

No. 1009/13

02.3.2016

Counsel for the appellant and Mr. Saleem Shah,
Supdt alongwith Addl. A.G for the respondents present.

Vide detailed judgment of larger bench placed
on record of appeal No. 1330/2010, titled "Muhammad
Shafiq Versus Government of Khyber Pakhtunkhwa through
Secretary C&W Department, Peshawar etc.", this appeal is
also disposed of in terms as spelled out in the detailed
judgment. Parties are, however, left to bear their own costs
File be consigned to the record room.

ANNOUNCED

02.03.2016



Member (Executive)



Member (Judicial)

Case No.

2013

2016

Counsel for the appellant and Mr. [Name] Shah

(Name) (Address) Add. AG for the respondents present. We
 have heard arguments of the learned counsel for the parties
 and have perused the record. And our detailed judgment of
 today in connected Services Appeal No. [Case No.] 2010, titled
 "Shahamud Chaudhry Versus Government of Khyber
 Pakhtunkhwa through Secretary, P.W. Department,
 Peshawar etc.", delivered by larger bench, this appeal is also
 disposed of in terms as spelled out in the said detailed
 judgment. Parties are, however, left to bear their own costs,
 and be consigned to the record book.

ANNOUNCEMENT
2013-2016


Member (Judicial)

Chairman


Member (Judicial)

16.10.2015

Counsel for the appellant and Mr. Saleem Shah, Supdt. alongwith Addl: A.G for respondents present. Due to paucity of time, arguments could not be heard. Adjourned for final hearing before Special Bench to 8.2.2016. Registrar is directed to ensure that the rosters of S.Bs and D.Bs as well as Special Benches are systematically prepared and cases accordingly fixed. In future responsibility for mismanagement would lie on his shoulder.



Member (Judicial)


Chairman



Member (Executive)

08.02.2016

Counsel for the appellant and Mr. Saleem Shah, Supdt. alongwith Addl: A.G for respondents present. Arguments heard. Judgment reserved which is to be announced on a date in office.


Member (Judicial)


Chairman


Member (Executive)

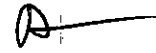
12.02.2016

Notices be issued to the parties for pronouncement of reserved judgment by D.B for 23-2-2016.


Chairman

23.2.2015

Counsel for the appellant and Mr. Muhammad Adeel Butt, AAG with Saleem Shah, Supdt. for the respondents present. The learned Judicial Member is on official tour to D.I.Khan, Therefore, case is adjourned to 23.4.2015 for arguments alongwith connected appeals.



MEMBER

23.4.2015

Junior to counsel for the appellant and Mr. Ziaullah, GP with Saleem Shah, Supdt. for the official respondents present. It came to know that larger bench has been constituted for disposal of similar nature cases in Service Appeal No. 95/2014. This appeal may also be put before the Worthy Chairman for constitution of larger bench.

MEMBER



MEMBER

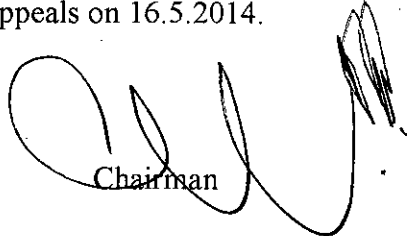
*Notice be issued to the Parties
for arguments on 30-4-2015
instead of 22-5-2015
allowing with connected A No.
95/15*

Chairman

*Ans for
29/4/15*

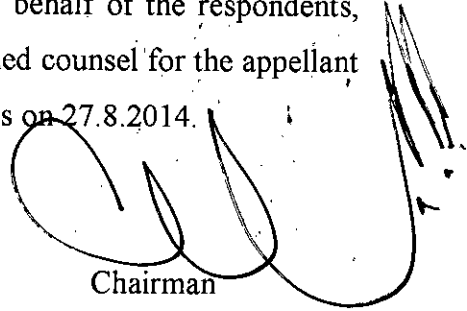
13.2.2014

Appellant with counsel, M/S. Salim Shah, Assistant for respondents No. 1 and 2 and Irshad Muhammad, Supdt. for respondent No. 3 with AAG present. Written reply has not been received. To come up for written reply alongwith connected appeals on 16.5.2014.


Chairman

16.5.2014

Appellant with counsel and Mr. Salim Shah, Assistant on behalf of respondents No.1 & 2 with AAG for the respondents present. Joint written reply received on behalf of the respondents, copy whereof is handed over to the learned counsel for the appellant for rejoinder alongwith connected appeals on 27.8.2014.


Chairman

27.8.2014

Appellant with counsel and Mr. Salim Shah, Assistant on behalf of respondents No. 1 and 2 with Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present. Rejoinder received on behalf of the appellant, copy whereof is handed over to the learned AAG for arguments alongwith connected appeals on 23.2.2015.


Chairman

Appeal No. 1008/2013
Mr. Rizq Ahmad


3.
19.09.2013

Clerk of counsel for the appellant present and requested for adjournment due to counsel for the appellant was busy in august High Court Peshawar. To come up for preliminary hearing on 28.11.2013.


Member

28.11.2013

Counsel for the appellant present and heard. Contended that the appellant has not been treated in accordance with law/rules. The appellant filed departmental appeal on 08.02.2013 which has not been responded within the statutory period of 90 days, hence the present appeal on 09.05.2013. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission of written reply on 13.02.2014.


Member

28.11.2013

This case be put before the Final Bench T for further proceedings.


Chairman



Appellant deposited
Security & process
fee Rs 180/- Bank
receipt is attached
with file

28

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1009/2013


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	25/06/2013	<p>The appeal of Mr. Riaz Ahmad resubmitted today by Mr. Muhammad Asif Yousafzai Advocate, may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	16-7-2013	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>19-9-2013</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Riaz Ahmad Sub Engineer, C&W Division Kohat received today i.e. on 09/05/2013 is incomplete on the following scores which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

Annexures-A, F, G and H of the appeal are illegible which may be replaced by legible one.

No. 759 /S.T,

Dt. 9/5 /2013.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. M. Asif Yousafzai Adv. Pesh.

Re-submitted after compliance
San Jai

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.**

Appeal No. 1009 /2013

Mr. Riaz Ahmad

V/S

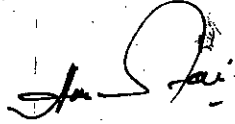
C&W Department

INDEX

S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	01-04
2.	Copy of Rules	- A -	05-07
3.	Copy of Judgment	- B -	08-11
4.	Copy of Appeal	- C -	12-13
5.	Copy of Order (4.9.2003)	- D -	14
6.	Copy of Order (5.12.2009)	- E -	15
7.	Copy of Service Tribunal's Judgment.	- F -	16-18
8.	Copy of Service Tribunal's Judgment.	- G -	19-20
9.	Copy of Service Tribunal's Judgment.	- H -	21-23
10.	Vakalat Nama	-----	24

APPELLANT
Riaz Ahmad

THROUGH:


(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.**

Appeal No. 1009 /2013

Mr. Riaz Ahmad, Sub Engineer,
C&W Division, Kohat.

N.W.F. Province
Case No. 894
Dated 09/5/13

APPELLANT

VERSUS

- 1- The Secretary, Government of Khyber Pakhtunkhwa, Works & Services Department, (Now C&W Department), Civil Secretariat, Peshawar.
- 2- The Chief Engineer, Works & Services Department (now C&W), Khyber Pakhtunkhwa, Peshawar.
- 3- The Secretary, Government of Khyber Pakhtunkhwa, Finance Department, Civil Secretariat, Peshawar.

RESPONDENTS

.....

**APPEAL UNDER SECTION 4 OF THE NWFP
SERVICE TRIBUNALS ACT FOR GRANTING
B-16 FOR HAVING 10 YEARS SERVICE AND
ALSO PASSED B GRADE EXAM.**

PRAYER:

That on acceptance of this appeal the respondent Deptt: may be directed to grant B-16 senior scale according to the rules for having 10 years service + passed B grade Exam with all consequential benefits. Any other remedy which this august Tribunal deems fit that may also be granted in favour of appellant.

.....

Recd to-12
9/5/13

co-submitted to-12
and filed,
25/10/13.

RESPECTFULLY SHEWETH:

- 1- That the appellant joined the W & S Deptt: in the year 1981 as Sub Engineer and also passed B grade departmental exam in the year 1991. Thus the appellant has more than 32 years service at his credit with good record throughout. All the dates are mentioned the departmental appeal of the appellant the copy of which is already attached as Annexure – C
- 2- That according to the rules 20 % of the post of senior scale sub engineers are to filled in on the basis of promotion from amongst persons who have ten years service and also passed B Grade exam. The appellant possesses the said requirement but despite of that the appellant has not be granted B-16. Copy of the rules is attached as Annexure – A.
- 3- That the august Tribunal has also decided such similar 15 appeals on 11.12.2012. As the appellant is the similarly placed person, therefore the appellant is also entitled to the relief under the principles of consistency and Supreme Court's judgment reported as 1996 SCMR-1185, 2009 SCMR-01. Copy of judgment is attached as Annexure - B
- 4- That the appellant also filed departmental appeal for grant of B-16 and proper fixation of seniority on 8.2.2013 and waited for 90 days but no reply has been received so far. Hence the present appeal on the following grounds amongst the others. Copy of the appeal is attached as Annexure – C.

GROUND:

- A- That not granting B-16 as per rules and not fixing the seniority at proper place is against the law, rules and norms of justice.
- B- That the appellant has attained eligibility for B-16 much earlier than those who are enjoying the benefits of B-16, therefore the appellant has been discriminated and deprived from his rights in an arbitrary manner.

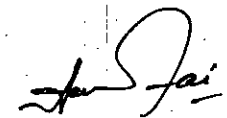
- C- That the appellant has not been dealt according to law and rules and has been discriminated by not extending the benefits of B-16 and seniority while the same has been given to the junior officials.
- D- That even the respondent Deptt; has granted B-16 to many officials vide order dated. 4.09.2003 & 5.12.2009. Thus the appellant is also entitled to the same relief. Copies of the orders are attached as Annexure- D & E.
- E- That the treatment of the respondent Deptt: is against the spirit of Article 4 and 25 of the constitution.
- F- That the rules regarding B-16 are still in field and this august Tribunal has also granted the same relief in appeals NO.1685/08, 791/08 decided on 7.5.09, Appeals NO.531/2001,533/2001, 534/2001, 535/2001, 537/2001 and 538/2001 decided on 6.6.07, Appeal No.194/93 decided on 7.9.94. and Appeal NO. 27/09. Copies of some judgments are attached as Annexure – F,G,H.
- G- That the appellant is also entitled to the same relief according to the principles of consistency and equality.
- H- That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.

