fSr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL AT CAMP COURT D.I.KHAN

Appeal No. 983/2013

Date of Institution ... 27.05.2013
Date of Decision ... 29.11.2017

Edda Jan S/O Haji Jalal Khan,
Ex-Sub Engineer Irrigation Department,
D.I.Khan, New Farhan General Store,
Eidgah Road, D.I.Khan.

Appellant

VERSUS

The Government of Khyber PakhtunKhwa through Secretary Irrigation Department, Peshawar & 2 others.

Respondents

Sheikh Iftikhar-ul-Haq,
Advocate --- For appellant.

Mr. Farhaj Sikandar,
District Attorney --- For respondents.

MR. GUL ZEB KHAN --- MEMBER
MR. MUHAMMAD AMIN KHAN KUNDI --- MEMBER

JUDGMENT

29.11.2017

GUL ZEB KHAN, MEMBER: Learned counsel for the appellant present. Mr. Farhaj Sikandar, District Attorney for the respondents present.

2. Appellant Edda Jan has filed the present appeal u/s 4 of the

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Khyber Pakhtunkhwa Service Tribunal Act, 1974 wherein the appellant has challenged the impugned office order dated 01.09.1999 wherein he has been granted selection grade (B-16) with immediate effect instead of due date.

3. Learned counsel for the appellant argued that the appellant was appointed as Sub Engineer in the Irrigation Department on 15.10.1973 and now stands retired on 28.02.2009. That the appellant was declared passed in the Grade "A" Sub-Engineers Departmental Exanimation held in December 1994 in all subjects (passed one subject in 1993 and three subjects in 1995) as per office order dated 14.05.1995. That passing of the department appeal was mandatory for further promotion. That according to the government notification dated 19.12.1975, 25% of the total posts of diploma holder engineers shall be placed in Grade-16, to be filled in on the basis of seniority cum fitness and subject to 10 years service and passing of the prescribed departmental examination. That the appellant falls within the similarly placed persons as decided by this Tribunal in appeal No. 797/2017 wherein his other colleagues have been granted selecting grade from the date when they became eligible. That the appellant has been allowed selection grade w.e.f 01.09.1999, thus denying him the benefits of selection grade to be accrued on the due date, because in the case of others, the same facility has been granted retrospectively with effect from completion of 10 years service and passing of departmental examination. That the appellant being aggrieved, preferred

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

departmental appeal on 11.02.2013 but was not decided. That being the case of financial//pensionary benefits, is not stopped by the limitation. That the impugned order dated 01.09.1999 may be set aside and the benefits of the selection grade may be extended to the appellant with effect from the due date i.e the date of passing of the departmental examination.

4. On the other side the District Attorney argued that the appellant has joined the Department as Sub Engineer on 15.07.1973 and retired from Government Service w.e.f 28.02.2009. Further argued that the appellant has passed Grade B & A Departmental Examination on 05.03.1991 and 14.05.1995 and granted Selection Grade (B-16) on availability of post with effect from 01.09.1999. That the ~~appellant~~ appeal was time barred and granted Selection Grade B-16 w.e.f 01.09.1999, which he accepted and later on, after retirement, he preferred appeal to the Department on 11.02.2013. That the appeal of the appellant was not considered due to discontinuation of the facility of Selection Grade by the Finance Department. Hence the instant service appeal may kindly be dismissed.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

5. We have heard arguments of the learned counsel for the appellant and District Attorney for the respondents and have gone through the record available on file.

6. According to the government notification dated 09.12.1975, twenty five percent of them total posts of diploma holder Sub-

Engineer shall be placed in Grade-16 to be filled on the basis of seniority-cum-fitness subject to 10 years and passing of the prescribed departmental examination . It is no disputed that the appellant was appointed as Sub Engineer in the Irrigation Department on 15.10.1973, and the date of completion of 10 years mandatory service falls on 15.10.1983. However the grant of selection grade has been made conditional with passing of the departmental examination, which the appellant has done as per notification dated14.04.1995. Hence he is eligible for the grant .of Selection Grade w.e.f 14.05.1995 on the analogy of the similarly placed person and not from immediate effect.

7. As a sequel to above, the present appeal is accepted and the respondent department is directed to consider him for the grant of selection grade with effect from 14.05.1995 accordingly. Parties are left to bear their own costs. File be consigned to the record room.

S.D

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

S.D

(GUL ZEB KHAN)
MEMBER

ANNOUNCED
29.11.2017

Certified to be ture copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

fSr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL AT CAMP COURT D.I.KHAN

Appeal No. 983/2013

Date of Institution ... 27.05.2013
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Edda Jan S/O Haji Jalal Khan,
Ex-Sub Engineer Irrigation Department,
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Appellant

VERSUS

The Government of Khyber PakhtunKhwa through Secretary Irrigation Department, Peshawar & 2 others.

Respondents

Sheikh Iftikhar-ul-Haq,
Advocate --- For appellant.

Mr. Farhaj Sikandar,
District Attorney --- For respondents.

MR. GUL ZEB KHAN --- MEMBER
MR. MUHAMMAD AMIN KHAN KUNDI --- MEMBER

JUDGMENT

29.11.2017

GUL ZEB KHAN, MEMBER: Learned counsel for the appellant present. Mr. Farhaj Sikandar, District Attorney for the respondents present.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Khyber Pakhtunkhwa Service Tribunal Act, 1974 wherein the appellant has challenged the impugned office order dated 01.09.1999 wherein he has been granted selection grade (B-16) with immediate effect instead of due date.

3. Learned counsel for the appellant argued that the appellant was appointed as Sub Engineer in the Irrigation Department on 15.10.1973 and now stands retired on 28.02.2009. That the appellant was declared passed in the Grade "A" Sub-Engineers Departmental Exanimation held in December 1994 in all subjects (passed one subject in 1993 and three subjects in 1995) as per office order dated 14.05.1995. That passing of the department appeal was mandatory for further promotion. That according to the government notification dated 19.12.1975, 25% of the total posts of diploma holder engineers shall be placed in Grade-16, to be filled in on the basis of seniority cum fitness and subject to 10 years service and passing of the prescribed departmental examination. That the appellant falls within the similarly placed persons as decided by this Tribunal in appeal No. 797/2017 wherein his other colleagues have been granted selecting grade from the date when they became eligible. That the appellant has been allowed selection grade w.e.f 01.09.1999, thus denying him the benefits of selection grade to be accrued on the due date, because in the case of others, the same facility has been granted retrospectively with effect from completion of 10 years service and passing of departmental examination. That the appellant being aggrieved, preferred

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

5. We have heard arguments of the learned counsel for the appellant and District Attorney for the respondents and have gone through the record available on file.

6. According to the government notification dated 09.12.1975,

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S.D

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

S.D

(GUL ZEB KHAN)
MEMBER

ANNOUNCED
29.11.2017

Certified to be ture copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

fSr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
		BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL AT CAMP COURT D.I.KHAN **Appeal No. 983/2013** Date of Institution ... 27.05.2013 Date of Decision ... 29.11.2017 Edda Jan S/O Haji Jalal Khan, Ex-Sub Engineer Irrigation Department, D.I.Khan, New Farhan General Store, Eidgah Road, D.I.Khan. **Appellant** **VERSUS** The Government of Khyber PakhtunKhwa through Secretary Irrigation Department, Peshawar & 2 others. **Respondents** Sheikh Iftikhar-ul-Haq, Advocate --- For appellant. Mr. Farhaj Sikandar, District Attorney --- For respondents. MR. GUL ZEB KHAN --- MEMBER MR. MUHAMMAD AMIN KHAN KUNDI --- MEMBER **JUDGMENT**
	29.11.2017	GUL ZEB KHAN, MEMBER: Learned counsel for the appellant present. Mr. Farhaj Sikandar, District Attorney for the respondents present. 2. Appellant Edda Jan has filed the present appeal u/s 4 of the

26.09.2017

Appellant in person and Mr. Farhaj Sikandar, District Attorney for the respondents present. Appellant seeks adjournment as his counsel is not available. Adjourned. To arguments on 24.10.2017 before DB at Camp Court D.I.Khan.

