to legal formalities before taking such stern action against the appellant and he has been singled out from the three employees whose cadres have also been changed. This action of singling out the appellant on the part of Police authorities, smells blatant malafides and discrimination. For a considerable period of 04 years, the Police authorities remained in deep slumber and all of sudden woken up to take action against the appellant alone while there were other instance too towards which the Police authorities did not pay any heed if they felt to remove illegal adjustments against the posts of LDCs. For such a long period, various duties of LDC BS-

11 has been taken from the appellant hence in this way, legal right has been accrued to the appellant against the post of LDC BS-11. Therefore, no doubt, principle of locus poenitentiae would be attracted in such situation. The counsel for the appellant has cited number of case laws which supports the case of appellant which are reported at:- **1996 SCMR 1350, 2001 SCMR 1320, 2007 PLC(CS) 364 and 2007 PLC(CS) 145.**

5. Keeping in view of above discussions, the appeal is accepted by setting aside the impugned office order No, IGP-I(20)Ex-I/68-72-2017 dated 01-01-2018 and the appellant's position as LDC BS-11 is restored w-e-f 1<sup>st</sup> Jan 2018 with all back benefits . No order as to cost.

6. File be consigned to record after completion.

Announced:  
05.04.2019

Sd/-  
**Member-I**

Judgment sheet  
**BEFORE GILGIT-BALTISTAN SERVICE TRIBUNAL  
GILGIT**  
Service Appeal No. 20/2018  
&  
Service Appeal No. 19/2018

Date of Institution:	09.04.2018
Date of hearing:	06.03.2019
Date of Judgment:	05.04.2019

**Appellants:** Abrar Ahmed (Alhmad BPS-07)  
ATC-1 GB (in Appeal  
No.20/2018)& Zafar Ahmed Khan  
(Nazir BPS-05) ATC-1 GB (in

Appeal No. 19/2018).

**Respondents:** Provincial Government through  
Chief Secretary GB & 05 others

**Before:** Mr. Muhammad Kamal Member-I

**Present:** M/s Mir Zeeshan Akhlaque and  
Zulfiqar Ali Advocates for  
Appellants  
Mr. Akhtar Jan, Law Officer GB  
for respondent No. 1 to 6.

### **JUDGMENT**

**MUHAMMAD KAMAL MEMBER-I:-** Through this single judgment, I intend to dispose of the above two appeals being identical filed by two employees of Anti Terrorism Court No.1 GB for upgradation of their posts to bring them at par with their other counterparts in GB Judiciary.

2. Brief facts narrated in the memo of appeals that the appellants are working as Nazir BS-05 and Ahlmad BS-07 in Anti Terrorism Court No.1 GB respectively. At the time of promotion of appellants to the said posts, those posts were already upgraded to BS-09 in subordinate judiciary of Gilgit-Baltistan. Later on in the year 2013, the Hon'ble chief court GB was pleased to further upgrade these posts to BS-14 in District & Sessions Courts of GB. The appellants claim that as per judgment of the Hon'ble Supreme Court of Pakistan, since the Anti Terrorism Courts enjoys the status equal to District and Sessions Court, therefore, all posts existing in these two courts should carry equal basic pay scales. Administratively, the Anti Terrorism Court falls within domain of Home and Prisons Department GB, consequently all matters whether they be policy matters or matters regarding terms

and conditions of employment of employees of Anti Terrorism are being dealt with by Home and Prisons Department GB. Initially, the appellants tried their best to get relief by way of applications to the Judge Anti Terrorism Court No.1 GB who wrote to the Secretary Home and Prisons GB, with strong recommendation for considering upgradation of these posts followed by reminders from time to time. A committee was constituted to consider upgradation of posts of all departments of GB. The committee convened its meetings and took upgradation cases of all govt. departments, wherein the Secretary Home & Prisons Department GB, being administrative secretary of Anti Terrorism Court GB disagreed to upgradation of posts of Nazir and Ahlmad of ATC-I GB. Being aggrieved and dissatisfied with decision of Home Secretary GB, the appellants filed a writ petition in the Hon'ble Chief Court GB. The Hon'ble Chief Court GB dismissed the petition by holding that the petition pertains to policy matter and the competency to upgrade the posts rests with the competent authority. However the Hon'ble Court left the appellants at liberty to resort to legal remedy in this Tribunal, if so desired. Hence, the appellants have approached this Hon'ble Tribunal with appeals in hand.

3. Upon admission of appeal, notices were issued to the respondents. The respondents submitted their respective parawise comments through learned Law Officer they have categorically denied relief claimed for by the appellants. After completing all codal formalities, the appeal finally came up for arguments on 06.03.2019.

4. Arguments in pro and contra heard, perused the available record and case law cited by both the parties in supports of their arguments as well. It is an admitted state of fact that upgradation of



posts in line departments of Govt. of GB is a policy matter and power to upgrade the posts rests with the competent authority and this Tribunal cannot interfere with policy matter of government departments. However, if there prevails discriminatory element amongst equals, then this Tribunal is a competent forum to enforce equality amongst equals and pass such orders for removing the disparity/discrimination. As per decision of the Supreme Court of Pakistan, ATC is a court having a status equal to District and Sessions Court, therefore, posts of the same cadre should carry equal basic pay scales in both the Courts. The posts of Ahlmad and Nazir wherever exist involve same nature of duties/ job description and qualification, hence the said posts should have equal basic pay scale. Besides above, recently, the post of Ahlmad BS-09 of this Tribunal has also been upgraded to BS-14. In no other govt. departments, these two posts exist except in Courts, therefore these posts must carry equal basic pay scale. Prima facie, there will be discrimination with the appellants if they are left without any relief and the same will further be failure to enforce right of equality amongst equals. The Secretary Home has failed to give plausible reason/ ground while declining upgradation of these posts and has misunderstood that the appellants claimed upgradation on the analogy of Chief Court, rather it was on the analogy set out by the Hon'ble Chief Court for its subordinate judiciary.

5. In view of foregoing, the appeal is accepted with the direction to the concerned departments to remove the anomaly/ disparity by upgrading the posts of Nazir BS-05 to BS-14 and Ahlmad BS-07 to BS-14 with a view to bring these posts at par with posts of

subordinate judiciary of GB. Appeal accepted with no order as to costs.

6. File be consigned to record after its completion.

Announced:  
05.04.2019

Sd/-  
**Member-I**

Judgment sheet  
**BEFORE THE GILGIT-BALTISTAN SERVICE TRIBUNAL**

Appeal No. 513/2014.

Date of institution	26-12-2014
Date of hearing	07-03-2019
Date of judgment	16-04-2019

APPELLANTS: ASI Nasir Ud Din and 210 others  
Police Department GB.

RESPONDENTS: Provincial Govt. through Chief  
Secretary GB.

BEFORE: Mr. Muhammad kamal Member-I

Mr. Ali Sher, Tst. Member-II

PRESENT: Mr. Amjad Hussain Advocate for  
appellants.

M/S Akhtar Jan Law Officer GB for  
respondent.

**JUDGMENT**

**MUHAMMAD KAMAL MEMBER-I:-** Brief facts leading to the filing of the instant joint appeal, are that the appellants are technical

staff/employees of Police Department GB who were paid and allowed technical allowance @ 20 % of pay per month till 2003. On 22-07-2003, the said allowance of appellants was discontinued/stopped by respondents. Appellant preferred departmental representation on 17-10-2014 but in vain finally, appellants filed the instant service appeal which was received by the office of this Tribunal on 26-12-2014, Appellants prayed for restoration of the technical allowance of 20% of pay from the date of its discontinuation i.e 22-07-2003 with arrears.

2. Respondents submitted their separate para wise comments whereby they vehemently opposed the contention of appellant on factual as well as legal grounds by stating that the said allowance has been seized/clubbed into basic pay scale by revised pay OM No. F. 1(5) Imp/2001 dated 04<sup>th</sup> September 2001. Respondents stated in their para wise comments that they discontinued the said technical allowance of appellant in the light of the directives given by Federal Finance Division Islamabad and controller general accounts Islamabad. Respondents stated that the said special allowance of 20% has been seized in para No. 9 of the said OM dated 04<sup>th</sup> September, 2001. Therefore, the appellants are not entitled for any special allowance of 20% which was allowed to them before it was seized.

3. Learned counsel for appellant argued that the said special/technical allowance has neither been clubbed into basic pay by the said revised pay OM nor seized. He further stated that the said technical allowance is also not covered by para 15 of said OM dated 04<sup>th</sup> September, 2001. Learned counsel for appellant contended that the said technical allowance is in addition to other special allowances, provided in para 15 of said OM. He further argued that when the said

technical allowance of technical staff of Federal Islamabad was discontinued in wrong presumption of para 15 of the said OM dated 04<sup>th</sup> September, 2001, the aggrieved staff approached Hon'ble Federal Service Tribunal Islamabad which after hearing the parties allowed the said technical allowance to technical staff of Federal employees of Police Department by its judgment dated 02-04-2009. Learned counsel for appellant further contended that since the Federal Employees of Police Department is availing the said technical allowance, Therefore, stoppage/discontinuous of the same to technical staff of police department of GB is against the law and it is malafied of the respondent. Finally learned counsel for the appellant prayed for restoration of the technical allowance @20% of pay from the date of discontinuation i.e 22-07-2013 with arrears to meet the end of justice.

4. Learned Law Officer appearing on behalf of respondents contended that the said technical allowance has been seized by the OM dated 04<sup>th</sup> September, 2011 and hence appellants are not legally entitled for any allowance. He further submitted that the appellant are entitled for those allowances which are covered/ provided by para 15 of OM dated 04<sup>th</sup> September, 2011. The said technical allowance is covered by para 15 of said OM. Hence appellant cannot claim any further allowance unless and until it is given by any provision of law. Learned law officer GB further argued that the departmental appeal as well as the instant service appeal of appellant is miserably time barred as the said technical allowance has been discontinued on 22-07-2003 whereas the departmental appeal and service appeal has been filed in the year 2014. He argued that after lapse of more than 11 years filing of departmental appeal as well as service appeal,

cannot be condoned by any provision of limitation Act or other law. Therefore, the instant service appeal as well as departmental appeal is time barred. Learned law officer placed his reliance on 1995 SCLR 1505. He further contended that the instant joint service appeal is not maintainable as joint appeal is not permissible under the law when the petitioners are more than one. He argued that the petitioners wrongly filed this joint service appeal instead of separate service appeal learned law officer placed his reliance on 2005 PLC (CS) 1395. Finally, learned law officer GB prayed for dismissal of the instant joint service appeal being non maintainable and time barred with cost.

5. We heard the arguments advance by the counsels for parties with due consideration and perused record minutely. Admittedly, applicants were allowed and paid the said technical allowance @20% till 2003 after that it was discontinued. It is also admitted state of affairs that the federal employees of police department are still getting the said technical allowance. It is evident from the record that when the said technical allowance was discontinued to federal employees they approached Federal Service Tribunal which allowed the same allowance by its judgment dated 26-03-2009. On the question whether the technical allowance has been seized or clubbed into basic pay by revised pay scale OM dated 04<sup>th</sup> September, 2001 whether the said technical allowance is covered by para 15 of the said Memorandum. From the perusal of the said OM and para 15 of it, it is crystal clear that para 15 of the said OM does not cover the said technical allowance. The said technical allowance is an addition to the special allowances, provided by the said para 15 of OM. This view has also been taken by Hon'ble FST in its judgment dated 26-03-2003.

6. As far as the limitation for filing of departmental as well as the instant service appeal is concerned, no doubt, the departmental appeal and the instant service appeal has been instituted before this forum after lapse of statutory period but, it is settled principle of law that fresh start of limitation and cause of action is accrued to the aggrieved party in case of claim of salary and allowances. This view has also been taken by Hon'ble Supreme Court of Pakistan in case of Sarwar Ali Khan V/S Chief Secretary Sindh etc 1994 PLC-CS-411 the appeal of appellant was dismissed on the ground of limitation while the Hon'ble Supreme Court of Pakistan allowed the appeal of the servant on the ground that the claim of appellant in the matter of pay and promotion and financial benefits cannot be rejected on the ground of limitation. The identical view has also been taken by the Hon'ble FST in its judgment reported as 2006 PLC (CS) 1124. The operative part of the same is hereby reproduced. The objection with regard to limitation cannot be sustained. In appeals relating to pays and allowances an aggrieved civil servant has a continuing cause of action. For a continuing cause of action there is no fix period of limitation. As such the appeal cannot be thrown away as time barred. As far as objection of learned law officer GB regarding filing of the instant joint service appeal is concerned, it transpires from the record that petitioners are technical staff of police department of GB whose technical allowance was discontinued by order of respondents. All the petitioners were affected by the same orders and as such same cause of action accrued to all of them from the said orders. Therefore, appellants are entitled to file joint service appeal in case of accruing same cause of action.

7. The nut shell is that we are inclined to partially accept the instant joint service appeal and through this judgment in rem direct the respondents to pay the arrears of the said technical allowance to appellants from the date of its discontinuation i.e 22-07-2003 till the promulgation of Gilgit Baltistan empowerment and self governance order, 2009, when Gilgit Baltistan assumed the provincial like status as the appellants were included in employees of federal government at that time. Furthermore, it shall be at the discretion of provincial government of Gilgit Baltistan to continue or discontinue the said technical allowance to appellants from the date when Gilgit Baltistan was granted provincial like status.

8. No order as to cost.

9. File be consigned to record after due completion.

Sd/-  
**Member-I**  
Sd/-  
**Member-II**

Judgment sheet  
**BEFORE THE GILGIT-BALTISTAN SERVICE TRIBUNAL**  
**GILGIT**

Appeal No. 58/2017

Date of institution	28-10-2017
Date of hearing	19-3-2019
Date of judgment	25-4-2019

**APPELLANT:** Mst. Batool Nisa d/o Muhammad Abdullah r/o Naghulishpang Skardu, EST, Teacher Girls Primary School singhani Gond Skardu.

**RESPONDENTS:** Provincial Govt. through Chief Secretary GB. Secretary Service

Gilgit-Baltistan. Secretary Education  
 Gilgit-Baltistan. Accountant General  
 Gilgit-Baltistan.

BEFORE: Mr. Ali Sher TST Member-II.

PRESENT: M/S Muhammad Saleem Khan and  
 Shahid Abbass Advocates for  
 appellant.  
 M/S Akhtar Jan Law Officer G.B,  
 and Muhammad Ilyas (D.R) for  
 Education Department /  
 respondents. Haji Muhammad Alam  
 for Accountant General Gilgit-  
 Baltistan.

### **JUDGMENT**

**ALI SHER Tst. MEMBER-II:** Brief facts of the case as divulged from the memorandum of appeal are that appellant was appointed as Lady Teacher on daily wage basis in the year 2003 and posted at Girls Primary School Shinghani Gond Skardu. She served in the said post till 2007 and in the same year appellant was appointed against a vacant post on contract basis till 2011 on fixed pay of Rs.4000/- per month subjected to availability of fund. In the same year i.e 2011 the contract service of appellant was regularized against the post of MT Teacher in BPS-09 at Girls Middle School Shinghani Gond Skardu. After regularization of the service of appellant i.e on 25.10.2011. She received her salary at Girls Middle School Shinghani Gond Skardu being listed at serial No. 148 of the pay bill of the employees till June, 2013. However for the month of July, 2013 appellant was paid from the pay bill at serial No. 117 claimed from Boys Middle School Shinkhani Gond Skardu. From August, 2013 onwards the salary of appellant was never paid. In the year 2014, the appellant and 298



others filed a Writ Petition bearing No. 139/2014 before the Hon'ble Gilgit-Baltistan Chief Court claiming the following relief which is reproduced as under:

- i. That respondents may be directed to include the posts of petitioners in the new item statement (NIS) of the Finance Department Government of Gilgit-Baltistan.
- ii. That the petitioners may be declared entitled to appear before the Committee constituted by the Government of G.B in order to prove their qualification having similar case with the 461 teachers and other staff of Education Department.
- iii. That the respondents may be directed to extend the benefits of the directions/ order issued by the C.M Gilgit-Baltistan dated 16.01.2014 vide summary No. SEC-EDU 2(14) dated 10.06.2014 and get their services regularized by providing the requisite qualifications of the posts.
- iv. That the respondents may be restrained from terminating the services of the petitioners.
- v. Any other remedies which this Honorable Court deems proper.

The petition was dismissed stating that " We don't find the judgment of the apex Court referred by the counsel for the petitioners relevant to the case in hand. However, the case laws referred by the

A.A.G, being relevant is placed reliance. The petitioner can seek their relief from the Court of competent jurisdiction if so advised”.

The petitioners challenged the judgment of Hon’ble Gilgit-Baltistan Chief Court before the Honorable Supreme Appellate Court Gilgit-Baltistan. The Supreme Appellate Court Gilgit-Baltistan also dismissed the petition stating that “Since the matters are connected with each other, therefore, same order is upheld as in Civil Appeal No. 58/2017 in CPLA No. 134/2016.

2. Respondents contested vehemently by filing their parawise comments where in they contended that appellant got no locus-standi to prefer the instant appeal before this Tribunal as there is no final order. She has not preferred any departmental appeal against any final order. Without preferring departmental appeal the instant appeal is not maintainable. The posts of MT BS-9 were upgraded and placed in BS-14 w.e.f 01.7.2011 by the Gilgit-Baltistan Government. Appellant can not be appointed to the post of MT BS-09 which has no existence in the Education Department GB Government since 01.7.2011. On the order of respondent No.1 (Chief Secretary) respondent No.2 issued a notification bearing No.Sec-Edu-2(14)/2014 dated 27<sup>th</sup> January, 2014 whereby a committee was constituted consisting of Mr. Mir Ahmed Jan Director Education(Colleges) G.B Chairman, Mr. Muhammad Abideen Director Education (Planning) G.B and Mr. Majeed Khan Director Education (Academics) Gilgit. The above named committee was asked to assess the eligibility/suitability of teachers/employees recruited illegally in education department at Skardu and Ghanche districts. The appellant willfully and intentionally concealed her appointment/facts to the said committee held in Feb/March, 2014 and lost the opportunity for consideration and

confirmation of the services rendered through an illegal appointment order. Hence the appellant is no more entitled for any concession on this effect.

3. M/S Muhammad Saleem Khan and Shahid Abbass counsel for appellant vehemently advanced their arguments and contended that appellant has rendered her services as a lady teacher at Girls Middle School Shinghani Gond Skardu from 27<sup>th</sup>, April, 2007 to 30<sup>th</sup>, June, 2011 and this fact has been admitted by the respondents in their parawise comments. They further argued that appellant was appointed on 27<sup>th</sup>, April, 2007 as lady teacher on contract basis in Girls Primary School Shinkhani Gonds @ Rs 4000/- per month subject to availability of fund. Subsequently the Director Education Baltistan Region regularized the contract service of appellant and appointed her as Martic Teacher BS-9 on 25<sup>th</sup>, October, 2011 at the same Girls Primary School Shinkhani Gonds. Appellant submitted an application on 11<sup>th</sup>, August, 2017 to the Director Education Baltistan Division Skardu for release of her pay but no action was taken by the Director Education. Appellant then filed the present appeal before this Tribunal on 28.10.2017. The counsel for appellant further contended that after regularization of contact service of appellant on 25<sup>th</sup>, October, 2011, she was paid her salary usually at Girls Middle School Shinghani Gond Skardu being at serial No. 148 of the pay bill of the employees till June, 2013 but for the month of July, 2013 appellant was paid from the pay bill at serial No. 117 in Boys Middle School Shinkhani Gond Skardu. From August, 2013 onwards the pay of appellant was never paid. Counsel for appellant submitted that in the year 2014, the appellant and 298 others filed a Writ Petition bearing No. 139/2014 before the Hon'ble Gilgit-Baltistan Chief Court which was dismissed

stating that the petitioner can seek their relief from the Court of competent jurisdiction if so advised". The petitioners challenged the judgment of Hon'ble Gilgit-Baltistan Chief Court before the Supreme Appellate Court Gilgit-Baltistan. The Supreme Appellate Court Gilgit-Baltistan was also dismissed the petition stating that "Since the matters are connected with each other, therefore, same order as in Civil Appeal No. 58/2017 in CPLA No. 134/2016. The counsel for appellant requested for release of pay from August, 2013 onwards on the ground that order of competent authorities is still in tact and pay of appellant may be released on humanitarian ground to meet the ends of justice.

The learned counsel in support of his contention relied the following decisions of superior Courts:

**1995 SCMR 950, 1996 PLC (C.S) 1224, 2006 PLC (C.S) 1124, 2004 SCMR 527 and C. Misc. No. 15/2014 & Cr. Original Petition No. 01/2014 in CPLA No. 12/2013.**

4. In response to the arguments, the Law Officer G.B reiterated the same contentions which were unequivocally mentioned in their written replies to the appeals and also negated the argument with the contention that ill gotten favour by civil servants through illegal means should not be endorsed and perpetuated by the Court. Learned counsel for respondents relied on the following decisions of superior Courts:-

**2012-SCMR 673, PLD-2004 SC-313**

**2006-SCMR 285, 1992-SCMR 468**  
**2013 PLC(CS)-1365**

I rely on the decision of Supreme Court held in an identical service matters in 2012-SCMR-673 case titled Muhammad Ali and 11 others versus Province of KPK through Secretary Elementary and Secondary Education Peshawar etc relevant para:

**Civil Service....**

**---Appointments made without advertisement of vacancies, inviting of applications and completion of codal formalities....Termination of service of such employees without providing them opportunity of hearing.....Validity....."He who seeks equity must do equity" and approach court with clean hands"...."Ill-gotten gains could not be protected"..... Such employees had got their appointments through backdoor, thus, could not agitate any grievance on pretext of denial of due opportunity of hearing to them.....Such employees could not challenge principle of good governance adopted at highest level mandating each and every appointment in government service to be made on merits as per relevant rules and completion of codal formalities... Appeals filed by such**

**employees were dismissed in circumstances.[p.678]A.”**

5. I have heard the learned counsels and perused the record of the case and case laws presented by the learned counsels. It is general recruitment policy as well as the prescribed procedure and recruitment rules that in order to fill the vacant posts of BS-15 and below, the Departmental Selection Committee (DSC) shall advertise the vacant posts in the daily news papers inviting applications from eligible candidates for written test and interview clearly mentioning number of posts, scale, grade, educational qualification, domicile, age, computerized national identity card and other conditions. After scrutiny of the applications suitable candidates are short listed for written test. Then the candidates who passed written test are called for interview/viva voce. After completion of these proceedings list of successful candidates is prepared on the basis of merit. In this regard the Secretary education department Northern Areas, on 28-6-2006, constituted three recruitment committees with the approval of the then Chief Secretary Northern Areas, one N.A level committee for BS-11 to BS-15 and another Directorate level committee for BS-6 to BS-10 and the third District level committee for BS-1 to BS-5 headed by Secretary education, Director education and Deputy Director education with four members for each committee respectively. But the Director and Deputy Director Education Department ignored the above committees while making the appointment of the appellants.

6. The Director/Deputy Director education Baltistan Region ignored the recruitment policy, rules, service laws and appointed appellant on contract @ Rs-4000 p.m subject to availability of fund just to justify his subsequent regularization/adjustment order. Later on appellant was regularized and was directly inducted. The appellant has never filed any departmental appeal, review and representation to the concerned authority under rule 15 of the Gilgit-Baltistan Civil Servants (Efficiency and Discipline) Rules, 2011 and section 5(a) of the GB Service Tribunal Act, 2010 thus mandatory provisions have not been complied with prior to filing of her appeal before this Tribunal.

7. The crucial point of the case in hand is that In the year 2014, the appellant and 298 others filed a Writ Petition bearing No. 139/2014 before the Hon'ble Gilgit-Baltistan Chief Court claiming the following relief which are reproduced as under:

- i. That respondents may be directed to include the posts of petitioners in the new item statement (NIS) of the Finance Department Government of Gilgit-Baltistan.
- ii. That the petitioners may be declared entitled to appear before the Committee constituted by the Government of G.B in order to prove their qualification having similar case with the 461 teachers and other staff of Education Department.
- iii. That the respondents may be directed to extend the benefits of the directions/ order issued by the C.M Gilgit-Baltistan dated 16.01.2014 vide summary No. SEC-EDU 2(14) dated 10.06.2014

and got their services regularized by providing the requisite qualifications of the posts.

- iv. That the respondents may be restrained from terminating the services of the petitioners.
- v. Any other remedies which this Honorable Court deems proper.

The same petition was dismissed stating that " We don't find the judgment of the apex Court referred by the counsel for the petitioners relevant to the case in hand however, the case laws referred by the A.A.G, being relevant is placed reliance. The petitioner can seek their relief from the Court of competent jurisdiction if so advised".

The petitioners challenged the judgment of Hon'ble Gilgit-Baltistan Chief Court before the Supreme Appellate Court Gilgit-Baltistan bearing Civil Appeal No. 59/2017 in CPLA No. 136/2016. The Supreme Appellate Court Gilgit-Baltistan also dismissed the petition stating that "Since the matters are connected with each other, therefore, same order as in Civil Appeal No. 58/2017 in CPLA No. 134/2016.

In Civil Appeal No. 58/2017 in CPLA No. 134/2016 titled Syed Konain & Others v/s Provincial Government and others, the Division Bench of Supreme Appellate Court converted the petition into an appeal and the same was dismissed and impugned order dated 15.10.2016 passed by Gilgit-Baltistan Chief Court was affirmed with following remarks:



Para No. 5 of the said judgment is reproduced as under:

**“We have heard the learned counsels for the respective parties at length, perused the material on record and gone through the impugned order. Admittedly, the petitioners were appointed illegally, unlawfully and without fulfilling the requisite codal formalities by the respondents, therefore, they can not be considered as the employees of Education Department. In our considered view, the impugned is well founded as no infirmity has been pointed out by the learned counsel for the petitioners.**

8. In para No. 5 of the judgment of Apex Court, the Court has declared that present appellant along with other petitioners are no more employees of the Education Department. Therefore, it is not appropriate to issue any direction to Education Department in the presence of above direction of the Apex Court. So without going into the merits of the case, appeal in hand is hereby dismissed. No orders as to cost.