APPELLANT
Riaz Ahmad



THROUGH:


(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

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= (5)

BETTER COPY
GOVERNMENT OF NWFP
SERVICES, GENERAL, ADMN TOURISM AND SPORTS DEPARTMENT

NOTIFICATION

Dated Peshawar, the 13th January, 00

Nostril(S&GAD)1-12/74- In exercise of the powers conferred by Section 26 of the North West Frontier Province Civil Servant Act, 1973, (NWFP Act XVIII of 1973), and in supersession of all previous rules on the subject in this behalf, the Government of the North West Frontier Province has pleased to make the following rules, namely:

**THE COMMUNICATOIN AND WORKS DEPARTMENT
(RECRUITMENT AND APPOINTMENT) RULES 1979**

1. (1) These rules may be called the Communication and Works Department (Recruitment and Appointment Rules 1979.
(2) They shall come into force at once.
2. The method of recruitment, minimum qualifications, age limit and other matters related thereto for the posts specified in column 2 of the Schedules annexed shall be such as given column-3 to 7 of the said Schedules.

Sd/--

SECRETARY TO GOVERNMENT OF NWFP
SERVICES AND GENERAL ADMN; DEPARTMENT

Dated Peshawar, the 13th Jan, 1990.

ENDST.NO.SORI(S&GAD)1-12/74
Copy forwarded to :

1. All Administrative Secretaries to Government of NWFP.
2. All Divisional Commissioners in NWFP.
3. Secretary to Governor, NWFP.
4. Secretary to Governor, NWFP.
5. All Heads of Attached Departments in NWFP.
6. All District and Sessions Judge in NWFP.
7. All Deputy Commissioners/Political Agent in NWFP.
8. Registrar, High court, Peshawar.
9. All Section Officers in the S&GAD.
10. Manager, Government Printing Press Peshawar for publication in the Government Gazette. He is requested to supply 60 copies of the printed.

Sd/-

Syed Noor Badshah
Secretary C&W Department

ATTESTED
A

BETTER COPY

Annexure-A (Pge-5)

BETER COPY

GOVERNMENT OF NWFP
SERVICES, GENERAL, ADMN; TOURISM AND SPORTS DEPARTMENT

NOTIFICATION

Dated Peshawar, the 13th January, 1990

No.SORI(S&GAD)1-12/72; In exercise of the powers conferred by Section 25 of the North West Frontier Province Civil Servant Act, 1973, (NWFP Act XVIII of 1973), and in supercession of all previous rules on the subject in this behalf, the Government of the North West Frontier Province pleased to make the following rules namely:

The Communication and Works Department
(Recruitment and Appointment) Rules, 1979.

1. (1) these rules may be called the Communication and Works Department (Recruitment and Appointment) Rules, 1979.

(2) They shall come into force at once.

2. The method of recruitment, minimum qualification age limit and other matters related thereto for the posts specified in column 2 of the schedules annexed shall be such as given column-3 to 7 of the said schedules.

Sd/- Secretary to Government of NWFP
Services & General Admn: Department,

Endst No.SORI(S&GAD)1-12/72; Dated Peshawar, the 13th Jan, 1990.

Copy forwarded to :-

1. All Administrative Secretaries to govt. of NWFP.
2. All Divisional Commissioners.

3. Secretary to Governor, NWFP.
4. All HADs in NWFP.
5. All District & Sessions Judge, in NWFP.
6. All Dy: Commissioner/P.A. in NWFP.
7. Registrar, High Court, Peshawar.
8. All Section Officer in the S&GAD.
9. Manager, Gov t. Printing Press, Peshawar for publication in the Government Gazette. He is requested to supply 60 copies of the print.

Sd/- Secretary to Government of NWFP
Services & General Admn: Department,

COMMUNICATION & WORKS DEPARTMENT
SCHEDULE-I

S.No.	Nomenclature of Post	Minimum Qualification for Appointments		Age for Initial Recruit. (Year)		Manner of Recruitment
		Initial Recruitment by Transfer	Promotion	Minimum	Maximum	
1	2	3	4	5	6	7
1.	Chief Engineer					By Selection on merit from amongst four senior most officers of the Department, with at least seventeen years experience as Government Servant, seniority being considered only in the case of officers of practically the same standard of merit.
2.	Superintending Engineer		Degree in Engineering from a recognized University			By Selection on merit from amongst the Executive Engineers or holders of equivalent posts in the Communication and Works Department, with at least twelve years service in Grades 17 and 18, seniority being considered only in the case of officers of practically the same standard of merit.
3.	Executive Engineer	Degree in Civil Electrical or Mechanical Engineering forms a recognized University; as may be specified by Government for the respective posts.	Degree or Diploma in the Engineering from a recognized Institution, as specified in column.			By Selection on merit with due record to seniority from amongst Assistant Engineers of the Communication and Works Department with at least six years service as such.

5

4.	Assistant Engineer					(a) Seventy percent by initial recruitment. (b) Ten percent by selection on merit with due regard to seniority from amongst sub engineers of the Department who hold a degree; and (c) Twenty percent by selection on merit with due regard to seniority from amongst senior scale sub engineers of the department, who hold a diploma and have passed departmental professional examination.
5.	Senior Scale Sub Engineer		Diploma in Engineering from a recognized Institute.			Twenty five percent of the total number of posts of the diploma holders, Sub-Engineers shall from the cadre of Senior Scale Sub Engineers and shall be filled by selection on merit with due regard to seniority from amongst Sub Engineers of the Department, who have passed the Departmental Examination and have at least ten years service as such.
6.	Administrative Officer, Budget and Accounts Officers.					By selection on merit with due regard to seniority from amongst holders of the posts of Senior Superintendents/Superintendents, in the Department.

(7)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.



Appeal No. 994/NEEM/2004

Date of Institution. ... 03.12.2004.
Date of Decision ... 11.12.2012.

Naushad Khan, Sub Engineer O/O Deputy Director-I,
Works & Services Department Peshawar.

(Appellant)

VERSUS

1. The Secretary, Government of Khyber Pakhtunkhwa, Works & Services Department, Peshawar.
2. The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariate, Peshawar.
3. The Departmental Promotion Committee through its Chairman (Respondent No.1).
4. Mr. Zafrullah Khan, Sub Engineer, Works & Services Department, Nowshera.
5. Mr. Tariq Usman, Sub Engineer, W&S Department, Khyber Agency, Jamrud.
6. Mr. Muhammad Javed Rahim, Sub-Engineer, W&S Deptt. D.I.Khan.
7. Mr. Jamshed Khan Sub Engineer, W&S Department, Buner.
8. Mr. Misal Khan, Sub Engineer, presently Assistant Director Works & Services Department Tank (S.W Agency).

(Respondents).

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDERS DATED 4.9.2003 AND 19.4.2004 PASSED BY RESPONDENT NO. 1 ON THE RECOMMENDATION OF RESPONDENT NO. 3 THEREBY GRANTED SENIOR SCALE (BPS-16) TO RESPONDENTS NO. 4 TO 8 IRRESPECTIVE OF THEIR INELIGIBILITY AGAINST WHICH HE FILED DEPARTMENTAL APPEAL DATED 13.8.2004 BUT THE SAME WAS NOT DISPOSED OF WITHIN STATUTORY PERIOD OF NINETY DAYS.

MR. MUHAMMAD ASIF YOUSAFZAI,
Advocate

... For appellant.

MR. SHERAFGAN KHATTAK,
Addl. Advocate General

... For official respondents

MR. IJAZ ANWAR,
Advocate

... For private respondents No. 4, 6, 7 & 8.

SYED MANZOOR ALI SHAH,
MR. NOOR ALI KHAN,

MEMBER

MEMBER

JUDGMENT

SYED MANZOOR ALI SHAH, MEMBER. This appeal has been filed by Naushad Khan, the appellant under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 against the order dated 4.9.2003 and order dated 19.4.2004,

ATTACHED
A

passed by respondent No. 1, whereby on the recommendation of Departmental Promotion Committee, private respondents No. 4 to 8 had been granted Senior Scale (BPS-16). It has been prayed that on acceptance of the appeal, the impugned orders may be set aside respondent No. 1 may be directed to consider name of the appellant for Senior Scale (BPS-16).

2. Brief facts of the case are that the appellant joined the respondent department as Sub Engineer on 28.5.1980 and in the year 1991 qualified Grade-B and A examination in the years 1996 and 1997 respectively. Final seniority list of Sub Engineers as it stood on 31.12.1998 issued wherein name of the appellant appeared at S.No. 50 while the names of private respondents No. 4 to 8 were placed at S.No. 52, 61, 63, 72 and 236. It shows that the appellant was senior to private respondents No. 4 to 8 who were allowed Senior Scale BPS-16 by respondent No. 1 through orders dated 4.9.2003 and 19.4.2004 while the appellant has been discriminated. When the appellant came to know about the impugned orders, so he immediately filed departmental appeal on 13.8.2004 which elicited no response within the statutory period of ninety days, hence he filed service appeal No. 994/2004 before this Tribunal.

3. The appeal was admitted to regular hearing on 6.1.2005 and notices have been issued to the respondents. The respondents have filed their written replies and contested the appeal. The appellant also filed rejoinder in rebuttal. Vide order dated 27.3.2007, the case was dismissed by this Tribunal. Feeling aggrieved, the appellant filed Civil Petition No. 312-P of 2007 before the august Supreme Court of Pakistan. Vide order dated 4.3.2010, the case has been remanded in the following terms:-

"Learned counsel appearing for the parties, after having argued the case at length contended that as the points involved in this case have not been elaborately discussed by the Service Tribunal including the one whether the Tribunal can dismiss the appeal on the question of misjoinder of causes of action and whether without making calculation in respect of period of filing and disposal of departmental appeal, the Tribunal can come to the conclusion that the departmental appeal is barred by time, therefore, on setting aside the impugned judgment, case be remanded to the Service Tribunal for decision afresh after hearing to all concerned.

Petition is converted into appeal and allowed as a result whereof that case is remanded to the NWFP Service Tribunal for decision afresh, after providing equal opportunity of hearing to both the sides, expeditiously, as far as possible within a period of three months, after receipt whereof."

4. After receipt of the appeal from the august Supreme Court of Pakistan and parties and their counsel were summoned for arguments. Arguments heard at length. Record perused.