Member
(Executive)

Member
(Judicial)
Camp Court D.I.Khan

24.10.2017

Counsel for the appellant and Mr. Farkhaj Sikandar, District Attorney alongwith Mr. Muslim Din, SDO for respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 27.11.2017 before D.B at camp Court D.I.Khan.

Member
(Executive)

Member
(Judicial)
Camp Court D.I.Khan

27.11.2017

Appellant in person present. Mr. Farhaj Sikandar, District Attorney for the respondents also present. Due to general strike of the Bar learned counsel for the appellant is not in attendance today. Adjourned. To come up for arguments on 29.11.2017 before D.B at Camp Court D.I.Khan.

(Gul Zeb Khan)
Member

(Muhammad Amin Khan Kundi)
Member
Camp Court D.I. Khan

23.05.2016 Counsel for the appellant and Mr. Farkhaj Sikandar, GP for respondents present. Counsel for the appellant requested for adjournment. Adjournment granted. To come up for arguments on 24.10.2016 at camp court D.I. Khan.

Member
Camp Court D.I.Khan

Member

24.10.2016 Counsel for the appellant and Mr. Farhaj Sikandar, Government Pleader for the respondents present. Learned counsel for the appellant requested for adjournment. Request accepted. To come up for arguments on 27.03.2017 before D.B at Camp Court D.I.Khan.

Member

Member
Camp Court D.I.Khan

27.03.2017 Since tour is hereby cancelled, therefore, the case is adjourned for the same on 24.07.2017.

Reader

24.07.2017 Counsel for the appellant present. Mr. Farhaj Sikandar, District Attorney for the respondents also present. Record reveals that the original impugned order in respect of selection grade given to the appellant is not available on record. The respondents are directed to produce the same on the next date of hearing. Notice be also issued to the respondents to direct the representative to attend the court positively on the next date. Adjourned. To come up for record and arguments on 26.09.2017 before D.B at Camp Court D.I.Khan.

(Gul Zeb Khan)
Member

(Muhammad Amin Khan Kundi)
Member
Camp Court D.I. Khan

23.11.2015 Counsel for the appellant and Mr. Farhaj Sikandar, GP for the respondents present. Since D.B for touring Bench, D.I.Khan is incomplete, therefore, case is adjourned to 30-12-15 for arguments at camp court, D.I.Khan.

MEMBER
Camp Court, D.I.Khan

30.12.2015 Since tour to D.I.Khan for the month of December, 2015 has been cancelled, therefore, case is adjourned to 28.3.2016 for the same.

Reader
~~Member~~
~~Camp Court, D.I. Khan~~

28.3.2016 Counsel for the appellant and Mr. Farhaj Sikandar, GP for the respondents present. Counsel for the appellant requested for adjournment. To come up for arguments on 23.5.16 at Camp Court, D.I.Khan.

Member

MEMBER
Camp court, D.I.Khan

29-9-2014. Appellant with counsel & Hafizullah, S.D.A. for respondents with G.P. present. Rejoinder not received. To come up for rejoinder on 27-10-2014 at camp court, D.I.Khan.

Registrar
Camp Court, D.I.K.

27-10-14. Present as before on 29-9-14. Rejoinder not filed. To come up for rejoinder on 29-12-14 at Camp Court, D.I.K.

Registrar
Camp Court, D.I.K.

29-12-14. Counsel for the appellant and Mubd Basir, S. Clerk for respondents present. Rejoinder not received due to incomplete bench. Case adjourned to 27-1-15 for rejoinder at Camp Court, D.I.Khan.

Registrar
Camp Court, D.I.K.

27-1-2015 Appellant with counsel present and Jamshed S.D.O. for respondents with G.P. present. Rejoinder received, copy whereof is handed over to G.P. for arguments. To come up for arguments on 28/4/15 at Camp Court, D.I.Khan.

Member
Camp Court, D.I.K.

28.4.2015 Junior to counsel for the appellant and Mr. Farhaj Sikandar GP with Basir Ahmad, Senior Clerk for the respondents present. The Bench is incomplete, therefore, case to come up for arguments on 23.11.2015 at camp court, D.I.Khan.

MEMBER
Camp Court, D.I.Khan

2-1-2014. Appellant with counsel and Hassan Zulqarnain, Engineer for respondent no.3 and Jamshed, S.D.O. with G.P. for official respondents present. The representative requested for time to file reply. To come up for reply on 24-2-2014 at Camp Court, D.I.Khan.

Member
Camp Court, D.I.Khan

24-2-2014. ~~At present as before on~~ 2-1-2014. Final warning for submission of written reply on 24-3-2014 at Camp Court, D.I.Khan is given to the respondents.

Member
Camp Court, D.I.Khan

24-3-2014. Appellant with counsel and Zulqarnain, Engineer for respondent no.3 with G.P. for official respondents present. Written reply not received. To come up for written reply on 26-5-2014 at Camp Court, D.I.Khan.

Member
Camp Court, D.I.K.

26-5-2014 Appellant with Counsel and ~~Mr. Jamshed, S.D.O~~ for respondents with G.P. present. Written received. Copy whereof is handed over to the counsel for appellant. for rejoinder, if any. To come up for rejoinder on 29-9-2014 at Camp Court, D.I.Khan.

Member
Camp Court, D.I.K

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 983 /2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	18/06/2013	The appeal of Mr. Edda Jan resubmitted today by Shaikh Iftikhar-ul-Haq Advocate, may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing. REGISTRAR
2	27-8-2013	This case is entrusted to touring Bench D.I.Khan for preliminary hearing to be put up there on 23-9-2013 CHAIRMAN
3.	23.9.2013	Appellant with counsel present and heard. The learned counsel for the appellant contended that appellant has not been treated in accordance with law. Points raised in the memo of appeal would require consideration. Admit, subject to all just legal objections. Process fee and security be deposited within 10 days. Thereafter, notices be issued to the respondents for submission of written reply on 28.10.2013 at Camp Court D.I.Khan. Member Camp Court D.I.Khan
4.	28-10-13	Appellant with counsel and Jamshed, S.D.O. with G.P. for respondents present. G.P. requested for adjournment to file written reply. To come up for written reply on 30-12-13 at Camp Court, D.I.Khan. Member Camp Court, D.I.Khan

Notified

27-8-2013

Not The appellant deposited security & Process fee Rs 180/- on 19/9/2013 Bank receipt attached on file

(12) Ann-"C" Annex-C

GOVERNMENT OF N.W.F.P.
IRRIGATION & POWER DEPARTMENT

Dated Peshawar the 13th January, 2004.

ORDER.

NO.SOE(IRR)4-3/94: Consequent upon the recommendation of the Departmental Promotion Committee of Irrigation and Power Department, the following Sub-Engineers are hereby allowed Selection Grade (BS-16) w.e.f. the date noted against each:

S.No.	Name of Sub-Engineer	Date of granted Selection Grade
1.	Syed Iqbal Shah	30-06-1991
2.	Mr. Sharin Jan	31-01-1995
3.	Mr. Abdur Rahim	03-02-1996
4.	Mr. Amanullah	04-08-1997
5.	Mr. Farmanullah	14-12-1998
6.	Mr. Fatehullah	07-09-1996

Attested

SECRETARY TO GOVT: OF NWFP
IRRIGATION & POWER DEPTT:

Endst: No. & date as above.

