

No. 1338/13

02.3.2016


Counsel for the appellant and Mr. Saleem Shah, Supdt and Kifayatullah, A.O 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)



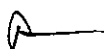
Member (Judicial)

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 215-32-2016.

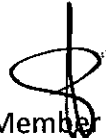
  
Chairman.

30.04.2015

Counsel for the appellant, M/S Saleem Shah, Supdt. and Irshad Muhammad, SO (lit.) alongwith Addl: A.G for respondents present.

It was brought in the notice of this Bench that numerous other appeals of the same nature are pending adjudication before this Tribunal in different Benches on different dates including appeals No. 1431/2013 and 699/2014 etc, which are fixed for final hearing before this Tribunal on 16.10.2015.

It was resolved that other appeals fixed before different Benches on different dates for different proceedings shall be matured and then fixed for hearing alongwith the afore-stated appeals on 16.10.2015. Orders accordingly. The appeal in hand is adjourned to 16.10.2015 for final hearing alongwith the afore-stated appeals before Special/Larger Bench constituted for the purpose. Office shall ensure that other appeals pending before S.B and D.B are matured and fixed for final hearing before Special Bench on 16.10.2015.



Member (Judicial)



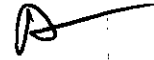
Chairman



Member (Executive)

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

*Am Jai*  
*29/4/15*

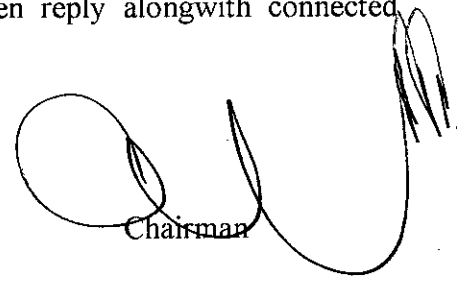
*Notice be issued to the Parties  
for arguments on 30-4-2015  
instead of 22-5-2015  
allowing with A. No. 95/14*

  
*Chairman*

1338/13

13.2.2014

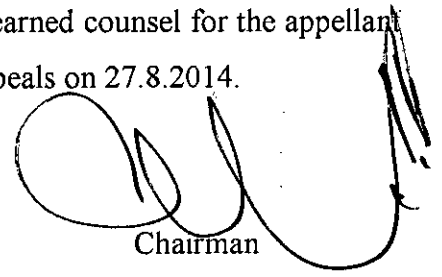
Counsel for the appellant, M/S. Salim Shah, Assistant for respondents No. 1 and 2 and Irshad Muhammad, Supdt. for respondent No. 3 with AAG for the respondents present. Written reply has not been received. To come up for written reply alongwith connected appeals on 16.5.2014.



Chairman

16.5.2014

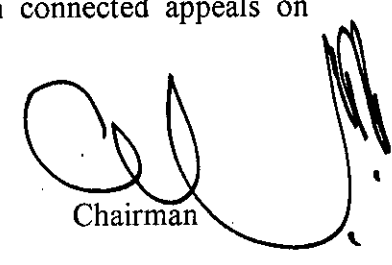
Counsel for the appellant and Mr. Salim Shah, Assistant on behalf of respondents No.1 & 2 with AAG for the respondents present. Joint written reply received on behalf of the respondents, copy whereof is handed over to the learned counsel for the appellant for rejoinder alongwith connected appeals on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



Chairman

27.8.2014

Appellant with counsel, M/S Salim Shah, Assistant on behalf of respondent No. 1 and Kifayatullah, Senior Administrative Officer on behalf of respondent No. 3 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. 1338/2013  
Mr. Aurangzeb

06.12.2013

Counsel for the appellant present and requested for adjournment. To come up for preliminary hearing on 17.12.2013.

  
Member

17.12.2013

4  
Appellant deposited  
Security & process  
fee Rs 200/- Bank  
receipt is attached  
with file  
Shah

Appellant with counsel present. - Preliminary arguments heard and file record perused. The learned counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. He filed departmental appeal on 21.05.2013 which has not been responded within statutory period of 90 days, hence the present appeal on 13.09.2013. He further stated that similar nature cases of Mr. Qaiser Shah in Service Appeal No. 1300/2013 and Mr. Riaz Ahmad, 1009/2013 have already been admitted and pending before the learned Bench-I for regular hearing, therefore the same may also be club with the said appeal. 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 before the learned Bench-I.