5. The learned counsel for the appellant argued that the appellant was appointed by the respondent department as Sub Engineer on 28.5.1980 and passed Grade A & B examination. Seniority list of Sub Engineers as it stood on 31.12.1998 issued wherein name of the appellant appeared at S.No. 50 while the names of private respondents were at S.No. 52, 61, 63, 72 and 236 respectively. The private respondents were considered for Senior Scale BPS-16 while the appellant has not been considered and ignored. The appellant was not considered by the DPC due to his incomplete record. It was the responsibility of the respondent department to provide official record of the appellant and sent his case to the Departmental Promotion Committee for consideration of his name against Senior Scale BPS-16. If the record was not available, the appellant could not be suffered for the lapses and fault of the respondent department. Junior to the appellant had been promoted while he has been deprived of his legal right for no fault on his behalf. The learned counsel for the appellant further argued that the benefits of Senior Scale BPS-16 have been granted to similarly placed person and the appellant is also entitled to the same treatment under the principles of consistency. The learned counsel for the appellant relied on 2006-SCMR-1082, 2007-PLC(C.S) 683, 1996-SCMR-1185 and 2007 PLC(C.S) 152 and judgment dated 7.5.2009 of this Tribunal in similar appeal No. 791/2008 decided in favour of appellant. The learned counsel for the appellant further argued that in the matter of promotion and pay, question of limitation does not arise. He relied on 2007-PLC(C.S) 1267, 2002-PLC (CS) 1388 and 2003-PLC (CS) 178. In a reported judgment of the august Supreme Court of Pakistan as reported in PLD 2003-Supreme Court 724, decision of the cases on merits always to be encouraged instead of non-suiting the litigants for technical reasons including limitation. He requested that the appeal may be accepted as prayed for.

6. The learned counsel for private respondents on the other hand argued that the private respondents No. 4 to 8 have been granted Senior Scale BPS-16 on the recommendations of the Departmental Promotion Committee vide orders dated 4.9.2003 and 19.4.2004. The appellant was not considered by the DPC due to his incomplete service record. The appellant did not challenge the seniority earlier seniority lists nor selection grade/Senior Scale at the relevant time and the present appeal is hopelessly time barred. Now the facility of Selection Grade/Move-over has already been withdrawn by the Provincial Government w.e.f. 1.12.2011, vide Finance Department letters dated 15.11.2001 and 6.4.2003 and in the prevalent circumstances, the present appeal has become infructuous. He requested that the

ATTESTED

appeal may be dismissed. The learned AAG also supported arguments of the learned counsel for the private respondents.

7. The Tribunal observes being term and condition of service, this Tribunal has ample jurisdiction to entertain the present appeal. In the matter of promotion and pay, question of limitation does not arise. The august Supreme Court of Pakistan in a judgment as reported in PLD 2003-Supreme Court 724, decision of the cases on merits always to be encouraged instead of non-suiting the litigants for technical reasons including limitation. Private respondents have been granted Senior Scale BPS-16, the appellant being similarly placed person also entitled for the same benefit as per judgment of the august Supreme Court as reported in 1996-SCMR-1185.

8. In view of the above, the appeal is accepted and the respondents are directed to allow the appellant Senior Scale BPS-16 from due date. Parties are left to bear their own costs. File be consigned to the record.

9. It is to be noted that there are other connected appeals filed in the years 2010 and 2011 fixed for arguments to-day, vide Service Appeals (1) No. 106/2010, Karimullah Khan, (2) No. 107/2010, Gul Malook, (3) No. 510/2010, Sanallah, (4) No. 511/2010, Syed Muhammad Tariq, (5) No. 512/2010, Malik Shakir Pervez, (6) -No. 579/2010, Muhammad Zahir Shah-III, (7) No. 1014/2010, Muhammad Zahir Shah, (8) No. 1230/2010, Muhammad Atique Farooq, (9) No. 1817/2010, Tariq Yousaf, (10) No. 1818/2010, Muhammad Najeeb, (11) No. 1908/2010, Ajmal Anwar, (12) No. 3121/2010, Jamal Khan, (13) No. 1254/2011, Mashal Khan, and (14) No. 1675/2011, Naushad Khan-II. Our this judgment will also dispose of the aforementioned service appeals in the same manner.

ANNOUNCED
11.17.2012.

Sd/-
(NOOR ALI KHAN)
MEMBER

Sd/-
(SYED MANZOOR ALI SHAH)
MEMBER

1600 23-1-2013
10-00
25 00
12-00

Certified copy
K. M. ...
Secretary, Peshawar

23-1-2013
23-1-2013

13

APPEAL TO SERVICE TRIBUNAL OR SUPREME COURTEFFECT.....

If the Service Tribunal or supreme court decides the point of law relating to terms of service of a civil servants which covers not only the case of civil servants who litigated but also of other civil servants who may have not taken any legal proceedings in such case, the dictates and the good governance demand that the benefit 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 any other forum (P.1193) C.

Some other Sub Engineers have also been allowed BPS-16 on the decision of Service Tribunal Khyber pakhtunkhwa who are senior than the above named Sub Engineers.

In view of the above reasons/facts, it is requested that my case may kindly be considered for the grant of BPS-16 w.e.f. 9.2.2003 for which I will be very thankful to you and pray for your long life and prosperity.

With best regard.

Yours obediently



(Riaz Ahmad)
Sub Engineer
C&W Division Kohat.

Dated 8 /2/2013

12

To

The Secretary to Government of KP
Communication and Works Department
Peshawar.

Through

Proper Channel.

Subject:

GRANT OF BPS 16 (SENIOR SCALE) ON PASSING B-GRADE EXAMINATION AND 10 YEARS SERVICE/FIXATION OF SENIORITY ON THE BASIS OF 1ST ENTRY INTO THE GOVERNMENT SERVICE.

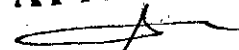
Respected Sir,

I have the honour to submit that after going to know about the seniority as notified by the Chief Engineer (Centre) C&W Department Peshawar, it reveals that Mr. Misal Khan and Syed Sardar Shah Sub Engineers as per 1st entry into the Government Service are Junior to me, have been granted BPS-16 in pursuance to the appointment /recruitment rules 1979 of the C&W Department promulgated on the advise of Finance Department circular letter during 12/75 which stated that :

“ 25% of the total numbers of posts of diploma holders Sub Engineers shall form the cadre of Senior Scale and shall be filled by way of selection of merits with due regard to seniority from amongst the sub engineers of the Department who have passed the departmental examination and have at least 10 years service as such”

I am senior than the above two officials as per entry into Service as Sub Engineer on 16.12.1981. I passed Departmental “B” Grade Examination in 11/91 and fulfill the prescribed criteria of the rules as is evident from the seniority lists notified during 1995,1996,1997,1998,1999 and the last one during 2010. I was eligible for Senior Scale B-16 at that time when the case of Mr. Misal Khan was processed by the Department during the Meeting held on 12.8.2003(Order dated 4.9.2003). I was fully covering the condition /criteria to the grant of BPS 16 but I was ignored during the Departmental Promotion Committee which is also conformed from the memo of Establishment Department Regulation wing No. SORV(E&AD)1-323/2005/Vol.II dated 19.8.2005 and apex Court judgment mentioned in the SCMR 1996(P-1185-1193) C states:

ATTESTED



Continued Page2.....

D (14)

GOVERNMENT OF N.W.F.P.
WORKS & SERVICES DEPARTMENT

Dated Peshawar the 04/09/2003

ORDER

No. SOE-I/W&S/4-2/2003/S.S Consequent upon recommendations of the Departmental Promotion Committee of the Works & Services Department during its meeting held on 12.08.2003, the competent authority has been pleased to the grant of Senior Scale (BS-16) in respect of the following Sub Engineers (BS-11) of the Works & Services Department, with immediate effect:-

1. Mr. Muhammad Arif,
Sub Engineer O/o the XEN Dev:
C&W Division Mattani at Kohat.
2. Mr. Missal Khan,
Sub Engineer O/o the XEN Dev:
C&W Division SWA at Tank.


SECRETARY TO GOVT OF NWFP
WORKS & SERVICES DEPARTMENT

End: No. SOE-I/W&S/4-2/2003/S.S

Dated Peshawar the 04.09.2003

Copy forwarded to the:-

1. Accountant General NWFP, Peshawar.
2. Chief Engineer Works & Services Peshawar,
3. Chief Engineer Works & Services (FATA) Peshawar.
4. Managing Director Frontier Highways Authority Peshawar.
5. Deputy Secretary (Reg-III) Establishment Department Peshawar.
6. Deputy Secretary (Reg) Finance Department, Peshawar.
7. All Superintending Engineer W&S Department.
8. District/Agency Accounts Officers concerned.
9. Officials concerned.
10. PS to Secretary Works & Services Department.
11. PA to Additional Secretary Works & Services Department.
12. Section Officer (Estt-II) Works & Services Department.
13. Office Order/Personal files.


(MUHAMMAD-AKBAR KHAN)
SECTION OFFICER (ESTT-I)

07C

ATTESTED



08.9.03

E
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(15)

GOVERNMENT OF NWFP
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar, the Dec 05, 2009.

ORDER:

No SIDE-1/C&W/4-2/91: Consequent upon the recommendations of the Departmental Promotion Committee during its meeting held on 16.11.2009, the competent authority has been pleased to grant Senior Scale BPS-16 in respect of the Syed Sardar Shah Sub Engineer of the C&W Department from the date from which his juniors were awarded BS-16, in order to implement the decision of NWFP Services Tribunal in Service Appeal No. 27/2009.

Secretary to Govt of NWFP
Communication & Works Department

Ends: of even number and date

Copy is forwarded to the:-

1. Accountant General NWFP, Peshawar.
2. Chief Engineer, C&W Peshawar.
3. Executive District Officer, W&S Kohat
4. Deputy Director Works & Services, Kohat
5. Registrar NWFP Services Tribunal Peshawar
6. District Accounts Officer Kohat
7. PS to Secretary C&W Peshawar
8. Official concerned.
9. Office order File/Personal File

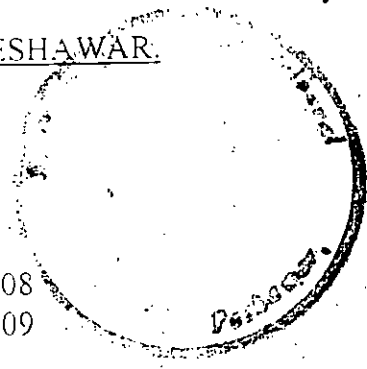

(RAHIM BADSHAH)
SECTION OFFICER (ESTT)

ATTESTED


BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 791 of 2008

Date of Institution. 22.05.2008
Date of Decision. 07.05.2009



Ikramullah-II, Sub Engineer, office of the Deputy Director-III
Works & Services Department, City District Government, Peshawar. (Appellant)

VERSUS

1. Secretary to Government of NWFP; Works & Services Department, Peshawar.
2. Chief Engineer, Works & Services Department, Peshawar.
3. Misal Khan-II son of Yousaf Khan, Sub Engineer, Assistant Director (Buildings) Works & Services Department Tank and 4 others. (Respondents)

Service Appeal under Section 4 of the N.W.F.P Service Tribunals Act, 1974 against the seniority list of Sub Engineers in BPS-16 and BPS-11 of the B and R Wing in Works and Services Department as it stood on 30.11.2007, issued by respondent No.2 on 08.1.2008 whereby respondents No. 3 to 7 have been shown at S.Nos. 82, 85, 88, 89 and 90 respectively while the appellant has been shown at S.No.122 despite the fact that in the Seniority list issued in the year, 1999, the appellant was at S.No.54 while the respondents No. 3 to 7 were at S.No. 236, 237, 61, 63, and 72 against which the appellant's departmental appeal dated 22.1.2008 communicated to respondent NO.1 through proper channel vide Dy. Director-III memo No. 59/3-E, dated 25.1.2008, has not been disposed of within statutory period of ninety days.