Copy forwarded to. SNO II F&D D'Khan

1. The Accountant General, NWFP, Peshawar.
2. Th Chief Engineer (O&M), Irrigation Department, Peshawar.
3. The Chief Engineer (Devt), Irrigation Department, Peshawar.
4. The Deputy Secretary (Regulation), Establishment Department.
5. The Section Officer (FR), Finance Department.
6. All Superintending Engineers, Irrigation Department.
7. All Executive Engineers concerned.
8. The District Accounts Officers concerned.
9. Officials concerned.
10. Office order file.

-: Sd :-
SECTION OFFICER (ESTT:)
IRRIGATION DEPARTMENT.

OFFICE OF THE CHIEF ENGINEER IRRIGATION DEPARTMENT NWFP PESH:

NO. 1364-54 /IR/Estt-Dated Peshawar the 12/1/2004.

Copy of the above is forwarded to the :-

1. SE CIC PESHAWAR. 2. SE HIC MARDAN. 3. SE SIC BANNU. 4. SE F&D
5. Xen, Pesh: Canals. 6. Xen Mardan. 7. Xen P&D Pesh: 8. Xen Peshawar
9. Xen Nowsat Canals. 10. Director General Small Dams Peshawar.

ADMINISTRATIVE OFFICER
PHONE NO.9212118

Attested

(13)

GOVERNMENT OF NWFP
IRRIGATION DEPARTMENT

Dated Peshawar the 18th November, 2009

ORDER

NO.SO(E)IRR/4-3/DPC. In pursuance of the NWFP Service Tribunal decision dated 2-3-2009, Law Department advice dated 9-5-2009 and consultation with the Departmental Promotion Committee, the competent authority is pleased to approve the Selection Grade BS-16 w.e.f. 30-5-1995 in respect of Mr. Farid Gul, Sub-Engineer, presently posted as Sub-Divisional Officer (OPS), Project Sub-Division for Small Irrigation Schemes Peshawar.

Secretary to Govt of NWFP
Irrigation Department

Endst: No. & Date a above.

Copy of the above is forwarded to:-

1. The Accountant General, NWFP, Peshawar.
2. The Chief Engineer (O&M), Irrigation Department, Peshawar.
3. The Chief Engineer (Dev), Irrigation Department, Peshawar.
4. The Superintending Engineer, Project Circle for Small Irrigation Schemes Peshawar.
5. The Executive Engineer, Project Division for Small Irrigation Schemes Peshawar.
6. Mr. Farid Gul, Sub-Divisional Officer (OPS) Project Sub-Division for Small Irrigation Schemes, Peshawar.
7. Personal File.

(ANWARUL HAQ)
Section Officer (Establishment)
Irrigation Department

Attested

(14)

Ann- "D"

To

The Secretary Irrigation department
Khyber Pakhtunkhwa Peshawar.

Sub: GRANT OF SELECTION GRADE FROM RETROSPECTIVE EFFECT.

Respected Sir,

I submit a request to your kind good self on the subject noted above that 14 Nos of Sub Engineer were granted Selection grade BPS-16 with immediate effect vide office No. SO.(E) irri/4-3/91/11963-66 dated 01-09-1999 and out of which some Sub Engineers filled appeal for grant of Selection BPS-16 with retrospective effect, which were accepted by the Your good self and issued Notification SO(E) 4-3/91 dated 13-01-2004 which were much Junior to me, as I was appointed on 15.10.1973 in Govt. service.(copies attached)

After some Sub Engineer come up with appeal for grant of Selection grade with retrospective affect i.e. Mr. Farid Gul dated 02-03-2009 and Mr. Wali Jan dated 11-08-2011 and the Court has decided the cases in the favour of above Two Sub Engineers. (copy attached)

I have allowed selection grade on 01-09-1999 i/c 14-Nos sub engineer I have submitted application to your kind good self for grant of Selection grade with retrospective ie 14-05-1995 due to I have passed (A) grade examination on 14-05-1995 (~~copy attached~~).

In the light of above narrated facts, it is therefore requested to kindly grant me selection grade with effect from 14.05.1995.

Dated:- 11-02-2013

Yours Obediently

(Edda Jan)
Ex Sub Engineer Irrigation DIKhan
C/O Farhan General Store Eid Gah Raod
DIKhan

Copy to:-

1- Honourable Chief Justice Peshawar High Court Peshawar for information.
2- The Chairman Provincial Services Tribunal KPK Peshawar.
3- The Chief Engineer irrigation Department KPK Peshawar.

Attested

53	17	26661	1061204	481
54	13	26663	0799304	2,000
55	13	26632	0542906	358
56	18	26631	1057900	356
57	11	26632	0464005	6,127
58	14	26631	0811302	2,525

Clerk's Total	89,024
Grand Total	**89,024**

Express & Logistics

Shipper's Acc.No.	
Reference / Job	

History ID 0213DIKXDI51855102

1060450671

GST No. 12-00-9808-002-73

COURIER	
Origin	Destination
DIK	PEW

From (Shipper)

IDA JAN
EX SUB ENGINEER IRRIGATION
C/O. FARHAN GENERAL STORE
EID GAH ROAD,
D I KHAN.
Phone#
SMS 03459828958

To (Consignee)

THE SECRETARY IRRIGATION DEPT
KHYBER PAKHTUNKHWA
PESHAWAR

Phone#

PESHAWAR

Shipment Detail	Coupans	Discount
Packet		
Declared Value		
0.00		

13/02/2013
Gul Rahman
at 10-52 am

Receiver's Signature

Date 11/02/2013
Time 12:35:35

Pieces	Weight
1	0.50

Dimension of Shipment: 0 0 0

Service Type: OVER NIGHT

Mode of Payment: CASH

Charges	Pak. Rupees
Service	147.00
Discount	0.00
Out of Serv	0.00
Handling	0.00
Others	0.00
GST	23.00
Ins. Prem.	0.00
DD Alerts	0
Total	170

Shipper Copy

Sender's Authorization

I warrant that I have read the terms and conditions on the reverse of this consignment note and that all details given herein are true and correct. I further declare that the contents of this consignment do not contain any letter. The execution of this consignment note is prima facie evidence of the conclusions of contract between shipper and TCS (PVT) LTD.

Idajan

Shipper's Signature

Booking Details

Staff 51855 MUHAMMAD FARHAN
Route XDI Date 11/02/2013 Time 12:35:35

TCS House, Saqib Hamdani Building, Iqbal Avenue, Jinnah International Airport, Karachi 75202, Pakistan.
Tel: + 92-21 111 123 456, Web: www.tcs.com.pk

خطوط، نقدی، زیورات اور قیمتی اشیاء قابل قبول نہیں ہیں۔

Page Total	**17,257.00**

The appeal of Mr. Edda Jan son of Haji Jalal Khan Ex-Sub-Engr. Irrigation Department received today i.e. on 27.05.2013 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- Copy of order bearing No.19414-43 dated 14.09.1999 mentioned in para-3 of the memo of appeal is not attached with the appeal which may be placed on it.
2- One copy/set of the appeal alongwith annexures i.e. complete in all respect may also be submitted with the appeal.

No. 925 /S.T,
Dt. 29/05/2013.

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Shaikh Iftikharul Haq Advocate,
Hihg Court Dera Ismail Khan.

Respected sir,

The objections No.1 and 2 has been removed. Hence resubmitted please.

17-06-2013

Sheikh Iftikhar ul Haq
Advocate High Court

Respected sir,

The objections no. 1 and 2 has been removed. Hence submitted please.

17-06-2013

Sheikh Iftikhar ul Haq
Advocate High Court

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHOWA PESHAWAR.

S,T.A No. 983 2013

Edda Jan V/S Govt of K.P.K etc.

Index.

