08.08.2016 Counsel for the appellant, M/S Saleem Shah, Superintendent and Muhammad Irshad, SO alongwith Additional AG for respondents present. Rejoinder submitted, copy whereof handed over to learned Additional AG. To come up for arguments on 13-12-16 before D.B.

Member Member

13.12.2016 Counsel for the appellant and Mr. Saleem Shah, Superintendent alongwith Mr. Muhammad Jan, Government Pleader for the respondents present. Both counsel for the appellant and Government Pleader for the respondents requested to dispose of the instant appeal in light of the judgment dated 02.03.2016 which was announced by the Larger Bench of this Tribunal in similar nature appeals. As the matter in issue has already been settled upon by the Larger Bench vide Service Appeal No. 1330/2010 dated 02.03.2016 hence, the appeal in hand is also disposed of in term of the above referred judgment. No order as to costs. File be consigned to the record room.

ANNOUNCED
13.12.2016

(ASHFAQUE TAJ)
MEMBER

(MUHAMMAD AAMIR NAZIR)
MEMBER

25.1.2016

Counsel for the appellant present. Learned counsel for the appellant argued that identical appeals including appeals No. 1071 and 1083 of 2015 are already for regular hearing.

In view of the above, this appeal is also admitted to regular hearing. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 22.2.2016 before S.B.

Appellant Deposited
Security & Process Fee

Chairman

22.02.2016

Counsel for the appellant and Mr. Saleem Shah, Supdt. alongwith Assistant AG for respondents present. Requested for adjournment. To come up for written reply/comments on 13.4.2016 before S.B.

Chairman

13.4.2016

Counsel for the appellant and M/S Saleem Shah, Supdt. and Muhammad Irshad, SO alongwith Addl: A.G for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 08.08.2016

Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 1231/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	05.11.2015	The appeal of Mr. Abdul Waheed resubmitted today by Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order. REGISTRAR
2		This case is entrusted to S. Bench for preliminary hearing to be put up thereon 23.11.2015 CHAIRMAN
	23.11.2015	Agent of counsel for the appellant present. Seeks adjournment as counsel for the appellant is not in attendance. Adjourned to 25.1.2016 for preliminary hearing before S.B. Chairman

The appeal of Mr. Abdul Waheed Sub-Engineer C & W department received to-day i.e. on 16/10/2015 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

Copies of judgments attached with the appeal are illegible which may be replaced by legible/better one.

No. 1624 /S.T,

Dt. 21/10/2015

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Muhammad Asif Yousafzai Adv. Pesh.

Respected Sir
Removed
Re submitted

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 1231 /2015

Mr. Abdul Waheed V/S C&W Department

.....

INDEX

S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	01-03
2.	Copy of Rules	- A -	04-06
3.	Copy of Judgment	- B -	07-10
4.	Copy of Appeal	- C -	11-12
5.	Copy of Rejection Order	- D -	13
6.	Copy of Order (4.9.2003)	- E -	14
7.	Copy of Order (5.12.2009)	- F -	15
8.	Copy of Judgment (07.05.2009)	- G -	16-18
9.	Copy of Judgment (07.05.2009)	- H -	19-20
10.	Copy of Judgment (06.06.2007)	I	21-27
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13.	Vakalat Nama	----	38

APPELLANT

THROUGH:

(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 1231 /2015

Mr. Abdul Waheed,
Sub Engineer,
C&W Building Division, D.I.Khan.

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 (Central) (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 KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 15.09.2015 RECEIVED TO APPELLANT ON 18.9.2015 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT FOR GRANTING B-16 ON HAVING 10 YEARS SERVICE AND ALSO PASSED PROFESSIONAL EXAM HAS BEEN REJECTED.

PRAYER:

That on acceptance of this appeal the order dated 15.9.2015 received to the appellant on 18.09.2015 may be set aside with the direction to the respondents to grant B-16 senior scale according to the rules for having 10 years service + professional Exam with all consequential & back benefits from the date when juniors were given. 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 1988 as Sub Engineer and also passed B grade departmental exam in the year 1996. Thus the appellant has more than 27 years service at his credit with good record throughout. All the dates are mentioned the departmental appeal of the appellant the copy of which is already attached as Annexure – C

2- Those according to the rules 25 % of the post of senior scale sub engineers are to be 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 27.08.2015 and the same was rejected for no good grounds on 15.09.2015 and received to the appellant on 18.09.2015. Hence, the present appeal on the following grounds amongst the others. Copy of the appeal and rejection order is attached as Annexure – C&D

GROUNDS:

A- That not granting B-16 as per rules and rejection of the departmental appeal of the appellant 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 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- E & F.

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 07.05.2009, Appeals NO.531/2001,533/2001, 534/2001, 535/2001, 537/2001 and 538/2001 decided on 06.06.2007, Appeal No.194/93 decided on 07.09.1994. and Appeal NO. 27/09, decided on 27.09.2008. Copies of some judgments are attached as Annexure – G, H, I, J & K .

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
Abdul Waheed

THROUGH:

(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

&

Taimur Ali Khan
Adv.

BETTER COPY

Annexure-A

(4)

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 – I

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 years experience as Government servant, seniority being considered only in the case of officers of practically the same standard of merit.
	Superintending Engineer		Degree in 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 years 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 years 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) Seventy percent 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.

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 International 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 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).

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

MR. MUHAMMAD ASIF YOUSAFZAI, Advocate ... For appellant.

MR. SHERAFGAN KHATTAK, Addl. Advocate General ... For official respondents

MR. IJAZ ANWAR, Advocate ... For private respondents No. 4,6, 7 & 8.

SYED MANZOOR ALI SHAH, ... 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 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 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."

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

5. The learned counsel for the appellant argued that the appellant was appointed by the respondent department as Sub Engineer on 28.5.1980 and passed Grade A & B examination. Seniority list of Sub Engineers as it stood on 31.12.1998 issued wherein name of the appellant appeared at S.No. 50 while the names of private respondents were at S.No. 52, 61, 63, 72 and 236 respectively. The private respondents were considered for Senior Scale BPS-16 while the appellant has not been considered and ignored. The appellant was not considered by the DPC due to his incomplete record. It was the responsibility of the respondent department to provide official record of the appellant and sent his case to the Departmental Promotion Committee for consideration of his name against Senior Scale BPS-16. If the record was not available, the appellant could not be 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.

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

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.