ATTESTED

MUHAMMAD ASIF YOUSAFZAI,
Advocate.

For appellant

MR. ZAHID KARIM,
Addl. Government Pleader.

For official respondents.

MR. WAQAR AHMAD SETH,
Advocate.

For respondents No.3, 5 to 7.

MR. JUSTICE (R) SALIM KHAN,
MR. ABDUL JALIL KHAN,

CHAIRMAN,
MEMBER.

JUDGMENT

JUSTICE (R) SALIM KHAN, CHAIRMAN:- The appellant was appointed as Sub Engineer in C&W Department on 14.7.1980. In the recent seniority list, respondents No. 3 to 7 have been shown at S.No. 82, 85, 88, 89 and 90

respectively while the appellant has been shown at S.No. 122. According to the seniority list of: 1999, the appellant was at S.No. 54 while respondents No. 3 to 7 were at S.Nos. 236, 237, 61, 63 and 72 respectively. The departmental appeal of the appellant was not disposed of. The present appeal No. 791 of 2008 was filed by Ikramullah, appellant on 22.5.2008.

2. Sher Wali Jang, appellant was appointed as Sub Engineer on 14.2.1981, while respondent No.4 was so appointed on 16.2.1981, respondent No. 5 on 01.4.1981, respondent No.6 on 22.11.1981 and respondent No.7 on 22.3.1988. The seniority list of January, 2008 shows that BPS-16 Selection Grade was granted to the private respondents. The application of the appellant dated 27.2.2008 was refused on 08.4.2008. The departmental appeal dated 21.5.2008 of the appellant was not decided.

3. The respondents contested the appeals. In the case of Ikramullah, they contended that the Works & Services Department had created a separate-tire (tier) of Senior Scale Sub Engineers and framed Service Rules. Some of the Sub Engineers of Works and Services Department agitated the matter, and a committee was constituted to investigate the matter, which decided that both the tiers would be merged but Senior Scale Sub Engineers (BPS-16) would be declared senior to Sub Engineers in BPS-11. They further contended that the case of Ikramullah was not considered by the Departmental Promotion Committee due to his incomplete record, and the facility of selection grade has already been discontinued/freezed by the Provincial Government w.e.f. 1.12.2001 vide Finance Department Notification dated 15.11.2001 and 06.4.2003. In the case of Sher Wali Jang, they took up the same issues and the same objections. They contended that the basic condition for grant of selection grade to 25% of Sub Engineers (BPS-11) was 10 years service and passing "B" Grade examination, and the case of Sher Wali Jang was not considered by the Departmental Promotion Committee due to his incomplete record.

4. We heard the arguments and perused the record.

5. The question of seniority is related to the question of grant of selection grade which has provided gains to the private respondents and continuous loss to the appellants. The case of the appellants had to be considered at the time when their respective immediate junior was granted selection grade. The cases of both the

ATTESTED
EXAMINER
OF TRIBUNAL

appellants were merely deferred due to incomplete record. It was the responsibility of the official respondents to complete the record of the appellants as early as was practicable, to consider their cases for grant of selection grade, in preference to their juniors, at the relevant time, to re-fix their seniority, after antedating the date of selection grade to them, and to decide their dispute accordingly.

6. The cases of both the appellants have to be considered in the light of the rules/policy in vogue at the time of grant of selection grade to their juniors, after completion of their record. Each of the appellants, if found senior to any of the private respondents, shall have to be granted selection grade w.e.f. the date on which the same was granted to his next junior, by issuing an order, with ante-dated effect. The merger of the two sets of Sub Engineers, and the discontinuance/freezing of the grant of selection grade shall not, at this stage, prejudice the rights of the appellants to the grant of selection grade and to their seniority in accordance with the original dates of regular appointment. The selection grade, for the purposes of pay and pension as well as other financial benefits of the appellants, shall be counted from the time when the same were to be given to them in preference of their juniors, in accordance with the date of decision of first D.P.C meeting, which had recommended selection grade for their next juniors, and from the dates on which selection grade was granted to their next juniors. The dis-continuance of the selection grade, after such grant, shall be effective in the same manner as it is effective for all other civil servants. The selection grade so granted to the appellants shall merge in their salary for all future purposes in accordance with the dis-continuance orders, and policy of the Government. The appellants shall, thus, regain their original seniority, and the seniority lists shall be corrected/modified accordingly.

7. In view of the above, we accept both the appeals in the above terms, with the directions to the official respondents to act as per observations as mentioned above. The appellants are also entitled to the costs of their litigation in their present cases from the official respondents.

ANNOUNCED
07.5.2009

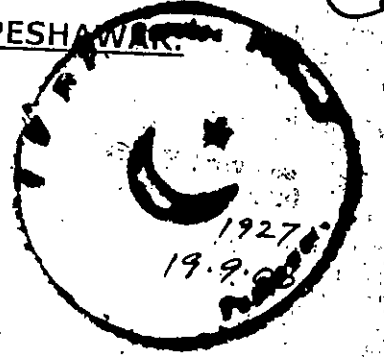
Sd/- Justice S. Salim Waseem
Chairman
Sd/- Abdul Jalil Waseem
Member

2

B1 19

BEFORE THE NWFP SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 1685 /08.



Sher Wali Jang, Asstt: Technical Officer,
Anti Corruption Establishment, Peshawar.....Appellant.

VERSUS

- 1- The Secretary Works & Services Deptt: NWFP Peshawar.
- 2- The Chief Engineer Works & Services Deptt: Peshawar.
- 3- The Secretary Finance Deptt: NWFP Peshawar.
- 4- Mr. Tariq Usman Sub Engineer,
AD. FMR, Hayat Abad, Peshawar.
- 5- Mr. Mohammad Javed Rahim, Sub Engineer,
AD. Building-I, w & S Deptt: D.I. Khan.
- 6- Mr. Jamshed Khan, Sub Engineer,
AD. Building, w & S Deptt: Buner.
- 7- Mr. Misal Khan, Sub engineer,
AD. Building-II, w & S Deptt: D.I. Khan.

.....Respondents.

APPEAL UNDER SECTION 4 OF THE NWFP
SERVICE TRIBUNAL TRIBUNALS ACT 1974
AGAINST THE ORDER DATED.8.4.08
WHEREBY THE RESPONDENT NO.2 REFUSED
TO GRANT B-16 AND DUE SENIORITY TO
APPELLANT AND AGAINST NOT TAKING
ACTION ON THE DEPARTMENTAL APPEAL OF
APPELLANT WITHIN STATUTORY PERIOD OF
90 DAYS.

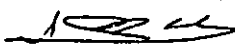



PRAYER: That on acceptance of this appeal the respondent
Deptt: may please be directed to grant the appellant
B-16 from his due date and to fix the seniority of
appellant over and above the private respondents by
setting aside the impugned order dated.8.4.08. Any

to-day
and

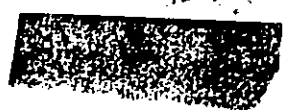
M. A. A.
Registrar,
4/11/08

ATTESTED
EXAMINER
NWFP Service Tribunal
Peshawar

20

Serial No. of Order or Proceedings	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
	07.5.2009	<p>Counsel for the appellants and A.G.F (Zahid Karim) alongwith Anwarul Haq, S.O for official respondents and counsel for private respondents present. Arguments heard and record perused. Vide our detailed judgment of to-day in connected Service Appeal No. 791 of 2008, titled "Ikramullah Versus Secretary to Government of NWFP, Works & Services Department Peshawar etc.", we also accept the present appeal ^{also} as per para-6 of the judgment, with costs.</p> <p><u>ANNOUNCED.</u> 07.5.2009.</p> <p style="text-align: center;"> MEMBER</p> <p style="text-align: center;"> CHAIRMAN</p> <p style="text-align: center;"></p> <p style="text-align: center;">11-3-10</p> <p></p>

Chairman



BEFORE THE NWFP SERVICE TRIBUNAL PESHAWAR

Appeal No. 27/09

Date of institution - 27.09.2008
Date of decision - 23.04.2009

Syed Sardar Shah, Sub Engineer, Works and Services KohatAppellant.

VERSUS

1. The Chief Secretary NWFP Peshawar.
2. The Secretary Works and Services Deptt: NWFP Peshawar.
3. The Chief Engineer Works and Services Deptt:
4. The Secretary Finance Deptt: NWFP Peshawar.....Respondents.

Appeal U/S 4 of the NWF Service Tribunals Act 1974 for granting B 16 as per rules and against not taking action on the Departmental appeal of the appellant.

Mr. M. Asif Yousaf Zai, Advocate.....For Appellant.
Mr. Ghulam Mustafa, A.G.P.....For Respondents.

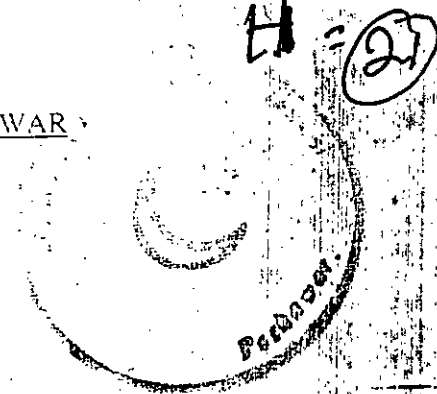
MR. ABDUL JALILMEMBER.
MR. SULTAN MEHMOOD KHATTAK.....MEMBER.

JUDGMENT

ABDUL JALIL, MEMBER: - This appeal has been filed by the appellant for grant of B- 16 as per rules and against not taking action on the departmental appeal of the appellant. He has prayed that the Respondents may be directed to grant BPS-16 to him on acquiring Diploma and B-grade examination as per Rules from his due date.

