

**JUDICIAL SERVICE TRIBUNAL OF AZAD JAMMU & KASHMIR
MUZAFFARABAD**

*Service Appeal No.01/2015;
Date of Institution 27.01.2015;
Date of Decision 03.04.2024.*

Muhammad Yousaf Haroon Civil Judge B-
18 Court No.I, Rawalakot, R/o Dhir-kot
District Bagh.

Appellant

VERSUS

1. Competent Authority for Judicial Officers Department/Hon'ble Chief Justice Azad Jammu & Kashmir Muzaffarabad;
2. Registrar Azad Jammu & Kashmir Muzaffarabad.

Respondents

(2) *Service Appeal No.02/2015;
Date of Institution 17.02.2015;*

Muhammad Yousaf Haroon Civil Judge B-
18 Court No.I, Rawalakot, R/o Dhir-kot
District Bagh.

Appellant

VERSUS

1. Competent Authority for Judicial Officers Department/Hon'ble Chief Justice Azad Jammu & Kashmir Muzaffarabad;

2. Judicial Selection Board through Registrar Azad Jammu & Kashmir, High Court;
3. Raja Shamraiz Additional District & Sessions Judge, Sehnsa;
4. Rashid Iftikhar Hashmi Senior Civil Judge, Kahuta;
5. Idrees Bhatti Senior Civil Judge, Bagh;
6. Muhammad Ghazanfar Khan Senior Civil Judge, Muzaffarabad;
7. Riaz Shafi Senior Civil Judge Authmuqam;
8. Wasim Gillani Senior Civil Judge, Kotli;
9. Jahangir Jarral Senior Civil Judge, Bhimber;
10. Arbab Azam Senior Civil Judge, Rawalakot;
11. Shahzaman Senior Civil Judge, Mirpur;
12. Nazia Ashraf Senior Civil Judge, Hattian Bala;

Respondents

SERVICE APPEALS

**Before:- Justice Sardar Muhammad Ejaz Khan, Chairman.
Justice Khalid Rasheed Chaudhary, Member.
(Division Bench)**

PRESENT:

Raja Sajjad Ahmed Khan, Advocate for the appellant in both appeals.

A.A.G. for the official respondents.

Syed Atif Mushtaq Gillani, Advocate for respondent No.8 in appeal No.02/2015.

JUDGMENT:

Sardar Muhammad Ejaz Khan, Chairman. The captioned appeals have been filed against the notifications/orders dated 27.10.2014 and orders dated 04.08.2011, 22.11.2012, 22.11.2012, 23.11.2012, 11.06.2014 & 11.11.2014.

2. As common question of facts and law is involved in the instant appeals, hence, the same were consolidated and are being decided through this single judgment.

3. Synthesized facts as per version of the appellant taken in appeal No.01/15 are that the appellant was removed from service from the post of Senior Civil Judge (BPS-19) by the competent authority on 04.07.2011, which was challenged before this tribunal while the appeal of the appellant was dismissed on 28.08.2013 against which the appellant preferred an appeal

before the apex Court through which the appeal was accepted and the appellant was reinstated into service and reverted into lower post from the date of removal from service i.e. 04.07.2011. It has been stated that vide notification dated 27.10.2014, the period i.e. 04.07.2011 to 12.06.2014 spent in between removal and reinstatement of the appellant was treated as leave without pay, which is contrary to law and rules. It has been craved that the period exhausted in removal and reinstatement may be declared as on duty and in this regard all benefits of service for the said period may also be awarded to appellant in the interest of justice.

4. Appeal was admitted for regular hearing vide order dated 31.03.2016 and the learned counsel for the respondents was directed to file written statement. The needful

was done in which the averments taken in appeal by the appellant was refuted from top to bottom and it has been craved for dismissal of appeal.