(NOOR ALI KHAN)
MEMBER

(SYED MANZOOR ALI SHAH)
MEMBER

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

C

(11)

OFFICE OF THE
SUPERINTENDING ENGINEER,
C&W CIRCLE D.I.Khan.

No. 270 **/2-E**

Dated. 27 **/08/2015**

To,

The Chief Engineer (Centre),
C&W Department Khyber Pakhtunkhwa,
Peshawar.

Subject: - **GRANT OF SENIOR SCALE BS-16 AS PER POLICY OF GOVERNMENT AND TRIBUNAL DECISION.**

Enclosed please find herewith (2 No) applications of following Sub Engineers (BS-11) attached with the office of Executive Engineer C&W Division DIKhan for favour of further consideration please.

S.No	Name of Sub Engineer
1.	Mr. Abdul Waheed Sub Engineer.
2.	Mr.Fazal Rehman Sub Engineer.

Encl/Application

SUPERINTENDING ENGINEER
C&W CIRCLE D.I.KHAN

Copy to:-

1. The Executive Engineer C&W Division DIKhan for information.

SUPERINTENDING ENGINEER
C&W CIRCLE D.I.KHAN

D

12

To

The Secretary to Govt: of
Khyber Pakhtunkhwa
C&W Department Peshawar.

Subject: **APPEAL FOR GRANT OF SENIOR SCALE (BPS-16)**

Sir,

With profound submissions, It is to state that during last year in 01/2014 an application on the subject cited above was processed with your good Office vide Chief Engineer (Centre Memo No.266-E/920/CE/C&WD dt:08/01/2014 .

Now I am very disappointed when it noticed from the Seniority Notified vide Chief Engineer (Centre Memo No.266-E/90/CE/C&WD dt:03/04/2015 that the following Sub Engineers Junior to me have been granted BPS-16 .

S.No	Name of Sub Engineer	Date appointment
1	Mashal Khan s/o Bagu Khan Seniority @ sl No. 114	16-03-1988
2	Misal Khan s/o Yousaf-Khan Seniority @ sl No.156	22-03-1988
3	Syed Sardar Shah s/o Sabirin Shah Seniority @ sl No.168	01-04-1990

Whereas I joined the service as Sub Engineer on 13-03-1988 and cleared B-Grade Examination in 03/1996 vide Chief Engineer order No 848/4-E/475/E-I (2) dated 27-06-1996 (under Roll No.96107)

It is therefore requested that my case being analogous may please be reconsidered and allowed me Senior Scale BPS-16 from the date my junior are granted i.e 04-09-2003 & obliged.

Thanks

Dated: /08/2015
27-8-2015.

Sincerely Yours

Abdul Waheed
Sub Engineer

C&W Building Division D.I Khan

ATTESTED

GOVT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

No. No.SOE/C&WD/13-21/2014
Dated Peshawar, the Sept 15, 2015

TO

Mr. Abdul Waheed
Sub Engineer O/O XEN
Building Division Dikhan

Subject: Appeal for Granting BS-16 on passing B-Grade and Professional Exam and 10 years Service

I am directed to refer to your appeal/representation dated 25.08.2015 on the subject noted above and to state that your appeal/representation has been examined by the Department and regretted as the policy of Selection Grade has been discontinued by the Provincial Government.

(USMAN JAN)
SECTION OFFICER (Estb)

Endst even No. & date

Copy forwarded to the:

1. Chief Engineer (Centre) C&W Peshawar
2. PS to Secretary C&W Department, Peshawar

SECTION OFFICER (Estb)

ATTESTED

E (14)

E

BETTER COPY

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

Annexure-D

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.

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

)py forwarded to the:

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

BETTER COPY

Annexure-F

15

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.

16

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)

ATTESTED

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

17

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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

(18)

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.

Sd/- Justice (R) Salim Khan
Chairman

Sd/- Abdul Jalil
Member

ANNOUNCED
07.5.2009

2

"H"

BEFORE THE NWFP SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 1685 /08. (19)

1927
19.9.08

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.

...to-day
...filed.
Registrar
4/12/08

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

1685/10

(20) (19)

No. of Order 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 as per para-6 of the judgment, with costs. ANNOUNCED. 07.5.2009. MEMBER CHAIRMAN

11-3-10

BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 531/2001

Date of institution – 18.04.2001
Date of decision - 06.06.2007

Muhammad Iqbal-II, Sub Engineer (Dev) Works & Services Division, Khyber at Jamrud.....(Appellant)

VERSUS

1. Government of NWFP through Secretary, Works & Services Department, Peshawar.
2. Secretary (Establishment), Establishment & Administration Department, Government of NWFP, Peshawar.
3. Chief Engineer, Works & Services Department, Government NWFP, Peshawar.
4. Administrative Officer, Works & Services Department, Government of NWFP, Peshawar.
5. Abdul Basir Qazi, Sub-Engineer, Office of the Chief Engineer Works & Services Department Peshawar and 45 others.....(Respondents)

Appeal for the grant of BPS-16 and re-fixation of seniority.

Haji Shamsul Qamar & M.Asif Yousafzai, Advocates.....For appellants.
Mr. Zaffar Abbas Mirza, AGP.....For respondents 1 & 3.
Mr. Jehangir Mohmand, Advocate.....For respondents No. 2,4,5,7,8,11,27,36,29.

MR. SHAH SAHIB.....MEMBER.
MR. SULTAN MAHMOOD KHATTAK.....MEMBER.

ATTESTED

NWFP Service Tribunal
Peshawar

(22)

JUDGEMENT:

SHAH SAHIB, MEMBER: - The appellant had filed the instant appeal for the grant of BPS-16 and re-fixing of seniority w.e.f. 22.1.1989.

2. The facts of the case as narrated in the memo of appeal briefly are that the appellant has been serving as Sub Engineer in the Works & Services Department. The appellant had completed 10 years service in the year 1989 and had passed his B-Grade examination on 30.1.1984 entitling him to get selection grade BS-16 from the due date by virtue of the method of recruitment for the post of Senior Scale Sub Engineer prescribed vide C & W Department (Recruitment and Appointment) 1973, notified vide S & GAD notification No. SOR-1 (S&GAD) 1-12/74 dated 13.1.80 read as under;

> " Twenty five per cent of the total number of posts of the Diploma holder Sub-Engineers shall form 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."

