No. 513/14

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 (Judicial)

Member (Executive)

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.

Chairman

Member (Judicial)

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.

Chairman

Member (Judicial)

Member (Executive)

12.02.2016 Notices be issued to the parties for pronouncement of reserved judgment by D.B for 25-02-2016.

Chairman

24.12.2014 Appellant in person, M/S Salim Shah, Supdt. for respondents No. 1 and 2 and Kifayatullah, A.O for respondent No. 3 with Mr. Muhammad Adeel Butt, AAG present. The Tribunal is incomplete. To come up for written reply/comments alongwith connected appeals on 13.04.2015.

Reader

13.04.2015 Agent of counsel for the appellant and Mr. Saleem Shah, Supdt. alongwith Addl: A.G for respondents present. Para-wise comments submitted. The appeal is assigned to D.B for rejoinder and final hearing for 16.10.2015.

Chairman

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

Chairman

Appeal No. 513/2014
Mr. Shahzad Ahmad Khan

3. 09.06.2014 Counsel for the appellant present and heard. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. The appellant filed departmental appeal on 31.12.2014 which has not been responded within the statutory period of 90 days, hence the present appeal on 09.04.2014. He stated that despite having professional qualification and 32 years service the appellant has not been awarded BPS-16, whereas junior to the appellant mentioned in para-3 of the appeal have been given the benefits of BPS-16 and as such the appellant has been discriminated. He further stated that similar nature case of Mr. Abdul Farooq in Service Appeal No. 489/2014 has 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 27.08.2014 before the learned Bench-I.

Appellant Deposited
Security & Process Fee
Rs. 180/- Bank
Receipt is Attached with File.

Member

4- 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. Written reply has not been received, and request for further time made on behalf of the respondents. To come up for written reply/comments alongwith connected appeals on 24.12.2014.

Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 513/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	09/04/2014	The appeal of Mr. Irshad Ahmad Khan presented today by Mr. M. Asif Yousafzai Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing. REGISTRAR
2	15-4-2014	This case is entrusted to Primary Bench for preliminary hearing to be put up there on 9-6-2014. CHAIRMAN

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 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. Supreme Court's judgment reported as 1996 SCMR-1185, 2009 SCMR-01. Copy of judgments attached as Annexure – B.

4- That the appellant also filed departmental appeal for grant of B-16 on 30.12.2010 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.

GROUNDS:

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.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 513 /2014

Mr. Irshad Ahmad Khan V/S C&W Department

.....

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5.	Copy of Order (4.9.2003)	- D -	14
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APPELLANT
Irshad Ahmad Khan

THROUGH:

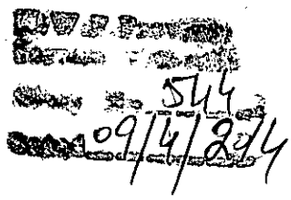
(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

&

TAIMUR ALI KHAN
ADVOCATE.

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 513 /2014



Mr. Irshad Ahmad Khan, Sub Engineer,
O/O Building Division-I, Peshawar.

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.

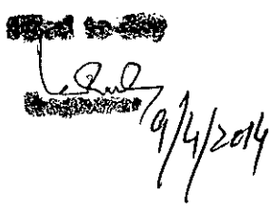
3- The Secretary, Government of Khyber Pakhtunkhwa, Finance Department, Civil Secretariat, Peshawar.

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.

.....

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 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 on 31.12.2014 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.

GROUNDS:

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
Irshad Ahmad Khan

THROUGH:

(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

&

TAIMUR ALI KHAN
ADVOCATE.

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 n 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

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				By selection on merit from amongst four senior most officers of the Department, with at least seventeen yeas experience as Government servant, seniority being considered only in the case of officers of practically the same standard of merit.
	Superintending Engineer		Degree n Engineering from a recognized University.		By selection on merit from amongst the Executive Engineers or holder of equivalent posts in Communication and Works Department, with at least twelve yeas service in Grade-17 and 18, seniority being considered only in the case of officers of practically the same standard of merit.
	Executive engineer				By selection on merit with due regard to seniority from amongst assistant Engineers of Communication and Works Department with at least six yeas experience as such.
	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.		(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 is 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 / Superintendants in the Department.