5. Similar facts have been stated by the appellant in appeal No.02 of 2015, however, he claimed that when he was reinstated into service and reverted to lower grade by the apex Court vide judgment dated 10.06.2014 and in compliance thereof, he was reinstated into service vide order dated 12.06.2014 while reduction into lower post is a temporary punishment and competent authority is legally bound to determine the seniority but the same was not done. It has been averred that according to seniority and the judgment of the apex Court, the appellant was senior most Civil Judge on 04.07.2011 while the impugned orders dated 11.06.2014, 04.08.2011, 22.11.2012,

22.11.2012 & 23.11.2012, under challenge, whereby respondents No.3 to 10 were promoted are contrary to law, which are liable to be set-aside in the interest of justice and the appellant may be declared as senior amongst Civil Judges from the date i.e. 04.07.2011 when he was reinstated and reverted from the post of Senior Civil Judge in the interest of justice.

6. The captioned appeal was admitted for regular hearing vide order dated 16.11.2017 and A.A.G. was directed to file written statement and rest of the respondents were summoned but despite service they failed to do the needful, hence, respondents No.3 to 7 & 9 were proceeded ex-parte vide order dated 09.11.2018 and vide order dated 06.05.2019 respondents No.11 & 12 were proceeded ex-parte. However, respondents No.1, 2 & 8 filed written statement wherein stand taken in appeal by the appellant

was repudiated in toto and it has been craved for dismissal of the same.

7. Heard. Record perused.

8. The proposition involved in appeal No.01 of 2015 is as to whether the impugned notification dated 27.10.2014 was issued in accordance with law and as per directive of the apex Court dated 10.06.2014 or not? It appears from record that the appellant was removed from service by the competent authority i.e. Hon'ble Chief Justice of High Court vide order dated 04.07.2011 while he challenged the *vires* of that order by-way of appeal before this tribunal, which was dismissed on 28.08.2011 against which the appeal before the Hon'ble Supreme Court was preferred by the appellant and the same was accepted through which the appellant was reverted to lower scale and reinstated into service from the date of removal

from service order i.e. 04.07.2011. For proper appreciation of the matter, a relevant portion of judgment of apex Court dated 10.06.2014 is hereby reproduced as under:-

“As in our opinion, the misconduct of the appellant has been proved, however, keeping in view nature of the misconduct, we modify the punishment of removal from service imposed by the authority, confirmed by the Judicial Service Tribunal, into reduction of appellant is reverted to the lower post and grade i.e. Civil Judge, grade, B-18. He is reinstated into service into the reduced post and Scale from the date of removal from service order, hence, his pay and other ancillary matters like judicial allowance etc, will be determined by the authority according to law in the reduced scale.”

9. After plain reading of operative part of the judgment, it depicts that the punishment from removal from service of the appellant was converted into reduction in lower post i.e. Civil Judge BPS-18 and he was reinstated into service from the date of removal from service i.e.

04.07.2011 meaning thereby that the Hon'ble Supreme Court reinstated the appellant from the date when he was removed from service vide order dated 04.07.2011 and reverted to lower post i.e. Civil Judge BPS-18. According to our estimation, the appellant would be deemed to be in a service without any service break from the date when he was reinstated into service to lower post, hence, notification dated 27.10.2014 appears to have been passed contrary to law in view of directive of the apex Court, which is liable to be *set-aside* and a period occurred from removal from service till reinstatement of appellant (04.07.2011 to 12.06.2014) cannot be said as leave without pay. In this backdrop, the appellant, in the given circumstances, is entitled to receive all back benefits during the intervening period, removal from service till reinstatement, as admissible for the post of Civil Judge BPS-18 because it has not been brought

on record that during the intervening period for which the appellant has been denied his right of back benefits, he had started a profitable business or he was gainfully employed somewhere but nothing has been brought on face of record, hence, the appellant can claim all emoluments during that period as a matter of right. Our this view finds support from a case reported as *Gul Shabir Khatian vs. Chief Secretary/Appellate Authority, Government Sindh, Karachi and 2 others* [K.L.R. 2010 Labour & Service cases 91] in which it has been observed as under:-

“14. Indeed, the law is settled, that when a civil servant is reinstated after his dismissal by departmental authority then he is entitled to back benefits for intervening period if he was not gainfully employed anywhere, from the date he was dismissed till his reinstatement, exceptions apart. The law cited in support of the appellant's case fully favours the appellant and is against the respondents.