S.No.	Particulars of documents.	Annexure	Pages.
1.	Memo and grounds of Appeal.	—	1 - 4
2.	Relevant page of Service Book.	A	-5-
3.	Copy of Seniority List & order of Selection grade given to Juniors	B&C	6 - 13
4.	Copy of Departmental Appeal.	"D"	-14-
5.	Wakalatnama.	-	-15-

Yours Humble Petitioner.

Edda Jan

through Counsel.

(Shaikh Iftikharul Haq)
Advocate High Court.

Dated.24.5.2013.

BEFORE THE NWFP SERVICE TRIBUNAL PESHAWAR

Appeal No.797/2007

Date of institution - 21.07.2007
Date of decision - 02.03.2009

Fareed Gul (Sub Engineer), Mechanical Irrigation Division N.W.F.P Peshawar
..... (Appellant)

VERSUS

1. Secretary to Govt: of N.W.F.P Irrigation Department Peshawar.
2. Chief Engineer (O &M) Irrigation Department Peshawar.
3. Amanullah Khan SDO, Irrigation SUB. Division Swat.
4. Fatehullah SDO Bannu Kanal Division Bannu.
5. Abdur Rahim Khan, SDO Small Irrigation Scheme, Peshawar.
6. Farmanullah Khan, SDO Small Dame organ-Peshawar.....(Respondents)

Appeal U/S 4 of the NWFP Service Tribunals Act, 1974 against the Order dated 23.6.2007 whereby the departmental appeal dated 6.3.2007 of the appellant for the ante dation of Selection Grade (BPS-16) w.e.f 30.5.1995 was rejected.

Mr. Ijaz Anwar, Advocate.....For appellant.
Mr.Ghulam Mustafa, A.G.P.....For respondents, 1&2.

MR. ABDUL JALIL.....MEMBER.
SYED MANZOOR ALI SHAH.....MEMBER.

JUDGMENT.

ABDUL JALIL, MEMBER :- This appeal has been filed by the appellant against the order dated 23.6.2007 whereby his departmental appeal dated 6.3.2007 for the grant of ante-date Selection Grade (BPS-16) w.e.f 30.5.1995 was rejected. He has prayed that the impugned order may be varied/modified/set aside and the respondents be directed to allow the appellant Selection Grade BPS-16 w.e.f 30.5.1995 with all arrears and benefits.

2. Brief facts of the case are that the appellant was initially appointed as Diploma Holder Sub-Engineer (BPS-11) on 29.5.1985. The appellant passed the departmental Grade A & B Examinations on 5.3.1991 and 14.5.1995 respectively. These examinations were mandatory for further promotion to the next higher post. In accordance with Government Notification dated 9.12.1975, 25% of the total posts of Diploma Holder Engineers shall be placed in Grade-16. These posts shall be filled on

ATTESTED
EXAMINER
NWFP Service Tribunal
Peshawar

the basis of seniority-cum-fitness and subject to 10 years services and passing of the prescribed departmental examinations. The appellant was accordingly allowed selection grade vide order dated 1.9.1999 with immediate effect. In the meantime seniority list of the Sub- Engineers was circulated vide order dated 31.12.2002. The seniority list was prepared not on the basis of initial regular appointment but on the basis of grant of selection grade in BPS-16. The appellant had filed service appeal No. 611/2004, challenging the wrong fixation of seniority. The same was allowed by this Tribunal. In the meantime respondent department allowed selection grade-16 to different officials retrospectively while in his case the appellant was given selection grade with immediate effect. Thus he was denied the benefit to be accrued by giving selection grade on the due date as in the case of others who have been given selection grade with retrospective effect from the date of completion of 10 years service and passing of the departmental examination. The appellant also submitted a representation dated 6.3.2007 and thereafter, also submitted reminder, however, it was finally regretted vide letter dated 23.7.2007, communicated to the appellant on 26.7.2007. Hence the instant appeal.

3. The respondents were summoned. They appeared though their representatives, submitted written reply, contested the appeal and denied the claim of the appellant.

4. Arguments heard and record perused.

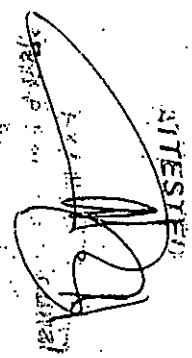
5. The learned counsel for the appellant argued that the Tribunal has in identical cases allowed the benefit of Grant of Selection Grade BPS-16 to the employees from the date of completion of 10 years service and passing of the departmental examinations, hence the same needs to be implemented in favour of the appellant as well. Since the appellant being deserves to be allowed the benefit as allowed to others, denial of that benefit is discriminatory and attract violation of Article 25 of the Constitution of the Islamic Republic of Pakistan 1973. The objection of the respondent department that the same matter is pending before the Hon'ble Supreme Court of Pakistan is misconceived and not correct. The matter pending before the Hon'ble Supreme Court of Pakistan is completely a different matter, pertaining to seniority, hence there is no legal impediment in the grant of monetary benefit. He prayed that the appeal may be accepted.

ATTESTED

6. The learned AGP argued that the appeal has not been filed within the prescribed time limit, therefore, is not maintainable. The appellant cannot claim the benefit of the cases decided afterwards. The appellant cannot claim benefit on the basis of subsequent decision of similar nature cases. The respondent Department's objection is quite correct regarding the matter being pending before the Supreme Court of Pakistan. Because the appellant being a Sub Engineer (B-11) could not claim inter-se- seniority amongst those serving as Officiating Assistant Engineers (B-16) which is a separate cadre according to the existing rules. The appellant has no case, at all, to be adjudicated upon by this Tribunal. He prayed that the appeal may be dismissed.

7. The Tribunal observes that the claim of the appellant is based on bonafide. The appellant has been discriminated as Junior to him have been granted selection grade with retrospective effect while in his case selection grade has been allowed with immediate effect, thus deprived him of monetary benefit. Notwithstanding he complted 10 years service and qualified departmental examination in 1991 and completed 10 years service required for granting selection grade. The appellant was allowed selection grade on 1.9.1999 with immediate effect. But the same has been modified vide order dated 13.1.2004 to other employees and it was given effect from the date when they passed departmental examination and completed 10 years service. The arguments of the respondents that those who had made applications/appeals at the relevant time, they were allowed the selection grade with retrospective effect, is not tenable because the respondents when processing the case of grant of selection grade should have itself acted in accordance with law because the relevant record of its employee was before them, the appellant cannot be blamed for the in-action and discriminatory treatment of the department. Though the private respondents were arrayed in the panel of respondents on their application, but in fact they cannot be allowed to resist the grant of selection grade to the appellant retrospectively when they themselves were given the same benefits with retrospective effect. When the grant of selection grade from retrospective date is permissible to the added respondents, how it can be argued that it is not permissible to the appellant. This Tribunal has vide appeal No. 531/2001 allowed

five identical appeals vide judgment and order dated 6.6.2007, whereby the Sub Engineers of Works and Services Department were allowed selection grade from the date they became eligible under the rules. The learned Counsel for the appellant has quite rightly relied upon the observation of the Hon'ble Supreme Court of Pakistan wherein it was held that "if the Service Tribunal or Supreme Court decides a point of law relating to the terms of service of a civil servant which cover not only the case of 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 rules of good governance demands that the benefits of such judgment by Service Tribunal/ Supreme Court be extended to other civil Servants, who may not be parties to the litigation instead of compelling them to approach the Service Tribunal or other forums". This view has been consistently followed by the august Supreme Court of Pakistan in the cases reported in SCMR 1996 page 1185, PLD 2004 SC 77, and 2005 SCMR 499. Getting wisdom from these judgments and having similar case of the appellant to those of Appeal No.531/2001 decided on 6.6.2007 he is also entitled to similar treatment. The respondents have raised the objection that the appeal as well as the departmental appeal of the appellant were barred by time and that the order dated 1.9.1999 was not challenged in time and that the appellant cannot be allowed to challenge it belatedly. The matter of grant of selection grade is in fact a grant of monitary benefits and extension of pay scale, thus is a continuous cause of action. Moreover, the departmental appeal was filed when the appellant came to know about the grant of selection grade to most of the employees with retrospective date and the judgment of this Tribunal decided on 6.6.2007, the departmental appeal of the appellant was replied not on the point of limitation but on merit. The superior courts have in the following cases reported in 2007 PLC (CS) Page 194, 2000 PLC (Civil Services) page 1240, NLR 2002 Service page 170, held that the courts are always very lenient regarding question of limitation in the extension of pay scale/pay matter, because the matter of pay is a continuous cause/recurring loss. In the instant case the appellant is suffering continuous loss for the non grant of increments w.e.f 1999. Reference can be made to cases reported in PLC 1996 (Civil Service) Page 832, PLC 1986 (Civil Service) page 66 and 2005 PLC (Civil Service) page 1439. Even