Evidently, the rules applicable to the matter entitled an incumbent Sub-Engineer who had passed departmental B-Grade examination and having 10 years long service at his credit to the grant of the post of Senior Scale Sub-Engineer (BPS-16). A number of posts of Senior Scale Sub-Engineer (BPS16) had been available in and onward 1989, soon after the appellant had completed 10 years long service and had passed the departmental

Grade "B" Examination, fulfilling the requirements laid down for entitling him to placement in the cadre of Senior Scale Sub-Engineers (BPS-16). But, the respondent department did not process the appellant's case, though the Departmental Selection Committee met a number of times during this period. The seniority list issued on 1.12.2000 did not contain the appellant's name in the said Cadre. The appellant had preferred a departmental representation for placing him in the Senior Scale Sub-Engineer (BS-16) and re-fixing his seniority in the said Cadre but the same had not been disposed of within the statutory period of 90 days. Hence, he had filed the instant appeal on the following grounds on 18.04.2001:-

a. That the appellant, having completed 10 years service and passed departmental B-Grade examination, was entitled to the grant of BS-16 in the Cadre of Senior Scale Sub Engineers as had been granted to his colleague Mr. Qalb-e-Saleem Sub Engineer;

b. That vacancies in the Cadre following his acquiring the requisite qualification had been available;

c. That the Service Tribunal had already laid down the criteria applicable to the matter while deciding Appeal No. 194/1993 Qalb-e-Saleem Vs. Govt. of NWFP etc, but the respondents have committed gross illegalities while denying him the grant of the post of Senior Scale Sub Engineer (BPS-16);

3. On receipt of the appeal, notices had been issued to the respondents. The appeal had been admitted to regular hearing on 9.10.2004. The respondents appeared through their representatives, filed their written replies, contested the appeal and denied the claim of the appellant. The appellant had also filed his replication in rebuttal.

ATTESTED

4. Arguments heard and record perused.

(24)

5. The learned counsel for the appellant contended that the appellan having passed departmental Grade "B" Examination in 1984 an completed 10 years service in 1989, had been entitled to the grant of BPS 16 in the cadre of Senior Scale Sub-Engineers as provided under the relevant service rules and on the analogy of his colleague Mr. Qalb-e-Saleem, Sub Engineer. Moreover, vacancy in the said cadre had been available in 1989, soon after he had become eligible for placement in the said cadre. Acting in furtherance of the rules, NWFP Service Tribunal had already held the appellant in Appeal No. 194/1993 Qalb-e-Saleem Vs. Govt. of NWFP etc. entitled to the said benefit. But, the respondent department had been adamant not to treat the appellant's case according to the rules and committed gross illegalities while refusing the grant of selection grade BS-16 to the appellant in the said Cadre from the date it had become due to him. In this connection the learned counsel for the appellant quoted the following authorities :-

1. 2002-PLC(C.S.) 1388
2. 1997-SCMR-55
3. 1997-PLC (C.S) 1210
4. 1995-PLC (C.S) 1137

6. The learned AGP and learned counsel for the private respondents contended that the appellant had been inducted in the service of respondent department on 12.12.1979 whereas the replying respondents had been inducted in service long before him in the years 1974, 1975, 1976 and 1978 respectively. Thus, they had ranked senior to the appellant. The appellant could not claim seniority over private respondents who had been otherwise senior to him and been qualified and fit for the grant of BPS-16 in the

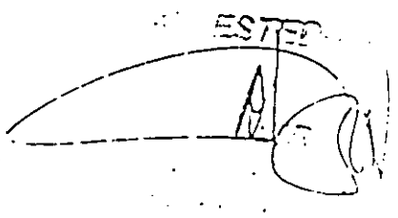
Cadre in all respects. Similarly, the appeal had been time bared as the appellant had acknowledged the meeting of the Departmental Promotion Committee that recommended the grant of BPS-16 in the Cadre of Senior Scale Sub-Engineers with effect from 17.11.1991, but had kept quiet and did not object to it. Now, he could not file the appeal that too without seeking condonation of delay.

7. After hearing arguments on both sides at a considerable length, the Tribunal holds that a number of vacancies existed in the cadre of Senior Scale Sub-Engineers (BPS-16) following acquiring the requisite eligibility by the appellant in 1989. However, the respondent department had referred the appellant's departmental representation alongwith 9 others to a "Review Committee" Comprising the following;

i. Engr. Inamullah Khan, Chief Engr. (North).....Chairman
ii. Engr. Gul Muhammad, Director HQ, CE (North).....Member
iii. Mr. Asif Shahab Khan, SO(General) W & S..... ...Member
iv. Mr. Maqbool Khan Khattak, Supdt. E & A, W & S....Member

The Review Committee met on 25.4.2001 and recommended the grant of the due right to the appellant with no financial implication and without payment of arrears. The matter had not stopped here and thrown to gather dust on the departmental representation of the appellant. Due consideration had been given by the respondent department for redressing the appellant's grievance. To this end, letter No. 56-E/642/CE/W&S dated 7.2.2007 of Respondent No. 3 addressed to Respondent No. 1 transpires

that they are also supportive of the appellant's view point. The letter ends with the suggestion to treat the appellant's case on the analogy of Mohammad Yousaf, whose case was similar and had been granted BPS-16 w.e.f 15/4/1983 vide order No. SOG /C&W/13/21/2000 dated 14.5.2001. Likewise, the respondent department had moved a mile further and had prepared a Working Paper on 6.12.2006 for convening the meeting of the Departmental Promotion Committee with the suggestion that the appellant may be granted BPS-16 with effect from 20.11.1989 and fixing his ante-date seniority on the analogy of Mr. Qalb-e- Saleem, Sub Engineer by placing him at his appropriate place after the latter as per conditions of the Review Committee's recommendations. The counsel for the appellant gave an undertaken on behalf of the appellant that his client would not claim arrears if annual increments were allowed. Thus in the given circumstances the appellant appears to have made out a fit case for the Tribunal's interference in the matter. Accordingly, we accept the appeal and direct the respondent department to consider the grant of BPS-16 to the appellant, if he is otherwise fit/eligible, on the analogy of Mohammad Yousaf with effect from 20.11.1989, the day he had attained eligibility on the basis of completing his requisite ten years service coupled with passing Grade "B" examination. He is also entitled to annual increments as admissible to him under the rules and fixing his interse seniority on the Cadre of Sub Engineers (BPS-16). However, since he has voluntarily forgone his claim to the arrears, the question of grant of the back benefits therefore, does not arise.