  
Member

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 1338/2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	13/09/2013	<p>The appeal of Mr. Aurang Zeb presented 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	23-9-2013	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>6-12-2013</u></p> <p style="text-align: right;">CHAIRMAN</p>

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

Appeal No. 1338 /2013

Mr. Aurangzeb

V/S

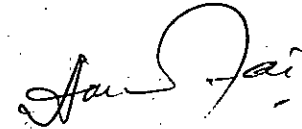
C&W Department

**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

THROUGH:



( M. ASIF YOUSAFZAI )  
ADVOCATE, PESHAWAR.



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

Appeal No. 1338 /2013

Mr. Aurangzeb, Sub Engineer,  
Building Sub Division bara/Jamrud, C&W,  
Khyber Agency.

**C&W**  
**1345**  
**13-9-13**

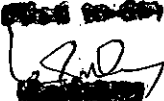
**APPELLANT**

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),(Centre) Khyber Pakhtunkhwa, Peshawar.
- 3- The Chief Engineer, FATA, W&S, Peshawar.
- 4- 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.**

  
13/9/13

**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.***

.....

**RESPECTFULLY SHEWETH:**

- 1- That the appellant joined the W & S Deptt: in the year 1987 as Sub Engineer and also passed B grade departmental exam in the year 1996. Thus the appellant has more than 26 years service at his credit with good record throughout. All dates are mentioned in the departmental appeal of the appellant the copy of which is already attached as Annexure – C
- 2- That according to the rules 25 % 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 been 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 20.5.2013 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:**

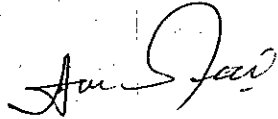
- A- That not granting B-16 as per rules and not treating alike with his colleagues who have been given sr. scale against the law, rules and norms of justice.
- B- That the appellant has attained eligibility for B-16 much earlier than those who are enjoying the benefits of B-16, therefore the appellant 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 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  
Aurangzeb

THROUGH:

  
( M. ASIF YOUSAFZAI )  
ADVOCATE, PESHAWAR.

BETTER COPY

Annexure-A

GOVERNMENT OF NORTH WEST FRONTIER PROVINCE  
SERVICES AND GENERAL ADMINISTRATION,  
TOURISM & SPORTS DEPARTMENT

NOTIFICATION

Peshawar the 13 January, 1980

No.SOR-1(S&GAD)1-12/74 – In exercise of the Powers conferred by Section 26 of the North West Frontier Province Civil Servants Act, 1973 (NWFP Act XVIII of 1973). In supersession of all previous rules on the subject in this behalf the Governor of the North West Frontier Province is pleased to make the following rules, namely:-

THE COMMUNICATION AND WORKS DEPARTMENT  
(RECRUITMENT AND APPOINTMENTS) RULES, 1979

1. (1) These rules may be called the Communication and Work 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 there to for the Posts specified in column 2 of the Schedules annexed shall be as given in column 3 to 7 of the said Schedules.

**ATTESTED**



COMMUNICATION AND WORKS DEPARTMENT  
SCHEDULE - 1

ATTESTED

b  
—

S.No.	Nomenclature of Post	Minimum qualification for initial recruitment or by transfer	Minimum qualification for appointment and promotion	Age limit for initial recruitment	Method of recruitment
1	2	3	4	5	6
1.	Chief Engineer		Degree in Engineering from a recognized University.		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.
	Superintending Engineer				
	Executive engineer				By selection on merit from amongst the Executive Engineers or holder of equivalent posts in Communication and Works Department, with at least twelve years service in Grade-17 and 18, seniority being considered only in the case of officers of practically the same standard of merit.
	Assistant Engineer	Degree in Civil Electrical or Mechanical Engineering from a recognized University as may be specified by Government for the respective posts.	Degree or Diploma in Engineering from recognized University or Institutions, as specified in column.		By selection on merit with due regard to seniority from amongst assistant Engineers of Communication and Works Department with at least six years experience as such. (a) Seniority present by initial recruitment (b) 10% by promotion, on the basis of seniority cum fitness from amongst the Sub Engineers holding a degree in Engineering, seniority to be determined from the date of acquiring degree or initial appointment which ever is later. (c) Twenty percent by selection on merit with due regard to seniority from amongst the Senior Scale Sub Engineers of the Department who hold a diploma and have passed Departmental Professional Examination.
	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.
					By selection on merit with due regard to seniority from amongst the holders of the posts of Senior Superintendent / Superintendents in the Department.