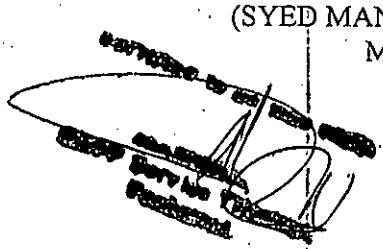
otherwise, the respondents department have itself meted out discriminatory treatment to its employee and not acted in accordance with law cannot be allowed to raise the question of limitation, because due to their in action the appellant was forced to filed the instant appeal. Much stress of the respondents was on the pendency of a case before the august Supreme Court of Pakistan between the same parties, however while consulting the record of that case it transpired that the judgment in this case would be having no bearing on the merit of the case, pending before the august Supreme Court of Pakistan. The matter before the apex court pertains to the determination of seniority of the employees where the Supreme Court would decide that whether seniority is to be granted from the grant of selection grade or from the date of regular promotion, therefore this case cannot be kept pending till the decision of the case of seniority.

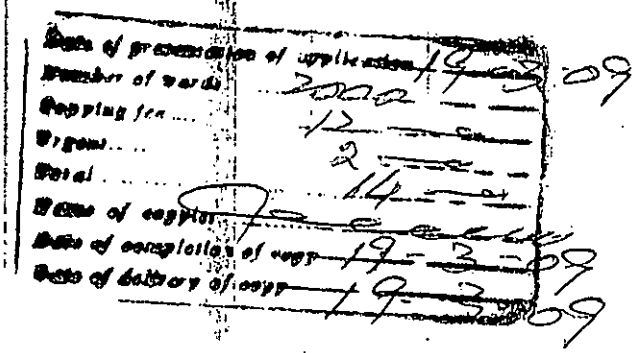
8. For what has been discussed above the appeal is accepted and the impugned order dated 23.6.2007 is set aside. The appellant shall be granted selection grade from the date when he become eligible under the rules i.e. 30.5.1995 on the analogy order dated 13.1.2004 allowed to similarly placed employees. The appellant will also entitled to annual increments etc. The decision in this appeal is to the extent of only granting monetary benefits to the appellant denied to the appellant vide the impugned order and has nothing with the pending appeal pertaining to seniority which will be decided by the Hon'ble Supreme Court of Pakistan. The parties are, however, left to bear their own costs. File be consigned to the record.

ANNOUNCED.
2.3.2009.

(SYED MANZOOR ALI SHAH)
MEMBER.

(ABDUL JALIL)
MEMBER.





(1)

BEFORE THE SERVICE TRIBUNAL K.P.K. PESHAWAR.

S.T.A No. 983 2013

Edda Jan S/O Haji Jalal Khan
Ex-Sub Engineer Irrigation Deptt:
D.I.Khan ,New Farhan General Store
Eidgah Road D.I.Khan.

Appellant.

V/S

1. Govt of K.P.K through Secretary Irrigation Deptt: Peshawar.
2. Secretary Finance Govt of K.P.K. Peshawar.
3. Chief Engineer (O&M) Irrigation Deptt:KPK Peshawar.

Respondents.

SERVICE APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHOWA SERVICE TRIBUNAL ACT.

PRAYER.

ON ACCEPTANCE OF THE INSTANT APPEAL THE SELECTION GRADE BPS 16 MAY KINDLY BE GRANTED TO THE APPELLANT W.E.FROM 14.5.1995 WHEREIN THE APPELLANT HAS PASSED 'A' GRADE DEPARTMENTAL EXAMINATION.

Respectfully Sheweth.

1. That the Appellant was appointed as Sub Engineer on 15.10.1973 in Irrigation Department and had been retired on 28.2.2009. The relevant page of the Service Book is enclosed as Annexure -A

2. That the Appellant had passed "A" grade Departmental Examination on 14.5.1995 and deserve /rightfull for Selection grade B.P.S 16 w.e.f. 14.5.1995 .Copy of the Seniority list is attached as Annexure B.

3. That the Respondent authorities granted Selection grade BPS 16 to Appellant vide letter No.19414-43 dated.14.9.1999 w.e.f. 1.9.1999 and lateron the Respondent authorities granted the Selection grade BPS 16 to some other Colleagues of the Appellant with retrospective effect and vide an other notification bearing No.SO(E)IRR/4-3BPC dated.14.11.2009 a few colleagues of the Appellant who were also junior to Appellant have granted selection grade BPS 16 w.e.f. 30.5.1995. Copies of letter/Notification are enclosed as Annexure C.

4. That As the Appellant has been not allowed selection grade w.e.f. 14.5.1995 .Thus the Appellant being aggrieved person approach /preferred departmental appeal on 11.2.2013 but no response so far received to appellant. Thus the Appellant humbly approach this Hon'ble Tribunal

through instant Service Appeal inter alia on the following grounds. Copy of Departmental Appeal/representation is enclosed as Annexure D

GROUNDS.

1. That it is the legal rights of the Appellant to grant Selection grade BPS 16 from the date of 14.5.1995 on the date of which the Appellant passed the Department "A" grade examination.

2. That according the principal of law and service policy the Appellant is rightfull /deserve selection grade BPS w.e.f.14.5.1995 .But the Respondent authotities deprived the Appellant from granting Selection grade w.e.f. 14.5.1995.

3. That Junior to the Appellant have been granted Selection grade with retrospective effect from 30.5.1995 but the Appellant have been ignored /deprived from the said.

4. That the act and omission of the Respondent authorities are against law , fact and in accordance with esta code and policy of rules regulation.

5. That the Counsel of the Appellant may kindly be allowed to raise additional grounds during course of hearing of the appeal.

In wake of submissions made above it is humbly prayed that on accptance of the instant appeal the Appellant may kindly be granted Selection grade w.e.f. 14.5.1995 which is the due right of the Appellant.

Yours Humble Appellant.

Idda Jan

through Counsel.

Dated.24.5.2013.

(Shaikh Iftikharul Haq)
Advocate High Court.

Affidavit.

I, Idda Jan S/O Haji Jalal Khan R/O D.I.Khan do hereby solemnly affirm and declare on oath that the contents of the Appeal are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.

Deponent.