15. Admittedly, there is nothing on

record to show that during the intervening period for which the appellant has been denied his right of back benefits, he was gainfully employed anywhere in any capacity. The burden to prove that the appellant was employed somewhere during the intervening period lay upon the respondents. No document is brought on record to controvert the case of the appellant. In absence of a proof that the appellant was gainfully employed some where and the delay caused in disposal of the civil servant's representation was not on the part of the civil servant, such civil servant can claim back benefit as a matter right and not as a charity.

16. Accordingly, for the facts and the law referred, we allow this appeal. The appellant is awarded back benefits for the period from 15.11.1983 to 6.5.1994 including consequential benefits flowing from the above, according to law. No order as to costs."

Similar proposition has been resolved in a case reported as *Sohail Ahmed Usmani vs. Director General Pakistan Civil Aviation Authority and another* [2014 SCMR 1843] wherein it has been opined as under:-

"From a perusal of the record it clear that this explanation was not considered by the competent

authority in his dismissal order nor by the appellate authority and the learned High Court has also failed to consider these paragraphs before taking a decision on Charge No.5. From a perusal of the record we have also noted that at no stage the respondents have rebutted or denied the explanation made in paragraphs 6 to 8 of the reply to the Show Cause Notice dated 5-5-2007. We are, therefore, of the considered view that Charge No.5 has been properly explained by the appellant and only for cogent reasons this explanation could have been rejected, which the learned High Court has failed to do. We are also of the considered view that once the learned High Court had reinstated the appellant into service, it should have allowed the back benefits unless it was proved that the appellant had obtained a gainful employment during the period of dismissal or was making some earnings. The affidavit of the appellant has also not been countered by the respondents.

11. We are, therefore, of the considered opinion that the impugned judgment cannot be sustained on the point of denial of back benefits to the appellant. We, therefore, allow this appeal and modify the impugned judgment to the extent that the learned High Court's decision holding that the appellant is not entitled to back

benefits is set aside and the respondents are directed to pay the back benefits to the appellant from the date of his dismissal i.e. 10-10-2007 to 15-8-2012 i.e. the date of reinstatement.”

10. Adverting to appeal No.02 of 2015, the appellant is claimant that he may be placed at serial No.1 of seniority among Civil Judges w.e.f. 04.07.2011 in view of judgment of the apex Court dated 10.06.2014 and promotion notifications/orders of private respondents may be *set-aside*. It is apparent on the face of record that the appellant has been reinstated into service and reverted in lower scale from the date of removal from service i.e. 04.07.2011 and was reverted to the lower post and grade i.e. Civil Judge, grade, B-18 while his pay and other ancillary matters will be left to be determined by the authority according to law, hence, there is no cavil with the proposition that the appellant was held

entitled to have back benefits for the period commencing from 04.07.2011 to 12.06.2014. Admittedly, in the light of judgment of the apex Court dated 10.06.2014 and in compliance thereof, he submitted his joining report on 12.06.2014, which was notified vide notification dated 27.10.2014 and on that date, according to our considered view, he should have been placed at serial No.1 of seniority list of Civil Judges. As and when the post of Senior Civil Judge became vacant or liable to be filled in on regular basis, he being senior most Civil Judge could have been considered amongst the others who already below in earlier seniority were promoted either against the post of Senior Civil Judge on acting charge, current charge and officiating basis or promoted on regular basis, hence, from date of joining i.e. 12.06.2014, he is senior most among those who were discharging their duties as Senior Civil Judges on current

charge, acting charge & officiating basis, as such, at the time of conducting selection board against the post of Senior Civil Judge on regular basis, the appellant should have been considered among others who were already below to him in earlier seniority.