**Announced:**

25-4-2019

Sd/-  
**MEMBER-II**

**BEFORE GILGIT-BALTISTAN SERVICE TRIBUNAL  
GILGIT**

Service Appeal No. 09/2019

Date of Institution	03.04.2019
Date of hearing	30.04.2019
Date of Order	30.04.2019

**Appellant:** Faizan Dukhi RFO Wild Life Division  
Gilgit and Ghizer

**Before:** Mr. Muhammad Kamal Acting Chairman

**Present:** Raja Shakeel Ahmed Advocate for  
Appellant

### **ORDER**

**MUHAMMAD KAMAL MEMBER-I:-** All the Service Appeals Nos. 09/2019, 10/2019, 11/2019, 12/2019, 13/2019, and 14/2019 arising out of Impugned Order dated 29.11.2018 and Impugned Notification No. SO(S)-I-1(60)/2019 dated 09.03.2019 involving common question of law and fact are taken up together to be decided through this single judgment.

The appeals came up today for preliminary hearing through learned counsel for the appellants Raja Shakeel Ahmed advocate.

From meticulous perusal of record, it transpired that the appellants jointly submitted a departmental appeal before Secretary Forest and Wildlife Department GB (Respondent No. 3) on 29<sup>th</sup>.Jan.2019 for seeking redress of their grievances. The appellants then approached this Tribunal with their individual appeals in hand on 03.04.2019 which means after a period of 65 days of their filing of departmental appeal instead of waiting for stipulated period i.e 90 days in violation of Section 5(a) of Gilgit Baltistan Service Tribunal Act,2010 which provides as under:-

***“No appeal shall lie to a Tribunal unless the aggrieved civil servant has preferred***

***an appeal or application for review or representation to such departmental authority in a period of 90 days has elapsed from the date on which such appeal, application or representation was so preferred."***

Therefore, in the light of above factual position, it has been observed that without discussing the merits, the instant appeal including all other appeals as mentioned above were found premature and not maintainable which are dismissed in limine. However, Secretary Forest and Wildlife GB (Respondent No.3) is directed to decide the appeal of the appellants pending before him on merits in accordance with laws/rules within thirty days.

Copy of Judgment be sent to Respondent No.3 i.e. Secretary Forest and Wildlife GB for compliance. Order accordingly

**Announced:**  
**30.04.2019**

Sd/-  
**Acting Chairman**

Judgment sheet  
**BEFORE GILGIT-BALTISTAN SERVICE TRIBUNAL**  
**GILGIT**

Service Appeal No. 92/2017

Date of Institution:	16.12.2017
Date of hearing:	14.03.2019
Date of Judgment:	02.05.2019

**Appellant:** Anas Safa s/o Abdul Qadeer r/o  
Farooqabad Colony, Chilas,  
District Diamer

**Respondents:** Chairman NADRA & 05 others

**Before:** Mr. Muhammad Kamal Member-I

**Present:** Mr. Basharat Ali, Advocate for appellant.  
Mr. Akhtar Jan, Law Officer GB for Respondent No. 4 and 6

## **JUDGMENT**

**MUHAMMAD KAMAL MEMBER-I:-** This judgment shall dispose of the above titled service appeal filed by the appellant for passing orders for correction of his date of birth in Service Book according to the age assessed by the Medical Board.

2. Brief facts leading to institution of the instant appeal are that the appellant is working as Forest Guard with Forest Department Diamer, Chilas. According to Service Book, date of birth of appellant has been shown to be 21.12.1956. The appellant after serving a number of years approached Forest authorities for correction of his date of birth in Service Book according to the date as mentioned in his CNIC. On the request of the Forest Department, a Medical Board was constituted to assess the age of appellant, who after examining the appellant, assessed his age to be 55 years as on 6<sup>th</sup> June, 2016. Thereafter he approached the NADRA authorities for preparation of CNIC according to the age so assessed by the Medical Board. The NADRA authorities appear to have not acceded to his request. Thereafter the appellant resorted to legal remedy by way of filing a civil suit in the Civil Court Diamer Chilas. The learned Civil Judge Chilas returned the suit for want of jurisdiction. Then, the appellant approached this Tribunal with the appeal in hand. The appeal came

up for arguments on 14.03.2019. Arguments pro and contra heard, perused the available record on file and also went through the case laws cited by both the parties.

3. It is noted that the appellant remaining silent for a number of years, firstly claimed correction of his date of birth as 1957 instead of 1956 which has been inserted in his Service Book. Thereafter, he claimed his date of birth to be 1961 as per assessment by the Medical Board. There is no record on file to ascertain his date of entry into government service, however, according to parawise comments filed by the Forest Department, his date of entry into service has been stated to be 1974. Even if his date of birth is assumed to be 1961, his date of entry into government service is 1974. In this way, his age, at the time of entry into government service comes to 13 years. How it could be possible that a person can be appointed to government service just in 13 years of age, while the mandatory age limit for appointment in government service is 18 years. It would be a futile exercise to discuss other parameters of the appeal, because the appeal in hand involves only one question i.e. can a government servant get his date of birth corrected in his service book at a belated stage that too at the verge of his retirement just on the basis of assessment of Medical Board?. To answer this question, it would be imperative to have a look at the relevant rules and rulings by the superior courts of Pakistan as well. One of the rulings set out by the Hon'ble Supreme Court of Pakistan is a judgment reported at 2013 SCMR 759. For the sake of convenience, operative part of the said judgment is reproduced below:

**Quote**

*"5. Before we discuss the merits of the case and arguments addressed at the bar it is worthwhile to refer to Rule 12A of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 which reads as under:*

***[12A. Alteration in the date of birth.---****The date of birth once recorded at the time of joining government service shall be final and thereafter no alteration in the date of birth of a civil servant shall be permissible].*

*6. The above quoted rule reveals that a date of birth once recorded at the time of joining government service shall be final and thereafter no alteration in the date of birth shall be permissible. This provision was inserted by SRO 52(1) on 31<sup>st</sup> July, 2000. An alteration before 31<sup>st</sup> July, 2000 could well be made but not thereafter. Reference to the case of Muhammad Sharif V. Chief Secretary and another (supra) will not be of any help to the petitioner as in that case the date of birth recorded in the Secondary School Certificate as well as Service Book was the same whereas it is not the case here. The idea to have the date of birth altered appears to be an off shoot of afterthought. It, as a matter of fact, has become common practice with the civil servants to file a civil suit for correction of date of birth when they come to the verge of their retirement just to prolong their tenure for enjoying the perks and privileges for a few more years at the cost of others".*

**Unquote**

4. Similar view has been taken by superiors Courts of Pakistan in judgments reported at 2018 PLC (C.S.) 944 and 2017 PLC (C.S.) 74. Counsel for the appellant in support of his contentions has placed reliance on 2011 GBLR 503. The judgment has been gone through and found that judgment so cited by the counsel for appellant in support of his contentions would not extend any help because the facts and grounds involved in this judgment is totally different from the facts and grounds of the appeal in hand.

5. In view of the above discussion, especially in view of rulings by the Hon'ble superiors of Courts set out in the above quoted judgments, appeal of the appellant is held to be without any legal force and is hereby dismissed with no orders as to costs. The above are the reasons for our short order dated 02.05.2019. Appeal dismissed.

6. File be consigned to record after completion.

**Announced:**  
**02.05.2019**

Sd/-  
**Acting Chairman/Member-I**

Judgment sheet  
**BEFORE GILGIT-BALTISTAN SERVICE TRIBUNAL**  
**GILGIT**

Civil Misc. Application No. 35/2019  
in Service Appeal No. 01/2017  
&  
Civil Misc. Application No. 36/2019  
in Service Appeal No. 02/2017

Date of Institution:	12.03.2019
Date of hearing:	26.04.2019
Date of Judgment:	10.05.2019

**Applicants:** Tanzeel ur Rehman Assistant Secretary GBLA & 5 others

**Respondents:** Hidayatullah/ Khalid Mehmood & 03 others

**Before:** Mr. Muhammad Kamal Member-I  
Mr. Ali Sher Member-II

**Present:** Raja Shakeel Ahmed, Malik Shafqat Wali, M/S Muhammad Saleem Khan, Arif Nazir, Asad Bilal and Islamuddin, Advocates and Akhtar Jan Law Officer GB for petitioners.  
M/S Johar Ali Khan, Basharat Ali and Muhammad Zafar Advocates for respondents.

## **JUDGMENT**

**MUHAMMAD KAMAL MEMBER-I:-** While Service Appeal Nos. 01/2017 and 02/2017 were pending adjudication before this Tribunal, Civil Misc. Applications No. 35/2019 and 36/2019 were filed by the petitioners under Order 7 Rule 10 CPC challenging maintainability of service appeals filed by the present respondents on the ground that since GB Legislative Assembly has been declared a special institution having its own separate Act and Services Rules, therefore, its employees do not fall within the definition of "Civil Servants" as enunciated in GB Civil Servant Act. Consequently, the GB Service Tribunal lacks jurisdiction to entertain service appeals of employees of the GB Legislative Assembly. Through this single judgment, we intend



to dispose off these 02 Service Misc. Applications on the captioned grounds/ observations being similarity of question of law.

2. The present respondents contested these misc. applications by filing replication through their respective counsels. The misc. applications were fixed for arguments on 26.04.2019. M/S. Raja Shakeel Ahmed, Shafqat Wali and Asad Bilal Advocates for petitioners advanced their arguments one after another on the ground already taken in the misc. applications/ petitions. The same arguments were relied upon by the rest of the counsels for the petitioners. It was argued that as the GB Legislative Assembly has been declared a Special Institution and the terms and conditions of employment of employees of GB Legislative Assembly are governed by GB Legislative Assembly Secretariat (Recruitment Terms and Conditions) Act, 2010 and GB Legislative Assembly (Administration Division) amended Order, 2017, hence its employees are not covered by the definition of Civil Servants as defined in the Civil Servant Act, 1973, thus service matters of employees of GBLA are not amenable to jurisdiction of GB Service Tribunal. In support of arguments, counsels for the petitioners placed reliance on various case laws reported at 1997 SCMR 141, 2008 SCMR 240, PLD 1997 877 & 2005 PLC (C.S.) 731,1994 MLD 2500(Quetta),PLD1993 Karachi41 . Counsels for the respondents on the other hand, vehemently opposed the version of counsels for petitioners by advancing their arguments that although GB Legislative Assembly is a special institution yet employment in GB Legislative Assembly is in connection with the affairs of provincial government of GB, therefore employees appointed in GB Legislative Assembly comes within purview of definition of Civil Servants as defined in Civil Servant Act, 1973. Based on the judgments of the

Supreme Court of Pakistan, Mr. Basharat Ali counsel for the respondents rigorously argued that this Tribunal has exclusive jurisdiction in respect of service matters of GB Legislative Assembly. In support of his arguments, he placed reliance on 2006 SCMR 1630, PLD 1997 Supreme Court 877 and 2010 SCMR 1886. Counsels for the respondents mainly based their arguments on a latest judgment of the Hon'ble Supreme Court of Pakistan reported at 2010 SCMR 1886 wherein employment under constitutional bodies i.e. National and Provincial Assemblies have been held to be civil servants and amenable to jurisdiction of the Service Tribunals.

3. Before putting our view with regard as to whether or not employees of special institutions come within purview of "Civil Servants", it would be more appropriate to consult the case law cited by counsels of respective parties. A number of cases have been decided by the Hon'ble Supreme Court of Pakistan regarding jurisdiction of Service Tribunals in respect of employment matters of special institutions including Supreme Court of Pakistan, High Courts and National and Provincial Assemblies. A judgment passed by a Bench comprising of 5 Hon'ble Judges of the Supreme Court of Pakistan reported at 2010 SCMR 1886 titled Muhammad Azam Davi and others Vs. Speaker Balochistan Provincial Assembly and others has been placed before us. This is a judgment latest to all judgments placed before us by the respective parties. This judgment elaborately discusses jurisdiction of Service Tribunals with respect to the matters involving terms and condition of employment under special institutions including National and Provincial Assemblies. This judgment is of a very useful help for this Tribunal to decide the questions involved in the said misc. applications. Various cases

decided by High Courts and Service Tribunals with respect to employment matters of special institutions have extensively been discussed in this judgment. For the sake of convenience, views taken by High Courts and Service Tribunals and decision of Supreme Court of Pakistan regarding status of employment under constitutional bodies/ special institutions in that judgment is given below:

- (i) In Muhammad Azam Davi and others Vs. Speaker Balochistan Provincial Assembly and others, the Balochistan High Court had dismissed his petition by holding that since he was an employee of Provincial Assembly Balochistan, therefore his service is covered by the definition of Civil Servant as defined in the Civil Servants Act, 1973 and jurisdiction of High Court was barred under Article 212 of the Constitution. **Through the judgment referred to herein above view taken by the High Court of the Balochistan was agreed upon and the decision was maintained by the Hon'ble Supreme Court of Pakistan.**
- (ii) In Syed Shaukat Ali Bokhari Vs. Speaker National Assembly, the Lahore High Court dismissed petition of the petitioner on the similar ground as taken by Balochistan High Court in the petition referred to above. **The judgment of the Lahore High Court too was maintained by the Hon'ble Supreme Court of Pakistan.**
- (iii) In Muhammad Aslam Shami who was also an employee of subordinate judiciary filed petition before Lahore High Court for permanent absorption in National Assembly Secretariat where he was already working on deputation. His petition

was dismissed by holding him to be civil servant. He filed petition before the Hon'ble Supreme Court. **Leave was granted in Civil Appeal No. 1187 of 1997 and decision of the Lahore Court has been maintained by Supreme Court of Pakistan.**

- (iv) In Malik Ghulam..... case, who was an employee of National Assembly, the Federal Service Tribunal had taken a contrary view by holding that the appellant was not a Civil Servant and his appeal was dismissed. **The Hon'ble Supreme Court of Pakistan set aside the judgment of Federal Service Tribunal vide Civil Appeal No. 96 of 2009 and held the appellant to be civil servant.**
- (v) In Sikandar Hayat Khattak's case who is an employee of Senate Secretariat, Federal Service Tribunal had entertained his appeal holding him to be civil servant. The order of FST was impugned before the Supreme Court of Pakistan contending that employee of Senate does not come within ambit of Civil Servant, therefore Service Tribunal has wrongly exercised the jurisdiction. **The Supreme Court of Pakistan maintained the judgment of Service Tribunal vide Civil Appeals No. 23 & 24/2010.**
4. Through judgment under discussion, the Hon'ble Supreme Court of Pakistan maintained the decisions/ judgments of the High Courts whereby employment under the National and Provincial Assemblies has been held to be civil servants and set aside the judgments of the Federal Service Tribunal whereby employees of

National and Provincial Assemblies were held to be out of remit of definition of civil servants. The Supreme Court of Pakistan has clearly held employees of these institutions to be civil servants and amenable to jurisdiction of Service Tribunals. For ease of reference, the relevant portion of the said judgment is reproduced below:

**Quote**

*21. From a detailed examination of the case law mentioned in the leave granting orders and that of the case of Chief Election Commissioner of Pakistan Vs. Miss Nasreen Pervez (ibid), decided recently in the year 2009, we do not find inconsistency in the case law. The principle emerging from these judgments is that the status of the employees of the Constitutional bodies as to whether or not they are civil servants for the purpose of being amenable to the jurisdiction of the Service Tribunal depends upon whether or not the Parliament has been conferred power to regulate the terms and conditions of service of such employees. In case the Parliament has been bestowed with such a power, either specifically, like in Articles 87 and 221, or generally in Article 240, whether or not exercised, the employees of such a body would be civil servants. Applying this principle to the case before us, Article 87 read with Article 127 of the Constitution expressly enables the Parliament and the Provincial Assemblies, as the case may be, to make laws for regulation of the terms and conditions of the service of employees of the respective*

*establishments. The employees of such bodies are, therefore, civil servants.*

*22. After holding as above, we now take up the individual cases. The judgments of the High Courts impugned in Civil Appeals Nos. 1513 of 1996, 844 of 1997 and 1187 of 1997, dismissing the appellants' Constitutional petitions, by holding them to be civil servants are, therefore to be maintained. Civil Appeal No. 96 of 2009, filed against the judgment of the Service Tribunal, declining to exercise its jurisdiction, cannot be sustained. Civil Appeals Nos. 23 and 24 of 2010, arise from exercise of jurisdiction by the Federal Service Tribunal in appeal filed by an employee of the Senate Secretariat, the same does not, therefore, suffer from any jurisdictional defect.*

*23. Resultantly, Civil Appeals No. 1513 of 1996, 844 of 1997 and..... the impugned judgment of the Service Tribunal, declining to exercise jurisdiction is set aside. The appeal filed by the appellant before the Tribunal is deemed to be pending and shall be decided on merits. CM Appeals NO. 23 and 24 of 2010 shall be fixed for hearing on merits.*

**Unquote**

5. In addition to the above judgment, we have also in our hands copy of judgment delivered by KPK Service Tribunal in a service appeal titled: Kifayatullah Khan Afridi Sr. Additional Secretary Provincial Assembly KPK Vs. Speak Provincial Assembly of KPK (Appeal No. 1324/2017). Furthermore, with a view to confirm

entertainment of service appeals of employees of National and Provincial Assemblies by Services Tribunals, office of this Tribunal contacted Provincial as well as Federal Service Tribunal including Service Tribunal of Azad Jammu & Kashmir, who confirmed that after judgment of the Hon'ble Supreme Court of Pakistan in Muhammad Azam Davi's case (supra), service appeals relating to employees of these institutions are being entertained by them. Though services under the GB Legislative Assembly have not specifically been termed as services in connection with the affairs of province, but practically services performed by the employees of GBLA is totally in connection with the affairs of province which services, of course, deemed to have been rendered to the state. Merely on technical grounds services of employees of GBLA cannot be held to be out of remit of services in connection with affairs of the province. This is our own view, while our judgment is wholly based on the judgment of the Hon'ble Supreme Court of Pakistan delivered in Muhammad Azam Davi's case.

6. It would not be out of context to mention here that the Hon'ble Supreme Court of Pakistan while deciding appeals of employees of constitutional bodies including Supreme Court of Pakistan and High Courts, has made clear distinction between employees of Supreme Court, High Courts, National and Provincial Assemblies. The learned counsels for petitioners who have relied on the judgments of High Courts even Supreme Court of Pakistan regarding jurisdiction of Service Tribunals in respect of employees of establishment of Courts is of no use as the Hon'ble Supreme Court of Pakistan, as stated above, has made clear distinction between the employees of Courts and other constitutional bodies and held that service matters of constitutional bodies other than the Supreme Court

and High Courts are amenable to jurisdiction of Service Tribunals. While differentiating the employment in Supreme Court/ High Courts and other constitutional bodies, following reasoning have been given by the Hon'ble Supreme Court of Pakistan:

**Quote**

*The principle emerging from these judgments is that the status of the employees of the Constitutional bodies as to whether or not they are civil servants for the purpose of being amenable to the jurisdiction of the Service Tribunal depends upon whether or not the Parliament has been conferred power to regulate the terms and conditions of service of such employees. In case the Parliament has been bestowed with such a power, either specifically, like in Articles 87 and 221, or generally in Article 240, whether or not exercised, the employees of such a body would be civil servants. Applying this principle to the case before us, Article 87 read with Article 127 of the Constitution expressly enables the Parliament and the Provincial Assemblies, as the case may be, to make laws for regulation of the terms and conditions of the service of employees of the respective establishments. The employees of such bodies are, therefore, civil servants.*

**Unquote**

7. In view of the above observations of the Supreme Court of Pakistan, the parliament has no role in connection with enactment of



rules regarding terms and conditions of service of employees of Supreme Court of Pakistan and High Courts. The Hon'ble Supreme Court in Muhammad Azam Davi's case under discussion, regarding status of employees of establishments of the above Courts, observed as under:

**Quote**

*11. Elaborate discussion as to whether the employees of the Supreme Court were civil servants or not was subsequently made in Registrar Supreme Court of Pakistan Vs. Qazi Wali Muhammad (ibid). The judgment lays down the litmus test for determining as to which of the employees in the "Service of Pakistan can be termed as civil servant for the purpose of filing appeals before the Service Tribunals regarding their terms and conditions of service. The question before the Court was whether an employee of Supreme Court was civil servant within the scope of the definition in the Civil Servants Act, 1973. The case was heard by a three member Bench and each Hon'ble Member wrote his individual opinion, all agreeing that the Federal Service Tribunal had wrongly held that employees of the Supreme Court were civil servants and thus amenable to jurisdiction of the Tribunal. The common theme in the three opinions was that since the Supreme Court, the Federal Shariat Court and the High Courts, and not the Parliament, have been conferred powers under Article 208 of the Constitution to make rules regarding terms and conditions of employment of their officers and servants, they cannot be termed 'civil servants'.*

**Unquote**

8. Without prejudice to what has been discussed above, it would be helpful to quote some lines from the appointment notification of the petitioners issued by GB Assembly Secretariat:

**Quote**

"2. *Their service shall be governed under the provisions of the GBLA Secretariat (Recruitment, Terms and Conditions) Act, 2010/ **Gilgit-Baltistan Civil Servants Act, 2010** as amended from time to time...."*

**Unquote**

9. It would be more appropriate to quote a few relevant lines from the contract appointment order issued by GBLA Secretariat regarding appointment of Mr. Salman Khan s/o Munir Shah (petitioner No. 6 in the petition):

**Quote****07. CONTRACT AND DISCIPLINE**

*Rule made and instructions issued by the Government or a prescribed authority as far Civil Servants under Section 15 and 16 of the Civil Servants Act, 1973 as amended from time to time shall apply.*

**Unquote**

10. In view of the above discussion and on the analogy of judgment of the Hon'ble Supreme Court of Pakistan reported at 2010 SCMR 1886 titled Muhammad Azam Davi and others Vs. Speaker Balochistan Provincial Assembly and others, it is not difficult for this Tribunal to hold that employees of Gilgit-Baltistan Legislative Assembly come within the purview of definition of Civil Servants as

defined in the Civil Servants Act, 1973 and GB Civil Servants Act, 2010 and this Tribunal has jurisdictional competency to try service matters brought to this Tribunal by the employees of Gilgit-Baltistan Legislative Assembly. Consequently, the two services appeals pending adjudication before this Tribunal is held to be competently entertained by this Tribunal. With the above observations, these civil misc. applications/ petitions are disposed off with no orders as to costs.

11. File be consigned to record after completion.

Announced:  
10.05.2019

Sd/-  
**Acting Chairman/  
Member-I**

Sd/-  
**Member-II**

Judgment sheet  
**BEFORE THE GILGIT-BALTISTAN SERVICE TRIBUNAL**

Appeal No. 64/2017.

Date of institution	05-04-2017
Date of hearing	26-04-2019
Date of judgment	24-05-2019

**APPELLANT:** Farhan Ahmad s/o Iftikhar Ahamad, Account Assistant Population Welfare Department posted at District Gilgit.

**RESPONDENTS:** Provincial Govt. through Chief Secretary GB and 10 others.

BEFORE: Mr. Ali Sher, Tst. Member-II.

PRESENT: Mr. Yasin Baltistani Advocate for the appellant.

Mr. Akhtar Jan Law Officer GB assisted, by Deedar Karim Assistant Director Population Welfare.

### **JUDGMENT**

**ALI SHER, Tst. Member-II:-** Brief facts leading to filing the instant amended service appeal are that the appellant was initially appointed as Account Assistant BS-11 in Population and Welfare Department of Gilgit Baltistan on contract basis for a period of two years through PM assistant package **on 24-09-2010**. The services of appellant were brought on regular footing on **30-05-2016**. The said post of account assistant was up-graded/Re-designated from BPS-11 to accountant BPS-16 and then further up-graded/Re-designated from accountant BPS-16 to Superintended BPS-17. Appellant stated in the memo of appeal that only the respondents No. 6 to 11 were benefited from the said up-gradation/Re-designation while appellant has been deprived hence, the appellant is still working in the post of account assistant BS-11 despite of the fact that his post has already been re-designated from account assistant BS-11 to accountant BS-16 and thereafter superintendent BS-17. Appellant prayed for up-gradation/re-designation of his post of account assistant BS-11 to accountant BS-16 w-e-f **30-05-2016** and then further up-gradation of the post of accountant BS-16 to superintendent BS-17 w-e-f **05-12-2016** to meet the end of justice.

2. Respondents filed their separate para wise comment whereby they vehemently denied the contentions made by appellant in memo of appeal on legal as well as factual grounds. It has been contended in para wise comments that the appellant has been appointed against the post of account assistant BS-11 in Reproductive Health Service which is just component/unit of population and welfare department of GB where as respondents No.6 to 11 were appointed as account assistant BS-11 in District Welfare offices and Directorate of Population Welfare GB. Therefore, only the respondent No. 6 to 11 are legally entitled for up-gradation/Re-designation. Respondents prayed for dismissal of amended service appeal being merit less with cost.

3. Learned counsel for appellant contended that the appellant was appointed as account assistant BS-11 in population welfare department GB as the respondents No. 6 to 11 were appointed after fulfilling all codal formalities. Since then, the appellant has been performing his duty regularly, sincerely and efficiently. He further submitted that the Reproductive Health Service –A- Centre is one of components of population welfare department GB and not a separate department. Therefore, the appellant is entitled for up-gradation/Re-designation of the said post of account assistant. He further submitted that respondent have malafidely deprived the appellant of the up-gradation/re-designation of the said post of account assistant when such post has been re-designated to accountant and then superintendent BS-17. Finally, counsel for appellant prayed for up-gradation/re-designation of the said post of account assistant to accountant BS-16 w-e-f **30-05-2016** and further up-gradation of the accountant BS-16 to superintendent BS-17 w-e-f **05-12-2016**.