(7)

ATTESTED

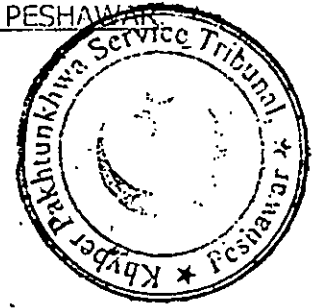
3

COMMUNICATION AND WORKS DEPARTMENT

SCHEDULE - II

S.No.	Nomenclature of Post	Minimum qualification for initial recruitment or by transfer	Minimum qualification for appointment and promotion	Age limit for initial recruitment	Method of recruitment
1	2	3	4	5	6
1.	Principal Engineer Refrigeration / Air-conditioning	M.Sc in Refrigeration / Air conditioning from a recognized University with 10 years experience.		30 to 45 years	By initial recruitment.
		By Mechanical Engineer with 15 years experience with National or Intentional Organization of repute in Design Installation and running of Air-conditioning and Refrigeration.			
		M.Sc in Highways Engineering from a recognized University with at least ten years professional experience in a National or International Organization.		30 to 45 years	By initial recruitment.
		Masters Degree in Civil Engineering from a recognized University with at least ten years professional experience in a National or International Organization.		30 to 45 years	By initial recruitment.

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).

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

ATTESTED

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.

ATTESTED

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,

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 C 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 NWP 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."

ATTESTED  
 EXAMINER  
 KHAYAT INSTITUTION  
 Service Tribunal  
 Pakistan

ATTESTED



10

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.

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

EXAMINER  
Khayser Pakhundi  
Tribunal

ATTESTED

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, Sanaullah, (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  
11.12.2012.

Certified to be true copy

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Sd/- Syed Manzoor Ali Shah  
Member  
Sd/- Nazir Ali  
Member

ATTESTED

Date of Presentation of Application 22.7.2013  
Number of Words 1600  
Copying Fee 10  
Urgent 2  
Total 12  
Number of Copies 3  
Date of Completion of Copy 22.7.2013  
Date of Delivery of Copy 22.7.2013

OFFICE OF THE EXECUTIVE ENGINEER  
BUILDING FATA DIVISION KHYBER AGENCY  
PLOT NO. 40/B-II PHASE-V, HAYATABAD,  
PESHAWAR.

PHONE & FAX NO. 091-9217108

NO. 4880 / 3-F

DATED PESHAWAR THE 21/5 /2013

C  
(13)

To

The Chief Engineer (FATA),  
Works & Services cDepartment,  
Peshawar.

Subject:- APPEAL AGAINST THE PROMOTION OF THE DIPLOMA HOLDER SUB ENGINEER  
BPS-11

Enclosed please find herewith an appeal in respect of Aurangzeb Sub Engineer  
attached to Building FATA Sub Division Bara/Jamrud for onward submission for the Qtr.  
concern please.

EXECUTIVE ENGINEER

Copy to the:-

1. Sub Engineer Building FATA Sub Division Bara/Jamrud for information.
2. Official Concern.

EXECUTIVE ENGINEER

ATTESTED



18-9-13

APPEAL

Through Proper Chanel

To,

The Chief Engineer, Center  
C & W Department,  
Khyber Pakhtunkhawa Peshawar.

