

**IN THE SUPREME APPELLATE COURT GILGIT-
BALTISTAN, GILGIT**

BEFORE:

Mr. Justice Syed Arshad Hussain Shah, Chief Judge
Mr. Justice Wazir Shakeel Ahmed, Judge

CPLA No.50/2019

(Against the judgment dated 15.03.2019 passed by the Gilgit-
Baltistan Service Tribunal in Service Appeal No. 43/2018)

1. Provincial Govt. Gilgit-Baltistan through Chief Secretary
2. Secretary Home & Prisons Gilgit-Baltistan, Gilgit
3. Secretary Services Gilgit-Baltistan, Gilgit
4. Director Health Gilgit-Baltistan, Gilgit

Petitioners

Versus

Dr. Fida Hussain, ENT Specialist BS-18, DHQ Hospital, Gilgit

Respondent

PRESENT:

For the Petitioners : The Advocate General GB

Date of Hearing : **09.11.2020**

JUDGMENT

Syed Arshad Hussain Shah, Chief Judge:-This judgment shall dispose-of the instant Civil Petition for Leave to Appeal directed against judgment 15.03.2019 passed by the learned Gilgit-Baltistan Service Tribunal whereby Service Appeal No. 43/2018 filed by the respondent was allowed and the present petitioners were directed to promote the respondent as Additional Principal Medical Officer BS-19.

2. Brief facts giving rise to institution of this Civil Petition for Leave to Appeal are that the present respondent

while serving as Senior Medical Officer (BS-18) in Health Department, GB requested for change of cadre from Senior Medical Officer (BS-18) to ENT Specialist on the ground of having specialization in the field of ENT. Such request was made in the year 2010. Neither any action was taken on this application nor was the present respondent informed of rejection or acceptance of the said application. The present respondent claimed in his service appeal before the learned Service Tribunal that another application containing the same request was made to the concerned authorities in the year 2011. This application too remained unattended. These applications were followed by another application/reminder in the year 2013. In response to all these applications vide letter dated 29.09.2014, office of the Secretary Health, GB informed the respondent that Chief Secretary, GB was pleased to agree to change of cadre of the respondent through a DPB as and when it would convened. A DPB was convened on 9th June, 2016 whereby 25 Senior Medical Officers (BS-18) including other specialists were promoted while through the same DPB mere services of the respondent were transferred from Senior Medical Officer BS-18 to ENT Specialist in his own grade BS-18. This action on the part of concerned government authorities gave rise to grievances for the present respondent because he claimed that on the one hand he was deprived of from the right of promotion to next higher post of Additional Principal Medical Officer (BS-19) while on the other hand, his seniority position was badly affected by placing him at the bottom of seniority list of ENT Specialists (BS-18), hence he claimed to have been put to sustain double jeopardy. The respondent in his service appeal before the learned GB Service Tribunal contended that notwithstanding his better position in the seniority list as SMO i.e. serial No. 7

of the seniority list, he was left out for promotion while SMOs junior to him were promoted to the post of Additional Principal Medical Officers (BS-19), thus, he was deliberately and with malafide intentions was superseded. In order to redress his grievances, respondent claimed to have filed a departmental appeal before the concerned government authorities which remained not responded, hence filed a service appeal before the learned GB Service Tribunal. The same was allowed and being aggrieved and dissatisfied with judgment of the learned GB Service Tribunal the instant Civil Petition for Leave to Appeal has been filed by the present petitioners.

3. It is contended by the learned Advocate General, Gilgit-Baltistan that no cause of action was accrued to the present respondent to file service appeal before the learned GB Service Tribunal because it was on his own request that his cadre from Senior Medical Officer BS-18 to that of ENT Specialist BS-18 was changed by the concerned authority through a Departmental Promotion Board (DPB). It was further contended by the learned Advocate General, that no departmental appeal was filed by the respondent before approaching the learned Service Tribunal. It was further contended by the learned Advocate General, GB that the learned Service Tribunal has erred in appreciating the fact that since there was no post of ENT specialist available against which the respondent could be transferred, hence there could not be a question of injustice to the respondent and that at the time when DPB was convened, the respondent was junior to the other SMOs, therefore he could not claim promotion on the basis of seniority. The last submission of the learned Advocate General, GB was that the learned GB

Service Tribunal failed to appreciate and take into consideration the vital legal aspect of the case that the service appeal filed before it by the respondent was time barred.

4. We have considered the submissions made by the learned Advocate General, Gilgit-Baltistan, perused the available record and gone through the impugned judgment minutely.

5. Now we would like to advert to the contentions of the learned Advocate General, GB. The first contention that no right had accrued to the respondent to file service appeal because it was on the basis of request of the respondent that his cadre was changed from Senior Medical Officer (BS-18) to ENT Specialist (BS-18) is not tenable. Admittedly, request was made by the respondent for change of his cadre for SMO (BS-18) to ENT Specialist (BS-18) but it was made in the year 2010 not in 2016. The concerned authorities did not respond to his request. The respondent again made similar request in the following year i.e. 2011. Again no response was given by the concerned authorities until the third request was made by the respondent in the year 2013. It is noticed from a letter attached with the case in hand that in the year 2014, the respondent was informed that the Chief Secretary, GB had agreed to change his cadre but through a proper DBP. The DPB was not convened until 2016 when on 9th June, 2016 the same was convened whereby 25 doctors, which included SMOs and other specialists were promoted to next higher post, while services of the respondent were simply transferred from SMO (BS-18) to ENT Specialist (BS-18) without extending any benefit of higher grade. It would not be out of place to mention here that after a long period spanning 6 years that his request was acceded to by the authorities for

change of his cadre on his own grade that too when he was at the verge of availing promotion to the post of Additional Principal Medical Officer (BS-19) which caused the respondent to lose his 6 years precious services inasmuch as he stood junior to other ENT Specialists. Even if for the sake of arguments, it is admitted that the cadre of the respondent was changed on his own request, still his services should have been transferred from SMO to ENT Specialist from back date (availability of posts) so that he could be able to get a better position in the seniority list of ENT Specialists, but it was not done so which smelled malafides on the part of concerned authorities.

