

PRESENT:

MR. JUSTICE GULZAR AHMED, CJ
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE MUNIB AKHTAR

Civil Appeal No.799 of 2021

(Against judgment dated 12.11.2018 passed by
the Federal Service Tribunal, Islamabad
in Appeal No.1208(R)(CS)/2016.)

Syed Arshad Ali

... Appellant

Versus

Secretary M/o Housing & Works, Islamabad & ... Respondents
others

For the Appellant : Mr. Muhammad Ramzan Khan, ASC

For Respondents # 1-4 : Mr. Sohail Mehmood, Addl. AGP
Mr. Abdul Razzaq, S.O. M/o H&W

For Respondents # 5-6 : Mr. Rashid Hafeez, ASC

Date of Hearing : 22.12.2021

ORDER

Gulzar Ahmed, CJ. – The appellant was employed with the Ministry of Housing and Works (“**the Ministry**”). He was promoted as an Assistant on 06.08.2003 w.e.f. 04.08.2003. The private respondents were appointed as Assistant respectively on 19.03.1990 and 02.09.1991 in the Statistics Department, where the services were declared to be surplus. They were transferred and absorbed in the Ministry on 06.08.2003 as Assistants. Final Seniority List of Assistants (BS-14) in the Ministry was circulated *vide* Circular dated 31.12.2015. The name of the appellant appeared at Serial No.4 whereas the names of the private respondents were shown at Serial Nos.2 and 3. The appellant submitted representation against the Final Seniority List which was not responded to and thereafter, he filed a service appeal

before the Federal Service Tribunal. By the impugned judgment dated 12.11.2018, the service appeal filed by the appellant was dismissed.

2. Leave to appeal was granted by this Court *vide* order dated 12.08.2021 to consider the submissions made by the appellant's counsel as noted in the order.

3. The learned counsel for the appellant has not argued on the point which is noted in the leave granting order, rather has raised a submission that the private respondents being direct recruits their names ought to appear junior to the appellant who is a direct recruit in the Ministry and promoted as Assistant w.e.f. 04.08.2003. The learned counsel for the appellant has referred to two judgments one Abdul Qadeer Vs. Government of Pakistan and another (2005 SCMR 1560) and Director General Intelligence Bureau Vs. Amir Mujahid Khan (2011 SCMR 389). Both the judgments have been read and apparently, they are distinguishable for the reasons that they did not deal with the question as is argued by the learned counsel for the appellant.

4. Rule 6 of the Civil Servants (Seniority) Rules, 1993 which existed at the time when the dispute arose in the present case is as follows:

“6. Inter se seniority of civil servants appointed in the same calendar year.—Persons appointed by transfer in a particular calendar year shall, as a class, be senior to those appointed by promotion or by initial appointment to such Posts in that year, and persons promoted to higher posts in a particular calendar year shall, as a class, be senior to those appointed by initial appointment to such posts in that year.”

5. Subsequently, that rule was amended and it is admitted by the learned counsel for the appellant so also the learned counsel

appearing for the respondents that the subsequent amended rule is not applicable to the case in hand.

6. The very reading of the rule shows that the persons appointed by transfer in a particular calendar year shall as a class be senior to those appointed by promotion or by initial appointment to such post in that year, and persons promoted to higher post in a particular calendar year as a class be senior to those appointed by initial appointment to such post in that year. This rule makes it quite clear that persons appointed by transfer in a particular calendar year shall as class be senior to those appointed by promotion or by initial appointment to such post in that year. The appellant was promoted on 06.08.2003 w.e.f. 04.08.2003 to the post of an Assistant while the private respondents were appointed as Assistants by transfer on 06.08.2003. The rule as read above clearly shows that the private respondents were appointed by transfer on 06.08.2003 and the appellant being promoted on 06.08.2003 with effect from 04.08.2003 and both transfer and promotion having taken place in the Calendar Year 2003, those appointed by transfer will be senior to those who were promoted. It is not the case of the appellant that the private respondents were transferred at their own request.

7. In the case of Tikka Khan and others vs. Muzaffar Hussain Shah and others (2018 SCMR 332) a learned 3-Member Bench of this Court has observed as follows:

“A look at the rules reproduced above would reveal that one deals with determination of seniority on appointment by transfer and the other deals with the determination of seniority on merger. A bare reading of the Rule 4 reveals that the case of the respondents is not of appointment by transfer or appointment on deputation. It is not even a case of absorption by any

attribute. The case of the respondents precisely is that many Ministries were abolished and reorganized in the wake of the Constitution (18th Amendment) Act, 2010 and that they being the employees of the Ministry abolished were transferred to the Ministry reorganized. Transfer of the respondents to the Ministry reorganized cannot be seen through the prism of Rule 4 of the Rules mentioned above. Their case is fully covered by serial No. 33(6) of Estacode, Vol-I, Edition 2007. In this context, their case would be more akin to Rule 4A rather than Rule 4 of the Rules. No canons of interpretation would scratch or strike off their past service when they on abolition of the Ministry, were compulsorily transferred to the Ministry of Religious Affairs and Interfaith Harmony. Their past service has to be respected and recognized for determining their seniority. It would, thus, be unfair and unjust to treat the respondents junior to the junior most civil servants in the Ministry for none of their faults. The view taken by the Service Tribunal is, therefore, not amenable to any change or modification."

In the case of Secretary Revenue Division / Chairman, FBR and another vs. Muhamamd Arshad Hilali (2019 SCMR 980) this Court while considering the implication of rule 6 has observed as follows:

"5. The import of paragraph 6(i)(a) above appears to be quite contrary to what respondent's counsel intend to advance before us. It clearly provides that where a person is transferred to another office in a situation where it was open to him to accept or refuse such transfer, his seniority was to be reckoned from the date of his transfer to the new office. The only exception to this rule is contained in paragraph 6(i)(b). It states that where a person is compulsorily transferred to another office then he is allowed to count his service in the previous office towards his seniority in his new office. In the case of transfer of four other officers of the department, example of which has been quoted as precedent in the present case, their seniority may have been reckoned from the date of their initial appointment but nothing was brought on the record as to the circumstances in which such transfers had taken place. In the present case, one thing is clear that the respondent sought his transfer to his new office on his own volition on the basis of mutual consent with another officer of the same grade. He was not compulsorily transferred at the instance of the department, hence the recognized practice contained in paragraph 6(i)(a) of Serial No. 30, Chapter III Part II of Estacode (1989 edition) clearly disentitles him to count his previous service towards seniority in the new office. When on a principle of law one upon his transfer is not entitled to seek seniority from the date of his initial appointment then if someone else has been granted seniority in violation of such principle, which too is not clear, the same cannot be made a

ground to raise the plea of discrimination.”

8. The law having been settled by this Court and also the very reading of rules 6 ibid, as it existed at the time of dispute having arisen between the parties, we are of the considered view that the private respondents having been appointed by transfer in the year 2003 and the appellant having been promoted in the year 2003 and all being promoted or being transferred to the post of Assistant, the private respondents shall acquire senior position than that of the appellant. No illegality in the impugned judgment is pointed out calling for interference by this Court. The appeal is, therefore, dismissed.

Islamabad, the
22nd Decem^{ber}, 2021
Navce^d Ahmad

~~Not~~ Approved For Reporting