5

Ann-A

11	12	13			14	15
Reason for termination (such as promotion transfer dismissal etc) وجوہات انقطاع ملازمت ترقی۔ تبادلہ یا برطرفی	Signature of the Head of the office of other attesting Officer دستخط افسر مجاز	Name and duration of leave taken رخصت کی نوعیت و معیار	LEAVE Allocation of periods of leave on average pay upto four months(or earned leave not exceeding 120 days) to which leave salary is debitable to another Government چار ماہ تک کی رخصت کے لئے اوسط تنخواہ کا تعین		Signature of the head of the office or other attesting officer دستخط افسر مجاز	Reference to any recorded punishment or censure, or reward or praised of the Government servant سزا یا جزا یا غیر مناسب کارکردگی کا ریکارڈ
			Period عرصہ	Govt: to which debitable گورنمنٹ جسے رقم ادا ہوئی		
Retired from Service on attaining the age of Superannuation viz - 60-years vide C.E. (O&M) Irri Deptt NWFP Peshawar O/O No. 2815-131/131 A/959-12, dt. 28-02-2009 w.e. from 28/02/2009 (A.N)						
	Executive Engineer, Paharpur Irrigation Division D.I.Khan.				01-12-08	28/2/09 (A.N)
	Attested					
					Attested	

(9)

OFFICE OF THE CHIEF ENGINEER
IRRIGATION DEPARTMENT NWFP
PESHAWAR.

NO. 14256 /IB/A/33-G,

Dated Peshawar, the 14/5/1995.

OFFICE ORDER

The following Sub-Engineers have passed Grade "A" Sub-Engineers Departmental qualifying examination held in Dec: 1994 :-

SL: NO.	Name	Name of office to which attached.	Remarks.
1.	Mr.Asad Ullah	Marwat Canal Div: Bannu.	Passed in all Subjects. (3 subjects passed in 4/93 & one subject passed this year).
2.	Mr.Tahir Said	Swat Irr; Div; Swat.	Passed in all subjects this year.
3.	Mr.Fazle Rehman.	Kohat Irr; Div; Kohat.	Passed in all subjects. (3 subject passed in 12/90 & one subject passed this year.
4.	Mr.Aurangzeb	Bannu Canal Div; Bannu.	Passed in all subjects. (2 subject passed in 4/93 & 2 subjects passed this year.
5.	Mr.Abdul Salam	Swabi Irrigation Div; Swabi.	Passed in all subjects. Passed professional in 3/88 & 3 subjects this year.
6.	Parwarish Khan	-do-	Passed in all subjects this year.
7.	Noor Ghulam	Swat Irri Div; Swat.	Passed in all subjects. (Passed 2 subjects in 12/90 one subject in 4/93 & one subject this year.
8.	Mohammad Ramzan.	Small Dams Development Corporation Hangu.	Passed in all subjects. (passed 3 subjects in 12/90 & one subject this year.
9.	Aman Ullah	Mardan Irr; Div; Mardan.	Passed in all subjects. (passed Survey and Practical in 4/93 and 3 subjects this year.
10.	Akhtar Jan	Paharpur Irr; Div; D.I.Khan.	Passed in all subjects; (passed one subject in 4/93 & 3 subjects this year.
11.	Farman Ullah	-do-	Passed in all subjects. (passed one subject in 4/93 & 3 subjects this year.
12.	Shuja Ahmad	North Waziristan Project FATA DC Miranshah.	Passed in all subjects; (passed 3 subjects in 4/93 & one subject this year.

(M/Page-II)

	Mr.Hidayatullah.	Maintenance Cum Development Divn: FATA DEV : Corp: Bajawar.	Passed in all Subjects. (Passed one subject in 4/93 and 3 subjects this year.
14/	Mr. Habibullah.	-do-	Passed in all subjects this year.
15/	Mr.Habibullah, Khan.	Malakand Irr: Divn: Malakand.	Passed in all subjects. (2 subjects passed in 4/93 and 2 subjects passed this year.
16/	Mr.Farid Gul.	Malakand Irr: Divn: Malakand.	Passed in all subjects. (passed 3 subjects in 4/93 and one subject this year.
17/	Mr.Hidayatullah.	Paharpur Irr: Division DIKhan.	Passed in all subjects. (passed 2 subjects in 4/93 and 2 subjects this year).
18/	Mr.Abdur Rauf.	FATA Development Corporation Pesh:.	Passed in all subjects (passed 2 subjects in 12/88, one subject in 3/91 and one subject this year.
19/	Mr.Ida Jan.	Project Irrigation Division, D.I.Khan.	Passed in all subjects. (passed one subject in 4/93 and 3 subjects this year.
20/	Mr.Parvez Khan.	FATA Development Corporation Pesh:.	Passed in all subjects. (2 subjects passed in 12/88, one subject in 1990 and one subject this year.

The following Sub Engineers have failed in the subjects noted each :-

SL NO	NAME	NAME OF OFFICE TO WHICH ATTACHED	SUBJECT IN WHICH FAILED	MARKS	REMARKS
1	2	3	4	5	6
1/	Mr.Habibur Rehman.	Swat Irrigation Division,Swat.	1)Accounts & Office Procedure.	32	1)Lost 2nd chance. 2)Passed Professional, survey and practical in 4/1993.
2/	Mr.Abdul Ghaffar.	Mohmand Project Div:FATA Deve: Corp: Peshawar.	1)Accounts & Office Procedure.	43	1)Lost 2nd chance. 2)Passed Professional & survey this year.
			2)Practical.	65	
3/	Mr.Fatehullah.	Bannu Canal Division Bannu.	1)Professional.	38	1)Lost Ist chance. 2)Passed accounts and Office Procedure, survey & Practical this year.

E/Page-3

(11)

	Moha mad Younis.	Kohat Irr: Division, Kohat.	1)Professional. 2)Survoy.	23 48	1)Lost Ist chance. 2)Passed Acctts & office procedure, and Practical this year.
5/	Mr.Khushal, Khan.	Tabarpur Irr: Divn: D.I.Khan.	1)Accounts & Office Procedure. 2)Survoy.	32 55	1)Lost Ist chance. 2)Passed Professional and Practical this year.
6/	Mr.Mohammad, Sashir.	North Waziristan Project FATA DC Miran-Shah.	1)Professional. 2)Accounts and Office Procedure.	29 48	1)Lost 2nd chance. 2)Passed Survoy and practical in 4/1993.
7/	Mr.Javed Iqbal.	Project Irr: Divn: D.I.Khan.	1)Professional. 2)Accounts and Office Procedure. 3)Practical.	45 36 68	1)Lost 2nd chance. 2)Passed Survoy in 4/1993.
8/	Mr.Munir Mohammad.	-do-	1)Practical.	63	1)Lost 2nd chance. 2)Passed Professional, Accounts and Office procedure, & survoy in 4/1993.
9/	Mr.Muslim Shah.	FATA Development Corporation, Peshawar.	1)Accounts and Office Procedure.	18	1)Lost Ist chance. 2)Passed Professional, Survoy and Practical this year.
10/	Mr.Mudassir, Khan.	Bannu Canal Division Bannu.	1)Professional. 2)Accounts and Office Procedure. 3)Survoy.	15. 32 48.	1)Lost Ist chance. 2)Passed practical this year.

CHIEF ENGINEER
PHONE NO. 278320

Attested

N/Page-4

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 1181 /2016
Neem

Dr. Abdul Hameed Khan. . . . . .**APPELLANT**

...VERSUS...

D.G, Health Services & others. . . . . .**RESPONDENTS**

I N D E X

S.NO.	DESCRIPTION OF DOCUMENTS	ANNEX	PAGES
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2.	Affidavit		4
3.	Condonation Application & Affidavit		5-7
4.	Suspension Application & Affidavit		8-10
5.	Addresses of the Parties		11
6.	Copy of Order	A	12
7.	Copy of Order dated 16.06.2016	B	13
8.	Copy of Departmental Appeal	C	14
9.	Copy of Order dated 17.11.2016	D	15
10.	Copy of Letter dated 04.12.2013	E	16
11.	Copy of Office Order dated 22.09.2014	F	17
12.	Copies of Office Orders dated 17.03.2016	G & H	18-19
13.	Copy of Office Order dated 30.09.2016	I	20
14.	Wakalatnama		21

APPELLANT

THROUGH

MIAN MUHIBULLAH KAKAKHEL
SENIOR ADVOCATE
SUPREME COURT OF PAKISTAN

&

SAIFULLAH MUHIB KAKAKHEL
ADVOCATE HIGH COURT

KAKAKHEL LAW ASSOCIATES
(ADVOCATES & LEGAL CONSULTANTS)
36-C, 2ND FLOOR CANTONMENT PLAZA,
SADDAR ROAD, PESHAWAR.
CELL: 0334-4440744 0333-9167424
WEB: WWW.KAKAKHELLAW.COM

DATED: 29.11.2016

GOVERNMENT OF N.W.F.P.
IRRIGATION DEPARTMENT

Dated Pesh: the 1/9/1998.