11. It appears from the record that the appellant has not been considered and was superseded only on the ground of reversion into lower grade but it cannot be said that his seniority would be reckoned from bottom of Civil Judges (BPS-18). According to Rule 10-A, 10-B & 13 of Rules, 1977, an appointment made on current charge, acting charge & officiating basis does not confer any right meaning thereby that on 12.06.2014, the appellant was senior most Civil Judge falling at top of seniority among those who already below to him in earlier seniority and in those who were performing their assignment as Senior Civil Judges on current

charge, acting charge and officiating basis and when proceedings initiated by the selection board for regular promotion against the post of Senior Civil Judge, the appellant could have been considered for regular promotion subject to condition if he was, otherwise, fulfilling the required eligibility criteria for promotion, the only condition of reversion from BPS-19 to BPS-18 was not a legal barrier on him but he was not considered which is against the principle of natural justice and equity.

12. A contemplate perusal of available record brought on file depicts that the appellant was appointed as Civil Judge on recommendations of Public Service Commission vide notification dated 18.11.2004 and when he, after reversion, joined his duty as Civil Judge on 12.06.2014 in compliance with the judgment of the apex Court dated 10.06.2014, he had become senior most Civil Judge BPS-18 among those either who

were below in seniority or those who already juniors to him in earlier seniority discharging their duties on current charge, acting charge and officiating basis while their seniority shall be counted from the date of regular appointment and from this angle, the appellant's initial appointment is of 18.11.2004 because under the relevant provisions of The AJ&K Civil Servants (Appointment & Conditions of Service) Rules, 1977 the persons selected for appointment to grade in an earlier selection shall rank senior to the persons selected in a later selection. As it is our unanimous opinion that according to the judgment of the apex Court dated 10.06.2014, the appellant was reverted one step down from BPS-19 to BPS-18 while he time and again has not been considered at the relevant time by the selection board for regular promotion against the post of Senior Civil Judge BPS-19 only on the condition of reversion into lower grade, as

such, under the relevant provisions of Service Rules, *supra*, and natural justice, nobody can be vexed twice for the same cause, hence, it was not in the interest of justice to supersede the appellant repeatedly in one time penalty.

13. It is pertinent to mention here that under the relevant provisions of service laws, it was incumbent upon the selection board to consider the appellant with others who already juniors to him earlier seniority were on current charge, acting charge and officiating appointees because when a junior appointed to a higher grade shall be deemed to have superseded his senior only if both the junior and the senior were considered for the higher grade but the selection board regretted to consider the appellant among others and if considered, he was regretted only on the condition of reversion into lower scale, hence, in our estimation, all the proceedings initiated from the date of joining of

the appellant i.e. 12.06.2014 in lower grade BPS-18 by the selection board for regular promotion without considering the appellant among others those who were already juniors to him in earlier seniority against the post of Senior Civil Judge would be deemed to have been conducted contrary to law. In this backdrop, the matter of seniority between the appellant and private respondents is resolved for once and all in terms that the appellant was senior most Civil Judge from the date of joining report dated 12.06.2014 and after from that date the proceedings initiated for confirmation of acting charge, current charge & officiating appointment against the post of Senior Civil Judge without considering the appellant along-with others who were already juniors to him in earlier seniority are contrary to law because in case of appellant, the seniority shall be reckoned from the date of regular appointment and it was

not disputed that his initial appointment as Civil Judge BPS-18 is 18.11.2004.