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 Inter national Organization.		30 to 45 years	By initial recruitment.
		Masters Degree in Civil Engineering from a recognized University with at lest ten years professional experience in a National or International Organization.		30 to 45 years	By initial recruitment.

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).

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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 13.6.2004 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, ... MEMBER
MR. NOOR ALI KHAN, ... 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 ade-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 th 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 Tribunalfor 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
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATTESTED

(11)

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

4. 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 in 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 1998-SCMR-1105.

5. 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.

6. It is to be noted that there are other connected appeals filed in the years 2010 and 2011 fixed for arguments to-day viz. Service Appeals (1) No. 1076/2010, Karimullah Khan, (2) No. 107/2010, Gul Maalook (3) No. 310/2010, Sanaullah, (4) No. 311/2010, Syed Muhammad Tariq, (5) No. 312/2010, Malik Shakir Pervez, (6) No. 379/2010, Muhammad Zahir Shah-III, (7) No. 1014/2010, Muhammad Zahir Shah, (8) No. 1230/2010, Muhammad Atique Farooqi, (9) No. 1817/2010, Tariq Yousaf, (10) No. 1818/2010, Muhammad Nazeeb,(11) No. 1709/2010, Ajmal Anwar, (12) No. 3121/2010, Jamal Khan, (13) No. 1254/2011, Mushal Khan, and (14) No. 1075/2011, Nausherad 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

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 22-12-2012
Number of Words 1600
Copying Fee 16
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Total
Name of Copyist
Date of Delivery of Copy 22-12-2012

ATTESTED

(13)

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 sufferred 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.

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

ATTESTED

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 19.1.2004. 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

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

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 non-induction of limitation does not arise. The august Supreme Court of Pakistan in 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 in 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 1998-SCMR-1105.

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 today, vide Service Appeals (1) No. 1014/2010, Kamrullah Khan (2) No. 107/2010, Gul Maiook (3) No. 310/2010, Sanaullah, (4) No. 211/2010, Syed Muhammad Tariq (5) No. 312/2010, Malik Shakir Pervez, (6) No. 379/2010, Muhammad Zahir Shah-III, (7) No. 1014/2010, Muhammad Zahir Shah, (8) No. 1230/2010, Muhammad Atique Parooq, (9) No. 1817/2010, Tariq Yousaf, (10) No. 1818/2010, Muhammad Nateeb,(11) No. 1083/2010, Ajmal Anwar (12) No. 3121/2010, Jamal Khan (13) No. 1254/2011, Mukhtiar Khan, and (14) No. 1575/2011, Nayshad 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

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 22-2-2013
Number of Words 1400
Copying Fee 14
Urgent
Total
Name of Copyist
Date of Complete
Date of Delivery of Copy 22-2-2013

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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.

Sd/- Syed Manzoor Ali Shah
Member

Sd/- Abdul Latif
Member

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 22-7-2013.
Number of Words 1600
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Urgent 2
Total 12
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Date of Completion of Copy 22-7-2013
Date of Delivery of Copy 22-7-2013

ATTESTED

OFFICE OF THE EXECUTIVE ENGINEER
BUILDING DIVISION-I PESHAWAR.

No. 1771/125 dated 31 /12/2013.

(12)

To

The Superintending Engineer
C&W Circle Peshawar

Subject:- **APPLICATION FOR UPGRADATION.**

An application (in original) which is self explanatory in respect of Muhammad Iqbal Sub Engineer & Irshad Ahmad Khan Sub Engineer attached to this office is submitted herewith for onward submission to the competent forum for favour of further necessary action please.

EXECUTIVE ENGINEER

Copy forwarded to the:-

1- Muhammad Iqbal Sub Engineer for information.
2- Irshad Ahmad Khan Sub Engineer for information.

EXECUTIVE ENGINEER

Ata ur Hamid Jia

ATTESTED

13

BETTER COPY

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

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14

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 form 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.

(15)

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.

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, ... CHAIRMAN.
MR. ABDUL JALIL KHAN, ... 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

ATTESTED

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

17

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 anpellants are also entitled to the costs of their litigation in their present cases from the official respondents.