2. Brief facts of the case as narrated in the memo of appeal are that the appellant was appointed as Road Inspector in the Respondent Department vide order dated 17.4.1982. The appellant was promoted as Sub Engineer (B-11) vide order dated 28.3.1990. The appellant has also passed B-grade departmental examination on 17.11.1991 and has more than 10 years service at his credit. Some junior Sub Engineers were granted B-16 on 4.9.2003 and 19.4.2004. The appellant filed a departmental appeal against those order on 1.5.2004 which was not responded, therefore the appellant filed a service appeal bearing No. 607/2005 in this Tribunal. The said appeal was finally disposed of on 15.12.2006 in terms that the appellant be considered for BPS-16 if he otherwise eligible and qualified

ATTESTED
EXAMINER
NWFP Service Tribunal
Peshawar



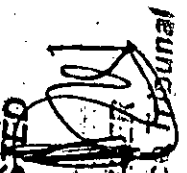
under the rules. After the directions of the Tribunal the Respondents wanted to file CPLA in the Supreme Court but the same was decided unfit by the Law Department on 22.1.2007. Thereafter the appellant filed implementation petition in this Tribunal. The said implementation petition was filed on 28.4.2008 after receiving the decision of the Department in negative on 28.4.2008. Then the appellant filed a departmental appeal and waited for 90 days but no reply has been received by the appellant so far. Hence the present appeal.

3. The respondents were summoned. They appeared through 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 not granting BPS-16 to appellant as per rules and not taking action on the departmental appeal of the appellant within 90 days is against law, facts, and norms of justice. The appellant is fully entitled to B-16 as per Rules of the department from his due date. The said rules are still in field and the juniors employees to appellant have been benefited by these rules. Similar appeal has already been accepted by this Tribunal and as such the appellant is also entitled to the said benefit under the principle of consistency. Decision of the department is not correct because the said rules are not being superseded so far. The appellant has been discriminated as the benefits of B-16 have been granted to the junior employee but denied to the appellant on flimsy grounds. He prayed that the appeal may be accepted as prayed for.

6. The learned AGP argued that in light of the recommendations of the standing Service Rules Committee, the W&S Department has been issued Notification on 19.4.2004, wherein all senior scale Sub Engineers (B-16) in the W&S Department, shall, with immediate effect, be re-designated as Sub Engineers in their existing pay and scale and shall be merged with the cadre of Sub Engineers in the Department, provided that for the purpose of maintainifg their inter-se-seniority, they shall rank senior to the existing Sub Engineer. On the basis of above Notification, W&S Department amended the service rules of the Sub Engineers on 04.01.2005. Some senior Sub Inspectors junior to him have been granted senior scale (B-16) on the recommendation of Departmental Promotion.

ATTESTED

 NWFP Service Tribunal
 Peshawar

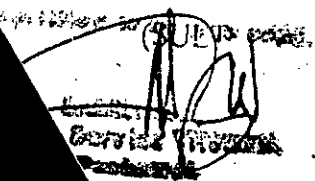
Committee at that time. The Government allowed selection grade (B-16) to 25% of the Sub Engineer (B-11) and the basic condition for the grant of selection grade was 10 years service and passing of B. Grade examination. The appellant was not considered by the DPC due to his incomplete record. The facility of selection grade has already been discontinued by the Provincial Government w.e.f 01.12.2001 vide Finance Department's letter No.FD (PRC) 1-1/01 dated 15.11.2001 and dated 6.4.2001 and in the prevalent circumstances the plea taken by the appellant has been infructuous. The Services Tribunal NWFP has directed in his decision dated 5.12.2006 that the appeal is disposed of with the direction to Respondents No.1 to 3 that the appellant be considered for BPS-16 if he has otherwise qualified and entitled for same under the relevant rules which was examined in the department and the appellant was not entitled to the grant of selection grade BPS-16 on the ground that according to the seniority position at the time, the appellant was at serial No.244. As per service record to the Respondent Sub Engineers who have already granted selection grade are senior to him. Moreover, the Government has discontinued the grant of selection grade to all the Government servants' grade. He prayed that the appeal may be dismissed.

After hearing arguments of the learned counsel for the parties, the Tribunal is of the view that there is sufficient weight in the arguments put forth by the learned counsel for the appellant. It was the responsibility of the department as per instruction on performance Evaluation report containing instruction 1.0 and 1.4. The appellant cannot be deprived from grant of BPS-16 due to incomplete record. It was the responsibility of the department to maintain his record.

In view of the above the appeal is accepted and his grant of BPS-16 may be antedated from the date it was due to him. The parties are, however, left to bear their own costs. File be consigned to the record.

ANNOUNCED.
23.04.2009.

Md. Abdul Jalil
Member
Sd/- Sultan Mahmood Wahid
Member



VAKALAT NAMA

NO. _____/20

IN THE COURT OF Service Tribunal Peshawar

Riaz Ahmed (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Govt Serv (Respondent)
(Defendant)

I/We Riaz Ahmed (Appellant),

Do hereby appoint and constitute **M.Asif Yousafzai, Advocate, Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/20

[Signature]
(CLIENT)

ACCEPTED

[Signature]
M. ASIF YOUSAFZAI
Advocate

M. ASIF YOUSAFZAI
Advocate High Court,
Peshawar.

OFFICE:

Room No.1, Upper Floor,
Islamia Club Building,
Khyber Bazar Peshawar.
Ph.091-2211391-
0333-9103240

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR
APPEAL NO. 1009 OF 2013

Riaz Ahmad, Sub Engineer,
C&W Division Kohat

--- Appellant

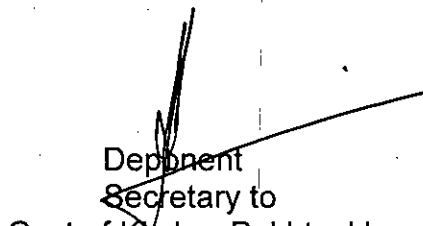
Versus

1. Secretary to Govt of Khyber Pakhtunkhwa
C&W Department, Peshawar
2. Chief Engineer (Centre)
C&W Department, Peshawar
3. Secretary to Govt of Khyber Pakhtunkhwa
Finance Department, Peshawar

--- Respondents

COUNTER AFFIDAVIT

We the respondent hereby affirm and declare that all the contents of the reply are correct to the best of our knowledge and belief and nothing has been concealed.


Deponent
Secretary to
Govt of Khyber Pakhtunkhwa
C&W Department

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR
APPEAL NO. 1009 OF 2013

Riaz Ahmad, Sub Engineer, --- Appellant
C&W Division Kohat

Versus

1. Secretary to Govt of Khyber Pakhtunkhwa --- Respondents
C&W Department, Peshawar
2. Chief Engineer (Centre)
C&W Department, Peshawar
3. Secretary to Govt of Khyber Pakhtunkhwa
Finance Department, Peshawar

Joint Parawise Comments on behalf of Respondents No. 1 to 3

Respectfully Sheweth

Preliminary Objections

1. That the appeal is not maintainable.
2. That the petitioner has never challenged in time any order in which his rights were ignored
3. That the appeal is premature.
4. That the appellant has no cause of action and locus standi.
5. That the appeal is time barred.
6. That the appeal is liable to be rejected on ground of non-joinder and mis-joinder of necessary parties
7. That the appellant is estopped by his own conduct to file the instant appeal

Facts

1. Subject to proof
2. Incorrect. In fact the selection grade BS-16 @25% of the total posts of the Diploma Holder Sub Engineers (BS-11) was allowed by the Government with the condition that holder of the post shall be filled by selection on merit with due regard to seniority from amongst Sub Engineers of the Department, who have passed the Departmental B-Grade Examination and have at-least ten (10) years service as such. The same facility has been discontinued by the Provincial Government w.e.f. 01.12.2001 vide Finance Deptt letter No.FD(PRC)1-1/2001 dated 06.04.2003 (**Annex-I**). The Establishment Deptt has issued a circular to all Administrative Secretaries and directed to clear all left over cases of Govt servants who were eligible for selection grade/move over on or before 01.12.2001 (**Annex-II**). Consequently the Respondent Department granted selection grade (BS-16) to 10 Sub Engineers in the year 2003 and 2004 (**Annex-III**) who were eligible and posts were available/vacant before 01.01.2001. Although the name of the appellant was at Sl.No. 74 of the seniority list of Sub Engineers dated 12.12.2000 (**Annex-IV**), the appellant was not considered by the Departmental Promotion Committee due to incomplete record, therefore, in the prevailing circumstances, the plea of the appellant is infructuous.
3. Correct to the extent that the attention of learned Services Tribunal is also invited into the subject chronic issue that as mentioned above, the grant of BS-16 @ 25% of the total sanctioned posts of Sub Engineers was allowed, which was subsequently freezed in 2001. Accordingly the selection grade upto 2001 was allowed against the available reserved quota of 25%, however, due to litigation and decision/ orders of leaned Tribunal so many Sub Engineers have been allowed ante-date selection grade only on the basis of their seniority,


whereas at the time of consideration of selection grade cases none of them were otherwise, suitable for consideration to the grant of selection grade due to incomplete record of their service i.e. non-availability of ACRs or pending inquiries against them. This situation is increasing day by day and the Sub Engineers who were not consider earlier, indulging themselves into filing of appeals in the Tribunal. In case the selection grade is granted on the basis of seniority at this belated stage and by allowing ante date selection grade B-16 to the Sub Engineers who are now in litigation on the basis of seniority, the reserve quota of 25% will be increased to 50%, as a number of Sub Engineers have been allowed ante date selection grade in the light of the court decision. This point needs proper consideration by the Hon'able court, so that un-necessary litigation is avoided in future.


4. Incorrect, Departmental appeal was received and processed in the Department as he has been informed about the ground of rejection of department appeal accordingly.


Grounds

- A. Incorrect, as explained in para-2 of the facts. Moreover, the appellant was not entitled to the said scale as selection grade is not granted on the basis of seniority-cum-fitness rather selection on merit.
- B. Incorrect. The selection grade cases are considered by the Departmental Promotion Committee as per Service Rules and on the completion of codal formalities. Furthermore, the orders of selection grade BS-16 in favour of the Sub Engineers were issued in 2003, 2004 but the appellant remained silent and filed no appeal against the orders in specified period.
- C. Incorrect. The orders for the grant of selection grade (BS-16) in favour of the Sub Engineers mentioned in the instant appeal was legal and according to law/rules.
- D. Incorrect, as explained in Para-B of the ground.
- E. Incorrect, as explained in the above parars.
- F. Incorrect. The selection grade cases are considered by the Departmental Promotion Committee as per service rules and on the completion of codal formalities.
- G. Incorrect, as explained in para-2 of the facts.
- H. The Respondents would like to seek permission of this Hon'able Tribunal to advance more grounds during the time of arguments.

In view of the above, it is submitted that the Appeal may kindly be dismissed with cost, as this Appeal is time barred and the same facility has been discontinued by the Provincial Govt. Moreover, no post of BPS-16 (Selection Grade) exists in C&W Department.