14. It is not out of place to mention here that the appellant was promoted as Senior Civil Judge on acting charge basis vide order dated 07.04.2009 meaning thereby that he was not confirmed in BPS-19, hence, the intervening period (removal from service till reinstatement into service in lower grade) commencing from 04.07.2011 to 12.06.2014 cannot be reckoned towards seniority rather the same can only be considered for pay protection and monetary benefits, as such, the appellant was entitled to be considered by the selection board at the time of regular promotion in BPS-19 among others. Although the appellant was reverted into lower grade (BPS-18) for which no specific time has been mentioned yet it cannot be said that appellant after reversion had waived his right for promotion rather the appellant had preferential

right to be considered for promotion as and when the vacancy occurred in the higher post from which he was reverted because he due to reversion in BPS-18 shall rank senior most in the cadre on the basis of his total length of service and shall be entitled to be promoted to the post of Senior Civil Judge (BPS-19) and he was not considered for promotion for certain period instead of one step down which would be considered numerous penalties but record shows that the appellant was time and again penalized on account of one time reversion in lower grade, which is not justified to knock out him only on sole condition of reversion into lower post. Our this view finds support from a case reported as *Abdur Rehman vs. Pakistan Railway Police through Inspector-General, Pakistan Railway Police, Pakistan Railway Headquarters, Lahore and 2 others* [1996 PLC

(C.S.) 1212] wherein the following principle has been laid down:-

“14. Thus, we are of the opinion that the reduction to a lower post where the period is not specified shall amount to reversion to the lower post with no future effect and the person concerned will be entitled to be considered for promotion as and when the vacancy occurs in the higher post from which he was reverted. The obligatory "shall" in F.R. 29 will not be applicable to such cases where the competent Authority has not specified the period of penalty. Therefore, the appellant on reversion to the post of Assistant Sub-Inspector shall rank senior most in the cadre on the basis of his total length of service and shall be entitled to promotion to the post of Sub-Inspector as and when the vacancy occurs because failure to consider him for promotion would amount to the imposition of additional minor penalty of withholding promotion for certain period which is neither the intention of the prevailing rules nor it was the intention of the competent Authority in the case in hand.

15. In the light of the above discussion the appeal is partially accepted and the impugned order is modified to the extent that the demotion of the appellant shall have

no incurring effect on his future career.”

Similar views have been expressed in a case titled *Tanveer Ahmed Vs. Director-General, Pakistan Public Works Department, Islamabad and 6 others* [1994 PLC (C.S) 887] in which it has been observed that:-

“The appellant was admittedly senior to the contesting respondents with reference to dates of appointment. He had completed 10 years service and had also already passed the departmental examination before 24.03.1992 when the impugned order of promotion was passed. There was hardly any justification for ignoring him at the time of promotion. The date of passing the departmental examination was absolutely immaterial and could by no means change the seniority position of the parties. There was absolutely no reason whatsoever why his name should not have been considered for promotion at the relevant time along-with others, especially when no departmental case was pending against him. The department’s failure to consider him for promotion suffers from a palpable illegality, more so when we have documentary evidence on

the record to prove that date of eligibility was not taken as a determining factor at the time of promotion of Sub-Engineers made by office order dated 5-9-1989 subsequently modified by O.M. dated 10.02.1991. These orders show that the concerned Sub-Engineers were placed in BPS-16 in accordance with their seniority, regardless of the dates on which they had passed the prescribed departmental examination.

9. For these reasons, the appeal is accepted and we declare that the policy laid down in letter dated 6.4.1993 did not have the support of the rules on the subject and was thus without any legal effect and that the appellant was entitled to promotion on the basis of seniority-cum-fitness on 24.03.1992, when the contesting respondents were placed in the Selection Grade (BPS-16). We accordingly direct the competent authority to consider his case for promotion with effect from the aforementioned date, within one month of the date of communication of this judgment in the light of observations made by us.”

In such like state of affairs, the appellant cannot claim ante-dated promotion, which can only be counted for monetary benefits not for seniority.

Similar proposition has been resolved by the apex Court titled *Abdul Majeed Bandy Vs. Azad Government and others* in civil appeal No.66 of 2004 decided on 12.07.2005 wherein it has been held that:-

“As far as ante-dated promotion is concerned, it is not approved by any law or rule, however, the Government is empowered under its general powers vested under section 22 of the Civil Servants Acts to deal with the case of any civil servant in such manner as may appear to it to be just and equitable. As the respondents were allowed selection grades B-17, they were given ante-dated promotion from the dates of their placement in B-17 for the purpose of monetary benefits and perks. The seniority is reckoned from different set of principles, while ante-dated promotion is not governed by any rule of law, except the general powers of the Government to meet the hardship in given cases. The notifications whereby, respondents are allowed the ante-dated promotion, therefore, do not bestow upon them the right of seniority from the dates they are given the ante-dated promotion.”