Subject:- Request for Grant of Senior Scale Grade- 16

Reference to the Seniority list issued by office of the Chief Engineer Works Services Department No 660/CE/C&WD Dated 9-04-2013 and received on Dated 15 / 05/2013


Respected Sir,

1. I had been appointed as Sub Engineer on 13-5-1987 vide Chief Engineer PHE Department office order # 130445/13/I dated 06-05-87. (Annex-B)
2. I had passed my Grade- B exam in 1996 at serial no 16 vide CE (C&W) No 848/4-E/475/E-I(2) dated 27-6-1996 . (Annex-C)
3. In the Seniority list as mentioned above at serial No8,22,37,41,45,47,49,50,52,56 and 197,210 have granted B-16 in 2003 & 2004. (Annex-D) moreover, at's.no 22 namely Mohd:Arif, though was appointment on 17-10-1979 but passed B-Grade exam later than me but he was granted B-16 while I was ignored.
4. In View of the facts and figure above, I have the right to claim Senior Scale B -16 w.e.f 13-05-1997 in view of the judgment of Services Tribunal Appeal #106/2010(copy enclosed). Therefore I may please be granted B-16 from due date and obliged.

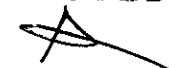
97. amends

Your's Obediently

Dated 20 / 5 / 2013

  
AURANGZEB VI (Serial #219)  
Sub Engineer Bldg: Division  
Khyber Agency (FATA)

ATTESTED



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Annexure-D

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

Dated Peshawar, the 04.09.2003.

ORDER

No.SOE-W&SS/4-2/2003/S.S. Consequent upon the recommendation of the Departmental Promotion Committee of the Works & Services Department during its meeting held on 12.03.2003, the competent authority has been pleased to the grant of Senior Scale (BS-16) in respect of the following Sub Engineer (BS-11) of the Works and Services Department, with immediate effect:

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

Sd/-  
SECRETARY TO GOVT.  
OF NWFP  
WORKS & SERVICES  
DEPARTMENT.

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

Copy forwarded to the:

1. Accountant General, NWFP, Peshawar.
2. Chief Engineer works & Services, Peshawar. Etc. etc.

ATTESTED



(5) 15

BETTER COPY

Annexure-E

GOVERNMENT OF NWFP  
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar, the Dec 05, 2009

No.SOE-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 Syed Sardar Shah, Sub Engineer of the C&W Department from the date from which his juniors were awarded BP-16, in order to implement the decision of the NWFP Service Tribunal in Service Appeal No.27/2000.

Sd/-  
SECRETARY TO GOVT. OF NWFP  
COMMUNICATION AND  
WORKS DEPARTMENT

Endst of even Number and date.

Copy is forwarded to the:

1. AG NWFP, Peshawar.
2. Chief Engg; C&W Peshawar.
3. Ex. District Officer, W&S Kohat.
4. Dy: Director Works & Services Kohat. Etc. etc.

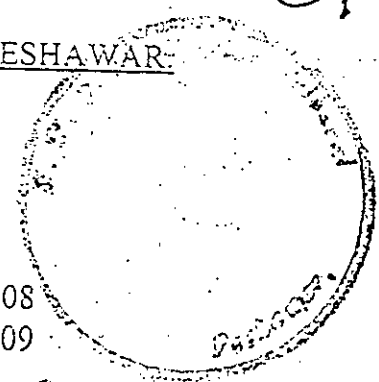
ATTESTED



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  
[Signature]  
[Stamp]

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.

ATTESTED  
[Signature]

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

17

17

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 tier (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/freezeed 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

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R

ATTESTED  
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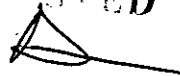


Appellants were merely deferred due to incomplete record. It was the responsibility of the official respondents to complete the record of the appellants as early as was practicable, to consider their cases for grant of selection grade, in preference to their juniors, at the relevant time, to re-fix their 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.

ATTESTED



Sd/- Justice Q. Salim Belawan  
Chairman  
Sd/- Abdul Jalil Khan  
Member

ANNOUNCED  
07.5.2009

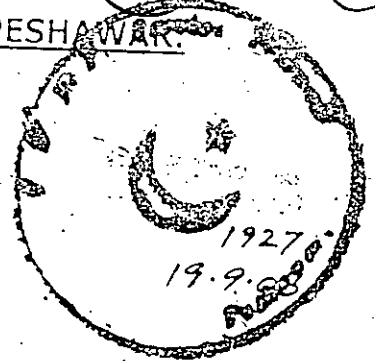


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27 (19) 19

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.