ANNOUNCED
07.5.2009

Sd/- Justice Dr. Fakhir Iqbal Khan
Chairman
Sd/- Abdul Jalil Khan
Member

ATTESTED

(19)

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.	Counsel for the appellant and A.G.P (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. ANNOUNCED. 07.5.2009. MEMBER CHAIRMAN

11-3-10

Chairman

ATTESTED

"H"

(20)

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

MR. ABDUL JALIL .....MEMBER.
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

(21)

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 though their representatives, submitted written reply, contested the appeal and denied the claim of the appellant.

4. Arguments heard and record perused.

5. The learned counsel for the appellant argued that 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

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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 infractious. 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 instructionon 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.

Sd/- Abdul Latif
Member

Sd/- Sultan Mahmood Khattak
Member

ATTESTED

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR
APPEAL NO. 513 OF 2014

Irshad Ahmad Khan, Sub Engineer
O/O XEN Building Division No.I
Peshawar --- 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

13.04.15

BEFORE THE KHYBER PAKHTUNKHWA,
SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No.__513_/2014

Mr. Irshad Ahmed Khan V/S C&W Department

.....

REJOINDER ON BEHALF OF APPELLANT

.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

(1-6) All objections raised by the respondents are incorrect. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

1 Admitted correct by the respondents, so no comments.

2 Incorrect and Misconceived, while Para-2 of the Facts of Appeal is correct.

3 Incorrect, while Para-3 of the appeal is correct. More over ensuring the availability of record was the duty of the Deptt: and not of appellant and as such the appellant cannot be deprived from his legal rights due to faults of others.

4 Incorrect and not replied according to Para-4 of the appeal.

GROUNDS:

A) Incorrect, while Para-A of the ground of appeal is correct.

B) Incorrect, while Para-B of the ground of appeal is correct.

C) Incorrect, The appellant has been deprived of his right in an arbitrary and fanciful manner. More over limitation factor is not attracted in cases of monetary benefits of high scale/grade.

D) Incorrect. As explained above.

E) Incorrect as explained above.

F) Incorrect. The appellant has been deprived of his right in an arbitrary and fanciful manner. More over limitation factor is not attracted in cases of monetary benefits of high scale/grade.

G) No comments has been admitted by the respondents, so no comments.

H) Legal.

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

APPELLANT
Irshad Ahmed Khan

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.

KHALID MAHMOOD ADVOCATE
ATTESTED
NOTARY PUBLIC
PESHAWAR HIGH COURT

DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA,
SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No.__513_/2014

Mr. Irshad Ahmed Khan V/S C&W Department

.....

REJOINDER ON BEHALF OF APPELLANT

.....

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Preliminary Objections:

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4 Incorrect and not replied according to Para-4 of the appeal.

GROUNDS:

A) Incorrect, while Para-A of the ground of appeal is correct.

B) Incorrect, while Para-B of the ground of appeal is correct.

C) Incorrect, The appellant has been deprived of his right in an arbitrary and fanciful manner. More over limitation factor is not attracted in cases of monetary benefits of high scale/grade.

D) Incorrect. As explained above.

E) Incorrect as explained above.

F) Incorrect. The appellant has been deprived of his right in an arbitrary and fanciful manner. More over limitation factor is not attracted in cases of monetary benefits of high scale/grade.

G) No comments has been admitted by the respondents, so no comments.

H) Legal.

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

APPELLANT
Irshad Ahmed Khan

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
APPEAL NO. 513 OF 2014

Irshad Ahmad Khan, Sub Engineer --- Appellant
O/O XEN Building Division No.I
Peshawar

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 appellant 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 estoped 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 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. 63 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.

   The appellant's right has not been effected due to the reason that the grant of Senior Scale BS-16 awarded during 2003-04 as the seniority of the appellant was at very low position and was in no way entitled for the grant of senior scale BS-16 as per Govt policy of 25% posts in senior scale BS-16 of the total number of posts of Sub Engineers prior to 2001.

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 considered 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. No comments

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 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
Finance Department
(Respondent No. 3)

IMMEDIATE Annex-II

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)

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-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.)