Chief Engineer (Centre)
C&W Peshawar
(Respondent No. 2)


Secretary to Govt of
Khyber Pakhtunkhwa
C&W Department
(Respondents No. 1)
Secretary to Govt of
Khyber Pakhtunkhwa
C&W Department


Secretary to Govt of
Khyber Pakhtunkhwa
Finance Department
(Respondent No. 3)



Annex-I

(BETTER COPY)

GOVERNMENT OF NWFP
FINANCE DEPARTMENT

No.FD(PRC)1-1/2003
Dated Peshawar the April 6, 2003

From Secretary to Govt. of NWFP
Finance Department

- To
1. All the Administrative Secretaries to Govt. of NWFP
 2. Senior Member, Board of Revenue NWFP
 3. The Secretary to Governor NWFP, Peshawar
 4. The Secretary Provincial Assembly NWFP
 5. All Heads of Attached Department, NWFP.
 6. All District Coordination Officer/Political Agents/
District and Session Judges NWFP
 7. The Registrar Peshawar High Court Peshawar
 8. The Chairman NWFP Public Service Commission.
 9. The Chairman NWFP Service Tribunal Peshawar.
 10. The Secretary Board of Revenue NWFP, Peshawar.

Subject:- REVISION OF BASIC PAY SCALE AND FRENCH BENEFITS OF CIVIL EMPLOYEES (BPS 1-22) OF THE NWFP GOVERNMENT (2001).

Dear Sir,

I am directed to refer to this Department's letter No.FD(PRC)1-1/2001 dated Nov: 15, 2001 on the subject noted above and to say that clarification given against Para-7 (i) and (ii) may be read as under:-

"The Selection and Movcover shall stand discontinued w.e.f. 1-12-2001 in stead of 27-10-2001. The clarification issued vide the above referred letter against Para.5(1) and Para 7 (i) & (ii) stand modified to this effect".

Yours faithfully,

-Sd/-
(ABDUL LATIF)
DEPUTY SECRETARY (REG.)

Dated Peshawar the, April 6, 2003

Endst: No.FD(PRC)1-1/2003

A copy is forwarded for information to:-

1. All Autonomous/Semi Autonomous Bodies/Corporation in NWFP

-Sd/-
(ABDUL LATIF)
DEPUTY SECRETARY (REG.)

GOVERNMENT OF N.W.F.P.,
ESTABLISHMENT DEPARTMENTNO.SO (PSB) ED/1-28/2002
Dated Peshawar, the 3.7.2004

To

1. All the Administrative Secretaries in NWFP.
2. All the District Coordination Officers in NWFP.
3. All the Political Agents in the NWFP.
4. The Secretary Public Service Commission.
5. The Registrar, NWFP, Service Tribunal.

SUBJECT: -CUT OFF DATE FOR DISPOSAL OF ALL LEFT OVER
CASES OF MOVE-OVER/SELECTION GRADE

Dear Sir,

1. I am directed to refer to this department letter of even number dated 9.6.2003, 30.1.2004 and 24.4.2004 on the subject noted above and to say that the competent authority has observed that a number of working papers regarding grant of move over and Selection Grade cases are still being received which indicates that decisions taken earlier have not been implemented with letter and spirit. In order to enable the Departments to process pending cases the competent authority has been pleased to extend the cut off date upto 31.8.2004. All left over cases of Government Servants who were eligible for Selection Grade/Moveover before 1.12.2001 may be placed before PSB/DPC for consideration as per instructions/policy on the subject at the latest otherwise strict disciplinary action would be taken against the defaulting official under the NWFP Removal from Service (Special Power) Ordinance 2000..The Administrative departments are also advised to furnish/weekly progress report about disposal of pending cases of Selection Grade/Move over through PSB/DPC on regular basis.

2. I am further directed to request that above instructions may kindly be followed by all concerned with letter and spirit.

Yours faithfully


(HAROON-UR-RASHID)
SECTION OFFICER (PSB)

Endst: No. NO.SO (PSB) ED/1-23/2002

Dated Peshawar, the 3.7.2004

A copy is forwarded to:-

1. The PS to Secretary Establishment Department Peshawar.
2. The PS to Secretary Administration Department Peshawar.
3. PAs to all Additional Secretaries/Deputy Secretaries in the Establishment and Administration Peshawar.
4. All Section Officer in the Establishment and Administration Department Peshawar.
5. The Section Officer (PR) Government of NWFP, Finance Department for information.


SECTION OFFICER (PSB)

Annex-III

GOVERNMENT OF N.W.F.P.
WORKS & SERVICES DEPARTMENT

Dated Peshawar the 04/09/2003

ORDER

No: SOE-I/W&S/4-2/2003/S.S Consequent upon recommendations of the Departmental Promotion Committee of the Works & Services Department during its meeting held on 12.08.2003, the competent authority has been pleased to the grant of Senior Scale (BS-16) in respect of the following Sub Engineers (BS-11) of the Works & Services Department, with immediate effect:-

1. Mr. Muhammad Arif,
Sub Engineer O/o the XEN Dev.
C&W Division Mattani at Kohat.
2. Mr. Missal Khan,
Sub Engineer O/o the XEN Dev.
C&W Division SWA at Tank.

SECRETARY TO GOVT OF NWFP
WORKS & SERVICES DEPARTMENT

Dated Peshawar the 04.09.2003

Endst. No. SOE-I/W&S/4-2/2003/S.S

Copy forwarded to the:-

1. Accountant General NWFP, Peshawar.
2. Chief Engineer Works & Services Peshawar.
3. Chief Engineer Works & Services (FATA) Peshawar.
4. Managing Director Frontier Highways Authority Peshawar.
5. Deputy Secretary (Reg-III) Establishment Department Peshawar.
6. Deputy Secretary (Reg) Finance Department, Peshawar.
7. All Superintending Engineer W&S Department.
8. District/Agency Accounts Officers concerned.
9. Officials concerned.
10. PS to Secretary Works & Services Department.
11. PA to Additional Secretary Works & Services Department.
12. Section Officer (Estt-II) Works & Services Department.
13. Office Order/Personal files.

(MUHAMMAD AKBAR KHAN)
SECTION OFFICER (ESTT-I)

3.)

GOVERNMENT OF N.W.F.P.
WORKS & SERVICES DEPARTMENT

Dated Peshawar the 19/04/2004

ORDER

No: SOE-1/W&S/4-2/2004/S.S. Consequent upon recommendations of the Departmental Promotion Committee of the Works & Services Department during its meeting held on 25/03/2004, the competent authority has been pleased to the grant of Senior Scale (BS-16) in respect of the following Sub Engineers (BS-11) of the Works & Services Department, with immediate effect:-

1.	Mr. Muhammad Shah, Sub Engineer O/o the Deputy Director- City Distt: Govt Peshawar.
2.	Mr. Buland Iqbal, Sub Engineer O/o the NEN Dev. C&W Division Khyber Agency at Jamrud.
3.	Mr. Hidayatullah, Sub Engineer O/o the Deputy Director-II, City Distt: Govt Peshawar.
4.	Mr. Sanatullah, Sub Engineer, O/o the Deputy Director W&S Lakki Marwat.
5.	Mr. Zafarullah, Sub Engineer O/o the Deputy Director W&S Nowshera
6.	Mr. Tariq Usman, Sub Engineer O/o the NEN Dev. C&W Division Khyber Agency at Jamrud.
7.	Mr. Muhammad Javed Rahim, Sub Engineer, O/o the Deputy Director W&S D.I. Khan.
8.	Mr. Jamshed Khan, Sub Engineer, O/o the Deputy Director W&S Banair

SECRETARY, TO GOVT OF NWFP
WORKS & SERVICES DEPARTMENT

Order No. SOE-1/W&S/4-2/2004/S.S

Dated Peshawar, the 19/04/2004

Copy forwarded to the:-

1. Accountant General NWFP, Peshawar.
2. AGPR, Sub Office, Peshawar.
3. Chief Engineer Works & Services Peshawar.
4. Chief Engineer (FATA) Works & Services Deptt Peshawar.
5. Managing Director Frontier Highways Authority Peshawar.
6. Deputy Director/XEN Works & Services concerned.
7. District/Agency Accounts Officers concerned.
8. Officials concerned.
9. PS to Secretary Works & Services Department.
10. Office Order/Personal files.

(NOORULLAH)
SECTION OFFICER (ESTT-I)

OFFICE OF THE CHIEF ENGINEER (NORTH)
 C&W DEPARTMENT N.W.F.P. PESHAWAR.
 No. 756/4 - E(1)/4574 /E-1(2)
 Dated Peshawar the 12/10/2000

FINAL SENIORITY LIST OF SUB ENGINEERS GRADE -11.
 ON THE BASIS OF DATE OF APPOINTMENT IN THE
 DEPARTMENT AS IT STOOD ON 31-12-1999.

In pursuance of sub section (1) of section - (8) of NWFP Civil Servants Act 1973, Seniority list of Sub Engineers
 Grade -11 of C&W Department NWFP, as it stood on 31-12-1999 is notified as under:-

Sl No	NAME	EDUL/TECH: QUALIFICATION	HOME DISTRICT	DATE OF BIRTH	DATE OF APPOINT MENT	TO CLASS	YEAR OF PASSING.		REMARKS
							Grade-B Exam:	Proffi: Exam:	
1	Fazli Raziq -1 S/O	B.A.	Swat	5.4.43.	1.7.61	-	11/91	-	-
2	Gul Zaman S/O	Matric DAE (Civ.)	Malakand Agy:	6-6-40	1-1-73	-	-	-	-
3	Payo Rehman S/O	Matric DAE (Civ.)	Karak	9-8-42	11-1-74	-	-	-	-
4	Faizur Rehman-II S/O	-do-	Peshawar	2-9-45	21-11-74	-	-	-	-
5	Fayaz Gul-I S/O	-do-	NW.A	20-6-51	19-12-74	-	6/96	-	-

Sl No	NAME	EDUL/TECH: QUALIFICATION	HOME DISTRICT	DATE OF BIRTH	DATE OF APPOINTMENT	TO CLASS	YEAR OF PASSING.	REMA
68	Inyat Zeb S/O Said Rehman	Matric DAE (Civ.)	Swabi	16-1-62	8-12-81	-	11/91 5/96	-
69	Khalid Naeem S/O Muhammad Ajab	-do-	Abbottabad	1-10-61	9-12-81	-	11/91	-
70	Sarfraz Alam S/O Hakim Ali	-do-	Peshawar	30-12-56	16-12-81	-	11/91	-
71	Gul Malook S/O Sher Jhang	-do-	Bannu	9-7-59	16-12-81	-	11/91 5/96	-
72	Sighbatulah S/O Hayatullah	-do-	Peshawar	15-2-60	16-12-81	-	6/96 12/97	-
73	Muhammad Idris S/O Muhammad Ibrahim	-do-	D.I.Khan	1-6-62	16-12-81	-	8/94 5/96	-
74	Riaz Ahmad S/O Jan Mohammad	-do-	Kohat	27-6-53	16-12-81	-	11/91	-
75	Karimullah S/O Moinullah	-do-	Bannu	29-3-61	16-12-81	-	11/91 5/96	-
76	Ghulam Qadir S/O Ghulam Haider	DAE (Civ.)	D.I.Khan	3-3-58	14-1-82	-	11/91 5/96	-