8. Our this judgment will also dispose of the other connected appeals bearing Nos. 533/2001 Asad Ali Bangash, 534/2001 Muhammad Tariq, 535/2001 Shakeel Ahmad, 537/2001 Muhammad Ikram Qureshi and 538/2001 Muhammad Arif Sub Engineers Versus Secretary C&W Department NWFP etc, involving common questions of law, in the same manner.

9. The parties are left to bear their own costs. File be consigned to the record after completion.

ANNOUNCED.
06.06.2007.

(SHAH SAHIB)
MEMBER.

(SULTAN MAHMOOD KHATTAK)
MEMBER.

Date of Presentation of Application 6.7.07
Number of Words 2800
Copying Fee 16
Urgent 2
Total 18
Name of Copyist
Date of Completion 6.7.07
Date of Delivery 6.7.07

BEFORE THE N.W.F.P. SERVICE TRIBUNAL, PESHAWAR.

28

Appeal No. 194/1993

Date of institution..22.6.1993

Date of decision .. 7.9.1994

Qalbe Saleem S/O Himat Khan, Sub-Engineer, C&W Department (Development Division) Kurram Agency. . . . . (APPELLANT)

VERSUS

1. Government of NWFP, through Secretary to Government of NWFP C&W Department.
2. Chief Engineer, C&W Department, Peshawar.
3. Executive Engineer Development, C&W Division Hangu.
4. Administrative Officer, C&W Department, Peshawar.
5. Sabit Hussain, Sub Engineer, C&W Kurram Agency and 34 others. . . . . (RESPONDENTS)

Mr. Abdul Rauf Rohaila, Advocate. For appellant.

Mr. Muhammad Shafi, Government Pleader. For respondents No.1 to 4.

MR. MARIN DAD KHATTAK .. MEMBER.
MR. GUL MUHAMMAD KHAN .. MEMBER.

JUDGEMENT.

MARIN DAD KHATTAK, MEMBER:- This appeal has been filed by Qalbe Saleem u/s 4 of the NWFP Service Tribunal Act 1974, against the order dated 26.5.1993, whereby the request of the appellant for seniority over respondents No.5 to 38 was rejected.

2. Brief history of the case as per memo of appeal is that the appellant joined service as Sub Engineer in the C&W Department on 21.1.78. He passed the S.D.O. Departmental Examination in 1984. Respondent No.. vide his letter dated

Cont..page..2.

17.11.89 (Annexure-A) directed all the Exe cutive Engineers in C&W Department to collect and supply the ACRs and pro-dated of 24 Sub Engineers for filling the vacancies of posts of Senior Sub Engineers (BPS-16). The ACRs for the period from 21.1.79 to 31.12.89 in respect of the appellant were asked for were duly supplied to respondent No.1 by respondent No.3 vide his letter dated 17.3.90. It has been alleged that there were 67 vacant posts in the Senior posts of Sub Engineers (BPS-16) in C&W Department on 5.6.1990. Six meetings of the Departmental Promotion Committee were held but the appellant was neither considered nor his case was placed before the Departmental Promotion Committee for consideration with the result that the grant of senior scale in favour of the appellant was unnecessarily delayed. In fact the appellant should have been granted the higher scale after passing the departmental examination on 29.1.90 on 17.11.9 , the result of the second batch of departmental examination was declared in which 162 officials were declared successful. The respondents kept pending/ directed the Executive Engineers time and again to forward the ACRs of the officials who had passed the departmental examination in second batch in order to consider their cases for the grant of senior scale (BPS-16). The appellant's case should have been placed before the Departmental Promotion Committee first and should have been granted the senior scale earlier. The respondents, however, vide their order dated 5.7.92 and with that 4.4.93 promoted the appellant alongwith respondent No.5 to and placed him junior to them. The appellant preferred a representation to respondent No.1 on 1.8.92 who conveyed his inability to accept the representation on 26.5.93 on this appeal. Respondents No.1, 2 and 4 have filed their written comments contested the appeal. Preliminary objections have been raised that the appellant has no cause of action and that the appellant has concealed facts. It has been averred that firstly his ACRs were completed on 4.2.90 as is clear

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Annexure-B to the appeal) secondly in the Junior [illegible] standing at S.No.159 in the seniority list and as such was not considered for Grade B-16 in Departmental Promotion Committee meeting dated 25.9.89. Therein Sub Inspectors upto S.No. [illegible] were considered by creating their Grade-16 w.e.f. 20.11.89. All seniors to the appellant. As is evident from Annexure-C to the appeal, there were 53 vacancies (not 57) [illegible] No.2.89 and the remaining [illegible] were to be promoted Grade-16 w.e.f. 20.11.89. Conduct & Departmental Grade-A examination being a codal requirement in said promotion, the last examination was held on 9th to 15th period 1989 and the result declared on 17.11.91 (not on 7.11.90 as mentioned in Annexure-B to the appeal). Necessary entries to this effect were made against the aggrieved Sub [illegible] in the seniority list as it stood on 31.12.91 wherein the appellant stood at S.No.112. In the subsequent Departmental Promotion Committee meeting held on 30.5.92, the appellant (along with his seniors in one batch) was approved for grant of Grade-16 retrospectively with effect from 17.1 .91, the date on which his seniors (respondents No.5 to 32 were upgraded. The appellant was allowed Grade-16 w.e.f. 17.11.91, the date from which his seniors were upgraded. Since he was considered for upgradation alongwith the seniors in one batch therefore, he on his promotion will retain his inter-se seniority in the lower grade under Sub Rule (4) of Rule 8 of the [illegible] Rules Act 1993 r/w Government of [illegible] Notification No.SOR-I(S&GAD)1-89/75, dated 13.4.79. As such he is correctly placed below respondents S.No.5 to 9 who were junior to him in the lower grade. It has been prayed that the appeal be dismissed with costs.

2. Arguments heard and record perused.

3. The appellant made departmental representation on [illegible] 1.8.92. It was rejected and he was informed [illegible]

ATTESTED

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on 26.5.93. The applicant came in appeal before this Tribunal on 22.6.93. This Tribunal therefore, holds that the appeal is within time. The objection is therefore, rejected.

6. The method of recruitment for the post of Senior Scale Sub Engineer prescribed vide C&W Department(Recruitment and appointment) Rules 1979, notified vide S & G.A.D. Notification No.LORI(S&GAD)1-12/74 dated 13.1.80 is as under:

"Twenty five percent of the total number of posts of the diploma holder Sub Engineers shall form 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".