4. Learned law officer GB appearing on behalf of respondents contended that nothing malafied has been committed by respondents against appellant case of appellant is different from respondent No. 6 to 11 as the appellant has been appointed against the post of Reproductive Health Service-A-Centre where as respondent No. 6 to 11 were appointed as account assistant in district health offices and directorate of population welfare department GB. Learned law officer GB further contended that the approved PC-1 covers only those posts of account assistants who are working in district health offices and directorate of population welfare department GB. He submitted that RHS-C is not covered by approved PC-1 therefore, appellant is not entitled for what he claims.

Finally, law officer GB prayed for dismissal of instant amended service appeal with cost.

5. I heard the arguments, advanced by learned counsel for appellant and law officer GB, with due consideration and perused the relevant record minutely. From perusal of the record, it transpires that the appellant was initially appointed on contract basis whose services were brought on regular footings by respondents in population welfare department of GB. It is also evident from the record that respondent No. 6 to 11 were also appointed in population and welfare department of GB who is headed by the same director under whom the appellant is working. On a question whether RHS-C is an independent department or a component, unit of population welfare department GB. It is evident from the record of the case that RHA-C is component of population and welfare department GB it is not a separate department as such is headed by same Secretary and Director. Despite of this the post of account

assistant has been re-designated to accountant BS-16 and then to superintendent BS-17 but only respondent No. 6 to 11 have been benefited whereas the appellant has been deprived of it. No doubt, respondents No. 1 to 5 committed discrimination by not treating the appellant equally among equals.

**6. For the reasons discussed above the instant service appeal is hereby accepted and respondents No. 1 to 5 are directed to up-grade/re-designate the post of appellant from accountant BS-16 w-e-f 30-05-2016 and further up-grade/re-designate the said post of accountant BS-16 to superintendent BS-17 w-e-f 05-12-2016 with all back benefits.**

7. No order as to cost.

Announced  
24-05-2019

Sd/-  
**Member-II**

Judgment sheet

**BEFORE THE GILGIT-BALTISTAN SERVICE TRIBUNAL**

Appeal No. 65/2017.

Date of institution	09-05-2017
Date of hearing	02-05-2019
Date of judgment	17-06-2019

APPELLANT: Nisar Hussain (Rtd. Acting  
DSP/SDPO Kharmang) s/o Sheikh  
Ali r/o Mehdi Abad District  
Kharmang Skardu.

RESPONDENTS: Provincial Govt. through Chief Secretary GB and 02 others.

BEFORE: **Mr. Ali Sher, Tst. Member-II**

PRESENT: Mr. Munir Ahmad Advocate for appellant. Mr. Akhtar Jan Law Officer GB for respondents.

### **JUDGMENT**

**ALI SHER, Tst. MEMBER-II:** Brief facts giving rise to the instant service appeal are that the appellant was serving as Inspector Police BPS-16 in Police Department of Gilgit Baltistan and retired on 17-09-2011 on attaining the age of superannuation. 13 clear posts of DSPs BS-17 were vacant before the date of retirement which were to be filled through promotion of the eligible candidates. Appellant's name was placed at serial No. 12 of merit list of eligible candidates. Working papers of 13 eligible inspectors, including that of appellant, were forwarded to service department vide Office Order No. IGP-1(6)/9987/2011 dated 27<sup>th</sup> August, 2011 to be placed before DPC for promotion but the same meeting of DPC was not convened till the date of retirement of appellant. After the retirement of appellant the same DPC was convened wherein the name of appellant was excluded and was not considered on the grounds of his retirement from service. Appellant made a number of departmental representations after his retirement but in vain. Finally, appellant filed the instant service appeal which was received by the office of Registrar of this Tribunal on 09-05-2017. Appellant prayed for



anti dated promotion from the date when his working papers were sent to service department i.e 27<sup>th</sup> August, 2011 with all back benefits.

2. Respondents filed para wise comments whereby they denied and opposed the contentions of appellant by stating that a retired civil servant cannot claim proforma promotion as of right. They stated that appellant is junior most among all the eligible inspectors therefore he was not considered for promotion. Respondents further stated that under GB Civil Servant Act, 2011 the retrospective or antidated promotion has already been barred. Therefore, a retired civil servant is not eligible for grant of promotion or proforma promotion.

3. Learned counsel for appellant argued that the appellant was eligible in all respect for promotion to the post of DSP BS-17 before his retirement. He submitted that 13 clear post of DSPs BS-17 were vacant for the fulfillment of the same seniority list was prepared wherein the name of appellant has been placed at serial No. 12. He further submitted that working papers of the 13 eligible inspectors BS-16 including appellant was forwarded to service department to convene the meeting of DPC but the same was not convened till after the date of retirement of appellant and the name of appellant was malafidely excluded from it. Learned counsel for appellant further submitted that it is the failure of respondents for not convening the meeting of DPC in due time as the same was convened after 3 months of retirement of appellant. He further submitted that fault was not on the part of appellant causing delay in convening the said DPC but it was sheer failure and incompetency of the respondents which deprived the appellant from his legal right of

promotion and pensionary benefits. Learned counsel further submitted that one of the colleagues of appellant namely Muhammad Hassan Inspector police whose name was placed at serial No. 4 of the said merit list of 13 eligible inspectors, was given proforma promotion by learned Gilgit Baltistan Service Tribunal vide its Judgment dated 01-04-2016 when the respondents deprived the appellant of his promotion to the post of DSP. Learned counsel submitted that the same treatment should be accorded to the present appellant as well as the case of appellant is identical with the case referred above. Finally, learned counsel for appellant prayed for proforma promotion of appellant w-e-f 27<sup>th</sup> August, 2011 with all back benefits.

4. Learned Law Officer GB argued that appellant cannot claim neither any promotion nor anti dated promotion as a retired civil servant cannot claim any anti dated promotion as it is against the settled law. Learned law officer GB placed his reliance on 2005 PLC (C.S) 1400 Supreme Court of Pakistan. Learned law officer further submitted that the departmental representation of appellant is miserably time barred as appellant made departmental representation on 23-01-2017 after lapse of 06 years of his retirement. Learned law officer argued that when the departmental appeal is time barred service appeal is also time barred. He placed his reliance on 1995 SCMR 1505. Learned law officer submitted that availability of the posts are no ground for promotion as promotion can be granted with effect from the date of assumptions of charge not from the date of availability of the post. Therefore appellant cannot claim anti dated promotion as it is not vested right of the civil servant which is in the exclusive domain of the Government. Learned

Law Officer GB placed his reliance on PLD 2008 SC 395. Finally learned Law Officer GB prayed for dismissal of the instant service appeal being non maintainable and time barred.

5. Arguments heard record perused. From perusal of record it reveals that appellant was serving as Inspector BS-16 in GB police in the year 2011. Seniority list was prepared by the department wherein name of appellant was placed at serial No. 13 of the said list. 13 vacant posts including resultant vacancies of DSPs BS-17 were to be filled by departmental promotion from amongst the senior most eligible Inspectors from GB Police on the basis of seniority cum fitness. Working papers for promotion against the said vacant post of DSP BS-17 were prepared and forwarded to Services Department GB on 27-08-2011 to place the same before DPC for consideration. But the meeting of the DPC was not convened till the date of the retirement of appellant. The said DPC was convened after 3 months of retirement of appellant and his name was not considered on the ground of his retirement from service. Furthermore, respondents in para 4 of their parawise comments conceded the contentions of appellant regarding the forwarding of working paper of appellant to Service Department for convening the meeting of DPC for promotion to the post of DSP and availability of the 13 vacant post of DSPs in Police Department GB. But in the same para of para wise comments respondents stated that promotion of appellant to the vacant post of DSP could not be made due to pendency of writ petition before Hon'ble Gilgit Baltistan Chief Court filed by directed inducted DSPs. It shows that appellant was eligible in all respect for promotion of vacant post of DSP BS-17 before his retirement and pendency of writ petition has nothing to do with the

promotion of appellant neither it can be considered as ground for delaying of convening the meeting of DPC for promotion when post of 13 DSPs were already vacant. It is settled law that no one can be made to suffer by an act of Court of Law or Government functionary. It is the failure and fault of respondents for not convening the meeting of DPC on time for promotion of appellant and as such appellant cannot be blamed for it.

6. Moreover, Gilgit Baltistan Service Tribunal has also granted anti dated promotion in number of civil service appeals including an identical case titled **Muhammad Hassan v/s Provincial Government vide his judgment dated 10-04-2016** apart from the above said judgment of GBST reliance can also be conveniently placed on 2010 SCMR,1466 and 2012 SCMR 126. The same are hereby reproduced as under.2010 SCMR, 1466---S.8-promotion---delay---legitimate expectancy, principle of---civil servant was not promoted despite availability of the vacancy---Service Tribunal allowed the appeal filed by civil servant and directed the authorities to consider him for promotion from the date when he became eligible for the post as there was vacancy available. Functionaries were mandated to act with certain amount of reasonableness such violation of due process of law was not observed in processing civil servants promotion matter---having acquired requisite experience and having authored number of articles required for post in question, the civil servant had legitimate expectancy for the post in question---judgment passed by service tribunal was neither against the rule nor the law declared civil servant was eligible to be considered for promotion when substantive vacancy in promotion quota was available. Judgment passed by service tribunal directing the

authorities to consider case of civil servants promotion to post in question from the date when vacancy in his quota was available was unexceptionable Supreme Court declined to interfere in the judgment passed by service tribunal and appeal was dismissed. ( pp.1471,1473,1474.) A,B,C 2012 SCMR 126 SS.2 (j,a.) (g,b.),5 and 8 punjab service tribunal act (ix of 1974) s.4.constitution of Pakistan, art.212 (3)... promotion...working papers regarding appellants promotion prepared before their retirement from service on attaining age of superannuation...denial of promotion to appellants due to their retirement...service tribunal while accepting appeal directed department to prepare working papers regarding appellants promotion and place same before selection board for consideration...validity...department had delayed matter of appellants promotion without any justifiable reason, for which he could not be made to suffer... appellants promotion after retirement from service would be proforma promotion.... Supreme Court refused to grant leave to appeal in circumstances. (pp.127, 130) A and B.

7. As far as the question of limitation for filing departmental appeal by appellant is concerned, no doubt departmental appeal has been filed by appellant after lapse of statutory period. But it has been held by apex Court of Pakistan in a number of cases that suits should not be dismissed on technical grounds rather be decided on merit as it is against principle of Natural Justice and fairplay to kill vested right of a Civil Servant on alter of limitation.

8. For the reasons, discussed above, the instant Service appeal is hereby accepted and respondents are directed to grant proforma promotion to appellant w-e-f 27<sup>th</sup> August, 2011 with all back benefits.

9. No order as to cost.

Announced  
8-06-2018

Sd/-  
**Member-II**

Judgment sheet  
**BEFORE GILGIT-BALTISTAN SERVICE TRIBUNAL  
GILGIT**

Service Appeal No. 601/2016

Date of Institution:	20.04.2016
Date of hearing:	30.04.2019
Date of Judgment:	18.06.2019

**Appellant:** Muhammad Hussain s/o  
Muhammad Ali Shah Forest  
Guard Baltistan Forest Division  
Skardu

**Respondents:** Provincial Govt. through Chief  
Secretary & 04 others

**Before:** Muhammad Kamal Member-I

**Present:** Mr. Akhtar Ali, Advocate for  
appellant.  
Mr. Akhtar Jan, Law Officer GB  
for Respondent No. 1 to 4. Mr.  
Shahid Abbas, Advocate for  
respondent No. 5.

**JUDGMENT**

**MUHAMMAD KAMAL MEMBER-I:-** This judgment shall dispose  
of the above titled service appeal filed by the appellant praying that

two office orders vide Nos. F&E-8(6)/Appeal/2014 dated 10<sup>th</sup> July, 2015 and CFBC-1(2)/2015 dated 16<sup>th</sup> September, 2015 issued by the Forest Department GB may be set aside.

1. Facts arising out for institution of the instant appeal are that the appellant has been appointed as Forest Guard BS-1 in Forest Department Skardu in the year 1989 and the respondent No. 5, Muhammad Ilyas was appointed as Game Inspector BS-05 in 1998, later on both the posts were upgraded from BS-1 to BS-05 and BS-05 to BS-07 respectively. The services of respondent No. 5 were terminated for one reason or the other. However, upon appeal by the respondent No. 5, he was reinstated in his position by the Secretary Forest GB vide No. FW&E-8(6) Appeal/2014 dated 10<sup>th</sup> July, 2015 with effect from the date of his termination i.e 09.10.1998. Initially, the respondent No. 5 was mistakenly adjusted against the post of Game Watcher BS-05, however, subsequently this mistake was rectified by reinstating him in his original post of Game Inspector vide No. referred to above. During the period between termination and reinstatement of Respondent No. 5, various promotions of Forest guards BS-05 to Game Inspector BS-07 were made and 02 of whom were allegedly juniors to the appellant by ignoring his right of promotion. The appellant failed to challenge the promotion of his juniors and to get his right so claimed. Now the appellant, all of a sudden woke up after a deep slumber in his forest castle, feels aggrieved by reinstatement of respondent and perceives that due to reinstatement of respondent No. 5, his right of promotion against the post of Game Inspector is affected. The appellant submitted departmental appeal against reinstatement of respondent No. 5 which

could not be succeeded. Thereafter, the appellant resorted to legal remedy before this Tribunal by way of the present appeal.

2. The provincial government and respondent No. 5 contested the appeal by filing separate parawise comments wherein they have categorically denied the relief claimed by the appellant. After completing all codal formalities, the appeal finally came up for arguments on 30.04.2019. Arguments in pro and contra heard.

3. The learned counsel for appellant contended that reinstatement of respondent No. 5 by the authorities of Forest Department GB has affected the right of promotion of appellant as the appellant is senior most Forest Guard and is entitled to be promoted to the post of Game Inspector. He further maintains that the post of Game Inspector BS-07 falls with 100% by promotion quota and the feeding post is Forest Guard BS-05. On the other hand, the learned counsel for respondent and learned Law Officer contended that although the post of Game Inspector is meant for 100% promotion, but this is not a case of promotion of respondent No. 5, rather he has been reinstated against the post of Game Inspector BS-07 from where he had been sacked. They further maintain that the appellant should have challenged initial appointment order of the respondent No. 5, made during the year 1998(21 years back) if he felt to be affected, but the appellant did not do so. Besides this, learned Law Officer and counsel for respondent No. 5 argued that the instant appeal is also time barred. Perusal of case file transpires that the appeal in hand is time barred by about 09 months and no application for condonation of delay has been filed by the appellant. The learned Law Officer and learned counsel for



respondent No. 5 further submitted that the appellant has also failed to move departmental appeal before proper appellate forum i.e. he has submitted departmental appeal before Secretary Forest, who made the impugned order instead of Chief Secretary which appellate forum available to the appellant. In support of arguments, learned counsel and Law Officer have placed reliance on 2015 PLC (C.S.) 695, 2005 SCMR 1206, PLD 2003 Supreme Court 110, PLD 2002 Karachi 457, 2012 PLC (C.S.) 507 and 2008 PLC (C.S.) 311. In consideration of arguments advanced from both the sides, perusal of file record, I am clear in mind that appellant under misconception has assumed that his right of promotion against the post of Game Inspector BS-07 has affected by reinstatement of respondent No. 5. The respondent No. 5 has not been promoted neither appointed a fresh against the post of Game Inspector BS-07 rather he has been reinstated in the said post which was previously held by him in the year 1998. Reinstatement of respondent No. 5 being purely an administrative action on the part of authorities of Forest Department GB cannot be challenged by the appellant. Besides, appeal of appellant is also barred by 09 months time for which there is no application for condonation of delay by the appellant. Furthermore, appellant should have challenged initial appointment order made in the year 1998 of respondent No. 5 as Game Inspector but he has failed to do so. Therefore, there cannot be any question of challenging reinstatement of respondent No. 5 at this belated stage.

4. In view of the above factual and legal position, appeal of the appellant is held to be without merit and legal force, besides being time barred, is hereby dismissed with no orders as to costs. Appeal dismissed.

5. File be consigned to record after completion.

**Announced:**  
**18.06.2019**

Sd/-  
**Member-I**

Judgment sheet  
**BEFORE GILGIT-BALTISTAN SERVICE TRIBUNAL**  
**GILGIT**

Service Appeal No.42/2018

Date of Institution:	20.06.2018
Date of hearing:	12.06.2019
Date of Judgment:	03.07.2019

**Appellant:** Imran Khan s/o Alif Khan r/o Kashrote Gilgit, Computer Operator PWD.

**Respondents:** Provincial Govt. through Chief Secretary Gilgit-Baltistan Gilgit & 03 others.

**Before:** Mr. Muhammad Kamal Member-I

**Present:** Mir Zeeshan Akhlaque, Advocate for appellant.  
Mr. Akhtar Jan, Law Officer GB for Respondent.

**JUDGMENT**

**MUHAMMAD KAMAL MEMBER-I:-** This judgment shall dispose of the above titled service appeal filed by the appellant seeking directives of this Tribunal for upgradation of his post to remove the

disparity and to bring basic pay scale of computer operator at par with basic pay scale of said post existed in other departments.

2. Facts briefly stated in memo of appeal are that in the year 2008 appellant was appointed as computer operator against maintenance head. With effect from 1<sup>st</sup> July, 2015 all RTE staff of Works Department GB were regularized which included the appellant as Computer Operator BS-12. On 27<sup>th</sup> May, 2010, Government of Gilgit-Baltistan upgraded post of Computer from BS-12 to BS-16. At the time of upgradation of the post of computer operator to BS-16, appellant was working as a temporary staff and his services were brought on permanent footings in 2015. The appellant submitted a departmental appeal to authorities of Works Department GB for upgradation of his post to bring it at par with his counterparts. But the said departmental appeal appears to have not been responded; hence the appellant seeks directives of this Tribunal for redressal of his grievance through the instant appeal.

3. Respondents were directed to file parawise comments and their appearance before the Tribunal. Parawise comments have been filed whereby contentions of appellant have been repudiated. After completing all codal formalities, the appeal came up for hearing on 12.06.2019. Arguments in pro and contra heard, record perused and arguments advanced by both sides considered.

4. It is an obvious case, needs not to go in deep details. Government of Gilgit-Baltistan upgraded post of Computer Operator BS-12 to BS-16 in the year 2010. This upgradation was/ is equally

applicable to all incumbents working in various govt. departments of GB. But benefit of this upgradation was not extended to computer operators of Works Department GB as they were not permanent employees. However, immediately after regularization of their services, in view of upgradation of post of computer operator from BS-12 to BS-16, posts of all computer operators working in Works Department should have been upgraded accordingly without forcing them to resort to legal remedies before Courts of law, while the department did not do so. Such an upgradation generally applies to all employees of same cadre automatically without waiting for orders of Courts. This is a case of discrimination done to appellant and compelled him to sustain loss in terms of legal fee and mental agony.

5. Foregoing in view, appeal of appellant is partially accepted by granting him upgradation of the post from the date of regularization of his services as Computer Operator i.e. **1<sup>st</sup> July, 2015** with all back benefits. Order accordingly. There is no order as to cost.

**6. This judgment shall be treated as judgment in rem applicable to all such cases of upgradation of post of computer operators.**

7. File be consigned to record after completion.

Announced:  
03.07.2019

Sd/-  
**Acting Chairman/Member-I**

Judgment sheet  
**BEFORE THE GILGIT-BALTISTAN SERVICE TRIBUNAL**

Appeal No. 45/2018.

Date of institution	05-07-2018
Date of hearing	01-07-2019
Date of judgment	02-08-2019

APPELLANT: **Tahira Begam w/o Shahid Ali  
 EST BS-14 Govt. Primary School  
 Hajigam Skardu.**

RESPONDENTS: Provincial Govt. through Chief  
 Secretary GB and 05 others.

BEFORE: Mr. Ali Sher, Tst. Member-II.

PRESENT: Mr. Muhammad Salim Khan  
 Advocate for the appellant.  
 Mr. Akhtar Jan Law Officer GB for  
 respondents.

**JUDGMENT**

**ALI SHER, Tst. MEMBER-II:-** Brief facts as stated in the memo of appeal and service miscellaneous No. 34/2018 are that the appellant was initially appointed as MT Teacher BS-7 in Govt, Middle School Astore vide officer order No. Sec-EDU-2(14)/96 dated 02-06-1996 against the quota of disable persons. After the appointment, appellant was transferred to different schools of different districts on medical grounds on attachment basis. Lastly, appellant was transferred from Govt. Girls Middle School Eid Gah Astore to Govt. Girls Primary School Hajigam Skardu on attachment basis. Appellant performed her duties till she was repatriated and relived of her services by respondent vide impugned office orders No. BHSS,

2(3)/2016 dated 05-09-2018 and office order dated 04-06-2018 whereby appellant was directed to perform her duties at the place of her original appointment i-e GMS Astore. Appellant made departmental appeal which was kept unattended. Finally, appellant filed the instant service appeal along with an application under order 39 rule 1 & 2 CPC which was received by the office of registrar of this tribunal on 05-07-2018. Appellant prayed for suspension of the said impugned office orders dated 04-06-2018 and 05-07-2018 and she be allowed to continue her duties at GMS Hajigam Astore as she is a disabled person and cannot live without her spouse who is also a lecturer in Govt. Boys College Kharmang Baltistan. During the pendency of the instant service appeal, respondents issued a number of notices dated 05<sup>th</sup> September, 2018, 18<sup>th</sup> August, 2018 and 30<sup>th</sup> July, 2018 against appellant and she was directed to join her duties at GMS Astore immediately in case of failure disciplinary action will be taken against appellant. Appellant filed SM petition No. 34/2018 with prayer that the said notices be suspended and her stopped salary be released from the date of its discontinuation i-e June, 2018.

2. Respondents filed para wise comments whereby they opposed the contentions of appellant by stating that appellant being Govt. Servant is deputy bound to perform her duties at the place of her original appointment and from where she draws her salary. Respondents stated that though appellant was posted at Skardu on medical ground but now she cannot be allowed to continue her duties there as there is shortage of teachers at concerned districts. He further submitted that it is not only the appellant who has been repatriated but other teachers, who were on attachment basis, have

also been repatriated. Finally, respondents prayed for dismissal of the instant service appeal with cost.

3. Learned counsel for appellant argued that appellant is a disabled lady and has been appointed against the quota of disabled persons. Therefore, she is in a dire need of help of her husband in affairs of her daily life. He further contended that appellant has been posted at GPS Hajigam on medical ground vide officer order No. DE(B)/1(7)/2016 dated 26<sup>th</sup> January, 2018 and in presence of this office order the said impugned office orders dated 04<sup>th</sup> June, 2018 and 05<sup>th</sup> June, 2018 are against the law and equity. Learned counsel for appellant further argued that there is no shortage of staff at GMS Astore as claimed by the respondents which is based on malafied and concoction. He further stated that no other teachers have been repatriated except the appellant. He further argued that respondents allowed continuation of services to those who were their blue eyed. He further contended that the salary of appellant has been illegally stopped by the respondents from June, 2018 despite of the fact that appellant is willing to perform her duties at GMS Skardu. Finally, counsel for appellant prayed for the release of the salary of appellant from the date of his discontinuation i-e June, 2018 and prayed that appellant be allowed to perform her duties at GPS Hajigam Skardu on medical ground by setting aside of impugned officer order dated 04<sup>th</sup> and 5<sup>th</sup> June 2018 and impugned notices dated 5<sup>th</sup> September, 2018, 18<sup>th</sup> August, 2018 and 30<sup>th</sup> July, 2018 to meet the ends of justice.

4. Learned Law Officer GB appearing on behalf of respondent argued that appellant was appointed at District Astore and she draws her salary at Astore therefore, she is duty bound to perform her

duties at the place of her original appointment. He further argued that though appellant is a disabled person and been appointed against quota of disabled person but on the basis of her disability she cannot claim place of duty at her own choice as it is purely an administrative matter and falls within the exclusive domain of concerned department to deal with the matter. He further submitted that though appellant has been posted at GPS Hajigam Skardu on medical ground but now there is sheer shortage of teachers at concerned district. He further argued that not only appellant has been repatriated but also other teachers who were on attachment basis. Finally, learned law office GB prayed for dismissal of the instant service appeal and SM petition No. 34/2018 with cost.

5. I heard the arguments, advanced by respective counsels for parties with due consideration and perused record minutely. From perusal of the record, it reveals that appellant has been appointed against quota of disabled person and after the appointment she remained posted at different areas on medical ground. Lastly appellant has been posted from GMS Eid Gah Astore to GPS Hajigam Skardu from where she has been repatriated and directed to report her duties at GMS Astore vide impugned office order dated 04<sup>th</sup> June, 2018 and impugned office order dated 05-07-2018. Admittedly, appellant is a disabled lady and on this ground she has been posted at the place where her husband (who is also a govt. servant) resides. During the arguments learned law officer GB stated that the case of appellant has been referred to concerned committee who is deciding the similar cases and allowed other concerned teachers to continue their duties on medical ground till further orders. Therefore, appellant should wait for the decision of the said committee.



It is completely obvious that appellant, besides being a women, is a disabled person and it will be injustice to station her at the place which is not only so away from her spouse but also causes inconvenience for her in dealing with daily affairs of life.