Sr No Name of Sub E

- 326. Muhammad Sha Iqbal S/o M Akbar.
- 327. Mr. Taseer A S/o Anwar G
- 328. Muhammad Fa Ahmad S/o f
- 329. Muhammad F S/o H. Said
- 330. Mr. Rokhan Khattak S/
- 331. Muhammad S/o Khali
- 332. Mr. Niamat S/o Nizam
- 333. Mr. Zahid S/o Muham

- Copy to
- 1) Secretar
 - 2) All the
 - 3) All Supe
 - 4) All Exec

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR
APPEAL NO. 1009 OF 2013

Riaz Ahmad, Sub Engineer, --- Appellant
C&W Division Kohat

Versus

1. Secretary to Govt of Khyber Pakhtunkhwa --- Respondents
C&W Department, Peshawar
2. Chief Engineer (Centre)
C&W Department, Peshawar
3. Secretary to Govt of Khyber Pakhtunkhwa
Finance Department, Peshawar

Joint Parawise Comments on behalf of Respondents No. 1 to 3

Respectfully Sheweth

Preliminary Objections

1. That the appeal is not maintainable.
2. That the petitioner has never challenged in time any order in which his rights were ignored
3. That the appeal is premature.
4. That the appellant has no cause of action and locus standi.
5. That the appeal is time barred.
6. That the appeal is liable to be rejected on ground of non-joinder and mis-joinder of necessary parties
7. That the appellant is estopped by his own conduct to file the instant appeal

Facts

1. Subject to proof
2. Incorrect. In fact the selection grade BS-16 @25% of the total posts of the Diploma Holder Sub Engineers (BS-11) was allowed by the Government with the condition that holder of the post shall be filled by selection on merit with due regard to seniority from amongst Sub Engineers of the Department, who have passed the Departmental B-Grade Examination and have at-least ten (10) years service as such. The same facility has been discontinued by the Provincial Government w.e.f. 01.12.2001 vide Finance Deptt letter No.FD(PRC)1-1/2001 dated 06.04.2003 (**Annex-I**). The Establishment Deptt has issued a circular to all Administrative Secretaries and directed to clear all left over cases of Govt servants who were eligible for selection grade/move over on or before 01.12.2001 (**Annex-II**). Consequently the Respondent Department granted selection grade (BS-16) to 10 Sub Engineers in the year 2003 and 2004 (**Annex-III**) who were eligible and posts were available/vacant before 01.12.2001. Although the name of the appellant was at Sl.No. 74 of the seniority list of Sub Engineers dated 12.12.2000 (**Annex-IV**), the appellant was not considered by the Departmental Promotion Committee due to incomplete record, therefore, in the prevailing circumstances, the plea of the appellant is infructuous.
3. Correct to the extent that the attention of learned Services Tribunal is also invited into the subject chronic issue that as mentioned above, the grant of BS-16 @ 25% of the total sanctioned posts of Sub Engineers was allowed, which was subsequently freezed in 2001. Accordingly the selection grade upto 2001 was allowed against the available reserved quota of 25%, however, due to litigation and decision/ orders of leaned Tribunal so many Sub Engineers have been allowed ante-date selection grade only on the basis of their seniority,


whereas at the time of consideration of selection grade cases none of them were otherwise, suitable for consideration to the grant of selection grade due to incomplete record of their service i.e. non-availability of ACRs or pending inquiries against them. This situation is increasing day by day and the Sub Engineers who were not consider earlier, indulging themselves into filing of appeals in the Tribunal. In case the selection grade is granted on the basis of seniority at this belated stage and by allowing ante date selection grade B-16 to the Sub Engineers who are now in litigation on the basis of seniority, the reserve quota of 25% will be increased to 50%, as a number of Sub Engineers have been allowed ante date selection grade in the light of the court decision. This point needs proper consideration by the Hon'able court, so that un-necessary litigation is avoided in future.

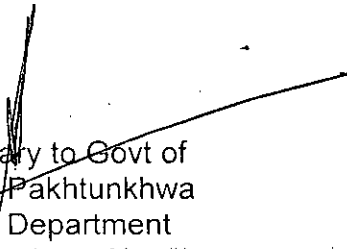
4. Incorrect, Departmental appeal was received and processed in the Department as he has been informed about the ground of rejection of department appeal accordingly. //

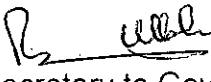
Grounds

- A. Incorrect, as explained in para-2 of the facts. Moreover, the appellant was not entitled to the said scale as selection grade is not granted on the basis of seniority-cum-fitness rather selection on merit.
- B. Incorrect. The selection grade cases are considered by the Departmental Promotion Committee as per Service Rules and on the completion of codal formalities. Furthermore, the orders of selection grade BS-16 in favour of the Sub Engineers were issued in 2003, 2004 but the appellant remained silent and filed no appeal against the orders in specified period.
- C. Incorrect. The orders for the grant of selection grade (BS-16) in favour of the Sub Engineers mentioned in the instant appeal was legal and according to law/rules.
- D. Incorrect, as explained in Para-B of the ground.
- E. Incorrect, as explained in the above parars.
- F. Incorrect. The selection grade cases are considered by the Departmental Promotion Committee as per service rules and on the completion of codal formalities.
- G. Incorrect, as explained in para-2 of the facts.
- H. The Respondents would like to seek permission of this Hon'able Tribunal to advance more grounds during the time of arguments.

In view of the above, it is submitted that the Appeal may kindly be dismissed with cost, as this Appeal is time barred and the same facility has been discontinued by the Provincial Govt. Moreover, no post of BPS-16 (Selection Grade) exists in C&W Department.


Chief Engineer (Centre)
C&W Peshawar
(Respondent No. 2)


Secretary to Govt of
Khyber Pakhtunkhwa
C&W Department
(Respondents No. 1)
Secretary to Govt of
Khyber Pakhtunkhwa
C&W Department


Secretary to Govt of
Khyber Pakhtunkhwa
Finance Department
(Respondent No. 3)


2013

Annex-I

(BETTER COPY)

GOVERNMENT OF NWFP
FINANCE DEPARTMENT

No.FD(PRC)1-1/2003
Dated Peshawar the April 6,2003

From Secretary to Govt. of NWFP
Finance Department

To

1. All the Administrative Secretaries to Govt. of NWFP
2. Senior Member, Board of Revenue NWFP
3. The Secretary to Governor NWFP, Peshawar
4. The Secretary Provincial Assembly NWFP
5. All Heads of Attached Department, NWFP.
6. All District Coordination Officer/Political Agents/
District and Session Judges NWFP
7. The Registrar Peshawar High Court Peshawar
8. The Chairman NWFP Public Service Commission.
9. The Chairman NWFP Service Tribunal Peshawar.
10. The Secretary Board of Revenue NWFP, Peshawar.

Subject:- REVISION OF BASIC PAY SCALE AND FRENCH BENEFITS OF CIVIL EMPLOYEES (BPS 1-22) OF THE NWFP GOVERNMENT (2001).

Dear Sir,

I am directed to refer to this Department's letter No.FD(PRC)1-1/2001 dated Nov: 15, 2001 on the subject noted above and to say that clarification given against Para-7 (i) and (ii) may be read as under:-

"The Selection and Moveover shall stand discontinued w.e.f. 1-12-2001 in stead of 27-10-2001. The clarification issued vide the above referred letter against Para.5(1) and Para 7 (i) & (ii) stand modified to this effect".

Yours faithfully,

-Sd/-
(ABDUL LATIF)
DEPUTY SECRETARY (REG.)

Dated Peshawar the, April 6, 2003

Endst: No.FD(PRC)1-1/2003

A copy is forwarded for information to:-

1. All Autonomous/Semi Autonomous Bodies/Corporation in NWFP

-Sd/-
(ABDUL LATIF)
DEPUTY SECRETARY (REG.)

GOVERNMENT OF N.W.F.P.,
ESTABLISHMENT DEPARTMENTNO.SO (PSB) ED/1-28/2002
Dated Peshawar, the 3.7.2004

To

1. All the Administrative Secretaries in NWFP.
2. All the District Coordination Officers in NWFP.
3. All the Political Agents in the NWFP.
4. The Secretary Public Service Commission.
5. The Registrar, NWFP, Service Tribunal.

SUBJECT: CUT OFF DATE FOR DISPOSAL OF ALL LEFT OVER
CASES OF MOVE-OVER/SELECTION GRADE

Dear Sir,

1. I am directed to refer to this department letter of even number dated 9.6.2003, 30.1.2004 and 24.4.2004 on the subject noted above and to say that the competent authority has observed that a number of working papers regarding grant of move over and Selection Grade cases are still being received which indicates that decisions taken earlier have not been implemented with letter and spirit. In order to enable the Departments to process pending cases the competent authority has been pleased to extend the cut off date upto 31.3.2004. All left over cases of Government Servants who were eligible for Selection Grade/Moveover before 1.12.2001 may be placed before PSB/DPC for consideration as per instructions/policy on the subject at the latest otherwise strict disciplinary action would be taken against the defaulting official under the NWFP Removal from Service (Special Power) Ordinance 2000. The Administrative departments are also advised to furnish/weekly progress report about disposal of pending cases of Selection Grade/Move over through PSB/DPC on regular basis.

2. I am further directed to request that above instructions may kindly be followed by all concerned with letter and spirit.

Yours faithfully

(HAROON-UR-RASHID)
SECTION OFFICER (PSB)

Endst: No. NO.SO (PSB) ED/1-23/2002

Dated Peshawar, the 3.7.2004

A copy is forwarded to:-

1. The PS to Secretary Establishment Department Peshawar.
2. The PS to Secretary Administration Department Peshawar.
3. PAs to all Additional Secretaries/Deputy Secretaries in the Establishment and Administration Peshawar.
4. All Section Officer in the Establishment and Administration Department Peshawar.
5. The Section Officer (PR) Government of NWFP, Finance Department for information.

SECTION OFFICER (PSB)

Annex-III

GOVERNMENT OF N.W.F.P.
WORKS & SERVICES DEPARTMENT

Dated Peshawar the 04/09/2003

ORDER

No: SOE-1/W&S/4-2/2003/S.S. Consequent upon recommendations of the Departmental Promotion Committee of the Works & Services Department during its meeting held on 12.08.2003, the competent authority has been pleased to the grant of Senior Scale (BS-16) in respect of the following Sub Engineers (BS-11) of the Works & Services Department, with immediate effect:-

1. Mr. Muhammad Arif,
Sub Engineer O/o the XEN Dev.
C&W Division Mattani at Kohat.
2. Mr. Missal Khan,
Sub Engineer O/o the XEN Dev.
C&W Division SWA at Tank.