7. The appellant was appointed as Sub Engineer in C&W Department on 21.1.79. He passed the reserved Grade-B, Departmental examination on 30.1.84. He completed 10 years service as Sub Engineer on 20.1.89 as such was eligible for upgradation subject to availability of vacancies and his seniority position in the cadre of Sub Engineer (BPS-11). The list of vacant posts of Senior Scale Sub Engineers (BPS-12) provided by the Administrative Department(Annex-C) shows that there were 67 vacant posts of senior scale Sub Engineers in the department on 5.6.1990,out of these 14 vacancies had occured in May 1990.The remaining vacancies had occured upto and for 18.3.89.The departmental promotion Committee in its meeting held on 25.9.89,cleared 32 Sub Engineers for the grant of Senior Scale(B-12). Respondent No.1 issued necessary orders on 20.11.89.It is therefore, clear that 35 more vacancies of Senior Scale Sub Engineers were at least available as on 20.9.89.It is also on record that respondent No.3 vide memo dated 14.2.89 (Annexure-B), had already sent the complete ACRs of the appellant for the period from 21.1.79 to 31.12.88, to respondent No.1. The case of grant of Senior Scale to the appellant was kept in abeyance for reasons best known to the respondents. Vide his order dated 17.11.91

declared 107 Sub Engineers (including res[illegible] Nos.5 to [illegible]) as successful in the Grade-B Departmental Examination. In the subsequent meeting of the DPC held on [illegible], 22 Sub Engineers were cleared for the grant of Senior Scale, their respondent No.2 accordingly issued necessary orders on [illegible] 5.7.92 retrospectively from various dates as under :-

i) From 1.2.1986...2 Sub Engineers
ii) From 20.11.89...8 - do -
iii) From 17.11.91...52 - do -
(including the appellant).
iv) From 1.2.92.... 2 - do -
v) From 03.5.92... 1 - do -

Respondents at S.No. 9 to 38 were appointed as Sub Engineers during the period from 17.1.74 to [illegible].11.978. The appellant having been appointed as such on [illegible].1.7[illegible] the above respondents were decidedly senior to the appellant in the rank of Sub Engineers. However, the grant of senior scale in the rank of Sub Engineers was contingent upon :-

a. Selection on merit with due regard to seniority from among Sub Engineers in the department.

b. having passed the departmental examination and

c. having at least ten years service as such.

The respondents having not qualified the departmental examination till 16.11.91 as such were not eligible for the grant of senior scale during the period from 20.11.89 (when the earlier batch was granted senior scale) to 16.11.91(when the respondent qualified the departmental Examination). The appellant was eligible for the grant of the senior scale right from 27.1.89 vis-a-vis, the above respondents who were all selected on [illegible].1.91. 39 (67%) vacancies were available upto [illegible].12.89. The respondent department should have precisely [illegible] the vacancies and [illegible] Sub Engineers [illegible] for the comparative [illegible]

(33)

basis of selection on merit with due regard to seniority from amongst the eligible Sub Engineers of the Department become eligible for the date of availability of vacancies to his share, which ever was later. However no such exercise has been carried out by the respondents and we observe that as against 67 vacancies of Senior Scale Sub Engineers available upto 27.5.90, only 32 were utilised vide respondent No.3 order dated 20.11.89. Against the remaining 35 (67-32) vacancies available upto 27.5.90, 10 more Sub Engineers were granted senior scale during interval 1.2.90 and 20.11.89 vide orders of respondent dated 5.7.92. Since the senior scale is granted to eligible persons retrospectively from the date of availability of vacancy on such the appellants would therefore be conveniently to be considered for the grant of Senior Scale on the basis of selection on merit with due regard to seniority against one of the vacancies of Senior Scale Sub Engineers fallen vacant upto 27.5.90. In case, he has been considered against any of the vacancies then available upto this date he would have been placed senior to respondents No.5 to 10.

10. This Tribunal therefore accepts the appeal to the extent that we remand the case and directs the respondents to work out precisely detail/number of vacancies in the senior scale of Sub Engineers (Gr.II) from 1.1.76 till 19.11.91 a day before the result of departmental examination was announced. As the selection grade is granted to the eligible civil servants from the date of availability of vacancies or, whichever is later and to consider the appellant through the appropriate Committee for the grant of senior scale to him from the date of availability of the vacancy to his share and his eligibility whichever is later for the grant of senior scale, he may be given his due seniority in the cadre of Senior Scale Engineers. The order dated 5.7.92 issued by respondent

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of 2nd be appropriately revised and a fresh senior ty list of Executive Engineers BPS-18 as it stood on 13.4.92 circulated vide respondent No.2 memo of 4.6.1992 be issued. Parties are left to bear their own costs. File is consigned to the record.

ANNOUNCED.
29.9.1994

(BASIR DAD KHATTAK)
MEMBER

(TAJ MUHAMMAD KHAN)
MEMBER.

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BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR

(28)

Appeal No.194/1993
Date of Institution 22.06.1993
Date of Decision ... 7.9.1994

Qalbe Saleem S/O Himat Khan, Sub-Engineer,
C&W Department (Development Division) Orakzai Agency. **Appellant**

VERSUS

1. Government of NWFP, through Secretary to Government of NWFP C& W Department.
2. Chief Engineer, C&W Department, Peshawar.
3. Executive Engineer Development, C&W Division, Peshawar.
4. Administrative Officer, C&W Department, Peshawar.
5. Sabit Hussain, Sub Engineer, C&W Karram Agency & 34 Others.
Respondents.

Respondents

.....

Mr. Abdul Rauf Rohaila, Advocate. — For appellant

Mr. Muhammad Shafi, Government Pleader — For Respondents No.1 to 4

.....

Mr. ZARIN DAD KHATTAK. — MEMBER
Mr. TAJ MUHAMMAD KHAN — MEMBER

JUDGMENT:

1. ZARIN DAD KHATTAK, MEMBER:- This appeal has been filed by Qalbe Saleem u/s 4 of the NWFP Service Tribunal Act, 1974, against the order dated 26.5.1993, whereby the request of the appellant for seniority over respondents No.5 to 38 was regretted.