While dealing the dispute of seniority the Hon'ble Supreme Court resolved similar matter in a case titled *Musa Jan and 4 others Vs. Arbab Shaheen Naib Tehsildar and 26 others* [PLJ 2018 SC (AJ&K) 47], which strengthens our correct stance in the following words:-

“Under the law, the seniority can be claimed by a civil servant in a grade from the date of regular promotion. The ante-dated seniority cannot be given to a civil servant on the basis of an order of appointment which is temporary in nature cannot confer any right except pay protection.”

Our this view finds support from a case titled *Mushtaq Ahmed Vs. Khawaja Ejaz Ahmed & 4 others* [2009 SCR 537] wherein it has been held that:-

“The perusal of above rule reveals that while determining the seniority it should be kept in sight that the person who is selected earlier shall be senior to the person selected later. In the present case both the incumbents were selected for

appointment on the same date. They were appointed by the same order. However, appointing authority determined the seniority of the incumbents in appointment order whereby the respondent No.1 was placed at serial No.2 and the appellant was placed at serial No.3. It is also on record that respondent No.1 joined the service on 28.09.1989 and the appellant joined the service on 01.10.1989, as such he was senior to the appellant and the service Tribunal has correctly determined the seniority among the incumbents.”

15. The only question might be in prudent mind that how appellant after reversion can be granted seniority from the date of joining in lower grade. The appellant not only faced embarrassing situation during that period but also worked in lower position under his juniors, hence, indeed no greater punishment is than that. Our this view finds support from a case reported as *Tanveer Ahmed vs. Director General, Ministry of Information & media Development,*

Islamabad & Five others [2003 TD (Service) 392]

in which it has been observed as under:-

“The only question is to be resolved is that what will be the fact of reversion of the appellant to I a lower post. Appellant was imposed major penalty of removal from service under E & D Rules, 1973 through die appellate order dated 9.10.1989 and the FST under section 5 of the Service Tribunals Act, 1973 could have modified the impugned appellate order and imposed any other penalty prescribed under E & D Rules. FST, however, invoked section 12 of the Civil Servants Act, 1973 and reverted the appellant to the post of UDC for a period of three years. Reversion to a post under section 12 of 5 the Civil Servants Act, 1973 could be ordered only in case if a civil servant was temporary or ad hoc or on officiating basis whereas appellant had already been confirmed as Assistant with effect from 15.1.1986. Counsel for appellant, however, did not contest FST's judgment whereby reversion to a lower post was ordered for a period of three years. He maintained that on completion of three years he was rightly restored to his original position by the respondent and his all service rights were protected. We are inclined to accept this contention of the appellant as during the three-

years period of reversion he not only underwent the humiliation of working on a lower post but also got lower emoluments. Respondent's Counsel could not substantiate any rule in support of his contention that the appellant lost his seniority on reversion except Establishment Division's advice that the appellant was to get his seniority as Assistant with effect from 9.10.1989 when he completed the three-years period. Establishment Division's advice is based on the reference of the respondent-Ministry a copy of which was not placed on record and it was therefore, not clear as to what kind of facts were intimated to the Establishment Division. If the Appellant is made to lose his seniority because of his reversion it would be a permanent loss which is not visualized under rules. Even in the circumstances when a major penalty of reduction in lower post or reduction in time scale is imposed on any civil servant it is for a specific period under FR-29 and on completion of that specific period, the concerned civil servant is restored to his original position without any other adverse factor.”