6. The second contention of the learned Advocate General, GB regarding non-submission of departmental appeal by the respondent before approaching the learned Service Tribunal is also not plausible as the petitioners were not able to prove before the learned GB Service Tribunal that no departmental appeal was filed by the respondent before invoking the jurisdiction of the learned GB Service Tribunal. With regard to the third contention of the learned Advocate General, GB that no post of ENT Specialist (BS-18) was available against which the services of the respondent could be transferred, it is clarified that if no post of ENT Specialist was available then how the Chief Secretary, GB had agreed to change cadre of the respondent in the year 2014 which was duly conveyed to the respondent through a letter dated 29.09.2014. Thus, it is proved on the basis of this letter that the post of ENT Specialist (BS-18) was available before the year 2014 and in the DPB convened in the year 2016, request of the respondent could have been considered for change of cadre retrospectively i.e. from the date of availability of the

post of ENT Specialist enabling the respondent to secure his seniority position over the junior ENT Specialists. In addition to this, since there was a gape of about 6 years between making request by the respondent for change of cadre and convening of the DPB and by that time, the respondent was had become eligible for promotion from Senior Medical Officer (BS-18) to the post of Additional Principal Medical Officer (BS-19) therefore, it would have been in the interest of justice if the respondent was given an option either to avail the opportunity of promotion to the post of Additional Principal Medical Officer (BS-19) or to avail the opportunity of transferring of his services to ENT Specialist cadre on the basis of his earlier request. Prime facie, we observe that injustice has been done to the respondent under the garb of his request for change of cadre. It would be appropriate to make it clear here that public functionaries are bound under the law to avoid exercising their powers in such a way which could result in discrimination and injustice to government officials. The superior Courts of Pakistan have been issuing directives to the public functionaries for avoiding discrimination and injustice while dealing with such cases. With a view to strengthen our view, we would lend support from a case reported as Messrs Arshad & Company Vs Capital Development Authority (CDA) through Chairman 2000 SCMR 1557, wherein the Hon'ble Supreme Court of Pakistan has held as under:

“Every exercise of discretion is not an act of discrimination as discretion becomes an act of discrimination only when it is improbable or capricious exercise or abuse of discretionary powers”

7. In addition to above, in a case titled Provincial Government of Gilgit-Baltistan & others Vs Niaz Ali CPLA No. 43/2019 while directing the public functionaries in this regard has held as under:

“Under the law, it is obligatory upon the public functionaries to redress grievances of general public including their subordinate employees in accordance with the law. In this regard, it is pertinent to mention here that in order to make the public functionaries realize their responsibilities, the legislature has felt it imperative to insert Section 24A in the General Clauses Acts laying down responsibilities of the public functionaries. For the sake of brevity, the said section is reproduced herein below:

24A. Exercise of power under enactments.- (1). Where by or under any enactment, a power to make any order to give any direction is conferred on any authority, office or person such power shall be exercised reasonably, fairly, justly and for the advancement of the purpose of the enactment”.

Perusal of the contents of the above section of the General Clauses Acts makes it abundantly clear that public functionaries are duty bound to decide applications/ grievances of citizen without fear, favour, nepotism, with reasons, within reasonable time and without discrimination. The Hon’ble Supreme Court of Pakistan in a case reported as 2015 SCMR 630 has held as under: (at page 37 para 9).

“The exercise of discretionary power must be rational and have a nexus with the objectives of the underlying legislature, when it confers a wide ranging power it must be deemed to have assumed that the power will be, firstly, exercised in good faith, secondly, for the advancement of the object of the legislation, and thirdly in a reasonable manner. Section 24A of the General Clauses Act, 1897, reiterates the principle that statutory powers is to be exercised “reasonably, fairly, justly and for the advancement of the purposes of the enactment” and further clarifies that executive authority must give reasons for its decisions. Any action by any executive authority which is violative of these principles is liable to be struck down”.

8. Foregoing in view, we do not find any illegality or infirmity in the impugned judgment inasmuch as no question of public importance has been pointed out which could call for interference of this Court. Therefore, leave in the above CPLA No. 50/2019 is refused. The impugned judgment dated 15.03.2019 passed by the learned Gilgit-Baltistan Service Tribunal in Service Appeal No. 43/2018 is maintained. The above were the reasons for our short order dated 09.11.2020 which is reproduced herein below:

“The learned Advocate General, Gilgit-Baltistan for the petitioners has been heard. We have also gone through the impugned judgment as well as record of the case minutely. We do not find any weight in the submissions of the learned AG, Gilgit-Baltistan. Therefore, for the reasons to be recorded later, leave in the above CPLA No. 50/2019 is refused. Impugned judgment dated 15.03.2019 passed by the learned Gilgit-Baltistan Service Tribunal in Service Appeal No. 43/2018 stands maintained.

Chief Judge

Judge

Whether fit for reporting **(Yes / No)**