2. Brief history of the case as per memo of appeal is that the appellant joined service as Sub Engineer in the C&W Department on 21.1.1979. He passed the B Grade Departmental Examination in 1984, Respondent No.2 vide his letter dated

ATTESTED

17.11.1989 (Annexure-A) directed all the Executive Engineers in C&W Department to collect and supply the ACRs and Bio-datas of 24 Sub Engineers for filling the available posts of senior Sub Engineer (BPS-16). The ACRs for the period from 21.1.1979 to 31.12.1989 in respect of the appellant were asked for, were duly supplied to respondent No.2 by Respondent No.3 vide his Memo of 14.2.90. It has been alleged that there were 67 vacant posts in the Senior Scale of Sub Engineers (BPS-16) in C&W Department on 3.6.1990. Several meetings of the Departmental Promotion Committee were held but the appellant was neither considered nor his case was placed before the Departmental Promotion Committee for consideration with the result that the grant of senior scale in favour of the appellant was unnecessarily delayed. In fact the appellant should have been granted the higher scale after passing the departmental examination on 30.1.84. On 17.11.1991, the result of the second batch of Departmental Examination was declared in which 167 officials were declares as successful. The respondents directed the Superintending Engineers time and again to forward the ACRs of the officials who had passed the Departmental Examination in second batch in order to consider their names for the grant of senior scale (BPS-16). The appellant's case should have been placed before the Departmental Promotion Committee first and he should have been granted the senior scale earlier. The respondents, however, vide their order dated 5.7.92 read with that of 4.4.93 promoted the appellant along-with respondents No.5 to 38 and placed him junior to them. The appellant preferred a representation to respondent No.1 on 1.8.92, who conveyed his inability to accept the representation on 26.5.93, hence this appeal.

3. Respondents No.1, 2 and 4 have vide their written comments contested the appeal. Preliminary objections have been raised that the appellant has no cause of action and that the appeal is time barred. On facts, it has been averred that firstly his ACRs were completed on 14.2.90 as is clear

(15)

on 26.5.93. The appellant came in appeal before this Tribunal on 24.6.93. The Tribunal, therefore, holds that the appeal is within time. The objection is therefore, rejected.

6. The method of recruitment for the post of Senior Scale Sub Engineer prescribed vide CSW Department (Recruitment and Appointment) Rules, 1979, notified vide S&GAD Notification No.SORI(S&GAD)1-12/74; dated 13.1.80 is as under:

> "Twenty five percent of the total number of posts of the diploma holder Sub Engineers shall form 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 services as such".

7. The appellant was appointed as Sub Engineer in C&W Department on 21.1.79. He passed the prescribed Grade-B, Departmental Examination on 30.1.84. He completed 10 years service as Sub Engineer on 20.1.89 as such was eligible for up-gradation subject to availability of vacancies and his seniority position in the cadre of Sub Engineer (BPS-11). The list of vacant posts of Senior Scale Sub Engineers (BPS-16) provided by the Administrative Department (Annex-C) shows that there were 67 vacant posts of senior scale Sub Engineers in the department on 5.6.90. Out of these 14 vacancies had occurred in May, 1990. The remaining vacancies had occurred upto and for 18.3.89. The departmental promotion committee in its meeting held on 25.9.89, cleared 32 Sub Engineers for the grant of Senior Scale (B-16). Respondent No.1 issued necessary orders on 20.11.89. It is, therefore, clear that 35 more vacancies of Senior Scale Sub Engineers were still available as on 27.5.90. It is also on record that respondent No.3 vide memo dated 14.2.90 (Annexure-B), had already sent the complete ACRs of the appellant for the period from 21.1.79 to 31.12.89, to respondent No.2. The case for grant of Senior Scale to the appellant was kept in abeyance for reasons best known to the respondents. Vide his order dated 17.11.91 (Annexure-D), respondent No. announced the result of another batch and

from Annexure-B the appeal. Secondly he was too junior standing at No.159 in the seniority list and as such was not considered for Grade B-16 in Departmental Promotion Committee meeting dated 25.9.89. Therein Sub Engineer upto S.No.154 were considered by granting them Grade-16 w.e.f. 20.11.82. They were all seniors to the appellant. As is evident from Annexure-C to the appeal, there were 53 vacancies (not 67) upto 18.3.89 and the remaining Sub Engineers could not be granted Grade-16 w.e.f. 20.11.89. Conduct of Departmental Grade-B examination being a codal requirement is held periodically. The last examination was held on 10th to 13th December, 1989 and the result declared on 17.11.91 (not on 17.11.92 as mentioned in Annexure-B to the appeal). Necessary entries to this effect were made against the successful Sub Engineers in the seniority list as it stood on 31.12.91 wherein the appellant stood at S.No.112. In the subsequent Departmental Promotion Committee meeting held on 30.5.92, the appellant (along-with his seniors in one batch) was approved for grant of Grade-16 retrospectively with effect from 17.11.91, the date on which his seniors (respondents No.5 to 38) were upgraded. The appellant was allowed Grade-16 w.e.f. 17.11.91, the date from which his seniors were upgraded. Since he was considered for up-gradation along with the seniors in one batch, therefore, he on his promotion will retain his inter-se-seniority as in the lower grade under Sub Rules (4) of Rules-8 of the NWFP Civil Servants Act 1973 r/w government of NWFP S&GAD Notification No.SOR-I(S&GAD)1-29/75; dated 13.4.1987. As such he was correctly placed before respondents No.5 to 8 who were senior to him in the lower grade. It has been prayed that the appeal be dismissed with costs.

4. Arguments heard and record perused.

5. The appellant made departmental representation on 01.08.1992, it was rejected and he was informed about the same

on 26.5.93. The appellant came in appeal before this Tribunal on 22.6.93. This Tribunal, therefore, holds that the appeal is within time. The objection is therefore, rejected.

6. The method of recruitment for the post of Senior Scale Sub Engineer prescribed vide C&W Department (Recruitment and Appointment) Rules, 1979, notified vide S&GAD Notification No.SORI(S&GAD)1-12/74; dated 13.1.80 is as under:-

> "Twenty five percent of the total number of posts of the diploma holder Sub Engineers shall form 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 services as such".