Likewise, in a case reported as *Tariq Mansoor vs. The Member Finance/Additional Finance Secretary, Government of Pakistan, Ministry of*

Railways, Islamabad and 5 others [1993 PLC

(C.S.) 195] by which it has been held that:-

“12. I do not feel any hesitation in holding that the record does not provide us with any legal support of the impugned order of 1-6-1986 and those which followed in wake. There was hardly any justification in relegating the appellant to a position below that of respondents Nos. 4 to 6 in the seniority list of 23-9-1985 and the impugned orders are arbitrary, unjust and ineffective against the appellant’s rights he had acquired in consequence of promotion as an Accountant.”

In paras 15, 16 & 21 of the above report, it has further been held that:-

“15. Order dated 2-6-1986 shows that the appellant was reverted as Stock Verifier merely on account of the facts that his senior namely Mr. Muhammad Hussain, Stock Verifier had not yet been promoted as an Accountant. This reversion, therefore, was evidently the result of the modification of the list, whereby the appellant was brought down from S.No.36 to S.No.39-A. Since change in the list having been effected without due notice, was unjustified, the subsequent order dated 2-6-1986 demoting the appellant was equally unjustified. It may be mentioned here

that the order of seniority appears from the record to have again been changed by a subsequent order which brought the appellant on step higher to S.No.39 above Mr. Muhammad Hussain, ostensibly on the ground that he had been appointed as Stock Verifier a day earlier on 13-11-1984. Therefore, the real cause for his demotion was that respondents Nos. 4 to 6 who had become senior to him on account of change in the list had not yet been promoted.

16. As already noticed, the appellant was again promoted as an Accountant on 16-6-1986 by which date respondents Nos.4 to 6 were still serving in Grade-II as Head Clerks. After he had represented on 19-6-1986 against order dated 1-6-1986 changing the list and order dated 2-6-1986 regarding his demotion, it was on 20-7-1986 that respondents Nos.4 to 6 were promoted as Accountants.

21. The consideration apart, I will feel no hesitation in holding that the appellant did not lose his seniority in Grade-11 to which he was promoted on 8-11-1983 prior to respondents Nos. 4 to 6, on account of having been appointed as Stock Verifier, for seniority is to be reckoned from the date of entry into a grade.”

16. As the matter of seniority has already been settled once and for all that current charge, acting charge & officiating promotion

does not confer any right, which cannot be counted towards seniority but only for monetary benefits, hence, at the time of determining the seniority-cum-fitness among Civil Judges against the regular promotion of Senior Civil Judge in BPS-19, the appellant could not have been superseded by the selection board only on the condition of reversion into lower grade, hence, proceedings initiated by the concerned selection board for regular promotion against the post of Senior Civil Judge from date of his joining in lower grade in BPS-18 i.e. 12.06.2014 whereby already juniors in earlier seniority to the appellant were promoted on regular basis are contrary to the scheme of law, against the maxim of natural justice and the relevant provisions of the Azad Jammu & Kashmir Interim Constitution, 1974 because the appellant cannot be vexed twice for same cause. We are of the considered view that the entire

proceedings conducted by selection board for determination of seniority-cum-fitness against regular promotion pertaining to post of Senior Civil Judge BPS-19 when the juniors in earlier seniority without considering the appellant from the date of joining of the appellant in lower post of BPS-18 i.e. 12.06.2014 were regularized are contrary to law and natural justice, hence, he is held entitled to retain his seniority at top of Civil Judges among those who already juniors in earlier seniority were either promoted on acting charge, current charge and officiating basis or regular basis as Senior Civil Judges from date of his joining in lower post i.e. 12.06.2014 and the concerned selection board was in a legal obligation to consider him being senior most Civil Judge in BPS-18 and only on the condition of reversion into lower grade, the appellant could not have been regretted. In this backdrop,

this seniority shall prevail and remain intact in their next higher grades.