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

A copy is forwarded for information to:-

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

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

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

Endst. 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)

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

Dated Peshawar the 19 / 04 / 2004

ORDER

No: SOE-I/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 XEN 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 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

Endst. No.SOE-I/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)

Annex-IV

New Select of B-11 After Merge

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2/07

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

FINAL SENIORITY LIST OF SUB ENGINEERS GRADE –II 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 –II of C&W Department NWFP, as it stood on 31-12-1999 is notified as under:-

Sl No	NAME	EDU/TECH: QUALIFICATION	HOME DISTRICT	DATE OF BIRTH	DATE OF APPOINTMENT	TO CLASS	YEAR OF PASSING Grade-B Exam:	YEAR OF PASSING Proffi: Exam:	REMARKS
1	Fazal Raziq –I S/C	B.A.	Swat	5.4.43.	5.7.61	-	1991		
2	Gul Zaman S/C	Matric DAE (Civ:)	Malakand Agy:	6-6-40	1-1-73				
3	Fazal Rehman S/C	Matric DAE (Civ:)	Karak	9-8-42	1-1-74				
4	Fazal Rehman-II S/D	-do-	Peshawar	2-9-45	10-11-74				
5	Faraz Gul-I S/D	-do-	NWA	20-6-51	10-12-74	-	5/96		

Section Officer Establishment-I W&S Department N.W.F.P.

Sl No	NAME	EDUL./TECH: QUALIFICATION	HOME DISTRICT	DATE OF BIRTH	DATE OF APPOINTMENT	TO CLASS	YEAR OF PASSING	REMARKS
59	Malik Nawaz S/O Gul Daraz	Matric B.Tech; -do-	Bannu	3-4-58	9-6-81	-	91	-
60	MrSultan Sikandar S/O	Matric DAE (Mech:)	Peshawar	30-11-47	24-10-81	-	87	-
61	Inamul Haq S/O Shamsul Haq	Matric DAE (Civ:)	-do-	18-12-58	15-11-81	-	91	4/93
62	Zainul Abadin S/O Muhammad Adris	-do-	Mardan	6-4-61	15-11-81	-	-	-
63	Irshad Ahmad Khan S/O lal Muhammad khan	-do-	Peshawar	23-9-61	18-11-81	-	1991	-
64	Abdul Hakim S/O Fazal Ghafoor	-do-	D#	9-6-54	22-11-81	-	-	-
65	Jamshed Khn S/O Saifur Rehman	-do-	Malakand	21-3-56	22-11-81	-	91	-
66	M. Hamid Zia S/O S. Muhammad Zia	-do-	Peshawar	1-7-61	22-11-81	-	91	5/96
67	Inamullah –I S/O Maizullah	DAE (Elec:)	DIKhan	24-2-57	5-12-81	-	90	5/96

Sl No.	NAME	EDUL/TECH: QUALIFICATION	HOME DISTRICT	DATE OF BIRTH	[illegible] ENT	TO CLASS	YEAR OF PASSING.
314	Anees Kalim S/O Abdul Rub Kalim	BA/ DAE (Civil)	Swabi	30-8-64	[illegible]-11-17	15.10.99	
315	Mr.Murad Ali S/O Marhamat Khan	MA/ DAE (Civil)	Bannu	20-1-64	31.[illegible]	18.10.99	

CHIEF ENGINEER (NORTH)

Copy to the:-

1. Secretary to Govt of NWFP C&W Department, Peshawar.
2. Chief Engineer South) C&W Department, NWFP Peshawar.
3. Superintending Engineers Dev:C&W Circle DI Khan Peshawar
4. All Executive Engineer in C&W Department, NWFP.
5. All Concern Director in C&W department NWFP.
6. Director M&E (North/South)C&W Dept:Peshawar

CHIEF ENGINEER (NORTH)

VAKALAT NAMA

23

NO._____/20

IN THE COURT OF Service Tribunal, Peshawar

Isshad Ahmad Khan (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

C & W Deptt: (Respondent)
(Defendant)

I/We Isshad Ahmad Khan & Taimur Ali Khan (adv)

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

& TAIMUR ALI KHAN

M. ASIF YOUSAFZAI
Advocate High Court,
Peshawar.

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