**6. For the reasons discussed above the instant service appeal and SM petition No. 34/2018 is hereby partially allowed, respondents are directed to allow the appellant continuing her duties at Girls GPS Hajigam Skardu for a period of two years (two years will be counted from the date of judgment). After the expiry of two years, it shall be at the disposal of concerned department to deal with the matter as the circumstances may require. Furthermore, impugned office orders dated 04<sup>th</sup> June, 2018, 05<sup>th</sup> June, 2018 and impugned notices dated 5<sup>th</sup> September, 2018, 18<sup>th</sup> August, 2018 and 30<sup>th</sup> July, 2018 are hereby set aside. Respondents are directed to release the salary of appellant from the date of its discontinuation i-e June, 2018.**

7. No order as to cost.

Announced  
02-08-2019

Sd/-  
**Member-II**

Judgment sheet  
**BEFORE THE GILGIT-BALTISTAN SERVICE TRIBUNAL**

Appeal No. 48/2018.

Date of institution	26-07-2018
Date of hearing	05-09-2019
Date of judgment	04-10-2019

APPELLANTS: Javed Iqbal s/o Abdul Haleem Head Constable District Police Diamer Gilgit Baltistan Gilgit.

RESPONDENTS: Provincial Govt. through Chief Secretary GB and 04 others.

BEFORE: Mr. Ali Sher, Tst. Member-II

PRESENT: Raja Shakeel Ahmad Advocate for appellants.  
M/S Akhtar Jan Law Officer GB for respondent.

### **JUDGMENT**

**ALI SHER, Tst. MEMBER-II:-** Brief facts, stated in the memo of service appeal and revealed during arguments, are that the appellant was Head Constable in Police Department of Gilgit Baltistan who alongwith other two officials, namely, FC Muhammad Amin and FC Zaib Alam were deputed with an injured person, namely Abdul Khadi, who injured in a murderous attempt at Chilas, to Pakistan Institute of Medical Sciences (PIMS) Islamabad for the safety and security of the said injured person on account of apprehension about possible attempt on life of the injured person during his stay at PIMS Islamabad. The said injured person remained in PIMS for couple of days till dated 25-11-2017, when he was taken to laboratory for an important test by the said two FCs, accompanied by relatives of the injured person, wherefrom he managed to escape with the collaboration of his relatives. Respondent No. 5 was appointed as inquiry officer to inquire into the matter who inquired and

recommended the removal of the appellant and the said FCs from the service. Respondent No. 4 removed the appellant from service and imposed lesser punishment upon the other two official by reduction of their pay for a period of three years vide impugned office order dated 28<sup>th</sup> February, 2018. Appellant being aggrieved from the said impugned office order, preferred departmental appeal before respondent No.3 who partially accepted the same by reinstatement of appellant in service but appellant was reversed from HC to FC vide impugned office order No. DIG-GR-E-1-(14) 5166-68/2018 dated 3<sup>rd</sup> July, 2018. Appellant instituted the instant service appeal before this tribunal mainly on the grounds that appellant was not told about the injured person to be an accused by the respondents as he was just told to ensure safety and protection of the injured person during his treatment. Appellant stated in the memo of appeal that neither any hand cuff was provided to him in order to prevent the escape nor FIR was lodged against the said injured person during his shifting from Chilas to PIMS Islamabad. Which could guide the appellant to believe thaty the said injured person was an accused. Appellant stated that no card of arrest was prepared and no remand was taken from the magistrate during shifting the said injured person to Islamabad. Finally, appellant prayed for setting aside of the impugned officer order dated 3<sup>rd</sup> July, 2018 passed by respondent No.3 and impugned office order No. SPD- 1 (7) 2597-2604/ 2018 dated 28<sup>th</sup> February, 2018 passed by respondent No.4 being illegal unlawful and ultra vires.

2. Respondents filed their joint para wise comments whereby they opposed all the averments, made by appellant in the memo of the service appeal with submission that appellant being commander of protection and security of the injured accused was duty bond to

prevent the escape of the said injured accused from PIMS Islamabad. It has been stated that it was the sheer negligence and misconduct of appellant and the said FCs they allowed injured accused to escape from the Hospital. Respondents stated that though no hand cuff was provided to appellant yet he was verbally told about the injured person to be an accused against whom FIR was also in existence during his shifting to Islamabad. Respondents stated that appellant was given personal opportunity to disprove the allegations, levelled against him but he miserably failed to disprove. Finally, respondents prayed for dismissal of the instant service appeal with cost.

3. Learned counsel for appellant argued that the impugned office orders are against the law and equity as the appellant was, all of the sudden, deputed with the said injured person to PIMS Islamabad for safety and security. Learned counsel further argued that before deputing, the respondents did not tell the appellant about the injured person to be an accused and appellant was totally ignorant about injured person status as that of an accused. He further submitted that if the injured person was an accused then hand cuff should have been provided to appellant by the respondents. Learned counsel for appellant further contended that no card of arrest was prepared by the respondents at the time of shifting the injured person to Islamabad. Learned counsel for appellant further argued that no FIR was registered against the accused during the time of his shifting to PIMS Islamabad therefore, no copy of the same was provided to the appellant. He further stated that the fact of non registration of FIR is further rectified by the SHO of PS Karachi company Islamabad who refused to lodge FIR against the said injured person after his escape from PIMS, on account of absence of any evidence about the injured

person to be an accused. Learned counsel for appellant argued that appellant being commander of the protection and security of the injured person was responsible to the extent of supervision of protection and security to be made by other said FCs who took the injured person to laboratory for some important test from where, the injured person managed to escape. Learned counsel for appellant further submitted that the said two FCs were awarded lesser punishment whereas the appellant was given major punishment which is against the rule of consistency. Finally, learned counsel for appellant prayed for reinstatement of the appellant to the post of HC with all back benefits by setting aside the impugned officer orders dated 3<sup>rd</sup> July, 2018, 28<sup>th</sup> February, 2018 to meet the ends of justice.

4. Learned law officer GB appearing on behalf of respondents, argued that appellant being member of disciplined force was under obligation to fulfill the assignment given to him with full devotion enthusiasm and vigilance but he miserably failed to do so. As the appellant did not take due care of the injured accused when he was taken to laboratory in PIMS. He further argued that after the escape of the said injured accused, appellant was given an ample amount of time to trace and re-arrest the injured accused but the appellant did not bother to trace and arrest the injured accused which brought the bad name to the entire force. Learned law officer GB further contended that the appellant was told about the injured person to be an accused and instructions were also issued to take back the said injured person to PS city Chilas after treatment from PIMS Islamabad. He further submitted that appellant committed gross mis-conduct and negligence by letting the injured person escaping from the hospital which is punishable under Punjab Police Efficiency and Disciplinary

Rule, 1975. Finally, learned law officer GB prayed for dismissal of the instant service appeal being non-maintainable and meritless.

5. I heard the arguments, advanced by counsels for the parties with due consideration and perused record minutely. From perusal of record, it transpires that appellant was deputed for security and protection of the said injured person when the later was shifted from Chilas to PIMS Islamabad for the purpose of treatment. It is also admitted fact that the said injured person managed to escaped from the said hospital which resulted in reversion of appellant from HC to FC. However questions exist whether appellant was told about the injured person to be an accused by the respondents, whether the appellant was deputed through a written order of the DPO Diامر informing the relevant Police circle of Islamabad, whether any remand was taken when the said injured person shifted to PIMS Islamabad, whether FIR was registered at the time of shifting the said injured person. As far as question regarding briefing the appellant about injured person to be an accused and written order of deputing the appellant, is concerned, nothing on record is available which may show that the appellant was deputed through written order by the respondents. It means that appellant has not been deputed through written order which was mandatory. Though respondents stated in para wise comments that FIR was lodged against the injured accused at the time of his shifting to PIMS Islamabad, yet, respondents failed to bring it on record. It shows that FIR was not in existent at the time of shifting the said injured person to PIMS Islamabad. If a copy of FIR was not given to the appellant how one could expect him to lodge the FIR against the said injured accused after his escape from Hospital. It is also an admitted state of affairs that no hand cuff was provided to

appellant by respondents at the time of the departure from Chilas to Islamabad. Appellant cannot be expected to prevent the escape of the said injured person when appellant was not provided necessary equipment to prevent the escape. Furthermore, under 26.25 Police rules, 1934 it is mandatory that whenever any wounded person is arrested is to be referred to hospital and the police shall take measures to ensure his safe custody in Hospital and the magistrate having jurisdiction shall be asked to grant remand, but this mandatory provision has not been complied with by the respondents. It is fundamental principle of law that if any act is required by law to be done in a particular manner it must be done accordingly otherwise all consequent acts will be, even if legal, nullity in the eyes of law. Respondents are directed to comply fully with the spirit of law and procedure before taking any action on their ends.

**6. For the reasons, discussed above, the instant service appeal is hereby partially allowed, the impugned office orders No.DIG-GR-E-1-(14) 5166-68/2018 dated 3<sup>rd</sup> July, 2018, SPD- 1 (7) 2597-2604/ 2018 dated 28<sup>th</sup> February, 2018 are set aside and respondents are directed to reinstate the appellant on his service as HC from the date of his reversion but appellant shall not be entitled for any back benefits.**

7. No order as to cost.

8. File be consigned to record after due completion.

Sd/-  
**Member-II**

Judgment sheet  
**BEFORE GILGIT-BALTISTAN SERVICE TRIBUNAL  
 GILGIT**

Service Appeal No.08/2018

Date of Institution:	30.03.2018
Date of hearing:	26.06.2019
Date of Judgment:	07.10.2019

**Appellant:** Kumail Shahid s/o Muhammad Taqi  
Tailor Master BPS-02 DHO Office  
Skardu

**Respondents:** Provincial Govt. through Chief  
Secretary Gilgit-Baltistan Gilgit & 06  
others.

**Before:** Mr. Muhammad Kamal Member-I

**Present:** M/s. Muhammad Saleem Khan and  
Shahid Abbass Advocates for  
appellant.  
Mr. Akhtar Jan, Law Officer GB for  
Respondent No. 01 to 04 & 07.

**JUDGMENT**

**MUHAMMAD KAMAL MEMBER-I:-** The appellant named hereinabove seeks directives of this Tribunal for payment of salary from 26.10.2015 onward.

2. Succinctly, facts narrated in the memo of appeal are that appellant was appointed on 7<sup>th</sup> February, 2013 as contingent paid multipurpose grade-1 in DHO Office Skardu and was posted at C.D. Sukhamaidan. Keeping in view exigencies of services and prolonged contingent services, the appellant was appointed as Tailor Master on contract basis for a period of 6 months. Subsequently, on 24<sup>th</sup> April,



2016 his contract services were brought on permanent footing by regularizing him against the said post. The appellant joined his services as Tailor Master bs-03 and started performing his duties as such. When bills for pay and allowance of appellant were prepared and presented to the District Accounts Office Skardu, the then Accounts Officer did not pass his bills. However, no written reasons as to why the pay bills were not passed by AGPR office are available on file. Against non-payment of his pay, the appellant submitted an appeal to the Secretary Health GB, which remained not responded, hence this appeal.

2. Upon admission and issuance of notices, the respondents submitted their respective parawise comments, wherein the respondents have repudiated the averments made by appellant on legal grounds. The appeal finally came up for hearing on 26.06.2019 Arguments pro and contra heard, available record on file perused and arguments advanced from both the sides considered. The law officer for respondents mainly contented in his arguments that appellant was illegally appointed against a regular post without fulfilling of codal formalities i.e advertisement and DSC etc. From perusal of case file, it transpired that the points raised by the respondents are only mentioned in their parawise comments as well as during their arguments but none of the single line/order in writing to this effect is available on record. Nor the appointment order has officially been revoked so farunder which the salary of appellant has been stopped.

3. The appellant was adjusted against the post of Tailor Master BS-02 (wrongly shown as BS-03 in appointment order). Copy of the said letter, amongst others, was also forwarded to Director Health

Services GB, who is the next higher authority to District Health Officer Skardu. It has not been brought into notice of this Tribunal during hearings or through any document that the Director Health Services Skardu region had ever objected to such appointment. Thus, it is presumed that the Director Health Services Skardu has accepted the said appointment. The contention of respondents in para 4 of parawise comments that DHO office has not accepted appointment of appellant is very ironical as the DHO Skardu himself is the appointing authority then who is other authority in DHO Skardu to accept or reject the appointment of appellant. If for the sake of brevity it is assumed that the appointment was illegal, then why DHO office Skardu took duties from the appellant which is evident from attendance register/ sheets. The attendance sheet shows that the appellant has performed his duties from his appointment till 1<sup>st</sup> March, 2018. Record onwards is not available on file.

4. As far as availability of record with AGPR Skardu is concerned, since it has not been entertained the pay bills of appellant, then how could there be availability of record with AGPR Office Skardu. Respondents no. 5 and 6 further contested in their parawise comments that appeal of the appellant is badly time bared hence liable to be dismissed. In this regard reliance is referred here as under:-

**“No cavil to proposition that limitation does not run in respect of financial matters. PLD 1992 SC 825, 2000 SCMR 104, 2000 SCMR 181, 2002 PLC (CS) 1388 & 2006 PLC (CS) 1124”**

Besides above, it would be more appropriate to refer to an Office Memorandum No. SO(S)-I-1(49)/2018 dated 16<sup>th</sup> January, 2018

issued from Services, General Administration and Cabinet Department  
GB: For ease of reference, the same is reproduced below:

GOVERNMENT OF GILGIT-BALTISTAN  
(SERVICES, GENERAL ADMINISTRATION AND CABINET DEPARTMENT)

SO(S)-I-1(49)/2018

Gilgit dated 16<sup>th</sup> January

### **OFFICE MEMORANDUM**

Subject: **MECHANISM TO ENSURE MERIT BASED  
RECRUITMENTS IN VARIOUS  
DEPARTMENTS OF GOVERNMENT OF  
GILGIT-BALTISTAN**

In supersession of this department's OM of even number dated 11<sup>th</sup> January, 2018 on the subject and to state that:

(i). All the administrative departments shall give preference to the contingent employees for appointments against the vacant positions, in accordance with the Establishment Division, Islamabad OM No. F.53/1/2008/SP, dated 11<sup>th</sup> May, 2017 titled "amendment in the Recruitment Policy/ Mechanism to ensure merit based recruitment in the Ministries/ Divisions/ Sub-ordinate offices/ Autonomous/ Semi-Autonomous Bodies/ Corporation/ Companies/ Authorities and decision of the Cabinet held in its meeting on 11<sup>th</sup> December, 2017.

(ii). For appointment to BS-01 to BS-05 posts, there shall be no screening test, whereas candidates shall only have to qualify particular skill test, if required for the said posts in

accordance with the **Establishment Division Islamabad OM F.53/1/2008/SP, dated 3<sup>rd</sup> March, 2015** titled "amendment in the Recruitment Policy/ Mechanism to ensure merit based recruitment in the Ministries/ Divisions/ Sub-ordinate offices/ Autonomous/ Semi- Autonomous Bodies/ Corporation/ Companies/ Authorities.

(iii). The ban imposed by Government of Gilgit-Baltistan on contingent appointment vide Finance Department GB Circular bearing No. Budget-1(5)/2016-2017, dated 25<sup>th</sup> July, 2016 shall be implemented in true letter and spirit and no new CPS shall be appointed.

(iv). No leftover CPS shall be removed on the basis of non-availability of posts.

(v). This policy shall be applicable only on the contingent paid staff appointed prior to 30.06.2016."

5. A bare reading of the above circular casts doubtless light on the matter that contingent paid staff has to be given preference while appointments in BS-02 to BS-05 without screening tests subject to fulfillment of relevant skills. The appellant was a contingent paid grade-1 and in view of his skills in tailoring, he was adjusted against the post of Tailor Master BS-02 by DHO Skardu who is the appointing authority in the case. The above referred office memorandum is also backed by office memorandum/ guidelines of Establishment Division Islamabad highlighted in para (iii) above. It is pertinent to mention here that without taking action in the matter of appointment of

appellant either to retain his services or cancel his appointment orders, the successor DHO advertised the post of Tailor Master BS-02 for new recruitment. Furthermore, the DHO Skardu also resorted to deprive the appellant of his salary for the period the appellant performed his duties. In this regard, the counsel for appellant has relied on two judgments PLJ 2011 Tr.C. (Services) 17 and 2019 PLC (CS) 557 wherein it has been held that pay to which employee entitled to could not be denied. Similarly, neither DHO Skardu nor AGPR Skardu is authorized to deprive the appellant from his pay for the period he performed his duties.

6. In view of above factual and legal position, appeal of the appellant is accepted and the respondents are directed to release pay of appellant from the date of its withholding till to date and let the appellant to continue his services as Tailor Master BS-02 in DHO Office Skardu. Order accordingly. There is no order as to costs.

7. File be consigned to record after completion.

Announced:  
07.10.2019

Sd/-  
**Member-I**

**BEFORE GILGIT-BALTISTAN SERVICE TRIBUNAL  
GILGIT**

Service Misc. No. 07/2019

Date of Institution	24.05.2019
Date of hearing	28.05.2019
Date of Order	14.10.2019

**Appellant:** Anas Safa s/o Abdul Qadeer r/o  
Farooqabad Colony, Chilas , District  
Diamer

**Before:** Mr. Muhammad Kamal Acting Chairman

**Present:** Shahid Abbas Advocate for Petitioner.

### **ORDER**

**MUHAMMAD KAMAL ACTING CHAIRMAN:-** This is a review petition against the Judgment dated 02.05.2019 passed by this Tribunal in a case titled "***Anas Safa vs. Chairman NADRA etc***". Heard Mr. Shahid Abbas advocate for the petitioner. He submitted that while passing the judgment the Tribunal has acted in a hurry manner as such the same is not maintainable and liable to be set a side. The learned Counsel for the petitioner failed to refer any specific law in support of his contention nor he has proved that any material fact or law point was over looked while passing the judgment dated 02.05.2019.

The scope of review under Civil Procedure Code(CPC),1908 is replicated as under, the relevant portion of Order 47 of CPC,1908 is as follows:

#### **Quote**

#### ***Order 47(1)(c)***

*"(1). Any person considering himself aggrieved --*

*(c) by a decision on a reference from a court of Small Causes, and who, from the discovery of new and important matter or evidence which,*

*after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order”.*

The Honorable Supreme Court in its case law cited at **P 1979 SC 741** also explained jurisdiction and scope of review. For sake of understanding the relevant para is reproduced as:

**Quote**

*“Review Jurisdiction is invoked mainly for the purpose of correcting errors”.*

In an another case law , the Honorable Supreme Court of Pakistan through one of its land mark judgment reported at **2013 SCMR 759**, made the following remarks regarding change or correction of age after entry into government service. For convenience, operative part of the said judgment is reproduced below:

**Quote**

*"5. Before we discuss the merits of the case and arguments addressed at the bar it is*

*worthwhile to refer to Rule 12A of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 which reads as under:*

***[12A. Alteration in the date of birth.--***

*-The date of birth once recorded at the time of joining government service shall be final and thereafter no alteration in the date of birth of a civil servant shall be permissible].*

The counsel for the petitioner through his review petition has not agitated any sufficient reason or any new evidence or any violation of law. For a review petition there shall be new grounds and finding of an important matter as per the law prescribed by the CPC. The Tribunal has not passed the decree in urgency, in fact whole appeal was read carefully and record available on the file was corroborated before passing decree. Also in the light of Judgment passed by the Honorable Supreme Court of Pakistan, once entry was made at timing of joining, it is mandatory not to change the date of birth of a civil servant **[cited above]**.

In view of the above discussion, I am of the considered view that this petition is not maintainable in the eyes of law as the counsel for the petitioner miserably failed to bring forth any important matter or evidence or any sufficient reason that is causing any legal impairment to the petitioner. Hence, dismissed *in limine*. Order accordingly.



File be consigned to record after completion.

Announced  
14.10.2019

Sd/-  
**Acting Chairman**

Judgment sheet  
**BEFORE THE GILGIT-BALTISTAN SERVICE TRIBUNAL  
GILGIT**

Appeal No. 02/2019.

Date of institution	09-01-2019
Date of hearing	31-10-2019
Date of judgment	29-11-2019

APPELLANTS: Sabir Hussain s/o Issa Khan ex FC  
Keypoint District Police Gilgit.

RESPONDENTS: Provincial Govt. through Chief  
Secretary GB and 04 others.

BEFORE: Mr. Ali Sher, Tst. Member-II

PRESENT: Mr Shahid Abbas Advocate for  
appellants.

Mr. Hafiz Ullah Law Officer GB for  
respondents.

**JUDGMENT**

**ALI SHER, Tst. MEMBER-II:-** Brief facts leading to filing of the instant service appeal are that the appellant was performing his duties as Foot Constable in GB Police Department who was dismissed from service vide impugned office order dated 15-06-1994 under 12.21 Police rules, 1934 on allegation that the appellant gave a fake cheque to a person namely, Muhammad Ayub who presented the same to

Bank authorities. Thus a criminal case was registered against the appellant under section 409,420,468,471 PPC vide FIR No. 2/94 FIA PS Gilgit. After dismissal from service, appellant faced criminal trial before learned special judge FIA/Session Judge Gilgit who acquitted the appellant from the said charges vide judgment dated 08-05-2018. Appellant preferred departmental representation before respondent No. 2 on 05-09-2018 which remained unattended. Appellant filed writ petition before Hon'ble Gilgit Baltistan Chief Court who dismissed the said petition in limine vide its order dated 17-09-2018 with observations that the case in hand falls within the exclusive jurisdiction of Gilgit Baltistan Service Tribunal and jurisdiction of Gilgit Baltistan Chief Court is thus barred. Appellant filed the instant service appeal before this Tribunal which was received by office of Registrar on 09-01-2019. Learned counsel for appellant argued that appellant has been dismissed from service illegally and unlawfully as appellant was not given an opportunity of personal hearing to defend the allegations, leveled against him. Learned counsel further contended that no show cause notice was served to appellant before his dismissal by Respondent No.4. Learned counsel further submitted that the said alleged fake cheque was not presented by appellant but it was presented by another person namely Muhammad Ayub against whom no criminal case has been registered. Per learned counsel for appellant, the appellant has been acquitted by trial court and the dismissal of appellant is against the law as appellant was dismissed on account of registration of FIR. He further argued that when the appellant is declared innocent by the court of law then dismissal from service is irrelevant. Counsel for appellant further contended that the service appeal of appellant is within time as the limitation runs from the acquittal of appellant not from his dismissal. Learned counsel

further argued that when a Public servant is tried under two different panel provisions of law, limitation runs from acquittal in the criminal case which results his dismissal from service. Learned counsel placed his reliance on PLD 2010 Supreme Court 695. He further submitted that under 12.21 Police rules, 1934 superintendent Police can only discharged the police constable during probation but respondent No. 4 dismissed the appellant which is against the law. Learned counsel for appellant further argued that discharged from service under 12.21 Police requires regular inquiry in to the allegations but no such inquiry has been conducted by respondent No.4 before dismissal of appellant. Learned counsel placed his reliance on 2011 GBLR 332. Finally learned counsel for appellant prayed for reinstatement of appellant with all back benefits.

2. Learned Law Officer GB appearing on behalf of respondents vehemently opposed the contentions of counsel for appellant by stating that the instant service appeal is miserably time barred as the appellant has been dismissed on **05-06-1994** whereas the instant appeal has been filed before this Tribunal on **09-01-2019**. Learned law officer GB further submitted that appellant has been dismissed by respondents after due process of law. He further argued that no show cause notice or regular enquirey is needed for dismissal of a Police Constable if he fails to prove himself efficient during his probation. Per learned law officer GB, appellant was dismissed lawfully as he committed an offence by giving a fake cheque during his probation and such offence cannot be expected and tolerated from personal of a disciplined force. Finally, learned law officer GB prayed for dismissal of the instant service appeal being time barred and meritless with cost.

3. I heard the arguments, advanced by counsels for parties, with due consideration and perused record minutely. From perusal of record, it transpires that appellant has been dismissed from service during his probation on account of registration of said criminal case under section 409,420,468,471 PPC. Record also shows that criminal case was registered on 12-06-1994 and appellant was dismissed on 16-06-1994 vide impugned officer order No. SP-SB-(16)/2827/94 dated 15-06-1994. It means that appellant was dismissed only after 03 days of registration of the said FIR. No doubt, Superintendent Police is empowered to discharge police constable during his probation under 12.21 police rules, 1934 but it does not mean that such discharge will be without giving show cause notice or personal hearing. It is principle of natural justice that every person must be given an opportunity to defend the allegations, leveled against him on the basis of universal principle "**AUDI ALTRAM PARTAM**" (no one should be condemned unheard). Moreover, nothing has been placed on record by respondents whether any show cause notice was given to appellant before his dismissal or departmental enquiry has been conducted in to the matter. The Respondent No. 4 should have served show cause notice and conducted an enquiry in order to dig out whether the alleged fake cheque was really given by appellant to the said person namely Muhammad Ayub himself presented it before bank authorities. But, unfortunately it was not done by respondent No.4.

4. Furthermore, appellant was acquitted by Trial Court in the said criminal case by learned Special Judge/Session Judge Gilgit vide Judgment dated 08-05-2018. The dismissal of the appellant from service is merely the result of registration of the said criminal case

against the appellant when the appellant is acquitted and declared innocent by the competent court of law, how he can be penalized by dismissal from the service when the dismissal itself is result of registration of criminal case.

5. As far as limitation for filing the instant service appeal before this forum is concerned, admittedly this service appeal has been filed after lapse of considerable period after dismissal of appellant from service. As stated supra that no an opportunity of personal hearing has been given to appellant before his removal and no enquiry has been conducted into the allegations leveled against the appellant which is against the law and natural justice. **It is settled law that limitation does not run against an order which is void ab initio as the same point has also been discussed by Hon'ble Lahore High Court in its Judgment reported as 2016 YLR 2575. Furthermore, The Hon'ble Supreme Court of Pakistan in several occasions held that suit must not be dismissed on technical grounds rather it will be decided on merit.**

6. **For the reasons discussed above the instant service appeal is partially allowed. The impugned office order dated 15-6-1994 is set aside, appellant is reinstated to service from the date of his dismissal, without pay as appellant performed no duty during the intervening period. However pay of the appellant shall be protected from the date of dismissal for the purpose of annual increment only.**

7. No order as to cost.
8. File be consigned to record after due completion.

Sd/-  
**Member-II**

Judgment sheet  
**BEFORE GILGIT-BALTISTAN SERVICE TRIBUNAL  
GILGIT**

Service Appeal No.07/2018

Date of Institution:	28.03.2018
Date of hearing:	26.11.2019
Date of Judgment:	13.03.2020

**Appellant:** Amir Munir s/o Muhammad Munir r/o Juglote at present Gilgit District Gilgit

**Respondents:** Provincial Govt. through Chief Secretary Gilgit-Baltistan Gilgit & 03 others.

**Before:** Mr. Muhammad Kamal Member-I

**Present:** Mr. Basharat Ali, Advocate for appellant  
Mr. Hafiz Ullah, Law Officer GB assisted by Mr. Mutahir, S.O E&T Department GB for respondents.