17. For the best satisfaction of the Court, the original record of selection board was also summoned by which it elucidates that the appellant submitted his joining report in compliance of directive of the apex Court on 12.06.2014 while a meeting of selection board pertaining to promotion of judicial officers was held on 23.06.2014 and thereafter, on the recommendation of concerned selection board the competent authority promoted respondent No.3 on regular basis vide notification dated 28.06.2014 without considering the appellant, hence, it was enjoyed upon the concerned selection board to consider the appellant falling at top of seniority of Civil Judges for regular promotion against the post of Senior Civil Judge BPS-19. It further reflects from the record that private

respondent No.3 was appointed as Civil Judge BPS-18 on the recommendations of Public Service Commission vide notification dated 16.05.2008 whereas appellant was inducted into service as Civil Judge BPS-18 on recommendations of Public Service Commission on 18.11.2004, hence, the appellant has clear edge to be considered and promoted by the concerned selection board against the post of Senior Civil Judge because the appellant joined his service long before respondent No.3. Another important aspect of the case in hand is that vide order dated 20.11.2012, a final seniority list of officers BPS-18 has been issued and at that time, there were 19 Civil Judges in BPS-18 in which respondent No.4 was falling at top of seniority while the officers BPS-18 falling at serial No.1 to 8 of the final seniority list were recommended and confirmed vide order dated 09.01.2016 but the appellant being senior most

officer in BPS-18 has not been considered by the selection board and concerned authority. It depicts that the appellant filed an appeal No.02 of 2015 on 17.02.2015 while the incumbent falling at serial No.10 of seniority prepared for officers in BPS-18 was promoted on regular basis against the post of Senior Civil Judge on the recommendation of concerned selection board and the appellant was also considered and superseded only on the condition of reversion into lower grade. After that in middle of seniority list vide notification dated 08.02.2017, the appellant was promoted on regular basis in BPS-19 meaning thereby that the appellant was not considered at the relevant time for regular promotion against the post of Senior Civil Judge BPS-19. If it were so, the appellant should have been placed at bottom of seniority at serial No.20 and why after serial No.10 out of 19 of seniority list of officers in

BPS-18, he was considered and promoted meaning thereby that in a middle of seniority, he was considered fit for promotion who should have been considered by concerned selection board in its meeting dated 23.06.2014, when respondent No.3 was considered & recommended for regular promotion but under what circumstances, the appellant, time and again, was ignored while considering private respondents No.3 to 12. As it has already been observed in preceding paragraphs 12, 13 & 14 that the appellant was senior to private respondents No.3 to 12 in BPS-18 and was not considered at the relevant time by the concerned selection board for promotion against the post of Senior Civil Judge BPS-19, as such, he was entitled to be promoted in BPS-19, if at the relevant time he was fulfilling the other requisite conditions for consideration and promotion, the only condition for reversion into lower grade

could not have been made an obstacle in his way, hence, he is declared as senior to private respondents No.3 to 12 in seniority.

18. Be that as it may, appeal No.01 of 2015 is hereby accepted and notification dated 27.10.2014 is hereby *set-aside* and appellant is entitled to receive all benefits admissible for the post of Civil Judge BPS-18 from 04.07.2011 to 12.06.2014 and he would be deemed to be in a service for the period commencing from the date of removal/reinstatement till his joining while appeal No.02 of 2015 is also accepted and the proceedings initiated by the concerned selection board after joining report of the appellant dated 12.06.2014 whereby private respondents No.3 to 12 (already juniors) have been promoted on acting charge, current charge, officiating basis and on regular basis in PBS-19 without considering the appellant and if considered and

knocked out only on the condition of reversion into lower grade, are hereby declared as contrary to law and natural justice, hence, the appellant is held senior to private respondents No.3 to 12 in seniority. The appellant shall retain his seniority at top, which shall also remain intact between appellant and private respondents No.3 to 12 in their next higher grades. A copy of this judgment shall be annexed along-with the other relevant file.

Muzaffarabad: **CHAIRMAN** **MEMBER**
03.04.2024(J.ZEB)

Approved for reporting

CHAIRMAN **MEMBER**