O R D E R.

The Governor NWFP in consultation with the departmental Promotion Committee is pleased to allow selection grades to the following fourteen (14) Sub Engineers from BPS-11 to BPS-16 of the Irrigation Department with immediate effect .

S.NO.	Name of officials.
1/	Mr.Wali Jan.
2/	Mr.Fazli Rehman.
3/	Mr.Ida Jan.
4/	Mr.Noor Ghulam.
5/	Mr.Riaz Ahmad.
6/	Mr.Habibullah.
7/	Mr.Hidayatullah-II
8/	Mr.Faizur Rehman.
9/	Mr.Tahir Said.
10/	Mr.Jamshid Ahmad.
11/	Mr.Nasiruddin
12/	Mr.Sherin Jan.
13/	Mr.Farid Gul.
14/	Mr.Abdur Rahim-II.

sd/-
SECRETARY IRRIGATION.
1963-66

Endst:No.SO(E)IRR:/4-3/91 Dated Pesh the 1/9/1999.
Copy forwarded to the:-

1/ Chief Engineer Irrigation Deptt:NWFP Peshawar and others concerned.

sd/-
SECTION OFFICER(ESTT:)
IRRIGATION DEPARTMENT.

OFFICE OF THE CHIEF ENGINEER IRRIGATION DEPARTMENT NWFP PESHAWAR.

NO. 19414-43 /IB/A-157-E, Dated Peshawar the 14/9/1999.

Copy of the above is forwarded to the:-

1/ All Superintending Engineers in Irrigation Deptt:NWFP.
2/ Project Coordinator PHLC Project Gohati.
3/ Project Director DIPHE Swabi Scarp Direcdorat Mardan.
4/ Director Small Dams Directorate NWFP Peshawar.
5/ All Executive Engineer in Irrigation Deptt:NWFP.
6/ All District/Agency Accounts officers in NWFP.
7/ officials concerned.

for information and further necessary action.

ADMINISTRATIVE OFFICER
(PHONE:9212122).

Copy to Personal files of the officials.

Attested

GOVERNMENT OF N.W.F.P.
IRRIGATION DEPARTMENT

Dated Peshawar the 1/9/1999.

O R D E R.

The Governor NWFP in consultation with the departmental Promotion Committee is pleased to allow selection grades to the following fourteen (14) Sub Engineers from BPS-11 to BPS-16 of the Irrigation Department with immediate effect.

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5/	Mr.Riaz Ahmad.
6/	Mr.Habibullah.
7/	Mr.Hidayatullah-II
8/	Mr.Faizur Rehman.
9/	Mr.Tahir Said.
10/	Mr.Jamshid Ahmad.
11/	Mr.Nasiruddin.
12/	Mr.Sheria Jan.
13/	Mr.Farid Gul.
14/	Mr.Abdur Rahim-II.

sd/-
SECRETARY IRRIGATION.
1963-66

Endst:No.SO(E)IRR:/4-3/91 Dated Peshawar the 1/9/1999.
Copy forwarded to the:-

1/ Chief Engineer Irrigation Deptt:NWFP Peshawar and others concerned.

sd/-
SECTION OFFICER(ESTT:)
IRRIGATION DEPARTMENT.

OFFICE OF THE CHIEF ENGINEER IRRIGATION DEPARTMENT NWFP PESHAWAR.

NO. 19414-43 /IB/A/157-E, Dated Peshawar the 14/9/1999.

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6/ All District/Agency Accounts officers in NWFP.
7/ officials concerned.

for information and further necessary action.

ADMINISTRATIVE OFFICER
(PHONE:9212122).

Copy to Personal Files of the officials.

Attested

BEFORE THE NWFP SERVICE TRIBUNAL PESHAWAR

Appeal No.797/2007

Date of institution - 21.07.2007
Date of decision - 02.03.2009

Fareed Gul (Sub Engineer), Mechanical Irrigation Division N.W.F.P Peshawar
..... (Appellant)

VERSUS

1. Secretary to Govt: of N.W.F.P Irrigation Department Peshawar.
2. Chief Engineer (O &M) Irrigation Department Peshawar.
3. Amanullah Khan SDO, Irrigation SUB. Division Swat.
4. Fatehullah SDO Bannu Kanal Division Bannu.
5. Abdur Rahim Khan, SDO Small Irrigation Scheme, Peshawar.
6. Farmanullah Khan, SDO Small Dame organ-Peshawar.....(Respondents)

Appeal U/S 4 of the NWFP Service Tribunals Act, 1974 against the Order dated 23.6.2007 whereby the departmental appeal dated 6.3.2007 of the appellant for the ante dation of Selection Grade (BPS-16) w.e.f 30.5.1995 was rejected.

Mr. Ijaz Anwar, Advocate.....For appellant.
Mr.Ghulam Mustafa, A.G.P.....For respondents, 1&2.

MR. ABDUL JALIL.....MEMBER.
SYED MANZOOR ALI SHAH.....MEMBER.

JUDGMENT.

ABDUL JALIL, MEMBER :- This appeal has been filed by the appellant against the order dated 23.6.2007 whereby his departmental appeal dated 6.3.2007 for the grant of ante-date Selection Grade (BPS-16) w.e.f 30.5.1995 was rejected. He has prayed that the impugned order may be varied/modified/set aside and the respondents be directed to allow the appellant Selection Grade BPS-16 w.e.f 30.5.1995 with all arrears and benefits.

2. Brief facts of the case are that the appellant was initially appointed as Diploma Holder Sub-Engineer (BPS-11) on 29.5.1985. The appellant passed the departmental Grade A & B Examinations on 5.3.1991 and 14.5.1995 respectively. These examinations were mandatory for further promotion to the next higher post. In accordance with Government Notification dated 9.12.1975, 25% of the total posts of Diploma Holder Engineers shall be placed in Grade-16. These posts shall be filled on

ATTESTED
EXAMINER
NWFP Service Tribunal
Peshawar

the basis of seniority-cum-fitness and subject to 10 years services and passing of the prescribed departmental examinations. The appellant was accordingly allowed selection grade vide order dated 1.9.1999 with immediate effect. In the meantime seniority list of the Sub- Engineers was circulated vide order dated 31.12.2002. The seniority list was prepared not on the basis of initial regular appointment but on the basis of grant of selection grade in BPS-16. The appellant had filed service appeal No. 611/2004, challenging the wrong fixation of seniority. The same was allowed by this Tribunal. In the meantime respondent department allowed selection grade-16 to different officials retrospectively while in his case the appellant was given selection grade with immediate effect. Thus he was denied the benefit to be accrued by giving selection grade on the due date as in the case of others who have been given selection grade with retrospective effect from the date of completion of 10 years service and passing of the departmental examination. The appellant also submitted a representation dated 6.3.2007 and thereafter, also submitted reminder, however, it was finally regretted vide letter dated 23.7.2007, communicated to the appellant on 26.7.2007. Hence the instant appeal.