**JUDGMENT**

**MUHAMMAD KAMAL MEMBER-I:-**Through this judgment, I intend to dispose off the above appeal filed by the appellant for redressal of his grievances on the following facts and grounds.

2. Facts giving rise to institution of this appeal are that the appellant was initially appointed as LDC BS-07 in Excise & Taxation Department GB in July, 2011. In pursuance of the said appointment letter, the appellant joined his duties and drew salary. Later on, the appellant was further appointed/ adjusted against a post of Assistant Sub-Inspector BS-09 in the same department. In the wake of an inquiry conducted against fake appointments in Excise & Taxation Department GB, services of appellant including other similarly placed persons were terminated. Immediately after termination of his services as ASI, he reported back to department for rejoining against the post of LDC BS-07 on the basis of lien retained by him vide joining report dated 10.03.2014. The appellant claims that he had been granted lien vide Office Order No. Secy-Revenue (Admin)-1(23)/2012 dated 18<sup>th</sup> September, 2012 but when submitted rejoining report the department did not accept the same. Be that as it may, the department did not accept his joining back report against the post of LDC BS-07 on the ground that as per record, no lien had been granted in favour of the appellant and the Office Order whereby the appellant claims to have been granted is a fake one. The appellant resisted that the said office is an original one which has been duly signed by the then Section Officer Excise & Taxation Department GB. He further submits that in view of the Office Order, referred to hereinabove, he cannot be restrained from joining back against the post of LDC-07 which was held by him prior to induction as ASI. Against denial of accepting rejoining report, on 12.03.2012, the Appellant submitted an appeal to the Secretary Excise & Taxation Department GB which remained not responded. On 06.07.2017, the appellant submitted another appeal in the shape of reminder which was replied on 11<sup>th</sup> March, 2018 vide Excise & Taxation Department

GB letter No. Sectt-E&T-Admin-2(5)/17- pt-15/2281 dated 12<sup>th</sup> March, 2018 informing the appellant that no record as to grant of lien in his favour is lying with Excise & Taxation Department. Being aggrieved by this office order, the appellant filed the instant appeal before this Tribunal.

3. Upon submission of the appeal, notices were issued to concerned departments for attendance and submission of parawise comments, in pursuance whereof, parawise comments were filed wherein the respondents have denied all averments made by the appellant on leg-factual grounds. The appeal, finally, came up for arguments on 26.11.019. The learned counsel for appellant argues that the lien order issued in favour of the appellant has duly been signed and issued by the then Section Officer Excise & Taxation Department GB (now in prison being convicted by NAB). He next contends that proper application for grant of lien was submitted by the appellant to the Secretary, which was marked to SO for process. He next iterates that it is responsibility of the department concerned to maintain record while lackness in maintaining the official record cannot be attributed to the appellant to impose harsh punishment. He next submits that the appellant cannot be held responsible for acts of lackness/ inaction in maintaining proper official record on the part of the Excise & Taxation Department. He next submits that, even some other employees/ LDCs, who were also appointed/ adjusted against the post of ASIs have been repatriated to their original post of LDC without any lien, whereas the appellant is being dealt in a different way, which is blatant discrimination. With a view to fortify his contentions, the counsel for appellant has placed reliance on number of rulings of apex Courts and rules/ laws, which will be quoted in



coming paras. After concluding his submissions, the learned counsel for appellant prays for acceptance of appeal for redressal of grievance of the appellant.

4. Conversely, the learned Law Officer GB contends that the appellant was appointed as ASI BS-09 without codal formalities, therefore there cannot be a question of his reverting back to the post of LDC BS-07. He further contends that the claim of having lien by the appellant through the office order, referred to hereinabove, is false and baseless, as neither such office order has been issued by the department nor record as to the said lien exists with the department, inasmuch as the signatures of then Section Officer (Mr. Gojar Khan) has also been disowned by him. In support of his submissions, he relied upon a judgment passed in Appeal No. 96 of 2007 by the learned Service Tribunal (AJ&K) reported at 2009 PLC (C.S.) 895. Although the judgment passed by learned Service Tribunal is persuasive effect and do not have binding effect. However, the judgment has been perused and it is found that facts and grounds of the case are quite distinguishable from the facts and grounds of the instant appeal.

5. Arguments heard and record perused. This Tribunal observes that on 17.09.2012 an application was submitted by the appellant to the Secretary Excise & Taxation Department GB for grant of lien which has duly been marked to Section Office E&T for processing thereof under the rules. The remarks on the application are "*SO.....process under rules*". Submission of this application has not been denied by the department in the parawise comments nor in the arguments. Furthermore, the signature of the competent authority on

the application has also not been questioned. In this way, it is proved that this application was actually submitted by the appellant. On the very next date, i.e. 18.09.2012 Office Order granting lien in favour of the appellant has been issued. Issuance of such an office order has been denied by the respondents. Mr. Gojar Khan, the then Section Officer has also denied putting his signatures on the said office order through a letter addressed to the Secretary E&T Department GB vide letter dated 2<sup>nd</sup> July, 2018. Mr. Gojar Khan was called in Court to record his statement as to issuance of the said office order granting lien or otherwise, he appeared in the Court and stated that submission of application and marking thereof to him is correct while he denied to have signed on the said office order. His specimen signatures have also been obtained on a plain paper to match with his rest of the signatures put on other letters/ office orders contained in the file. When I put a glance at each signature of the then SO, E&T, I found different flows of signature on each office order/ letter. It is pertinent to mention here that this Section Officer had also denied signing 23 appointment orders against which, NAB inquired the matter and proved that he had signed the appointment orders, resultantly, he has been convicted. Therefore, I am unable to rely on his denial as to signing the lien granting office order. As far as non-maintenance of record of the said office order is concerned, it is pertinent to mention here that during chaotic period when fake appointments were being made in the Excise & Taxation Department GB, it is doubtful that the authorities who involved in fake appointments may have maintained proper record, therefore, non-existence of office record in respect of said office order is not astonishing. Hence, benefit of doubt also goes in favour of the appellant. Logically, when appointment of an employee is made to a

post in another department without fulfilling codal formalities, he betterly knows that there can happen something wrong in immediate future and it can be his best effort to retain lien in his parent department. Exactly the same situation prevails regarding the case in hand, as the appointment of appellant to the post of ASI was in sheer violation of rules/ law. In addition to above, a certified copy of same office order granting lien to appellant referred to hereinabove obtained from District Accounts Office Diامر which were also endorsed to them at serial number-4 further clarifies that the then SO Excise & Taxation Secretariat GB (Mr.Gujar Khan) issued the said office order bearing number Secy. Revenue(Admin)-1(23)/2012 dated 18<sup>th</sup> September,2012 under his own signature with stamp. Hence denial of SO Gujar khan regarding his own signature on Office Order referred to above, is denied nor the act of lackness in maintaining proper official record or any irregularity on the part of concerned department can be held on the appellant for no fault of his. I m of the firm view that a permanent civil servant may not be succumed to lose his job just for the fault on the part of concerned department. Even otherwise, in view of rullings of apex courts of Pakistan, services of a civil servant can not be terminated by his parent department unless the civil servant is brought on permenent footing by other Govt department. My view is further fortified for the Case Law, relied upon by learned counsel for the appellant which is reproduced below:-

**2005 SCMR 716 (Muhammad Israrullah Vs. Assistant Director, Manpower and others.**

*"5. The appellant cannot be held responsible for this lackness ad lapse committed by the concerned functionaries of the Director of Manpower and Training Centre itself. The services of the appellant being regular employee could not have been*

*terminated as he was appointed as Instructor in the Vocational Training School, Hangu, through proper channel and at the best he could be considered as deputationist who retained his lien in the parent department, as he was not confirmed in the borrowed department.*

*6. The upshot of the above mentioned discussion is that the appeal is accepted and the judgment dated 15.4.1999 of the learned NWFP Service Tribunal, Peshawar delivered I appeal No. 1832 of 1997 is set aside”.*

6. In view of aforementioned lego-factual position as well as in view of rulings by the apex Courts reproduced herein above, I am inclined to accept this appeal. The Secretary Excise & Taxation Department GB to accept his rejoining against the post of LDC from the date when he submitted his rejoining report with all back benefits. Order accordingly. The parties are left to bear their own costs.

7. File be consigned to record after completion.

Announced  
13-03-2020

Sd/-  
**Member-I**

Judgment sheet  
**BEFORE GILGIT-BALTISTAN SERVICE TRIBUNAL**  
Service Appeal No.01/2017

Date of Institution:	02 - 01 - 2017
Date of hearing:	12 -12 - 2019
Date of Judgment:	10 - 06 - 2020

**Appellant:** Hidayatullah s/o Inayatullah, Accounts Officer GBLA Secretariat & another

- Respondents:** Speaker, Gilgit-Baltistan Legislative Assembly & 08 others
- Before:** Mr. Muhammad Kamal Member-I  
Mr. Ali Sher, Member-II
- Present:** Mr. Basharat Ali, Advocate for the appellants, Malik Shafqat Wali Khan, Raja Shakeel Ahmad, M/S Asadullah Khan & Muhammad Saleem Khan Advocates for respondents No. 4 to 9. Learned Law Officer for respondent No. 1 to 3.

### **JUDGMENT**

**MUHAMMAD KAMAL MEMBER-I:-** Through this single and consolidated judgment, we intend to dispose off the above service appeal alongwith service appeal No. 02/2017 (Khalid Mehmood V. Speaker GBLA & others), as both the appeals have arisen out of the same notification and carry identical facts and grounds.

2. Facts, as per record of appeals, necessitated for institution of these appeals are that the appellants are performing their duties as Accounts Officer, BPS-16 (now upgraded to BPS-17) and Superintendent BS-16 (now upgraded to BPS-17) in Gilgit-Baltistan Legislative Assembly, Gilgit. Some posts of Assistant Secretaries BS-17 stood created in the Assembly Secretariat of GBLA. Appointments to those posts were made on contract basis for a period of 02 years, whose beneficiaries have now been impleaded as respondents Nos. 4 to 9 in these appeals. Subsequently, contract services of the said respondents were regularized by the then

Speaker, GBLA against the same positions held by them through notification No. Admin-I(3)/2014 dated 18<sup>th</sup> August, 2014. Resultantly, being expectants of promotion to the said posts, the appellants felt aggrieved by the said regularization notification and started efforts from pillar to post raising voice against the said regularization, but to no avail. The appellants claim that, as per Gilgit-Baltistan Assembly Secretariat (Recruitment terms and condition) Act X of 2010 and Gilgit-Baltistan Legislative Assembly (Administration Division) Order, 2011 (hereinafter abbreviately called as **the Rules**), the post of Assistant Secretaries BS-17 are required to be filled in on the basis of equal ration of 50-50% quota i.e. 50% for direct recruitment and 50% for promotion quota. The appellants further claim that as per the Rules/ procedure laid down in ESTACODE, first preference requires to be given to promotion quota and then the direct recruitment can be exhausted. However, they assert that to their disappointment, against their legal rights and in sheer violation and total disregard to the recruitment rules, all the posts have been filled in availing the direct recruitment quota. The appellants next assert in their respective appeals that when the services of the respondents No. 4 to 9 were being regularized, the appellants were from all angles eligible for *promotion to the post of Assistant Secretaries and were meeting* the eligibility criteria laid down in the rules. They next contend that without prejudice to the above legal and factual position, the contractual appointments were made in violation of standing orders of Federal Government adopted in GB whereby all sort of appointments were banned, however, during that very relevant period these contract appointments have been made and also the subsequent regularization have been effected by the Speaker of GBLA, which on the face of it is against

the law/ rules and standing orders of government, as such have no legal force and requires to be declared illegal being made by misusing the powers. On the basis of above assertions, they pray this Hon'ble Tribunal to declare the said contract appointments and their subsequent regularization as null and void and further pray to declare the appellants to be eligible for promotion to the posts of Assistant Secretaries BS-17 from the date when they became eligible on the basis of allocated quota. The appellants further contend that they when the regularization orders were being issued, they had submitted appeals to the Speaker requesting him to consider their promotions first as per law/ rules, but to no avail. They next contended that after the new cabinet was formed, they also submitted an appeal to the present Speaker for redressal of their grievance and upon which, the present Speaker was pleased to constitute a committee to inquire into the matter and to submit report. In compliance whereof, the committee inquired the matter keeping in view the relevant law/ rules and facts and recommended that two additional posts may be created to accommodate the appellants. They contended that the said recommendations have also not been implemented. Hence these appeals. In support of contentions, the learned counsel for appellants has placed reliance on 2017 PLC (C.S) 1080, 2012 SCMR 673, a judgment passed by the Hon'ble Supreme Appellate Court GB in Civil Appeals No. 25/2017 in CPLA No. 83/2017 & Civil Appeal No. 26/2017 in CPLA No. 86/2017 and judgments passed by the Hon'ble Chief Court in Writ Petition No. 48/2016 and Writ Petition No. 172/2017.

3. Upon admission of the appeals, notices were issued to the respondents. In compliance whereof, the respondents, jointly and severally submitted their respective parawise comments wherein,

they have rebutted the contentions of the appellants on various factual and legal grounds. Arguments were advanced from both sides followed by written arguments by respective parties. The learned counsel for the respondents hotly contested the appeals and submitted that the appellants have nothing to do with the regularization of private respondents as at the time of their contract appointments, the appellants did not fulfill the eligibility criteria for promotion to the posts of Assistant Secretaries BS-17. The respondents further contend that their contract appointments have duly been made after fulfilling all the legal requirements i.e. advertisement of posts, written test and interview preparation of merit list etc. hence, the appellants are not legally entitled to get the said appointments declared as null and void. The respondents next contend that when the contract appointments were made as stopgap arrangements, which has also been admitted by the appellants, there were no eligible persons available for promotion, hence at this belated stage, the appellants have no *locus standi* to file the instant appeals and in support of their assertions, they produced the relevant section of assembly rules. They further iterate that as far as the contract appointments made during the banned period is concerned, under section 12 of the Gilgit-Baltistan Assembly Secretariat (Recruitment terms and condition) Act, the Speaker GBLA has powers to relax the ban, hence the plea taken by the appellants to this effect is not tenable. As far as non-adherence to promotion quota by the authorities of GBLA is concerned, the respondents contend that the appellants have deliberately concealed some important facts from this Hon'ble Tribunal that two officials namely Akber Hussain and late Adil Shah have been promoted to the post of Assistant Secretaries availing the promotion quota. The respondents further submit that as per



rules, if no suitable person is available, the posts of Assistant Secretaries BS-17 can be filled in through direct recruitment. The respondents next iterate that the appeals of the appellants are not maintainable as the same are barred by limitation of 47 days. They next contend that the appellants are working as Assistant Secretary Admin and Assistant Secretary Budget BS-17 respectively. The respondents further contend that as per the principle of *locus poenitentia*, a vested right has been accrued to the private respondents over the posts already held by them for a long period which cannot be taken away at this stage. The learned counsels for the private respondents Nos. 4 to 6 submit that the appellants have no cause of action to file the instant service appeals as in the first round of litigation i.e. Service Appeals No. 488/2015 and 547/2015 before this Hon'ble Tribunal against the contract appointments of respondents Nos. 7 & 8, the appellants did not implead the respondents Nos. 4 to 6 as necessary party. Therefore, they contend that, the appellants by their own conduct have themselves barred to institute the appeals against the respondents No. 4 to 6 in the second round of litigation and in this way, they have lost their right to challenge the regularization orders of the respondents Nos. 4 to 6. In order to fortify their contentions, the respondents No. 4 to 6 have relied on various judgments of superior Courts of Pakistan such as 2020 SCMR 246, 2019 CLC 1781, PLD 2019 Baluchistan 68, 2018 SCMR 1864, 1996 SCMR 1185, 2005 SCMR 499, 2009 SCMR 01, 2015 SCMR 1418, PLD 2000 Lahore 1, 2012 PLC (C.S) 602, 1996 SCMR 413, 2016 PLC (CS) 190, 2007 PLC (C.S.) 67, 2016 PLC (CS) 95, 2016 PLC (CS) 218, 2001 SCMR 1446, 2015 PLC (CS) 1519, 2002 SCMR 71 and 2002 SCMR 82. On the basis of the assertions, the counsels for the respondents pray for dismissing the appeals in hand being merit

and without legal force. On the other hand, the learned counsels for the appellants advanced their arguments mainly based on the facts and grounds stated in para 2 above.

4. Arguments as well as written arguments submitted by both the parties have been considered, record on files examined and case laws and relevant law/ rules were also gone through. We would like to start our observations from the starting point of institution of these appeals. The question is whether all the posts of Assistant Secretaries BS-17 could be filled in availing the direct recruitment quota? To this effect, section 5(3) (b) of Gilgit-Baltistan Assembly Secretariat (Recruitment terms and condition) Act X of 2010 is reproduced below:

**5. Method of recruitment:--** Recruitment to a post or class of posts may be made by one or more of the following methods, namely:--

- (a) .....
- (b) .....
- (c) .....
- (2)** .....
- (a) .....
- (b) .....
- (3)** .....
- (4)** .....
- (c) .....
- (b) **If no suitable person is available for promotion or transfer, the vacancy may be filled by direct recruitment.**

It is clear from the above quoted rule, that in absence of suitable person(s), the posts meant for promotion quota can also be filled in availing the direct recruitment quota. The 2<sup>nd</sup> question is whether,

when the private respondents have served the Assembly Secretariat for a period spanning 5 years or more, can their services be disturbed now? In view of observations made by the superior courts of Pakistan, the answer to this question is in negative. The private respondents do have to their credit a period of 5 years or more service. In view of the judgments delivered by the apex Courts of Pakistan in various cases, the private respondents cannot be held responsible for the acts done by the authorities of GBLA Secretariat, as such the private respondents cannot be punished for no fault of their. These observations have been taken by the Hon'ble superior Courts in the cases reported as **2011 PLC (C.S.) 1296 & 2020 PLC (C.S) 352**. In addition to the above, as per the principle of *locus poenitentia*, a valuable legal right has accrued to the private respondents. In order to fortify our view, operative/ relevant parts from some of the judgments delivered by the apex Courts of Pakistan are reproduced as under:

**"2015 PLC (C.S) 1519: (page 28 para 20)**

Once a right is accrued to the appellant by appointment letters issued after complying with all the codal formalities could not be taken away on mere assumption or supposition and or whims or fancy of any executive functionary. Such right once vests, cannot be destroyed or withdrawn as legal bar would come into play under the well doctrine of *locus poenitentia*'.

Observations similar to the above been made by the Hon'ble Supreme Court of Pakistan in a case reported as 2015 SCMR 1418, which are reproduced below.

**"2015 PLC SCMR 1418 (page 1426 para 18)**

Under these facts and circumstances a right had come to vest in the appellant on issuance of appointment letter and more so after joining the service. In the case of Ghulam Murtaza V. Federation of Pakistan (2011 PLC (C.S) 709) passed by the learned Division Bench of Sindh High Court placing reliance on the case of Jabbar Malik V. Province and others, last mentioned judgment was also upheld by this Court in Civil Petitions Nos. 426-K to 436-K of 2008, it was held that once a person is appointed after fulfilling all the codal formalities, appointment letter is issued, it was held that a vested right is created and appointment letter could not be withdrawn.

5. The 3<sup>rd</sup> question is whether the respondents have lost their right of appeal by not impleading the respondents No. 4 to 6 in their first round of litigation? In this regard, the contentions of respondents Nos. 4 to 6 deserve to be given weight because, the appellants did not implead the respondents Nos. 4 to 6 as necessary parties in the first round of litigation i.e. Service Appeals Nos. 488/2015 and 547/2015 where only respondent No. 7 & 8 have been made party the appeals. However, when the appellants failed to succeed in the first round of litigation, they filed the instant service appeals where they have arrayed the respondents Nos. 4 to 6 as parties. Hence as per law, they are debarred under the principle of estoppel and acquiescence to sue the respondents Nos. 4 to 6 in the service appeals in hand. The appellants have further lost their cause by way of acceptance of promotion by Mr. Hidayatullah. If he had still the grievance against the regularization of private respondents ignoring their right of promotion, he should have accepted the same under

protest, however, there is no any record has been made available by the appellants to ascertain this fact. The respondents Nos. 4 to 6 have attached with their written arguments an Office Order No. Admin-1(14)/2014 dated 5<sup>th</sup> April, 2018 issued by Deputy Secretary Admin, GBLA which carries the designation of Mr. Hidayatullah, appellant as Assistant Secretary BS-17 and is rendering services as Assistant Secretary Budget while appellant Mr. Khalid Mehmood has been posted as Assistant Secretary BS-17. This shows that they are already holding the posts for which the instant appeals have been filed. Besides the above reasons, it is to be noted here that the appeals in hand are barred by time of 47 days, while the appellants have not submitted any application for condonation of delay explaining reasons of such delay.

7. In view of what has been discussed above as well as keeping in view the relevant rules of GB Assembly and case laws cited above, this Tribunal comes to the conclusion that the instant appeals deserve to be dismissed being meritless and time barred. The parties are left to bear their own costs. With disposal of these appeals, the interim stay granted in favour of appellants on 2-12-2019 stands vacated.

8. File be consigned to record after completion.

**Announced:**  
**10.06.2020**

Sd/-  
**Member-I**

Sd/-  
**Member-II**

(Judgment sheet)  
**BEFORE THE GILGIT-BALTISTAN SERVICE TRIBUNAL,  
 GILGIT**

Service Appeal No. 70/2017

Date of Institution:	29.04.2017
Date of hearing:	04.11.2019
Date of Judgment:	30.06.2020

**Appellant:** Ibrahim Shah, Ex. Inspector Police  
 Gilgit-Baltistan Police

**Respondents:** Provincial Govt. through Chief  
 Secretary & 03 others

**Before:** Mr. Muhammad Kamal Member-I

**Present:** M/S. Shahid Abbass & Adnan Anjum  
 Advocates for the appellant.  
 Mr. Hafiz Ullah Law Officer GB for  
 respondents No. 1 to 4.

**JUDGMENT**

**MUHAMMAD KAMAL MEMBER-I:-** This appeal is arising out of the facts that the appellant was serving as Inspector of Police BS-16 in Police Department, Gilgit-Baltistan and got retirement on 30<sup>th</sup> September, 2015 after attaining the age of superannuation. Before retirement, he was expectant of promotion to the post of Deputy Superintendent Police BS-17 on the basis of seniority and vacancy position. The record reveals that a DPC was held by the Police Department, GB on 22<sup>nd</sup> April, 2015 with a view to fill in three vacant posts of DSPs, BS-17 in Police Department GB wherein, the appellant

alongwith two senior Inspectors BS-16 were recommended for promotion. It appears that working papers alongwith requisite documents were forwarded to the Home & Prisons Department, GB for consideration of the case of appellant alongwith his two seniors against the three purportedly vacant posts of DSPs BS-17. The case seems to have been sent to the Services Department, GB for consideration in pre DPB meeting. Vide letter dated 8<sup>th</sup> September, 2015 the Services Department GB informed the Secretary Home & Prisons GB that appellant's case was put up before the pre DPB meeting wherein it was found that promotion quota has already been excessively consumed and, thus the case of the appellant alongwith his two senior IPs was turned down. In reply to this letter, the DIG Police HQs again explained the vacancy position and vehemently recommended the case of the appellant alongwith the two other Inspectors, especially in view of exigency of services of police officers for command and control purpose. All the above letters etc. did not yield a fruitful result and the appellant retired on the same post.

2. That subsequently, on 28<sup>th</sup> June, 2016 three Inspectors of Police BS-16 were promoted to the post of Deputy Superintendent of Police BS-17, one of them was junior to the appellant when he was in the service of Police Department GB. These promotions have been

effected by the Services & General Administration Department GB without having any change in vacancy position as prevailed on previous pre DPB so turned down dated 8<sup>th</sup> September 2015. The purpose of giving promotions to two DSPs appears to be extension of retirement benefits to them. Prior to promotion of the above two Inspectors, the appellant submitted an application/ appeal on 05.08.2015 to the Chief Secretary GB which was followed by another appeal dated 08.09.2015 for availing retirement benefits of the post of DSP BS-17, but record shows that those appeals/ application appear to be remained unheeded, hence this appeal.

3. The respondents resisted this appeal by filing parawise comments by AIG Establishment, Police Department GB wherein the averments made by the appellant have been denied on factual and legal grounds. The learned counsel for the appellant contends that since immediately after retirement of the appellant, two Inspectors BS-16, one of them was junior to him at the time of his retirement have been promoted to the next higher post i.e. Deputy Superintendent of Police BS-17 that too when there were no new creations nor any post had fallen vacant due to retirement of any DSP or otherwise. He next contends that at the time of promotion of the said two Inspectors, the same vacancy position was prevailing as it



prevailed at the time when the case of appellant was recommended for promotion which was turned down for want of vacancy. He next iterates that waiting for retirement of appellant and after his retirement, promotion of two Inspectors smacks of malafides on the part of the respondents. He next submits that this is patent discrimination met out to the respondents, which is not permissible under the law/ rules. He maintains that the law/ rule demand equal treatment amongst equals. On the other hand, the plea taken by the respondents in their parawise comments still stands on non-availability of vacancies, non-permissibility of proforma promotion after retirement and time barring of the appeal.