7. The appellant was appointed as Sub Engineer in C&W Department on 21.1.79. He passed the prescribed Grade-B, Departmental Examination on 30.1.84. He completed 10 years service as Sub Engineer on 20.1.89 as such was eligible for up-gradation subject to availability of vacancies and his seniority position in the cadre of Sub Engineer (BPS-11). The list of vacant posts of Senior Scale Sub Engineers (BPS-16) provided by the Administrative Department (Annex-C) shows that there were 67 vacant posts of senior scale Sub Engineers in the department on 5.6.90, out of these 14 vacancies had occurred in May, 1990. The remaining vacancies had occurred upto and for 18.3.89. The departmental promotion committee in its meeting held on 25.9.89, cleared 32 Sub Engineers for the grant of Senior Scale (B-16). Respondent No.1 issued necessary orders on 20.11.89. It is, therefore, clear that 35 more vacancies of Senior Scale Sub Engineers were still available as on 27.5.90. It is also on record that respondent No.3 vide memo dated 14.2.90 (Annexure-B), had already sent the complete ACRs of the appellant for the period from 21.1.79 to 31.12.89, to respondent No.2. The case of grant of Senior Scale to the appellant was kept in abeyance for reasons best known to the respondents. Vide his order dated 17.11.91 (Annexure-D), respondent No. _ announced the result of another batch and

declared 167 Sub Engineers (including respondents No.5 to 38) as successful in the Grade-B Departmental Examination. In the subsequent meeting of the DPC held on 30.6.92, 72 Sub Engineers were cleared for the grant of Senior Scale Respondent No.2 accordingly issued necessary orders of their promotion on 5.7.92, retrospectively from various dates as under:

i) From 1.2.1986 .....2 Sub Engineers
ii) From 20.11.89 ....8 -do-
iii) From 17.11.91.... 58 -do-
(including the appellant)
iv) From 1.2.92 .....2 -do-
v) From 23.5.92.... 1 -do-

8. Respondents at S.No.5 to 38 were appointed as Sub Engineers during the period form 17.1.74 to 21.11.78. The appellant having been appointed as such on 21.1.79, the above respondents were decidedly senior to the appellant in the seniority of Sub Engineers. However, the grant of senior scale in the case of Sub Engineers were contingent upon:-

a. Selection on merit with due regard to seniority from among Sub Engineers of the department.
b. having passed the departmental examination; and
c. having at least ten years service as such.

9. The respondents having not qualified the departmental examination till 16.11.91 as such were not eligible for the grant of senior scale during the period from 20.11.89 (when the earlier batch was granted senior scale) to 16.11.89 (when the respondents qualified the Departmental Examination). The appellant was eligible for the grant of the senior scale right from 27.1.89 vis-a-vis, the above respondents who become eligible w.e.f. 17.11.91; 35 (67-32) vacancies of senior scale Sub-Engineers were still available upto & for 27.5.90. The respondent department should have precisely worked-out the vacancies & eligible Sub-Engineers should have been declared for the retrospective grant of senior scale. On the

basis of selection on merit with due regard to seniority from amongst the eligible Sub Engineers of the Department from the date of their having become eligible or the date of availability of vacancy of his share, whichever was later. However, no such exercise has been carried out by the respondents we observe that as against 67 vacancies of Senior Scale Sub Engineers available upto 27.5.90, only 32 were utilized vide respondent No.1 order dated 20.11.89. Against the remaining 35 (67-32) vacancies available upto 27.5.90, 10 more Sub Engineers were granted senior scale dating Later-on 1.2.86 and 20.11.89 vide orders of the respondent No.1 dated 5.7.92. Since the senior scale is granted to eligible persons retrospectively from the date of availability of vacancy as such the appellant could therefore, conveniently be considered for the grant of Senior Scale on the basis of selection on merit with due regard to seniority against one of the vacancies of Senior Scale Sub Engineer fallen vacant upto 27.5.90. In case, he had been considered against any of the vacancies then available upto this date, he would have been placed senior to respondents No.5 to 38.

10. This Tribunal, therefore, accept the appeal to the extent that we remand the case and directs the respondent No.1 to work out precisely details / number of vacancies in the senior scale of Sub Engineers (BPS-16) from 1.1.76 till 16.11.81 a day before the result of departmental examination was announced. As the selection grade is granted to the eligible civil servants from the date of availability of vacancies. Therefore, they may be proceed to consider the appellant through the appropriate forum for the grant of senior scale to him from the date of availability of the vacancy falling to his share and his eligibility whichever is later on approved for the grant of senor scale, he be given his due seniority in the cadre of senior scale Sub Engineer. The order dated 5.7.92, issued by respondent

No.2 be appropriately revised and a fresh seniority list of senior scale Sub Engineers BPS-16 as it stood on 13.4.93 circulated vide respondent No.2 memo of 4.4.1993 be issued. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED:
7.9.1994.

Sd/-
(ZARIN DAD KHATTAK)
MEMBER

Sd/-
(TAJ MUHAMMAD KHAN)
MEMBER

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 15.12.2005 in terms that the appellant be considered for BPS-16 if he otherwise eligible and qualified

ATTESTED

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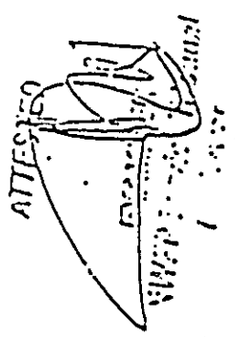
under the rules. After the directions of the Tribunal the Respondents wanted to file CPLA in the Supreme Court but the same was decided until by the Law Department on 22.1.2007. Thereafter the appellant filed implementation petition in this Tribunal. The said implementation petition was filed on 28.4.2008 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 o the appellant on flimsy grounds. He prayed that the appeal may be accepted as prayed or.

The learned AGP argued that in light of the recommendations of the standing rvice Rules Committee, the W&S Department has been issued Notification on 1.2004, wherein all senior scale Sub Engineers (B-16) in the W&S Department, shall, immediate effect, be re-designated as Sub Engineers in their existing pay and scale shall be merged with the cadre of Sub Engineers in the Department, provided that for urpose of maintaining their inter-se-seniority, they shall rank senior to the existing gineer. On the basis of above Notification, W&S Department amended the service the Sub Engineers on 04.01.2005. Some senior Sub Inspectors junior to him have inted senior scale (B-16) on the recommendation of Departmental Promotion



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 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
04.2009.

Sd/- Abdul Jalil
Member

Sd/- Sultan Mahmood Khattak
Member

BEFORE THE NWFP SERVICE TRIBNUNAL 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.