ATTEST

*[Signature]*

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

ATTESTED  
EXAMINER  
NWFP Service Tribunal  
Peshawar

*[Signature]*

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No. of Order Proceedings

Date of Order of Proceedings

Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary

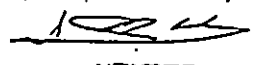
07.5.2009

Counsel for the appellants and

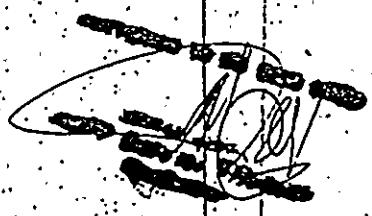
A.G.F (Zahid Kerim) alongwith Anwarul Haq, S.O for official respondents and counsel for private respondents present. Arguments heard and record perused. Vide our detailed judgment of to-day in connected Service. Appeal No. 791 of 2008, titled "Ikramullah Versus Secretary to Government of NWFP, Works & Services Department Peshawar etc.", we ~~also~~ accept the present appeal <sup>also</sup> as per para-6 of the judgment, with costs.

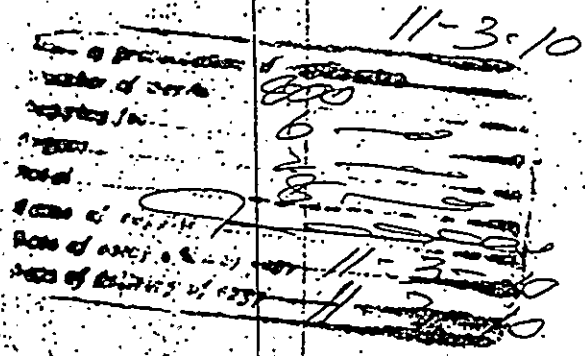
ANNOUNCED.

07.5.2009.

  
MEMBER

  
CHAIRMAN



11-3-10  


ATTESTED

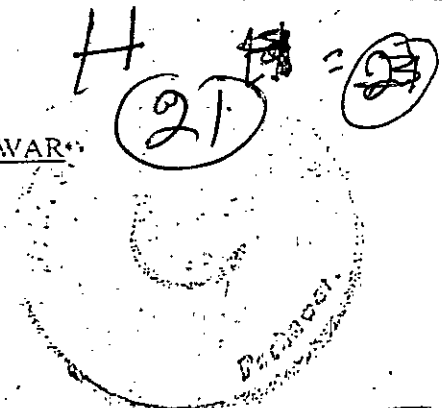


Chairman

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 Kohat ..... Appellant.

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. Gihulam Mustafa, A.G.P..... For Respondents.

MR. ABDUL JALIL ..... MEMBER.  
MR. SULTAN MEHMOOD KHATTAK..... MEMBER.

JUDGMENT

ATTESTED  
A

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

NWFP SERVICE TRIBUNAL  
EXAMINER  
ATTESTER

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 maintaining 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

ATTESTED  
 W&S DEPARTMENT  
 W&S DEPARTMENT

23

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 consider 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/- Gulshan Mahmood Khattak*  
Member

ACCEPTED

# VAKALAT NAMA

NO. \_\_\_\_\_/20

IN THE COURT OF Service Tribunal Peshawar

Aurangzeb (Appellant)  
(Petitioner)  
(Plaintiff)

VERSUS

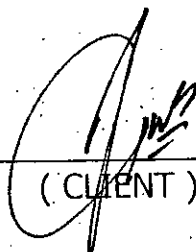
G & W Septi (Respondent)  
(Defendant)

I/We Aurangzeb Capelland

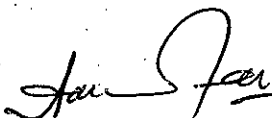
Do hereby appoint and constitute **M.Asif Yousafzai, Advocate, Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel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

  
(CLIENT)

ACCEPTED

  
**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. 1338 OF 2013**

Auragzeb, Sub Engineer,  
Building FATA Division  
Khyber Agency at Jamrud

--- Appellant

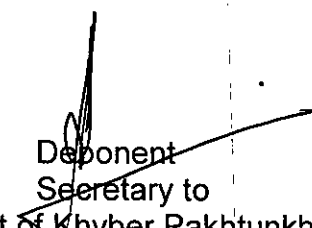
**Versus**

1. Secretary to Govt of Khyber Pakhtunkhwa  
C&W Department, Peshawar
2. Chief Engineer (Centre)  
C&W Department, Peshawar
3. Chief Engineer (FATA)  
W&S, Peshawar
4. 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. 1338 OF 2013**

Auragzeb, Sub Engineer, --- Appellant  
Building FATA Division  
Khyber Agency at Jamrud

**Versus**

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

**Joint Parawise Comments on behalf of Respondents No. 1 to 4**

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 01.012.2001. Although the name of the appellant was at Sl.No. 256 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.