4. Arguments heard and record perused. First of all, the plea taken by the AIG Establishment in the parawise comments, which have been relied upon by other respondents is surprising. It was the DIG HQ who had submitted the case of appellant to the Home & Prisons Department GB with strong recommendations showing vacancy position and had made specific reference to rules of the Hon'ble Supreme Court of Pakistan to fortify his stance with a view to get the promotion of the appellant made. The justification given by the DPB in its meeting held in connection with promotion of Baba Jan and Muhammad Yamin from the post of Inspector BS-16 to Deputy

Superintendent Police BS-17 is that since two DSPs were posted on deputation to the offices of Chief Minister and Governor GB, therefore two posts of DSPs had fallen vacant. The relevant para of Minutes of DPC is reproduced herein below:

“In addition to above, 02 posts have become vacant due to posting on deputation of two DSP’s Mr. Hafiz ur Rehman and Mr. Jan Muhammad in Chief Minister Secretariat and Governor Secretariat respectively. Both the officers posted/ deputed are rankers (promotees) and after their posting in the other institutions, 02 posts have also occurred in promotion quota for the time being”.

It may not be out of place to note here that the above two DSPs were posted on deputation on 7<sup>th</sup> March, 2015 and 16<sup>th</sup> July, 2015 respectively, as such these posts were fallen vacant much before the date of retirement (30.09.2015) of the appellant. The case of appellant could have been considered in line with the cases of Baba Jan and Muhammad Yamin Inspectors, but it appears that with malafide intentions, the respondents did not consider the case of appellant, which is a grave discrimination meted out to the appellant. Similar facts and grounds were prevailing with a case of proforma promotion titled: Muhammad Anwar Khan (Rtd.) SP versus Provincial Govt. etc. wherein this Tribunal had granted proforma promotion,

which has further been upheld by the Hon'ble Supreme Appellate Court GB reported as 2016 GBLR 35. In addition to this, the Hon'ble Supreme Court of Pakistan in a case having facts and grounds similar to the appeal in hand has held as under:

**2012 SCMR 126**

“Coming to the facts this, we find that it has not been disputed before this Court that much before the retirement of the respondents, a working paper was prepared by the department with regard to their promotion but the matter was delayed without any justifiable reason and in the meanwhile respondent attained the age of superannuation. They cannot be made to suffer on account of the departmental lapse. The arguments of learned Law Officer that the respondents were not entitled at the relevant time to be granted promotion for one reason or the other is rather misconceived, as the operative part of the impugned judgment has candidly directed that the working paper of the respondents shall be prepared and they will be considered for grant of next grade notwithstanding their retirement, if they are even otherwise entitled thereto. This in fact would now be pro forma promotion”.

In another identical case, the Hon'ble Supreme Appellate Court GB has held as under:

**2016 GBLR 108**

“The net shell of the above discussion is that a civil servant has a fundamental right to be promoted even after his retirement through pro forma promotion provided his right of promotion accrued during his service and his case for promotion could not be considered for promotion for no fault of his own and retired on attaining age of superannuation”.

5. Exactly the same facts and circumstances as discussed in the above case laws hovers round this appeal. For the purpose of extending pensionary benefits, the appellant could have been promoted against the vacant post of DSP, which had fallen vacant due to posting of two DSPs to Governor and Chief Minister Secretariat. This favour of pensionary benefits has been extended to the above said two DSPs, one of them was junior to the appellant. It appears that with malafide intentions, discrimination has been meted out to the appellant which has deprived him from the pensionary benefits.

6. In view of what has been discussed above, this appeal is allowed. The respondents are directed to consider the case of appellant for proforma promotion to the post of DSP (BS-17) aiming at giving him pensionary benefits. Order accordingly. The parties are left to bear their own costs.

7. File be consigned to record after completion.

Announced  
30.06.2020

Sd/-  
**Member-I**

Judgment sheet  
**BEFORE GILGIT-BALTISTAN SERVICE TRIBUNAL**  
**GILGIT**  
Service Appeal No. 93 /2017

Date of Institution:	04.12 .017
Date of hearing:	01.06.2020
Date of Judgment:	03.07.2020

**Appellant:** Shah Murad Khan Ex. Director  
Education, Baltistan Region  
Department of Education GB

**Respondents:** Provincial Government through Chief  
Secretary GB & 04 others

**Before:** Muhammad Kamal Member-I

**Present:** Mr. Shahid Abbas Advocate for  
Appellant.  
Mr. Hafiz Ullah, Law Officer for  
respondents No. 1 to 4 assisted by  
Mr. Kamal Hussain Advocate, legal  
adviser.

**JUDGMENT**

**MUHAMMAD KAMAL MEMBER-I**:- Appellant, through the instant appeal, has sought relief by way of extending benefits of a Circular issued with approval of Prime Minister of Pakistan vide No. F.-1-1/2011-EDU dated October 14, 2011 in respect of timescale for teachers from basic pay scales 17 to 21 w.e.f.01.01.2011.

1. Facts as set out in memo of appeal as well as the facts which came into notice of this Tribunal during the course of arguments are that Prime Minister of Pakistan, vide Circular No. F.-1-1/2011-EDU dated October 14, 2011, was pleased to grant timescale for school teachers for basic pay scales from 17 to 21 which was further circulated to all provinces of Pakistan including AJK and GB for implementation. Government of Gilgit-Baltistan implemented/ approved Timescale Formula in favour of teachers in BS-17 and above on 10.6.2014 which was actualized w.e.f. 1<sup>st</sup> July, 2014 instead of 1<sup>st</sup> January, 2011. The said circular was implemented by GB Govt. according to its own choice and convenience; firstly, by granting time scale for teachers from BS.16 to BS 20 vide Circular No. Sec-Edu-2(31)/2014 dated 10<sup>th</sup> June, 2014 that too with prospective effect instead of retrospective effect i.e. from 2014 instead of 2011. Some teachers got benefits of the circular who retired after 2014 while the remaining teachers who stood retired during the intervening period from 2011 to 2015 were not extended the benefits of the circular as claimed by the appellants. The present appellant claim to have not been given the benefits of this circular. The leftover teachers, excluding the appellant, somehow succeeded in getting benefits of the circular through Courts of Law. Hence, being aggrieved and dissatisfied with the partial treatment of Government of Gilgit-Baltistan met out with the appellant, he has approached this Tribunal with the appeal in hand. The appellant was sent on forced retirement on 26-3-2015 who first approached their concerned department for redressal of their grievances and then came up before this Tribunal.

2. A similar appeal, having identical facts and grounds and seeking a same relief, was also filed in this Tribunal titled "Asghar

Shah & 52 others Versus Government of Gilgit-Baltistan & others". That appeal was decided in favour of appellants directing the Education Department GB to extend benefits of circular of 2011 to all those teachers included in the said appeal. The judgment in that appeal was assailed by government before the Hon'ble Supreme Appellate Court GB and the honorable august Court was pleased to uphold the judgment of this Tribunal, however, setting out some conditions therein, which will be discussed in coming paras below.

3. Parawise comments were filed by Provincial government through learned Law Officer Mr. Hafiz Ullah wherein the government has denied the relief sought by appellant on facts and legal grounds as well.

4. The appeal came up for final arguments on 01-06-2020. Counsel for appellant argued that according to circular issued in the year 2011 by the Federal Government which, later on, was adopted by Government of Gilgit-Baltistan, the appellant is equally entitled to timescale from his respective dates of eligibility with a view to treat him equally, as the teachers who have been given the benefits of circulars mentioned in preceding paras, has similar status and were rendering same duties to the Government. More vehemently, he stressed upon a judgment passed by the Hon'ble Supreme Appellate Court GB in an appeal by Asghar Shah versus Prov. Government. The learned counsel for appellants construes that judgment to be in *rem* and further conceives the same to be applicable to all teachers, who have similar cause of action. The learned counsel for appellant advanced further arguments that since the facts and grounds narrated in the appeal of Asghar Shah & others and those taken in

the appeal in hand are similar and identical in nature, therefore, in light of judgment of the Hon'ble Supreme Court of Pakistan reported at 1996 SCMR 1185, the appellant must have been extended the benefits of 2011 circular without compelling him to resort to legal remedies in the Court of law. For the sake of ready reference, operative part of the said judgment is reproduced below:

***"If FST or Supreme Court of Pakistan decides a point of law relating to terms and conditions of a civil servant which covers not only the case of a civil servant who litigated, but also of other civil servants who may have not taken any legal proceedings, in such a case, the dictates and rule of good governance demand that the benefit of such judgment by FST/ Supreme Court be extended to the civil servants, who may not be parties to the litigation instead of compelling them to approach the Service Tribunal."***

The above quoted judgment of the Hon'ble Supreme Court of Pakistan provides sound reasons which apply to the appeal in hand in *stricto sensu*, as this Hon'ble Tribunal and Supreme Appellate Court GB have decided a matter arising out from non-implementation of the same Circular.

5. The learned Law Officer on the other hand, contended that since the appellant has remained in deep slumber over his rights for a long period and woke up after judgment by the Hon'ble Supreme Appellate Court GB, therefore he cannot claim benefits of timescale at this belated stage. The learned Law Officer candidly denied the



interpretation of judgment of the Hon'ble Supreme Appellate Court so made by the learned counsel for appellant and argued that judgment of the Hon'ble Supreme Appellate Court is not meant to be construed as judgment in rem, (as there is no explicit word "judgment in rem") in the said judgment rather the august Court has restricted the benefit of its judgment to those 53 appellants included in that appeal only and the august Court has plainly made it clear that this judgment may not be made as a precedent.

6. It has been observed that some other appellants (who are also retired teachers) in similar joint appeal have got relief from this Tribunal which has been upheld by the Hon'ble Supreme Appellate Court GB (referred to above in Asghar Shah etc.'s appeal), thus it would not be fair and judicious that the remaining appellant if any, be denied the same relief treating him on other way. If a Circular is issued by executive authority of the country i.e. Primer Minister of Pakistan giving some benefits in the shape of up-gradation/ timescale etc. to a specific class/ category of employees, the same becomes applicable to that category of employees/ beneficiaries irrespective of the fact that at which part of country they perform their duties. Unfortunately, authorities of GB Government, play with such circulars issued by Executive authority at Federal Government level according to their own choice and convenience instead of implementing those circulars in their true spirit, which acts on the part of government hierarchy leads to create resentment and discrimination amongst govt. employees, besides creating unnecessary hassle for Courts to try such matters brought before them, while the law warrants equal treatment amongst equals which is ensured by the Constitution of Pakistan. Such circulars issued by the executive authority of the

country cannot be treated in a way to benefit some beloved ones amongst the employees of same class/ category while others would be left to face consequences in the Courts of law by sustaining mental agony and loss of money for no fault on their part which amounts to discrimination as well as violation of Article 25 of the Constitution of Islamic Republic of Pakistan. As far as arguments advanced by learned Law Officer GB regarding the appeal being time barred, it is not fair and just to apply this contention to the present appeal, as this is not an appeal brought a fresh before this Hon'ble Tribunal, rather it is an appeal of implementation nature of a circular of executive authority of the country to the extent of the appellant in this appeal. The circular was meant to be equal.

7. As far as non-submission of departmental appeal by the appellant argued by the learned Law Officer GB (although he has submitted the same) I am convinced with the arguments of learned counsel for appellant that a departmental appeal is required where there is an adverse order by the appellate authority, but in the appeal in hand, there was no adverse order, rather it was an implementation issue of circular, which the department were not willing to do so (though not in writing). The learned counsel for appellant further argued that the matter, being a pecuniary one, does not involve limitation as in such matters cause of action arises with every passing day.

8. I have consciously given due consideration to the arguments advanced by counsels for parties, perused record & previous judgment passed by Full Bench of this Hon'ble Service Tribunal and judgment passed by the Hon'ble Supreme Appellate Court GB. The

same judgment of this Tribunal has duly been upheld by the Hon'ble Supreme Appellate Court GB. My sense of interpretation of the said judgment, as I have understood, is that the august Court has neither given the judgment in *rem* which could apply to all beneficiaries of the timescale circular, including the appellant in that appeal nor has bound the other beneficiaries of the said Circular from getting remedy from other Courts of law by way of filing appeals, petitions etc. Perusal of the said judgment gives a sense that the remaining beneficiaries appear to have been left at liberty to approach other Courts of law for seeking remedy of their grievances. The judgment of the august Court is not a judgment in *rem* rather the Court has confined that judgment to the extent of those 53 appellants before the Hon'ble Court in the appeal of Asghar Shah etc.

9. Apart from what has been elaborated above, the appeal also effectively involves the rule of consistency. This is so because in similar nature of appeals having similar grievances arising out from non-implementation of the same Circular in the appeal of Asghar Shah etc. where this Tribunal has allowed the benefits of Timescale Circular 2011, which has further been upheld/ maintained by the Hon'ble august Supreme Appellate Court. The appellant in this appeal also seeks benefit of the same circular, therefore rule of consistency demands that prayers of the appellant be acceded to. This Tribunal cannot deviate from its own view taken in the above referred appeal on the principles of consistency. The timescale circular for teachers issued by the Prime Minister of Pakistan became applicable to all beneficiaries who fall within the ambit of eligibility criteria immediately after issuance thereof in black and white. The same must have been extended immediately. Issuance of further notification by

provincial authorities does not confer any right on the said authorities to deny, alter or vary the said directives of chief executive of the country, however if any delay occurs due to any reason, the same can be covered at the time of issuance of further notification giving effect from the original date of notification. The delay in extending the benefits is on the part of government not on the part of appellant, as nowhere in the circular it has been mentioned that benefits of the said circular can be availed by personal efforts or through Courts of law by the beneficiaries. The Supreme Court of Pakistan has also condoned the delay in a matter involving points in similarity. The case is reported at **2002 PLC (C.S) 286**. The relevant paragraph is: "***In the interest of justice and similarity of the point involved in all the cases the delay in filing Civil Appeals..... is condoned***". The Hon'ble Supreme Court of Pakistan in a case reported at **2006 SCMR 1087** under the principle of consistency allowed leave to appeal. The relevant part thereof is reproduced as: "***Be that as it may, we have examined the cases of the appellants. In view of the observations of this Court in judgment, dated 02.11.2001 announced in Civil Appeals Nos. 720 to 725 of 1999, cases of appellants are not, in any manner, different from the cases which have already been decided by this Court. Therefore, following the reasons, instant appeals have to be allowed, in view of the principle of consistency***". The question of limitation has been discussed in the appeal of Asghar Shah etc., which involves the same facts and grounds in this appeal and the grievance has arisen out from the said Circular, therefore on the basis of rule of consistency, this Tribunal cannot deviate from its view taken in that appeal.

10. The outcome of the above is that the present appellant, if being beneficiary of Timescale Circular issued on 2011 cannot be treated differently, particularly in light of judgment passed by this Tribunal which was maintained by the Hon'ble Supreme Appellate Court and keeping in view the rule of consistency. In various cases, in view of rule of consistency, delay has been condoned by apex Courts. The appellant being retired officer of Education Department of GB is equally entitled to the benefits of the said Circular on the same analogy of judgment referred to hereinabove. Hence there appears no reason for denial of benefits of the said circular to the appellant. The appeal in hand is accepted with the direction to extend the benefits of Timescale under Circular of 2011 to the appellant subject to fulfillment of eligibility criteria. This judgment shall be treated as judgment in rem. Order accordingly.

11. Parties to bear their own costs.

12. File be consigned to record after completion.

**Announced:**  
**03-07-2020**

Sd/-  
**Member-I**

Judgment sheet

**BEFORE THE GILGIT-BALTISTAN SERVICE TRIBUNAL,**  
**Service Appeal No. 25/2019**

Date of Institution:	02.05.2019
Date of hearing:	03.06.2020
Date of Judgment:	06.07.2020

**Appellant:** Ramzan Ali Agriculture Assistant  
BS-10 Agriculture Department,  
Govt. of GB, D.D. Agriculture

Office Nagar

**Respondents:** Provincial Govt. through Chief Secretary & 05 others

**Before:** Mr. Muhammad Kamal: Acting Chairman.

**Present:** M/s. Amjad Hussain and Shahid Abbass Advocates for the appellant.  
Mr. Hafiz Ullah Law Officer GB for respondents No. 1 to 4 assisted by Mumtaz Wali, Legal Advisor with Shah Abbas Agriculture Officer Rep. of Agriculture Department. Mr. Basharat Ali, Advocate for respondent No. 6.

## **JUDGMENT**

**MUHAMMAD KAMAL ACTING CHAIRMAN:-** This judgment will dispose of the instant Service Appeal filed against tentative seniority list issued by the respondent No. 4 wherein seniority of appellant has been relegated showing the appellant to be junior to the respondent No. 6.

2. Brief facts giving rise to institution of the instant service appeal are that appointments to various posts were made on 20<sup>th</sup> January, 2001 in Agriculture Department GB wherein the appellant was also appointed as Field Assistant BS-06. Proper Departmental Selection procedure was adopted assigning merit against each category of posts. Three Field Assistants were selected in the DPC

minutes for various Districts of NAs (GB) duly mentioning marks obtained by each candidate and merit was assigned on the basis of marks obtained. Out of three selected candidates, the appellant has been assigned serial No. 1 in merit list having secured 45 marks. For the sake of brevity, the position of merit is reproduced herein below:

I). **DISTRICT GILGIT**

a. Selected candidates (Merit-Wise)

<u>S/No.</u>	<u>Name of Candidate</u>	<u>Father's Name</u>	<u>Marks obtained</u>
1.	Mr. Ramzan Ali	Rajab Ali	45
2.	Mr. Azhar Ali	Behram Ali	45
3.	Mrs. Naseem Begum	Nehal Shah	42

I). **DISTRICT DIAMER**

a. Selected candidates (Merit-Wise)

<u>S/No.</u>	<u>Name of Candidate</u>	<u>Father's Name</u>	<u>Marks obtained</u>
1.	Mr. Jehanzeb	Gulab Gul	43
2.	Mr. Mujeeb ur Rehman	Muhammad Saleem	37

3. From perusal of the above merit position, it transpires that appellant has secured 45 marks and assigned 1<sup>st</sup> position while the respondent No.6 who had been selected for District Diamer has secured 43 marks. The appointment letters have also been issued

keeping in view the merit position as per the DPC minutes by the office of respondent No. 4. Combined seniority lists have been prepared and issued on the basis of above merit position in the years 2003 and 2009 wherein appellant has been shown senior to respondent No. 6. Thereafter the posts of Field Assistants BS-06 were abolished and the posts of Agriculture Assistants BS-10 were created. Against these posts, Field Assistants were promoted on the basis of seniority. On 28<sup>th</sup> December, 2017, the impugned seniority list of Agriculture Assistants (BS-10) has been issued from the office of respondent No. 4 wherein respondent No. 6 has been shown senior to appellant. Being aggrieved and dissatisfied with the impugned seniority list, the appellant filed a departmental appeal, which was turned down being time barred, hence this appeal. The respondents resisted this appeal by filing parawise comments, respondents Nos. 1 to 5 through the learned Law Officer GB while respondent No. 6 filed his parawise comments through his counsel.

4. The case came up for hearing on 03.06.2020. Arguments heard and record perused. The learned counsel for the appellant contends that the combined seniority list was maintained on the basis of marks obtained and merit assigned in the minutes of DPC meeting. According to the merit lists issued in the years 2003 and 2009, the



appellant has been shown senior to the respondent No. 6 on the basis of merit assigned in the minutes of DPC. He next contends that subsequent change in seniority list and relegating the seniority position by showing the respondent No. 6 senior to the appellant on the pretext of his early submitting joining report is totally against the law/ rules which smacks of malafides on the part of respondents and prays for allowing the appeal in hand. Contrarily, the learned Law Officer GB and learned counsel for the respondent No. 6 contend that the appointments were made on district wise basis and that the respondent No. 6 had submitted his joining report earlier than the appellant. They next contend that the appellant did not submit objections to the seniority list issued in the year 2017 and that his appeal was rejected by the Service Department GB being barred by time. On the basis of their submissions, they pray that dismissal of the instant appeal.

5. Arguments advanced by both the parties considered and record of the case perused. This Tribunal observes that although the appointments to the posts were made on District-Wise, yet a combined seniority list was prepared and issued in the year 2003 and then in 2009 according to the merit assigned in the minutes of DPC on the basis of marks secured. Hence, contentions of the learned Law

Officer and learned counsel for respondent No. 6 are not convincing. Upon application by the respondent No. 6, the seniority was relegated on pretext of early submitting the joining report. It is worth mentioning here that in presence of a clear rule governing the seniority of civil servants, the seniority cannot be prepared solely on the basis of submission of joining report rather the rules have to be read and understood as a whole. For the sake of convenience, relevant rule of the Civil Servants (Seniority) Rules, 1993 is reproduced below:

"2. **Seniority on initial appointment.**(1)(2). If two or more persons are recommended in open advertisement by the selection authority their *inter se* seniority shall be determined in order of merit assigned by the selection authority".

Perusal of the above rules makes abundantly clear that in case of recruitments to two or more posts made in open advertisement, the *inter se* seniority has to be determined in order of merit assigned. Exactly the same situation prevails with the matter in hand. Assigning seniority the basis of earlier submission of joining reports in the cases where two or more persons are appointed on open advertisement is misconception of the law/ rules. As far as non-submission of objections to the seniority list by the appellant is concerned, the

tentative seniority list(s) prepared and issued calling objections from the concerned employees requires to be circulated amongst them in a proper manner i.e. if 15 days period is given for submission of such objections, it must be ensured that the said list(s) reaches to the concerned employees well before the date of submission of objections with proper acknowledge receipt by the concerned employee enabling him to prepare and submit his objections, if any. Record does not speak that such a list has ever been got received by the appellant. On the other hand respondent No.4 entertained a time barred application of respondent No.6 who challenged the tentative seniority list issued in the year 2003 after a deep slumber of 06 years instead of prescribed 15 days. Respondent No.4 not only entertained this utmost time barred application, but also accepted the said application whereby the respondent No.6 was placed senior to the appellant without hearing him. Where an irreparable loss is likely occurring to an employee, the technicalities should not come in the way of extending substantial justice. Therefore, turning down of the appeal by Service Department, GB on the ground of its being time barred, that too when the Service Department knows that a substantive law/rule i.e. Civil Servants (Seniority) Rules, 1993 has been violated, is not tenable.

6. In view of what has been discussed above, this appeal merits acceptance. Consequently, the respondents are directed to assign seniority to the appellant as per the merit assigned in the minutes of DPC meeting. Order accordingly. The parties are left to bear their own costs.

7. File be consigned to record after completion.

Announced  
06.07.20

Sd/-  
**Acting Chairman**

Judgment sheet  
**BEFORE THE GILGIT-BALTISTAN SERVICE TRIBUNAL,  
GILGIT**  
Service Appeal No. 57/2019

Date of Institution:	26.09.2019
Date of hearing:	24.06.2020
Date of Judgment:	06.07.2020

**Appellant:** Muhammad Naseem s/o Muhammad Baitham r/o Nagar Computer Operator, Law and prosecution department GB.

**Respondents:** Provincial Govt. through Chief Secretary & 03 others

**Before:** Muhammad Kamal: Acting Chairman.

**Present:** Mr. Saadatullah Advocate for the appellant.  
Mr. Hafiz Ullah Law Officer GB for respondents No. 1 to 4.

**JUDGMENT**

**MUHAMMAD KAMAL ACTING CHAIRMAN:-** Through this single judgment, I intend to dispose off 04 identical Service Appeals having common cause of action, bearing Nos.57/19, 58/19, 59/19 and 60/19 filed by M/S Muhammad Naseem (appellant), Muzaffar Hussain, Afsar Khan and Muhammad Iqbal Computer Operators in Law and Prosecution Department Gilgit Baltistan Secretariat. The appellants, in their respective appeals, have sought directives of this Tribunal for upgradation of their posts from BPS-12 to BPS-16 to remove the disparity and to bring basic pay scale of computer operators at par with the said posts existed in other departments of GB.

2. Facts in brief giving rise to institution of these service appeals are that the appellants were appointed as computer operators in Law and Prosecution department GB in BPS-12 in the year 2016. On 27<sup>th</sup> May 2010, Government of Gilgit Baltistan upgraded post of Computer Operators from BS-12 to BS-16 vide Notification No. F&R-A-1(30)/2008 circulated to all the departments including Law and Prosecution Department GB. The said upgradations have been implementing from time to time through the concerned departments by exercising of their own will-power or through directives of the

Courts of Law. However, the present appellants are still deprived of the same legitimate rights. Hence, these appeals.

3. The case came up for hearing on 24.06.2020. Arguments in pro and contra heard and record also perused.

4. This Tribunal observes that it is an obvious case, needs not to go in deep details. Government of Gilgit Baltistan upgraded the post of Computer Operator from BS-12 to BS-16 in the year 2010. This upgradation was/is equally applicable to all incumbents working in various Government departments of GB. The upgradation of the posts of present appellants are proved to be their fundamental rights which should have been given to them without forcing them to resort legal remedies from the courts of law, while the department did not do so. Such an upgradation generally applies to all employees of same cadre automatically without waiting for orders of Courts. This is a case of discrimination done to appellants and compelled them to sustain loss in terms of legal fee and mental agony.

**5. Foregoing in view, the appeal of the appellant is accepted as prayed for. Order accordingly.**

**6. This judgment shall be treated as Judgment in rem applicable to all such cases of upgradation of post of Computer Operators.**

7. File be consigned to record after completion.

Announced  
06.07.20

Sd/-  
**Acting Chairman**

**BEFORE THE GILGIT-BALTISTAN SERVICE TRIBUNAL  
GILGIT**

Service Appeal No. 26-2020

Shahid Ali s/o Feroz Shah, Ex-Offg. Post Master BS-07 Gulmit/Sust  
District Hunza.