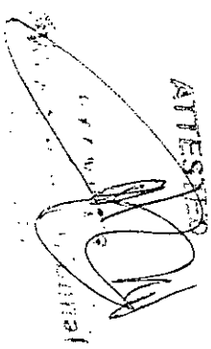
3. The respondents were summoned. They appeared though their representatives, submitted written reply, contested the appeal and denied the claim of the appellant.

4. Arguments heard and record perused.

5. The learned counsel for the appellant argued that the Tribunal has in identical cases allowed the benefit of Grant of Selection Grade BPS-16 to the employees from the date of completion of 10 years service and passing of the departmental examinations, hence the same needs to be implemented in favour of the appellant as well. Since the appellant being deserves to be allowed the benefit as allowed to others, denial of that benefit is discriminatory and attract violation of Article 25 of the Constitution of the Islamic Republic of Pakistan 1973. The objection of the respondent department that the same matter is pending before the Hon'ble Supreme Court of Pakistan is misconceived and not correct. The matter pending before the Hon'ble Supreme Court of Pakistan is completely a different matter, pertaining to seniority, hence there is no legal impediment in the grant of monetary benefit. He prayed that the appeal may be accepted.

6. The learned AGP argued that the appeal has not been filed within the prescribed time limit, therefore, is not maintainable. The appellant cannot claim the benefit of the cases decided afterwards. The appellant cannot claim benefit on the basis of subsequent decision of similar nature cases. The respondent Department's objection is quite correct regarding the matter being pending before the Supreme Court of Pakistan. Because the appellant being a Sub Engineer (B-11) could not claim inter-se- seniority amongst those serving as Officiating Assistant Engineers (B-16) which is a separate cadre according to the existing rules. The appellant has no case, at all, to be adjudicated upon by this Tribunal. He prayed that the appeal may be dismissed.

7. The Tribunal observes that the claim of the appellant is based on bonafide. The appellant has been discriminated as Junior to him have been granted selection grade with retrospective effect while in his case selection grade has been allowed with immediate effect, thus deprived him of monetary benefit. Notwithstanding he complted 10 years service and qualified departmental examination in 1991 and completed 10 years service required for granting selection grade. The appellant was allowed selection grade on 1.9.1999 with immediate effect. But the same has been modified vide order dated 13.1.2004 to other employees and it was given effect from the date when they passed departmental examination and completed 10 years service. The arguments of the respondents that those who had made applications/appeals at the relevant time, they were allowed the selection grade with retrospective effect, is not tenable because the respondents when processing the case of grant of selection grade should have itself acted in accordance with law because the relevant record of its employee was before them, the appellant cannot be blamed for the in-action and discriminatory treatment of the department. Though the private respondents were arrayed in the panel of respondents on their application, but in fact they cannot be allowed to resist the grant of selection grade to the appellant retrospectively when they themselves were given the same benefits with retrospective effect. When the grant of selection grade from retrospective date is permissible to the added respondents, how it can be argued that it is not permissible to the appellant. This Tribunal has vide appeal No. 531/2001 allowed



five identical appeals vide judgment and order dated 6.6.2007, whereby the Sub Engineers of Works and Services Department were allowed selection grade from the date they became eligible under the rules. The learned Counsel for the appellant has quite rightly relied upon the observation of the Hon'ble Supreme Court of Pakistan wherein it was held that "if the Service Tribunal or Supreme Court decides a point of law relating to the terms of service of a civil servant which cover not only the case of 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 rules of good governance demands that the benefits of such judgment by Service Tribunal/ Supreme Court be extended to other civil Servants, who may not be parties to the litigation instead of compelling them to approach the Service Tribunal or other forums". This view has been consistently followed by the august Supreme Court of Pakistan in the cases reported in SCMR 1996 page 1185, PLD 2004 SC 77, and 2005 SCMR 499. Getting wisdom from these judgments and having similar case of the appellant to those of Appeal No.531/2001 decided on 6.6.2007 he is also entitled to similar treatment. The respondents have raised the objection that the appeal as well as the departmental appeal of the appellant were barred by time and that the order dated 1.9.1999 was not challenged in time and that the appellant cannot be allowed to challenge it belatedly. The matter of grant of selection grade is in fact a grant of monitary benefits and extension of pay scale, thus is a continuous cause of action. Moreover, the departmental appeal was filed when the appellant came to know about the grant of selection grade to most of the employees with retrospective date and the judgment of this Tribunal decided on 6.6.2007, the departmental appeal of the appellant was replied not on the point of limitation but on merit. The superior courts have in the following cases reported in 2007 PLC (CS) Page 194, 2000 PLC (Civil Services) page 1240, NLR 2002 Service page 170, held that the courts are always very lenient regarding question of limitation in the extension of pay scale/pay matter, because the matter of pay is a continuous cause/recurring loss. In the instant case the appellant is suffering continuous loss for the non grant of increments w.e.f 1999. Reference can be made to cases reported in PLC 1996 (Civil Service) Page 832, PLC 1986 (Civil Service) page 66 and 2005 PLC (Civil Service) page 1439. Even

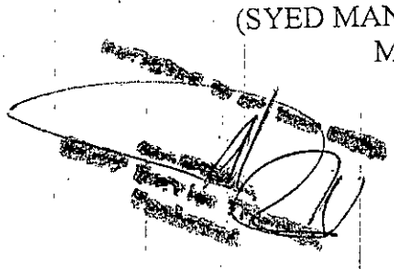
otherwise, the respondents department have itself meted out discriminatory treatment to its employee and not acted in accordance with law cannot be allowed to raise the question of limitation, because due to their in action the appellant was forced to filed the instant appeal. Much stress of the respondents was on the pendency of a case before the august Supreme Court of Pakistan between the same parties, however while consulting the record of that case it transpired that the judgment in this case would be having no bearing on the merit of the case, pending before the august Supreme Court of Pakistan. The matter before the apex court pertains to the determination of seniority of the employees where the Supreme Court would decide that whether seniority is to be granted from the grant of selection grade or from the date of regular promotion, therefore this case cannot be kept pending till the decision of the case of seniority.

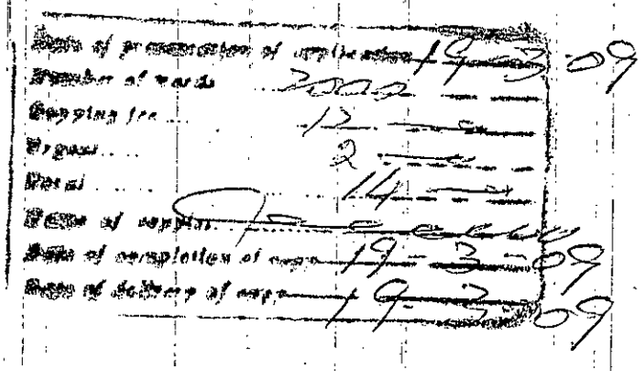
8. For what has been discussed above the appeal is accepted and the impugned order dated 23.6.2007 is set aside. The appellant shall be granted selection grade from the date when he become eligible under the rules i.e. 30.5.1995 on the analogy order dated 13.1.2004 allowed to similarly placed employees. The appellant will also entitled to annual increments etc. The decision in this appeal is to the extent of only granting monetary benefits to the appellant denied to the appellant vide the impugned order and has nothing with the pending appeal pertaining to seniority which will be decided by the Hon'ble Supreme Court of Pakistan. The parties are, however, left to bear their own costs. File be consigned to the record.

ANNOUNCED.
2.3.2009.

(SYED MANZOOR ALI SHAH)
MEMBER.

(ABDUL JALIL)
MEMBER.





KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No 10 /ST Dated 02 /01/2018

To

The Chief Engineer (South) Irrigation Department,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: **JUDGEMENT IN APPEAL NO. 983/13, MR.EDDA JAN**

I am directed to forward herewith a certified copy of Judgment dated 29/11/2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.