SECRETARY TO GOVT OF NWFP
WORKS & SERVICES DEPARTMENT

Dated Peshawar, the 04/09/2003

Endst. No. SOE-1/W&S/4-2/2003/S.S.

Copy forwarded to the:-

1. Accountant General NWFP, Peshawar.
2. Chief Engineer Works & Services Peshawar.
3. Chief Engineer Works & Services (FATA) Peshawar.
4. Managing Director Frontier Highways Authority Peshawar.
5. Deputy Secretary (Reg-III) Establishment Department Peshawar.
6. Deputy Secretary (Reg) Finance Department, Peshawar.
7. All Superintending Engineer W&S Department.
8. District/Agency Accounts Officers concerned.
9. Officials concerned.
10. PS to Secretary Works & Services Department.
11. PA to Additional Secretary Works & Services Department.
12. Section Officer (Estt-II) Works & Services Department.
13. Office Order/Personal files.

(MUHAMMAD AKBAR KHAN)
SECTION OFFICER (ESTT-I)

GOVERNMENT OF N.W.F.P.
WORKS & SERVICES DEPARTMENT

Dated Peshawar the, 19/04/2004

ORDER

No. SOE-1/W&S/4-2/2004/S.S. Consequent upon recommendations of the Departmental Promotion Committee of the Works & Services Department during its meeting held on 25/03/2004, the competent authority has been pleased to the grant of Senior Scale (BS-16) in respect of the following Sub-Engineers (BS-11) of the Works & Services Department, with immediate effect:-

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2.	Mr. Buland Iqbal, Sub Engineer O/o the NEN Dev. C&W Division Khyber Agency at Jamrud.
3.	Mr. Hidayatullah, Sub Engineer O/o the Deputy Director-II, City Distt. Govt Peshawar.
4.	Mr. Sanaullah, Sub Engineer, O/o the Deputy Director W&S Lakki Marwat.
5.	Mr. Zafrullah, Sub Engineer O/o the Deputy Director W&S Nowshera.
6.	Mr. Tariq Usman, Sub Engineer O/o the NEN Dev. C&W Division Khyber Agency at Jamrud.
7.	Mr. Muhammad Javed Rahim, Sub Engineer, O/o the Deputy Director W&S D.I. Khan.
8.	Mr. Jamshed Khan, Sub Engineer, O/o the Deputy Director W&S Bunari.

SECRETARY TO GOVT OF NWFP
WORKS & SERVICES DEPARTMENT

Dated Peshawar the 19/04/2004

Encls. No. SOE-1/W&S/4-2/2004/S.S.

Copy forwarded to the:-

1. Accountant General NWFP, Peshawar.
2. AGPR, Sub Office, Peshawar.
3. Chief Engineer Works & Services Peshawar.
4. Chief Engineer (FATA) Works & Services Deptt Peshawar.
5. Managing Director Frontier Highways Authority Peshawar.
6. Deputy Director/XEN Works & Services concerned.
7. District/Agency Accounts Officers concerned.
8. Officials concerned.
9. PS to Secretary Works & Services Department.
10. Office Order/Personal files.

(NOORULLI II)
SECTION OFFICER (ESTT-I)

Sl No	Name of Sub Engg:	Edu/Tech: qualification	Home Distt:	Date of birth.	Date of Ist entry in Deptt:	Date of confir- mation.	Year of passing	Gr. 'B' Exam:	Depttl: prill: Exam:	Remarks
326.	Muhammad Shahid Iqbal S/o Muhammad Akbar.	Matric/DAE(C)	Haripur	18.12.72	3.7.94	-	-	-	-	-
327.	Mr. Taseer Anwar S/o Anwar Gul.	-do-	Moh: Agcy:	25.12.71	27.6.94	-	-	-	-	-
328.	Muhammad Faiz Ahmad S/o Safri.	-do-	Haripur	5.12.72	3.7.94	-	-	-	-	-
329.	Muhammad Farooq S/o H. Said Ghulam.	-do-	Mardan.	1.1.73	23.4.95	-	-	-	-	Sl: No. 329 to seniority list order of merit assigned by Public Service Commission.
330.	Mr. Rokhan Gul Khattak S/o Rax Khan.	-do-	Karak	1.1.71	30.4.95	-	-	-	-	-
331.	Muhammad Zaheer S/o Khalifa.	-do-	A. Abad	9.4.71	23.4.95	-	-	-	-	-
332.	Mr. Niamatullah Khan S/o Nizam Khan	-do-	S.W.A.	6.5.67	27.4.95	-	-	-	-	-
333.	Mr. Zahid Amin S/o Muhammad Amin.	-do-	A. Abad	4.5.70	23.4.95	-	-	-	-	-

Copy to the:-

- 1) Secretary to Govt: of NWFP C&W Department, Peshawar.
- 2) All the Chief Engineers in C&W Department, N.W.F.P.
- 3) All Superintending Engineers in C&W Department, N.W.F.P.
- 4) All Executive Engineers in C&W Department, N.W.F.P.

CHIEF ENGINEER

CHIEF ENGINEER.

**BEFORE THE KHYBER PAKHTUNKHWA,
SERVICE TRIBUNAL, PESHAWAR.**

Service Appeal No. 1009/2013

Riaz Ahmad

VS

C&W Deptt:

.....

REJOINDER ON BEHALF OF APPELLANT

.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

- (1-7) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

- 1 Admitted correct by respondents because the service record of the appellant is laying in the custody of respondent department.
- 2 Incorrect. the respondent Deptt: has granted BS-16 to many official vide order dated 4.9.2003 and 5.12.2009 and the appellant also entitled to the same relief under the principles of consistency and equality as the appellant possess the same requirements which are required for promotion. Moreover it is not the fault of the appellant to deprive from promotion due to incomplete record as maintainability of record is the responsibility of the department.
- 3 Incorrect. the right of promotion to BS-16 to the appellant as well as others official was given by Govt: on notification dated 13.01.1980 and the august Tribunal decided the cases on basis of this notification and given promotion to these official and the appellant is similarly placed person and

also entitled to relief under the principles of consistency and Supreme Court's judgment.

- 4 Incorrect. the appellant filed departmental appeal for grant of BS-16 and proper fixation of seniority, but the respondent department did not responded in statutory period of 90 days.

GROUND:

- A) Incorrect. the respondent Deptt: has granted BS-16 to many official vide order dated 4.9.2003 and 5.12.2009 and the appellant also entitled to the same relief under the principles of consistency and equality as the appellant possess the same requirements which are required for promotion. Moreover the Govt: fixed 25% quota for senior scale sub engineer for promotion who possess the said requirements i.e ten years service plus B-Grade exam and the appellant was entitled for promotion on the basis of seniority-cum-fitness. Therefore to deprive the appellant from promotion is against the law, rules and norms of natural justice.
- B) Incorrect. The Govt: fixed 25% quota for senior scale sub engineer for promotion who possess the said requirements i.e ten years service plus B-Grade exam and the appellant possessed the same requirements, therefore the appellant is eligible for BS-16. Moreover if the appellant did not claim BS-16 in 2003,2004 it does not mean that the appellant will deprive from his right on this score as many official has granted BS-16 vide order dated 5.12.2009.
- C) Incorrect. the appellant is similarly placed person, therefore he is also entitled to the same relief under the principles of consistency and equality as the appellant possess the same requirements on the basis of which other official has granted BS-16.
- D) Incorrect. the appellant possessed the same requirements on the basis of which respondent

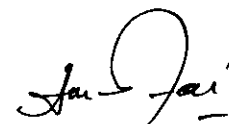
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It is, therefore, most humbly prayed that the appeal of appellant may kindly be accepted as prayed for.

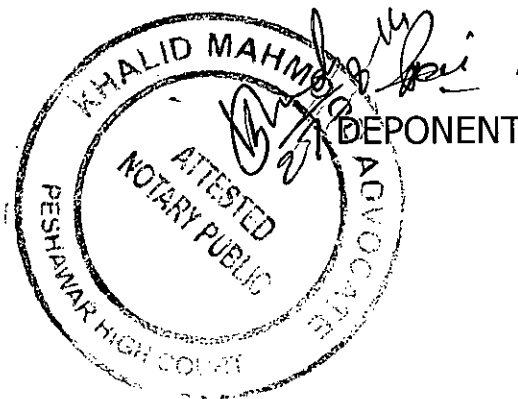
APPELLANT
Riaz Ahmad

Through:


(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.



**BEFORE THE KHYBER PAKHTUNKHWA,
SERVICE TRIBUNAL, PESHAWAR.**

Service Appeal No. 1009/2013

Riaz Ahmad

VS

C&W Deptt:

REJOINDER ON BEHALF OF APPELLANT

RESPECTFULLY SHEWETH:

Preliminary Objections:

- (1-7) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

- 1 Admitted correct by respondents because the service record of the appellant is laying in the custody of respondent department.
- 2 Incorrect. the respondent Deptt: has granted BS-16 to many official vide order dated 4.9.2003 and 5.12.2009 and the appellant also entitled to the same relief under the principles of consistency and equality as the appellant possess the same requirements which are required for promotion. Moreover it is not the fault of the appellant to deprive from promotion due to incomplete record as maintainability of record is the responsibility of the department.
- 3 Incorrect. the right of promotion to BS-16 to the appellant as well as others official was given by Govt: on notification dated 13.01.1980 and the august Tribunal decided the cases on basis of this notification and given promotion to these official and the appellant is similarly placed person and

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- 4 Incorrect. the appellant filed departmental appeal for grant of BS-16 and proper fixation of seniority, but the respondent department did not responded in statutory period of 90 days.

GROUND:

- A) Incorrect. the respondent Deptt: has granted BS-16 to many official vide order dated 4.9.2003 and 5.12.2009 and the appellant also entitled to the same relief under the principles of consistency and equality as the appellant possess the same requirements which are required for promotion. Moreover the Govt: fixed 25% quota for senior scale sub engineer for promotion who possess the said requirements i.e ten years service plus B-Grade exam and the appellant was entitled for promotion on the basis of seniority-cum-fitness. Therefore to deprive the appellant from promotion is against the law, rules and norms of natural justice.
- B) Incorrect. The Govt: fixed 25% quota for senior scale sub engineer for promotion who possess the said requirements i.e ten years service plus B-Grade exam and the appellant possessed the same requirements, therefore the appellant is eligible for BS-16. Moreover if the appellant did not claim BS-16 in 2003,2004 it does not mean that the appellant will deprive from his right on this score as many official has granted BS-16 vide order dated 5.12.2009.
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DEPONENT

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