**(Appellant)**

**VERSUS**

- 1- Postmaster General FC, AJK & GB Circle Islamabad.
- 2- Deputy Postmaster General, GB Region Gilgit.
- 3- Senior Postmaster General GPO.
- 4- Divisional Superintendent Postal Services Gilgit.
- 5- Assistant Superintendent Postal Services Gilgit.

**(Respondents)**

**SERVICE APPEAL UNDER SECTIONS 5/7 OF  
GILGIT- BALTISTAN SERVICE TRIBUNAL  
ACT,2010 ETC.**

**09-7-2020**

Appellant present with his counsel Shahid Abbass  
advocate. This appeal in hand was fixed today for  
preliminary arguments. Arguments heard.

Gilgit-Baltistan Service Tribunal is a Provincial judicial forum which adjudicate upon the service matters of Civil Servants of Gilgit-Baltistan only. According to Gilgit-Baltistan Service Tribunal Act Civil Servants means the servants working under the Administration control of Provincial Government and draw their pay and allowances from the Accountant General of Pakistan Revenue, Gilgit-Baltistan. Appellant is an employee of Federal Government and post office an institution administered by Federation. Gilgit-Baltistan Service Tribunal is competent to adjudicate upon the service matters of Gilgit-Baltistan Civil Servants. Therefore, Gilgit-Baltistan Service Tribunal lacks its jurisdiction to take cognizance over the matters of employees of Federal Government. The appeal in hand is hereby returned to appellant due to lack of jurisdiction.

**Announced**  
09.7.2020

Sd/-  
**Acting Chairman**

Judgment sheet  
**BEFORE GILGIT-BALTISTAN SERVICE TRIBUNAL  
GILGIT**

Service Appeal No.83/2017

Date of Institution:	29.11.2017
Date of hearing:	02.06.2020
Date of Judgment:	09.07.2019

**Appellant:** Mir Ghazi, Naib Subedar, Levy Force,  
Assistant Commissioner Office Darel,  
District Diamer



**Respondents:** Provincial Govt. through Chief Secretary Gilgit-Baltistan Gilgit & 09 others.

**Before:** Mr. Muhammad Kamal Member-I

**Present:** Mr. Shahid Abbas Advocate for appellant  
Mr. Hafiz Ullah, Law Officer GB for Respondents No. 1 to 4. Respondents Nos. 5, 6, 7, 9 & 10 through M/s. Khursheed ul Hassan and Tariq Shah Advocates. Mr. Basharat Ali, Advocate for the respondent No. 8.

## **JUDGMENT**

**MUHAMMAD KAMAL MEMBER-I:**-The instant appeal has been filed by the appellant against the impugned order dated 17<sup>th</sup> May, 2017 issued by the respondent No. 4 (Assistant Commissioner Darel), whereby the appellant has been reverted back to his earlier post. Through this judgment, I intend to dispose of this appeal on the facts and grounds explained below:

2. That the appellant was appointed as Levy in the office of Assistant Commissioner Darel on 22.07.1990. On 30<sup>th</sup> August, 2002, in recognition of best performance in arresting proclaimed offenders, the appellant was given shoulder promotion to the rank of Havaldar. Subsequently, necessary orders were issued by the respondent No. 4 in this regard. In the year 2016, service structure of the Levy Force of Gilgit-Baltistan is stated to have been approved by GB Government whereby the existing posts of Levy Forces in Gilgit-Baltistan were upgraded, as such, the post of Hawaldar stood upgraded to Naib Subedar BS-11 alongwith the incumbent vide Office Order dated 15<sup>th</sup>

December, 2016 issued by the respondent No. 4. The respondent No. 3 (Deputy Commissioner Diamer) vide his office order dated 11<sup>th</sup> June, 2011 and office No. No. Estt-1(2)/2016 (date not mentioned) cancelled all promotions/ up-gradations granted on the basis of honorary ranks and further directed to effect all promotions/ up-gradations strictly as per seniority cum fitness. It was in consequence of these directives that the respondent No. 4 (Assistant Commissioner Darel District Diamer) withdrew/ cancelled all such promotions and issued an office order on 7<sup>th</sup> March, 2017 refixing the seniority of levy forces as per the dates of their initial appointments and the District Accounts Officer was informed accordingly through a letter of the same date. As a result whereof, the appellant was reverted back to his original position and his seniority was relegated by placing him at serial No. 7. Being aggrieved and dissatisfied with the above office order(s), the appellant preferred a departmental appeal which remained unattended, hence this appeal.

3. That upon admission of the appeal, notices were issued to the respondents for attendance and submission of para-wise comments. The respondents Nos. 1 to 4 submitted their para-wise comments through the learned Law Officer GB, while the private respondents filed their parawise comments through their respective counsels, wherein assertions made by the appellant have been denied on legal as well as on factual grounds. After completing all the codal formalities, the appeal came up for hearing on 02.06.2020. The counsel for the appellant contends that since the appellant was promoted to the post of Havaldar BS-11 in recognition of his gallantry performance, therefore, he is entitled to retain the post while the reversion order issued by the respondent No. 4 is illegal and against

the norms of natural justice. He further contends that since the matter was subjudice before the Court of law, therefore, the act of withdrawal/ cancellation of his promotion order is against the principles of *lis pendence*. The Law Officer and counsels for the private respondents on the other hand contend that merely on the basis of shoulder promotions, neither the appellant can be promoted nor can he claim seniority over the senior ones. They further contend that the shoulder ranks are not recognized in law, therefore granting promotion on the basis of such honorary ranks superseding the senior incumbents is against the law/ service rules.

4. That the levy force has its own service structure having its sanctioned strength carrying posts from Levy BS-1 upto Naib SubedarBS-11. No post other than the levy BS-1 is inducted directly. The upper posts are filled in accordance with the service rules on the basis of seniority cum fitness basis. This aspect of the rules/ law appears to have been overlooked while effecting the promotions and upgradation in sub-divisions of District Diamer. The incumbents of honorary ranks/ promotions were being absorbed against the same posts without observing the method prescribed in the service laws. Since the employee of the levy force is at par with the other civil servants, therefore, laws/ rules governing the employment of levy force are the Civil Servants Act, 1974, the Civil Servants (Transfer, Promotion & Transfer) Rules, 1973 and the Civil Servants Seniority Rules, 1993. In the year 2011, the Deputy Commissioner District Diamer took notice of this matter and cancelled all promotions/ upgradations granted on the basis of honorary ranks. It was in consequence of this action by the Deputy Commissioner Diamer that the appellant was reverted back to his previous position i.e. from Naib

Subedar BS-11 to Naik BS-7 (including those who were also given promotions/ up-gradations on the basis of honorary ranks). The seniority of the reverted employees of Levy Force District Diamer was re-fixed as per the date of their initial appointments. The appellant's claim that he had been promoted to the post of Havaldar in the year 2004 in reward of outstanding performance is not tenable as granting him promotion on the basis of honorary ranks by superseding his senior levy staff was/ is in sheer violation of the substantive services law/ rules. Similar case had also been filed by counterparts of the appellants before the Hon'ble Chief Court Gilgit-Baltistan by way of Writ Petition No. 66/2017 titled: Wasil Khan Levy Havaldar AC Office Tangir Vs. Provincial govt. etc. The Hon'ble Chief Court, GB was pleased to dismiss the petition being against the law/ rules. Besides above, the Hon'ble Supreme Court of Pakistan has also deprecated the practice of out of turn promotions holding them to be against the substantive law i.e. Civil Servants (Appointment, Promotion & Transfer) Rules, 1973, which resulted in reversion of a number of police officers/ officials of Sindh Province. For the sake of ready reference, the relevant parts are reproduced herein under:

**2016 SCMR 1525**

*"We expect that all the out of turn promotions granted either to police personnel on gallantry award or otherwise shall be undone within four weeks from today and their seniority be re-fixed with their batch mates in terms of the directions contained in the aforesaid judgments".*

**2009 SCMR 245**

*“Undoubtedly performance of duty with due diligence and efficiency deserves due appreciation but it cannot be over appreciated out of proportion as to make case a grievance to other employees in service of the department. If a case of glaring favoritism is made resulting in a malafide action as in the instant matter, it has to be rectified in accordance with the law to avoid any injustice. Such a valid order cannot be set aside merely on the conjectures or surmises s such practice would encourage a person to obtain any order using underhand means or otherwise and then claim immunity for such acts which would therefore, result in rewarding the person using such means by allowing him to continue to enjoy fruits of such ill-gotten gains and thus, perpetuate injustice”.*

**2013 SCMR 1752**

*“Likewise, we further hold and declare that all out of turn promotions made under section 9-A of the Sindh Civil Servant Act, 1973 by the Sindh government to an employee or civil servant with or without back dated seniority since 22.1.2002 when section 9-A was inserted through ordinance i.e. of 2002 are ultra vires of the Constitution”.*

5. In addition to the above, the Hon’ble Supreme Appellate Court GB in a Suo Moto Case No. 10/2017 (Shoulder/ Out of turn promotions in GB police) has also held the shoulder/ out of turn promotions to be unlawful. Relevant part of the judgment is reproduced below:

*"The perusal of the above mentioned Statutes, case laws, and the Police Service Rules, transpires that admittedly the Officers/ Officials of the Police Department Gilgit-Baltistan have been granted undue/ out of turn promotions, promotions without fulfilling codal formalities i.e. without obtaining the prerequisite trainings and/ or promotions without lawful authority. Due to granting of out of turn promotions given by the then authorities of Gilgit-Baltistan Police does not create a perpetual right to the beneficiaries gained on the basis of illegal order(s) which can be set aside at any time".*

In a case reported as **2019 PLC (C.S.) 40**, it has been held that no out of turn promotion can be awarded to an employee at the cost of other employees.

6. It must be borne in mind by all the public functionaries that no one is above the law to act according to his whims and wishes and go out of limits of the law/rules to bless undue favour to any employee that too at the cost of other employees. Therefore, the pretext of giving of promotion to the respondent No. 7 by Chief Secretary GB superseding the senior levy force and in sheer violation of the service law/ rules is not sustainable.

7. In view the above factual/ legal position, law & rules as well as keeping in view the rulings given by the apex Courts which are reproduced hereinabove, I have come to the conclusion that the appeal in hand deserves to be dismissed being meritless. The District Administrations District Diamer is directed to re-fix the seniority of levy force in all Sub-Divisions of District Diamer strictly in accordance

with the Civil Servants (Seniority) Rules, 1993. However, pay and allowances already received by the appellant if any, in consequence of holding the out of turn promoted post shall not be recovered. The parties are left to bear their own costs. Order accordingly.

8. File be consigned to record after completion.

**Announced:**  
**09.07.2020**

Sd/-  
**Member-I**

Judgment sheet  
**BEFORE GILGIT-BALTISTAN SERVICE TRIBUNAL  
GILGIT**

Service Appeal No.41/2018

Date of Institution:	24.05.2018
Date of hearing:	02.06.2020
Date of Judgment:	09.07.2019

**Appellant:** Saddar Wali, Levy Hawaldar BS-08, s/o Shakar Wali r/o Samigal Darel District Diamer.

**Respondents:** Provincial Govt. through Chief Secretary Gilgit-Baltistan Gilgit& 06 others.

**Before:** Mr. Muhammad Kamal: Member-I

**Present:** Mr. Basharat Ali Advocate for appellant  
Mr. Hafizullah, Law Officer GB for Respondents No. 1 to 6. Mr. Shahid Abbas Advocate along with Attorney of Respondent No. 7.

**JUDGMENT**

**MUHAMMAD KAMAL MEMBER-I:-**The instant appeal has been filed by the appellant against the impugned order dated 17<sup>th</sup> May, 2017 issued by the respondent No. 5 (Assistant Commissioner Darel), whereby the appellant has been reverted back to his earlier post. Through this judgment, I intend to dispose of this appeal on the facts and grounds explained below:

2. That the appellant was appointed as Levy in the office of the Assistant Commissioner Darel on 10.01.1987. Thereafter number of persons was appointed as levies BS-01. In the year 2002, the Chief Secretary, GB had granted honorary promotion to the respondent No. 7. A seniority list of levy force has been prepared and issued by the Assistant Commissioner Darel/ Tangir (then was a single subdivision) on 09.04.2012 on the basis of dates of their initial appointment wherein appellant's name is appearing at serial No. 4 whereas name of respondent No. 7 stands at serial No. 19. It appears that thereafter, shoulder promotions were granted to some junior levies superseding the appellant. The appellant filed a civil suit before the Court of the learned Civil Judge Chilas for promotion to the post of Hawaldar, which suit after establishment of this Tribunal stood abated and transferred to this Tribunal (Service Appeal No. 385/2014). In the year 2016, service structure of the Levy Force of Gilgit-Baltistan is stated to have been approved by GB Government whereby the existing posts of Levy Forces in Gilgit-Baltistan were upgraded, as such, the post of Hawaldar stood upgraded to Naib Subedar BS-11 alongwith the incumbent vide Office Order dated 15<sup>th</sup> December, 2016 issued by the respondent No. 5. The respondent No. 3 (Deputy



Commissioner Diamer) vide his office order dated 11<sup>th</sup> June, 2011 and Office Order No. Estt-1(2)/2016 (date not mentioned) cancelled all promotions/ up-gradations granted on the basis of honorary ranks and further directed to effect all promotions/ up-gradations strictly as per seniority cum fitness. It was in consequence of these directives that the respondent No. 4 (Assistant Commissioner Darel) withdrew/ cancelled all such promotions and issued an office order on 7<sup>th</sup> March, 2017 re-fixing seniority of levy forces as per the dates of their initial appointments and the District Accounts Officer was informed accordingly through a letter of the same date. It is further noted here that during pendency of that service appeal, respondent No. 5 (Assistant Commissioner Darel) issued an Office Order on 7<sup>th</sup> March, 2017 whereby the seniority of the appellant was restored to its original position. Consequently, the grievance of the appellant stood satisfied and the appellant withdrew the service appeal. Thereafter, another seniority list was issued by the respondent No. 5 wherein again the respondent No. 7 has been shown senior to the appellant. The justification given for assigning again fixing the seniority and assigning serial No. 1 to the respondent No. 7 was that he was promoted by the then Chief Secretary GB while his seniority was mistakenly fixed showing him juniors to the some incumbents of levy force. This seniority list was followed by the impugned office order dated 29<sup>th</sup> November, 2017 issued by the respondent No. 4 (the date has wrongly been mentioned in the memo of appeal as 29.12.2017). Through this office order, the earlier office order of 7<sup>th</sup> March, 2017 has been withdrawn and promotions were effected as per the revised seniority list of 14<sup>th</sup> November, 2017 accordingly. Being aggrieved and dissatisfied with this office order, the appellant submitted departmental appeal, which remained unattended, hence this appeal.

3. That upon admission of the appeal, notices were issued to the respondents for attendance and submission of para-wise comments. The respondents Nos. 1 to 6 submitted their para-wise comments through the learned Law Officer GB, while the private respondent No. 7 submitted his parawise comments through his counsel, wherein \assertions made by the appellant have been denied on legal as well as on factual grounds. After completing all the codal formalities, the appeal came up for hearing on 02.06.2020. The counsel for the appellant contends that since the appellant was promoted to the post of Havaldar BS-11 on the basis of seniority reckoned from the date of his initial appointment, therefore, he is entitled to retain the post while the reversion order issued by the respondent No. 4 again restoring the respondent No. 7 at serial No. 1 of the seniority list is illegal and against the norms of natural justice and against the services law/ rules. On the other hand, the Law Officer and counsel for respondent No. 7 contend that the respondent has been promoted by the competent authority in the year 2002, which order has neither been challenged nor has the same been withdrawn by the competent authority, therefore, the same has attained finality and cannot be withdrawn or cancelled at this belated stage.

4. That the levy force has its own service structure having its sanctioned strength carrying posts from Levy BS-1 upto Naib Subedar BS-11. No post other than the levy BS-1 appears to be inducted directly. The upper posts are filled in accordance with the service rules on the basis of seniority cum fitness basis. This aspect of the rules/ law appears to having been overlooked while effecting the promotions and upgradation in the Sub-Divisions of District Diamer.

Since the employee of levy force is at par with the other civil servants, therefore, laws/ rules governing the employment of levy force are the Civil Servants Act, 1974, the Civil Servants (Transfer, Promotion & Transfer) Rules, 1973 and the Civil Servants Seniority Rules, 1993. In the year 2011, the Deputy Commissioner District Diamer took notice of this matter and cancelled all promotions/ up-gradations granted on the basis of honorary ranks. It was in consequence of this action by the Deputy Commissioner Diamer that the respondent No. 7 was reverted back to his previous position i.e. from Naib Subedar BS-11 to Levy BS-5 (including those who were also given promotions/ up-gradations on the basis of honorary ranks). The seniority of the reverted employees of Levy Force District Diamer were re-fixed as per the date of their initial appointments as such all promotions/ up-gradations were given accordingly. The appellant's claim that he had been promoted to the post of Havaldar in the year 2004 in reward of outstanding performance is not tenable as granting him promotion on the basis of honorary ranks by superseding his senior levy staff was/ is in sheer violation of the substantive services law/ rules. Similar case had also been filed by a levy force personnel before the Hon'ble Chief Court Gilgit-Baltistan by way of Writ Petition No. 66/2017 titled: Wasil Khan Levy Havaldar AC Office Tangir Vs. Provincial govt. etc. The Hon'ble Chief Court, GB was pleased to dismiss the petition being against the law/ rules holding that on the basis of just honorary ranks, the incumbents cannot claim regular promotions and seniority. In addition to this, the Hon'ble Supreme Court of Pakistan has also deprecated the practice of out of turn promotions holding them to be against the substantive law i.e. Civil Servants (Appointment, Promotion & Transfer) Rules, 1973, which resulted in reversion of a number of police officers/ officials of Sindh

Province. For the sake of ready reference, the relevant parts are reproduced herein under:

**2016 SCMR 1525**

*"We expect that all the out of turn promotions granted either to police personnel on gallantry award or otherwise shall be undone within four weeks from today and their seniority be re-fixed with their batch mates in terms of the directions contained in the aforesaid judgments".*

**2009 SCMR 245**

*"Undoubtedly performance of duty with due diligence and efficiency deserves due appreciation but it cannot be over appreciated out of proportion as to make case a grievance to other employees in service of the department. If a case of glaring favoritism is made resulting in a malafide action as in the instant matter, it has to be rectified in accordance with the law to avoid any injustice. Such a valid order cannot be set aside merely on the conjectures or surmises s such practice would encourage a person to obtain any order using underhand means or otherwise and then claim immunity for such acts which would therefore, result in rewarding the person using such means by allowing him to continue to enjoy fruits of such ill-gotten gains and thus, perpetuate injustice".*

**2013 SCMR 1752**

*"Likewise, we further hold and declare that all out of turn promotions made under section 9-A of the Sindh Civil Servant Act, 1973 by the Sindh government to an employee or civil*

*servant with or without back dated seniority since 22.1.2002 when section 9-A was inserted through ordinance i.e. of 2002 are ultra vires of the Constitution”.*

5. In addition to the above, the Hon’ble Supreme Appellate Court GB in a Suo Moto Case No. 10/2017 (Shoulder/ Out of turn promotions in GB police) has also held the shoulder/ out of turn promotions to be unlawful. Relevant part of the judgment is reproduced below:

*“The perusal of the above mentioned Statues, case laws, and the Police Service Rules, transpires that admittedly the Officers/ Officials of the Police Department Gilgit-Baltistan have been granted undue/ out of turn promotions, promotions without fulfilling codal formalities i.e. without obtaining the prerequisite trainings and/ or promotions without lawful authority. Due to granting of out of turn promotions given by the then authorities of Gilgit-Baltistan Police does not create a perpetual right to the beneficiaries gained on the basis of illegal order(s) which can be set aside at any time”.*

In a case reported as **2019 PLC (C.S.) 40**, it has been held that no out of turn promotion can be awarded to an employee, depriving other employees of their rights.

6. It must be borne in mind by all the public functionaries that no one is above the law to act according to his whims and wishes and go out of limits of the law/rules to bless undue favour to any employee that too at the cost of other employees. Therefore, the pretext of

giving of promotion to the respondent No. 7 by Chief Secretary GB superseding the senior levy force and in sheer violation of service law/ rules is not sustainable.

7. In view of the above factual/ legal position, law & rules as well as keeping in view the rulings given by the apex Courts which are reproduced hereinabove, I do not hesitate to hold that the appeal in hand merits acceptance. However, pay and allowances already received by the respondent No.7 if any, against out of turn promoted post shall not be recovered. The District Administration District Diamer is directed to re-fix the seniority of levy force in all Sub-Divisions of District Diamer strictly in accordance with the Civil Servants (Seniority) Rules, 1993. The parties are left to bear their own costs.

8. File be consigned to record after completion.

**Announced:**  
**09.07.2020**

Sd/-  
**Member-I**

Judgment sheet  
**BEFORE GILGIT-BALTISTAN SERVICE TRIBUNAL**  
**GILGIT**

Service Appeal No. 79/2018

Date of Institution:	14.12.2018
Date of hearing:	29.06.2020
Date of Judgment:	11.08.2020

**Appellant:** Dr. Fida Hussain S/O Ashraf Khan,  
R/O Usmania Mohallah, Kashrot,  
Gilgit.

**Respondents:** Chief Secretary Gilgit-Baltistan & 07

others.

**Before:** Mr. Muhammad Kamal Member-I

**Present:** Mr. Zia ur Rehman for the appellant,  
Mr. Hafiz Ullah, Law Officer, for  
Respondent No. 1 to 3, Maqbool  
Hussain Advocate for Respondent No  
4 and 5, MS Khawar Advocate for  
Respondent No. 6 and 7.

## **JUDGMENT**

**MUHAMMAD KAMAL MEMBER-I:-** Through the instant service appeal, the appellant has prayed for issuance of direction to the respondents to correct his date of birth according to his CNIC No. 71501-1497352-3 in his service record and in SSC Certificate to meet the end of justice.

2. Brief facts disclosed in memo of instant appeal are that the appellant is serving in Health department Government of GB as medical Doctor. His date of birth entered into his service record as well as in his SSC Certificate as 01-04-1963. When he realized that he is only 03 months and 20 days younger than his brother who is also in Government service and was born in 12-12-1962, approached NADRA authorities for correction of his date of birth and got a fresh CNIC showing his date of birth as 25-11-1963. He then preferred a departmental service appeal before the respondents No. 2,3,4 and 5 for correction of his date of birth according to CNIC which remained

unattended. After expiry of statutory period of 90 days, he approached this Tribunal by filling of the instant appeal.

3. Arguments pro and contra heard. Record also perused. Without going into deep in detailed discussion made out in arguments, I observed that there is an unnatural gap of difference of birth between two real brothers which is only 03 months and 20 days. Mr. Allaudin, the elder brother of appellant who is also in Government service appeared in person before this Tribunal and confirmed his date of birth showing his service record noted as 12-12-1962. If the appellant's date of birth is taken as 01-04-1963, he would have born only 03 months and 20 days after his elder brother's birth, which is not only unbelievable but also against the law of nature. Though this Court discourages changing of date of birth, which either could be for the purpose of enhancement of the tenure of service in any employment or to bring oneself within certain age limit in order to qualify for getting employed or seeking admission in an institution where age is relevant. However, in the present case, no such situation seems to have arisen as the appellant's claim is only 07 months lessen of his age just to remove anomalous situation of unnatural age difference gap between himself and his elder brother.

4. Keeping in view the forgoing reasons above, the appeal is allowed as prayed for and Respondents No. 01 to 05 are directed to correct the date of birth of the appellant according to his CNIC No. 71501-1497352-3 in his service record and in SSC Certificate. Order accordingly.

5. There is no order as to cost. Parties be informed.



6. File be consigned to record after its completion.

Announced:  
11.08.2020

Sd/-  
**Member-I**

Judgment sheet  
**BEFORE GILGIT-BALTISTAN SERVICE TRIBUNAL**  
**GILGIT**  
Service Appeal No.33/2019

Date of Institution:	28.05.2019
Date of hearing:	24.06.2020
Date of Judgment:	12.08.2020

**Appellant:** Nisar Ahmed (Ex. Accountant BS-14),  
Excise and Taxation Department GB

**Respondents:** Provincial Govt. through Chief  
Secretary Gilgit-Baltistan Gilgit & 03  
others.

**Before:** Mr. Muhammad Kamal, Acting  
Chairman

**Present:** M/s. Amjad Hussain and Shahid  
Abbass Advocates for appellant  
Mr. Hafiz Ullah, Law Officer GB for  
respondents No. 1 to 3. Respondent  
No. 4 is proceeded ex-parte. Mr.  
Imran Hussain, Advocate Legal  
Adviser E&T Department GB.

**JUDGMENT**

**MUHAMMAD KAMAL Acting Chairman**:- Through this judgment,  
I intend to dispose off the above service appeal filed by the appellant

against the withdrawal of his adjustment order against the post of Accountant BS-14 on the following facts and grounds:

2. The appeal is arising out of the fact that the appellant was appointed as LDC BS-07 in Excise & Taxation Department GB on 12<sup>th</sup> April, 2010. After appointment as LDC, he was assigned the responsibility of maintenance of cash and accounts of the department. On 19.09.2012 a DPC was convened whereby the appellant was adjusted against a vacant post of Accountant BS-14 and adjustment order was also issued on the same date accordingly. In pursuance of the said adjustment order, the appellant joined his duties as Accountant BS-14 and withdrew pay and allowances against the same post. On 24.04.2014 on the charges of handing/ taking of substandard number plates, services of the appellant, amongst others, had been placed under suspension. Later on, an inquiry committee was constituted to probe into the matter, which, after inquiry exonerated the appellants from the charges leveled against him. Prior to his suspension, two UDCs had filed a Writ Petition No. 34/2013 in the Hon'ble Chief Court GB challenging the adjustment order of the appellant as Accountant BS-14. During pendency of the writ petition before the Hon'ble Chief Court GB, on 03.06.2013 appellant's adjustment order as Accountant BS-14 was withdrawn by the then Secretary Excise & Taxation Department GB. As a result whereof, the writ petition pending before the Hon'ble Chief Court GB stood infructuous and was disposed off accordingly. Against order of the Hon'ble Chief Court GB, the appellant invoked the jurisdiction of the Hon'ble Supreme Appellate Court GB by way of a CPLA. The apex Court was pleased to dispose off the CPLA with the direction to the Hon'ble Chief Court GB to hear the parties in the Writ Petition No.