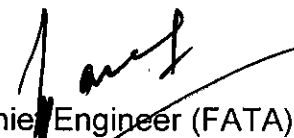
4. Departmental appeal was received and processed in the Department and filed by the competent authority.


### 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  
(Respondents No. 2)

  
Chief Engineer (FATA)  
W&S Peshawar  
(Respondents No. 3)

  
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. 4)

  
2813

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 DEPARTMENT

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


11/2/233  
2/17  
DSA  
HAROON-UR-RASHID  
SECTION OFFICER (PSB)  
6  
50

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. Sanaullah, 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

Encls. 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)

BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR  
APPEAL NO. 1338 OF 2013

Auragzeb, Sub Engineer,  
Building FATA Division  
Khyber Agency at Jamrud

--- Appellant

**Versus**

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

**Joint Parawise Comments on behalf of Respondents No. 1 to 4**

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. 256 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 frozen 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 learned Tribunal so many Sub Engineers have been allowed ante-date selection grade only on the basis of their seniority,



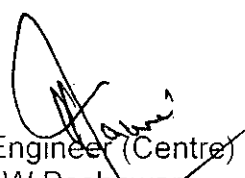
whereas at the time of consideration of selection grade cases none of them were otherwise, suitable for consideration to the grant of selection grade due to incomplete record of their service i.e. non-availability of ACRs or pending inquiries against them. This situation is increasing day by day and 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.

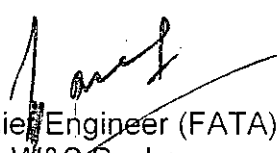
4. Departmental appeal was received and processed in the Department and filed by the competent authority.

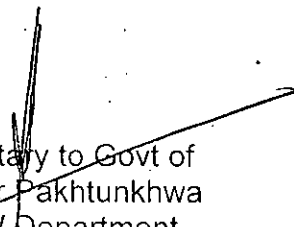
### Grounds

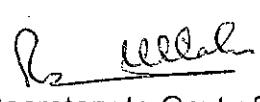
- A. Incorrect, as explained in para-2 of the facts. Moreover, the appellant was not entitled to the said scale as selection grade is not granted on the basis of seniority-cum-fitness rather selection on merit.
- B. Incorrect. The selection grade cases are considered by the Departmental Promotion Committee 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  
(Respondents No. 2)

  
Chief Engineer (FATA)  
W&S Peshawar  
(Respondents No. 3)

  
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. 4)

  
28/3

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

Dear Sir,

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(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/1-23/2002  
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

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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

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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:-

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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

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3.	Mr. Hidayatullah, Sub Engineer O/o the Deputy Director-II, City Distt. Govt Peshawar.
4.	Mr. Sahauallah, 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 XEN 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

Inst. 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(T)/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.	REMARKS
254	Hayatulla Khan S/O Muhammad Khan	Matric/DAE(C) -do-	Bannu	24.7.65	12.12.90	-	-	-
255	Roedar Alam S/O Rahim Gul	-do- DAE (Elec.)	Malakand	6.1.68	16.12.90	-	-	-
256	Aurangzeb -IV S/O Jaffar Hussain	F.A./ DAE (Civ.)	Peshawar	21.5.64	2012.90	-	6/96	12/97
257	Nasrullah Khan S/O Sultan Jan	Matric DAE (Civ.)	Dir	5.1.66	22.12.90	-	6/96	-
258	Jehanzeb -IV S/O Muhammad Salim	-do-	Bannu.	15.4.62	2012.90	-	6/96	-
259	Yaqoob Jan S/O S.Muslim	B.A./DAE (Civ.)	Orakzai Agency	15.2.63	20.12.90	-	-	-
260	Muhammad Rashid Butt S/O Mukhtiar Butt.	Matric DAE (Civ.)	D.Ikhan	2.10.64	6.12.90	-	6/96	-
261	Aurangzeb-VII S/O Mohabat Khan.	FSC/ DAE (Civ.)	Manshra	9.4.65	16.12.90	-	6/96	-
262	Farhat Ali S/O Farzand Ali	Matric DAE (Civ.)	Peshawar	2.4.65	12.12.90	-	-	-