34/2013. In the meantime, the petitioners in the said writ petition were promoted and again the writ petition was dismissed as infructuous.

3. After disposal of the writ petition by the Hon'ble Chief Court GB, the appellant filed an application before the Chief Secretary GB for setting aside the withdrawal order dated 03.06.2013. No action on that application has been taken rather the Chief Secretary GB wrote on the application "NFA" (no further action), hence this appeal.

4. Appeal was admitted and notices were issued to the respondents calling parawise comments and attendance. Parawise comments have been submitted by the respondents through the learned Law Officer GB, while respondent No. 4, Accountant General, GB relied upon the same comments. In the parawise comments, the relief claimed on basis of various averments by the appellant have been denied on various facts and grounds.

5. Arguments heard, record perused and case laws submitted by both the parties have also been gone through. It was contended by the learned counsel for the appellant that since the appellant had been adjusted/ promoted as Accountant BS-14 through a proper DPC, who joined his duties as such, performed duties for a period of 2 and half years and withdrew salary against the said post. He next contends that all of a sudden, the adjustment/ promotion order was withdrawn by the Secretary Excise & Taxation Department GB that too without intimation or affording a chance of personal hearing to the appellant before resorting to such a stern action who was promoted to the post of Accountant BS-14 through a proper DPC wherein all the Members of Committee have put their signatures. He

next contends that non-affording of personal hearing or issuance of a show cause notice before taking such action behind the back of appellant is against the law and natural justice. He next submits the appellant had been promoted/ adjusted by the competent authority in view of performances/ expertise of appellant in accounts and cash dealing, as such once a benefit of promotion given to an employee that too when there is no fault on the part of the employee concerned cannot be taken away after a period of 2 and half years in view of principles of *locus poenitentia*. He next contends that when the appellant, after judgments by the Hon'ble Chief Court, GB, submitted an appeal to the Chief Secretary GB, instead of taking appropriate action on the application, the Chief Secretary wrote "NFA" (no further action), whereas it is obligatory upon the competent authority to decide the applications/appeals submitted by government servants by issuing proper speaking orders. The learned counsel for the appellant next iterates that the two UDCs who had challenged adjustment orders of the appellant before the Hon'ble Chief Court GB, have already been promoted to the post of Assistants BS-14, as a result whereof, the writ petition was disposed off being infructuous. He next contends that when there is no *lis* pending in any forum against adjustment orders of the appellant, therefore, there cannot be a question of refusal to restore services of appellant against the post of Accountant BS-14 which he has held for two and half years. In support of his contentions, the learned counsel for the appellant relied upon 2002 SCMR 1124, 2004 PLC (C.S.) 473, 2002 PLC (C.S.) 1246, PLJ 2004 SC (AJ&K) 1, 2020 SCMR 188 and 2011 PLC (C.S.) 1296.

6. On the other hand, the learned Law Officer contends that adjustment of appellant against the post of Accountant BS-14 was made patently against the rules and seniority of other employees. He next contends that composition of DPC was illegal which was not empowered to adjust employees of Excise & Taxation Department and that the adjustment of appellant against the post of Accountant-BS-14 was illegal on the face of it because at the relevant time the department did not have approved recruitment rules. The learned Law Officer alongwith the Legal Adviser, E&T GB further maintain that the adjustment of the appellant has been made by superseding UDCs and LDCs senior to the appellant, hence the action of adjustment of the appellant against the post of Accountant BS-14 is a patent violation of set rules and has affected the right of promotion of the UDCs and LDCs senior to him. In rebuttal to the contentions of the learned counsel for the appellant as to accruing of right of retention of the post by the appellant in view of the principle of *locus poenitentia* is concerned, the learned Law Officer assisted by the Legal Adviser E&T Department GB contend that since the order of adjustment has been got by the appellant through an illegal manner and against the rules, therefore the principle of *locus-poenitentia* is not attracted in favour of an ill gotten order. With a view to fortify their contentions, the learned Law Officer and Legal Adviser E&T Department GB have relied upon 2000 SCMR 907, 2003 PLC (C.S.) 1029, 2007 SCMR 318 and a judgment passed by the Hon'ble Chief Court GB in Writ Petition No. 178/2016.

7. Before going into deep discussion of the case, firstly it would be more appropriate to thrash out as to whether the competent authority was empowered to adjust the appellant against the post of

Accountant BS-14 (now BS-16) in presence of incumbents of the posts of UDCs and senior LDCs. The answer is in negative as at the relevant time when the appellant had been adjusted against the post of Accountant BS-14, there were already 03 UDCs working with the department besides three senior LDCs to the appellant. No valid justification has been given for adjustment of the appellant in the minutes of DPC. The reasons as has been given in the minutes of DPC meeting are ***"to consider the appointment/ adjustment of eligible candidate against the newly created post of Accountant (BS-14)"***. Astonishingly, it is noted that how a junior LDC had been considered eligible for adjustment against the post of Accountant BS-14 when there were already 03 UDCs and 03 LDCs senior to the appellant. In addition to this, all DPCs being convened in all government departments (except autonomous bodies) comprise of Reps. of Finance and Services Department GB which is a mandatory requirement for holding DPCs. However, in this DPC, no reps. either from Finance or from Services Department have attended the DPC meeting which smacks malafides on the part of the Members of the DPC in question to bless their blue eyed ones. The contentions of the learned counsel for the appellant regarding accruing of *locus poenitentia* in favour of the appellant is concerned, in my considered view, no *locus poenitentia* can accrue in favour of an illegal order, which is detrimental to the vested rights of the other individuals inasmuch as in clear departure from the method prescribed under the law/rules. In the case in hand, same situation prevails as the adjustment order has been issued badly affecting the promotion rights of UDCs and senior LDCs to the appellant. Even in absence of approved departmental recruitment rules, it is settled method of appointment/promotions in ESTACODE that the post of

Accountant/Assistants are to be filled in through 100% promotion quota from amongst the senior UDCs. In this case, even the UDCs have been superseded to benefit the appellant, which at any cost is not sustainable in law/ rules. In order to fortify my view, some rulings of the Hon'ble Supreme Court of Pakistan are reproduced below:

**2007 SCMR 318 (See 323 G)**

*"It is a settled proposition of law that if the order is illegal then perpetual rights cannot be gained on the basis of an illegal order and in such situation principle of locus poenitentia is not attracted"*

Similar view has been taken by the Hon'ble Supreme Court of Pakistan in a case reported as 2000 SCMR 907.

In another case, the Hon'ble Supreme Court of Pakistan has held as under:

**2011 PLC (C.S.) 1296 (see page 1298 A)**

*"5. There is no cavil with the proposition that principle of locus poenitentia would not arise in a situation when some benefit is awarded to a person against the declared law and the judgment of this Court in 2011 SCMR 408".*

8. As far as non-affording of personal hearing or issuance of show notice is concerned, in my considered view the same could be applied to the cases where a vested right of an individual is apprehended to be violated. However, as discussed above, since no vested right of the appellant was being violated while withdrawing the adjustment order, therefore plea of learned counsel for the appellant to this

effect is not sustainable. Under Section 21 of the General Clauses Act 1897, the authority to make orders has the power to vary or rescind the same. Regarding maxim of *Audi Alteram partem*, the Hon'ble Supreme Court of Pakistan in a case reported as 2000 SCMR 907 has held as under.

**2000 SCMR 907 (see page 908)**

*"But at the same time this principle cannot be deemed to be of universal nature because before invoking/ applying this principle one has to specify that the person against whom action is contemplated to be taken prima facie as a vested right to defend the action and in those cases where the claimant has no basis or entitlement in his favour he would not be entitled for protection of the principal of natural justice".*

9. The case laws/ rulings relied upon by the learned counsel for the appellant in support of his contentions are distinguishable in terms of facts, grounds and circumstances.

10. Without prejudice to what has been discussed above, it is noted with great concern that when the appellant submitted his appeal to the Chief Secretary GB for reinstatement of his services against the post of Accountant BS-14, the learned Chief Secretary has written "NFA" on the margin of the said appeal. Whereas, under the law, it is obligatory upon the public functionaries to dispose off appeals/ applications duly assigning reasons thereof and pass a speaking order. If the public functionaries resort to such attitude, the purpose of enactment of law/ rules would be defeated. Relevant part of Section 24A is reproduced below:



**"II. Order without reasons:** Public functionaries are bound to act in accordance with the law in view of Article 4 of the Constitution and under Section 24A, General Clauses Act, 1897, it is duty and obligation of public functionaries to pass orders with reasons. Orders without reasons is not sustainable in the eyes of law under Section 24A of the General Clauses, Act 1897.

11. In view of the position explained in para 6 to 8 above, I am unable to protect an illegal adjustment order. However, the appellant is held entitled for the promotion to next higher post when it was due with back benefits to be involved if any, as well as with retention of inter se seniority.

12. No order as to costs. Parties be informed accordingly.

Announced  
12.08.2020

Sd/-  
**Acting Chairman`**

Judgment sheet  
**BEFORE THE GILGIT-BALTISTAN SERVICE TRIBUNAL  
GILGIT**

Service Appeal No. 22/2018

Date of Institution:	18.04.2018
Date of hearing:	08.07.2020
Date of Judgment:	18.08.2020

**Appellant:** Ghulam Mehdi TGT teacher BS-16  
posted at Mehdiabad Skardu,  
Education Department Skardu.

**Respondents:** Provincial Govt. through Chief Secretar  
03 others.

- Before:** Mr. Muhammad Kamal; Member-I
- Present:** Sharif Ahmad Advocate for the appellant.  
Mr. Hafiz Ullah Law Officer GB, assisted by Mr. Kamal Hussain Advocate, Legal Adviser to Education Department for respondents No. 1 to 4.

### **JUDGMENT**

**MUHAMMAD KAMAL MEMBER-I:** These 17 titled appeals including the instant appeal of identical nature are being disposed off through this consolidated judgment having common points of law and facts, vide Nos. 22/2018, 23/2018, 24/2018, 25/2018, 26/2018, 27/2018, 28/2018, 29/2018, 30/2018, 31/2018, 32/2018, 33/2018, 34/2018, 35/2018, 36/2018, 37/2018, and 38/2018.

2. Brief facts as narrated in the memo of appeal are that the appellant is TGT teacher (BS-16) in Education department GB. He has sought relief of up-gradation (BS-14 to BS-16) with effect from the date he acquired his B-Ed. on 10-05-2007 instead of 01-07-2011. He along with others jointly filed departmental appeal before respondent No. 2 but up till now no action has been taken, hence this appeal.

3. I have heard the arguments from both the sides and gone through the record placed before me. Learned Law Officer assisted by Mr. Kamal Hussain Advocate Legal Adviser to the Education department for the respondents No. 1 to 4 at the very outset argued that the appeal in hand is not maintainable as there being no departmental appeal which is mandatory clause to file service appeals before the Honourable Service Tribunal. The appellant has attached

a fictitious joint application to the respondent No. 2 just to fulfill pre-requisite documentation with the instant appeal. There is no evidence as to actually filed this application before the departmental authority. This state of act on the part of appellant is clear violation of Section 5(i)(a) of Gilgit-Baltistan Service Tribunal Act 2010 (Amended 2014).

4. Learned Counsel for the appellant vehemently contended that departmental appeal is not mandatory to file service appeals before the Tribunal, which shows that they actually did not file any representation to the departmental authority (respondent No. 2). The attached departmental appeal is fictitious one, even no sign of receipt has been recorded thereon.

5. Before discussing the merits, I am of the firm view to address law point on importance of departmental appeal as discussed above. It is admitted fact that departmental appeal to the departmental authority is mandatory provision before filling of an appeal in Service Tribunal as provided under Section 5 (1) (a) of Service Tribunal Act 2010 (Amended 2014) which is reproduced as below:-

**Section 5 (1): "Any civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him or within six months of the establishment of the appropriate Tribunal, whichever is latter prefer an appeal to the Tribunal:-**

**Provided that.-**

**(a) Where an appeal, review or representation to a departmental authority is provided under the Civil Servants**

**Act, 1973, or any rules against any such order no appeal shall lie to a Tribunal unless the aggrieved civil servant has preferred an appeal or application for review or representation to such departmental authority and a period of ninety days has elapsed from the date on which such appeal, application or representation was so preferred.”**

6. From bare reading of available record, it transpired that the appellant was up-graded from BS-14 to BS-16 in July, 2011 and thereafter, he remained in a deep slumber of about 08 years. He actually got cause of action in July, 2011 and after elapse of 08 years or so, he came to this Tribunal with the help of a fabricated departmental appeal seeking anti-dated upgradation. I am fully agreed with the contention of learned counsel for respondents No. 1 to 4 that the action on the part of appellant is clear violation of section 5 (1) (a) referred to above.

7. Keeping in view the above discussion, the departmental appeal attached with the case file has since been proved to be fabricated, therefore, the instant appeal being not maintainable is hereby dismissed. Order accordingly.

8. No order as to cost. Parties be informed accordingly.

9. File be consigned to record after its completion.

Announced  
18-08-2020

Sd/-  
**Member-I**

Judgment sheet  
**BEFORE GILGIT-BALTISTAN SERVICE TRIBUNAL  
 GILGIT**

Service Appeal No.71/2019

Date of Institution:	25.11.2019
Date of hearing:	10.07.2020
Date of Judgment:	20.08.2020

**Appellant:** Zameer Abbas, Deputy Secretary (Admin) Home & Prisons Department GB.

**Respondents:** Provincial Govt. through Chief Secretary Gilgit-Baltistan Gilgit & 20 others.

**Before:** Mr. Muhammad Kamal, Acting Chairman  
Mr. Ali Sher, Member-II

**Present:** M/s. Asadullah Khan & Adnan Hussain Advocates for appellant  
Mr. Hafiz Ullah, Law Officer GB for respondents No. 1 & 2. Mr. Mujaddid Shaukat Ali Advocate for Respondents No. 3 to 21.

### JUDGMENT

**MUHAMMAD KAMAL Acting Chairman:-** Through this judgment, we intend to dispose off the above service appeal filed by the appellant for issuance of directives of this Tribunal for his promotion from BS-17 to BS-18 from the year, 2014 and further maintenance of *inter se* seniority from the date of his initial appointment.

2. Vide Notification dated 26<sup>th</sup> December, 2007, the appellant, amongst others, was appointed as Assistant Commissioner BS-17. An

inquiry was ordered to be conducted in a matter of illegal appointments and purchase of substandard number plates in Excise & Taxation Department GB in 2015 against the responsible officers, which included the appellant who was working as Deputy Director in that department. During pendency of inquiry, a Departmental Promotion Board (DPB) was convened in the year 2014, wherein promotion of the appellant was deferred on account of pendency of inquiry against him. The reasons recorded therein are: ***"There is an enquiry under process against Mr. Zameer Abbas, as such he cannot be considered for promotion as per rules. However, one post needs to be kept vacant for the officer against which disciplinary proceedings are under way"***. Two DPBs were convened in the year 2016 wherein appellant was recommended to be superseded. Another DPB was convened in August, 2018 wherein promotion of appellant was deferred. In the next two DPBs convened during the year 2019, appellant's case was again recommended for supersession. The appellant's promotion case met the same fate in the last DPB held on 26<sup>th</sup> March, 2020. Vide order dated 23-01-2019 the pending inquiry against the appellant was concluded with awarding of some minor penalties against which the appellant filed a review petition before the competent authority. Later on, the appellant was reinstated and posted as as Deputy Secretary (Admin) Home & Prisons Department GB, the appellant submitted an appeal to the Secretary Services and GAD GB for his promotion and conversion of supersession into deferment. On his appeal, the Services & GAD, GB sought advice from the Establishment Division Islamabad, hence this service appeal.

3. Appeal was admitted and notices were issued to the respondents calling for parawise comments and attendance. Respondents Nos. 1 and 2 submitted parawise comments through the learned Law Officer, GB while respondents Nos. 3 to 21 submitted their joint parawise comments through their counsel. The respondents Nos. 1 and 2 in their parawise comments have denied/ rebutted the averments made by the appellant on various facts and grounds, while the respondents No. 3 to 21 have prayed for disposal of the appeal in hand on merits and under the law/ rules. The learned counsel for the appellant mainly based his contentions on the ground that under Rule 7(6) of the Gilgit-Baltistan Civil Servants Act, 2011, inquiry proceedings are required to be concluded within a period of 60 days while, he contends that with malafide intentions, the inquiry proceedings have been protracted which lasted for more than five years. As per the learned counsel for appellant, it is a requirement under the Revised Promotion Policy, 2007 read with Civil Servants Promotion Rules 2019 to officially communicate the officers/ officials of the reasons of deferment/ supersession, whereas the appellant has not been communicated the reasons as to the impugned deferment/ supersession. He next submits that even the appellant has not been afforded a chance of personal hearing before deferment/ supersession on multiple times, which act on the part of respondents is violation of the fundamental rights of the appellant in as much as against the mandatory provisions of the prevailing policy. The learned counsel of the appellant further contended that since the admission of his appeal in this Tribunal, the competent authority has exonerated him from all charges of misconduct, embezzlement etc. The counsel submitted an office order dated 03-07-2020 to substantiate his argument. He further added that vide judgment dated 14-11-2019,

the Hon'able Chief Court GB has quashed the NAB proceedings against the officers including the appellant. Contrary to the submissions of the learned counsel for the appellant, the learned Law Officer GB submits that due to pendency of a case with NAB, the inquiry proceedings could not be finalized within the prescribed period. The learned Law Officer refers to the Revised Promotion Policy 2007 and submits that pendency of inquiry against an officer has been prescribed as a cause of deferment and the same cannot be considered for promotion. As to non-communicating the reasons of deferment/ supersession to the appellant is concerned, the learned Law Officer submitted that the officer whose promotion case has been deferred/ superseded must know it automatically when his junior officers are promoted.

4. Arguments heard, record perused and also went through the case laws cited by the parties. Before we put our view, we must reproduce the relevant conditions for deferment/ supersession contained in the Promotion Policy 2007 as well as Civil Servants Promotion Rules, 2019

**"7. Conditions for deferment.**— On consideration for promotion in order of seniority, a civil servant shall be recommended for deferment, if—

- (a) the officer does not meet the eligibility criteria as contained in rule 6;
- (b) the officer has not submitted Part-I and Part-II of his/ her performance evaluation report (PER) form to his/ her reporting officer;



- (c) the CSB, DSB or DPB considers that service record of the officer is incomplete in any aspect;
- (d) the CSB, DSB or DPB wants to further watch performance of the officer for any reason to be recorded in writing
- (e) disciplinary or departmental proceedings are pending against the civil servant;

Provided that this clause shall not be applicable in cases, where on the date of consideration of the civil servant for promotion, such proceedings are pending for more than a year and the delay has not been caused by any reason attributable to the officer;

- (f) the civil servant is for a period not less than one year on deputation to a foreign government or international agency irrespective of whether it is located abroad or within the country;
- (g) the civil servant is availing ex-Pakistan leave including extra ordinary leave or study leave as well as similar leave within Pakistan for a period of not less than one year;
- (h) the civil servant who have availed ex-Pakistan leave including extra ordinary leave or study leave as well as similar leave within Pakistan for a period of not less than one year and have not earned one full year PER on return from such leave;

- (i) **an inquiry, investigation, case or a reference is pending against any civil servant in Anti-Corruption Establishment, Federal Investigation Agency, National Accountability bureau or such other organization by whatever name called for:**

Provided that this clause shall not be applicable in such cases, where on the date of consideration of a civil servant for promotion, such an inquiry, investigation, case or reference is pending against him for more than three years and the delay has not been caused by any reason attributable to the officer;

- (j) The civil servant has not submitted his/ her declaration of assets forms for the last five years; or
- (k) There is any other reason to be recorded in writing by the CSB, DSB or DPB as the case may be.

**"8. Conditions for supersession.**—A civil servant shall be recommended for supersession, if-

- (a) He/ she does not meet the requisite threshold for promotion to a particular post or grade in any particular services, group or post;
- (b) Subject to the provision of rule 22, he/ she fails thrice for any reason to attend the mandatory training; or
- (c) **There is any other reason to be recorded in writing by the CSB, DSB or DPB as the case may be.**

5. A bare perusal of the above two rules and the conditions laid down thereunder makes it clear that the case of the appellant falls within clause (i) of rule 7 of the said rules. Under the clause *ibid*, the promotion case of the appellant was required to be deferred by DPB instead of resorting to rule 8 i.e., supersession. Even if the authorities concerned tended to resort to rule 8, the relevant condition is laid down in clause (c) under which, the Members of the DPB were required not only to record the reasons for supersession of promotion case of the appellant but also mandatorily communicate the reasons for such supersession/deferment as provided under Promotion Policy 2007 as well as Rule 23 of the Civil Servants Promotion Rules 2019. However, no such reasons have been recorded and conveyed by the DPB Members to the appellant. Even in the case of deferment under clause (i) of rule 7, there was no justification for deferring the appellant's promotion case because the saving clause to clause (i) of rule 7 provides that ***"Provided that this clause shall not be applicable in such cases, where on the date of consideration of a civil servant for promotion, such an inquiry, investigation, case or reference is pending against him for more than three years and the delay has not been caused by any reason attributable to the officer"***. No doubt, the delay in completion of inquiry proceedings is either on the part of Inquiry Committee or NAB which cannot be attributed to the appellant. Recommendations for superseding the appellant in each DPB meeting (except deferment in 2 DPB meetings) without adherence to relevant rules smells malafides on the part of the concerned authorities. The criteria and quantification for recommending the appellant for supersession has not been given neither in the Minutes of DPB meeting nor on any separate paper. The only reasons for his

supersession recorded in the minutes of each DPB meeting are the pendency of inquiry proceedings/ pendency of case before NAB, while no such conditions have been laid down in the Promotion Policy 2007 and rule 8 of Civil Servants Promotion Rules, 2019 rather the condition laid down in clause (i) of rule 7 of the said rules is attracted in the case in hand, which calls for deferment only. In addition to the above, it is pertinent to note here that in view of the observations of the superior Courts of Pakistan, no promotion could be/ should be deferred/ superseded merely on the ground of pendency of departmental inquiry or proceedings pending with NAB authorities. For ease of reference, some of the said observations are quoted below:

**SUPREME COURT OF PAKISTAN (IN CIVIL APPEALS NO. 2109 TO 2139 OF 2016 AND CIVIL PETITION NO 516 OF 2017)**

“ The OM dated 24-10-2007 also required that the officers superseded/deferred by the CSB be informed about the reason for his supersession/deferment to enable him to improve his performance and to complete his records or to make up any other deficiency, as the case may be”

The Hon’able Supreme Court of Pakistan in the cases where officers were not duly informed or communicated the reason for their supersession/deferment held in the above judgment that:

“In the event the officers whose cases for promotion have been recommended to be deferred or superseded are through the proposed process recommended for promotion, they shall maintain their seniority viz a viz those who were recommended for promotion through the impugned process, and may again be so recommended

so that the seniority of the presently left out officers and so also their entitlement to the consequential benefits, including prospects of their future promotion is not adversely affected”.

**2007 PLC (C.S.) 716**

“Insofar as department’s view that the petitioner’s case is to be deferred till such time the enquiry is finalized, in our opinion this cannot be substantiated because it is settled law that a person is presumed innocent until found guilty. Hence the petitioner cannot be punished departmentally for a crime which, ultimately, he may not be found guilty”.

**2017 PLC (C.S.) 1137**

“As far as pending inquiry before NAB is concerned, it is trite law that pendency of an inquiry is not a disqualification”.

6. Without prejudice to what has been explained above, it would be more appropriate to turn to rule 23 of the rules mentioned herein above, which calls for communication of reasons of deferment and supersession of the civil servants. The record does not speak as to communication of deferment/ supersession to the appellant. The plea of learned Law Officer that the civil servant may know about his deferment/ supersession automatically when his juniors are promoted is not tenable as departure from the prescribed rules on the basis of whims and conjecture would tend to defeat enactment of law/ rules for governing/ regulating the terms and conditions of civil services. While dealing with and disposal of service matters, the public functionaries are bound by the law to take into consideration every aspect of law/ rules and ignorance or willful overlooking thereof will prove to be failure in dispensation of substantive justice. It is well

settled principle of law that violation of mandatory provisions of law renders all the proceedings void ab initio as provided in rule 23 *ibid*.

7. Furthermore, quashing of proceedings pending before NAB by the learned Chief Court GB, exonerating the appellant from the charges and restoration of his services and posting him as Deputy Secretary (Admin), Home & Prisons Department, GB itself manifests that the reasons on which his case was deferred/ superseded ceased to exist which means that as if there were no charges against the appellant.

8. We, on the basis of the above factual and legal position, accept this appeal. The supersession/deferment awarded to the appellant, being departure from adherence to the legal requirements, is hereby declared unlawful and against the mandatory provisions of law. The appellant is held entitled for promotion from the date on which his batch-mates have been promoted. He shall retain the right of *inter se* seniority from the date of his initial appointment with all consequential benefits. Order accordingly.

9. No order as to costs.

10. File be consigned to record after completion.

Announced  
20.08.2020

Sd/-  
**Acting Chairman**  
Sd/-  
**Member-I**

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**THE END**