Sl. No.	Name of Sub Engrs	Edu/Tech: qualification	Home Distt:	Date of birth.	Date of 1st entry in Deptt:	Date of confir-mation.	Year of passing		Remarks
							Gr. 'B' Exam:	Depttl: profil: Exam:	
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 Rak 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. 1338/2013

Aurangzeb

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 Deptt: has granted BS-16 to many official vide order dated 4.9.2003 & 5.12.2009. Therefore the appellant also entitled to the same relief.
- E) Incorrect, while Para-E of the appeal is correct.
- F) Incorrect. The appellant also possessed the same requirements on which selection grade were given to other sub engineers, therefore the appellant is also entitled for the same benefits.
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It is, therefore, most humbly prayed that the appeal of appellant may kindly be accepted as prayed for.

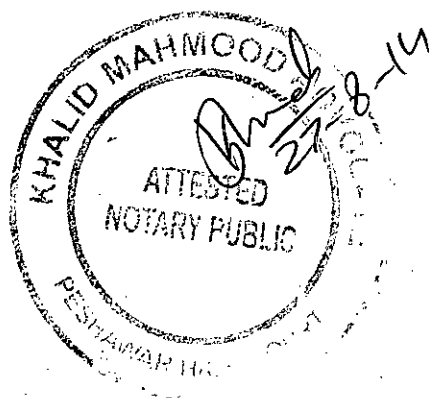
APPELLANT  
Aurangzeb

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.



  
DEPONENT

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

Service Appeal No. 1338/2013

Aurangzeb

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.
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Aurangzeb

Through:

  
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ADVOCATE, PESHAWAR.

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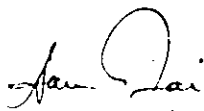
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APPELLANT  
Aurangzeb

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.

  
DEPONENT

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 -I 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 APPOINT MENT	TO CLASS	YEAR OF PASSING.	REMA
254	Hayatulla Khan S/O Muhammad Khan	Matric/DAE(C) -do-	Bannu	24.7.65	12.12.90	-	-	-
255	Roedar Alam S/O Rahim Gul	<del>do</del> DAE (Elec)	Malakand	6.1.68	16.12.90	-	-	-
256	Aurangzeb -IV S/O Jaffar Hussain	F.A./ DAE (Civ.)	Peshawar	21.5.64	2012.90	-	6/96	12/97
257	Nasrullah Khan S/O Sultan Jan	Matric DAE (Civ.)	Dir	5.1.66	22.12.90	-	6/96	-
258	Jehanzeb -IV S/O Muhammad Salim	-do-	Bannu.	15.4.62	2012.90	-	6/96	-
259	Yaqoob Jan S/O S.Muslim	B.A./DAE (Civ.)	Orakzai Agency	15.2.63	20.12.90	-	-	-
260	Muhammad Rashid Butt S/O Mukhtiar Butt.	Matric DAE (Civ.)	D.Ikhan	2.10.64	6.12.90	-	6/96	-
261	Aurangzeb-VII S/O Mohabat Khan.	FSC/ DAE (Civ.)	Mansehra	9.4.65	16.12.90	-	6/96	-
262	Farhat Ali S/O Farzand Ali	Matric DAE (Civ.)	Peshawar	2.4.65	12.12.90	-	-	-

Sl No	Name of Sub Engr:	Edu/Tech: qualification	Home Distt:	Date of birth.	Date of Ist entry in Deptt:	Date of confir- mation.	Year of passing		Remarks
							Gr. 'B' Exmn:	Depttl: prfl: Exmn:	
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 Fareoq S/o H. Said Ghulam.	-do-	Mardan.	1.1.73	23.4.95	-	-	-	Sl: No. 329 to seniority fix order of meri assigned by t. 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.