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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

(26)

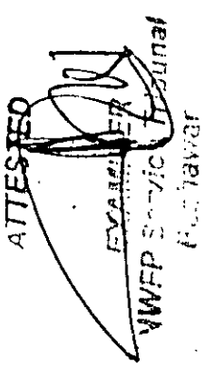
under the rules. After the directions of the Tribunal the Respondents wanted to file CPLA in the Supreme Court but the same was declared unfit by the Law Department on 22.1.2007. Thereafter the appellant filed implementation petition in this Tribunal. The said implementation petition was filed on 28.4.2008 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



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 was10 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 infractuous. 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 Jalil
Member

Sd/- Sultan Mehmood Khattak
Member

TESTED

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VAKALAT NAMA

NO._____/20

IN THE COURT OF Service Tribunal, Peshawar

Abdul- Waheed (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

C & W Deptt: (Respondent)
(Defendant)

I/We, Abdul- Waheed

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

Abdul Waheed
(CLIENT)

ACCEPTED

M. ASIF YOUSAFZAI
Advocate.
&
TAIMUR ALI KHAN
Advocate

OFFICE:

Room # FR-8, 4th Floor,
Bilour Plaza, Peshawar,
Cantt: Peshawar
Cell: (0333-9103240)

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR
APPEAL NO. 1231 OF 2015

Abdul Waheed, Sub Engineer
O/O XEN Building Division
DIKhan --- Appellant

VERSUS

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

--- Respondents

COUNTER AFFIDAVIT

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

Deponent
Secretary to
Govt of Khyber Pakhtunkhwa
C&W Department

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
APPEAL NO. 1231 OF 2015

Abdul Waheed, Sub Engineer --- Appellant
O/O XEN Building Division
DIKhan

Versus

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

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

Respectfully Sheweth

Preliminary Objections

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

Facts

1. Subject to proof
2. Correct to the extent that 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.
3. The facility of selection grade BS-16 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 had 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. 135 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 at that time, 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.

4. Departmental appeal was received and processed in the Department and he has been informed about the grounds of rejection of departmental appeal accordingly.

Grounds

A. Incorrect, as explained in para-2 of the facts. Moreover, the appellant was not entitled to the said scale as selection grade is not granted on the basis of seniority-cum-fitness rather selection on merit.

B. Incorrect. The selection grade cases are considered by the Departmental Promotion Committee as per Service Rules and on the completion of codal formalities. Furthermore, the orders of selection grade BS-16 in favour of the Sub Engineers were issued in 2003, 2004 but the appellant remained silent and filed no appeal against the orders in specified period.

C. Incorrect, as explained in Para-B of the ground.

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-3 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)

Annex-I

4

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

Yours faithfully,

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

Dated Peshawar the, April 6, 2003

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

A copy is forwarded for information to:-

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

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

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 (PSE

Annex-III

7

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 tl Departmental Promotion Committee of the Works & Services Department during i meeting held on 12.08.2003, the competent authority has been pleased to the grant 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 04.09.20(

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 KHA
SECTION OFFICER (ESTT-

8

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 (ES-II) 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 Bunair

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)

OFFICE OF THE CHIEF ENGINEER (NORTH)
C&W DEPARTMENT N.W.F.P PESHAWAR.
No.7564-E/ 4574 /E-1(2)
Dated Peshawar the 12/12/2000

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 APPOINTMENT	TO CLASS	YEAR OF PASSING.		REMARKS.
							Grade-B Exam:	Proffi: Exam:	
1	Fazl Raziq –I S/C	B.A	Swat	5.4.43.	.7.61	-	1991		
2	Gul Zaman S/C	Metric DAE (Civ:)	Malakand Agy:	6-6-40	-1-73				
3	Payi Rehman S/C	Matric DAE (Civ:)	Karak	9-8-42	-1-74	-			
4	Fazal Rehman-II S/C	-do-	Peshawar	2-9-45	-11-74	-	-		
5	Fazal Gul-I S/C	-do-	NWA	20-6-51	13-12-74	-	1996		

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

Subject to proof

Incorrect. In fact ..

Sl No	NAME	EDUL./TECH: QUALIFICATION	HOME DISTRICT	DATE OF BIRTH	DATE OF APPOINTMENT	TO CLASS	YEAR OF PASSING.	REMA
130	M. Taqiqob Khan-I S/O Malik Badshah	Matric/DAE(C) -do-	NWA	19-3-62	13-3-88	-	6/96	
131	Shahzad Hassan S/O Sher Hasan Khan	-do-	Peshawar	5-1-62	13-3-88	-	6/96	
132	Mohammad Javed S/O H.M. Ramzan	DAE (Mech:)	DI Khan	2-9-62	13-3-88	-	6/96	
133	Nigarul Haq S/O Noorul Haq	DAE (Elec:)(Radio Electronic)	Peshawar	1-2-63	13-3-88	-		
134	Sameeullah S/O Habibullah	Matric DAE (Civ:)	Kohat	1-6-63	13-3-88	-		
135	Abdul Waheed S/O Abdur Rashid	FA/ DAE (Civ:)	DIKhan	30-8-63	13-3-88	-	6/96	
136	Mohammad Sajjad S/O Abdul Haleem	Matric DAE (Civ:)	Peshawar	21-4-66	13-3-88	-	6/96	
137	Sabir Khan S/O Rustam Khan	-do-	Swabi	18-12-50	14-3-88	-	6/96	
138	Hafizur Rehman S/O Habibur Rehman	-do-	Peshawar	1-3-59	14-3-88	-	11/91	

Attested

1652

Sl No	Name	EDUL/TECH: QUALIFICATION	HOME DISTRICT	DATE OF BIRTH	[illegible]	TO CLASS	YEAR OF PASSING
314	Anees Kalim S/o Abdul Rab Kalim	BA DAE (Civil)	Swabi	30-3-64	[illegible]	15.10.99	
315	Mr.Murad Ali S/o Marhamat Khan	MAV DAE (Civil)	Bannu	20-1-64	[illegible]	15.10.99	

CHIEF ENGINEER (NORTH)

15)

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 DIKhan/Peshawar
4. All Executive Engineer in C&W Department, NWFP
5. All Revisit Director in C&W department NWFP.
6. Director M&E (North/South)C&W Dept:Peshawar

CHIEF ENGINEER (NORTH)

1. Subject to proof

2. Incorrect. In fact the selection grade BS-19 [illegible]

BEFORE THE KHYBER PAKHTUNKHWA,
SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1231/2015

Abdul Waheed 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 Admitted correct by the respondents that Selection grade BPS-16 @ 25% of the total posts of the Diploma holder Sub Engineers are to be filled in on the basis of promotion from amongst they persons who have ten years service and also possessed B grade exam and the appellant possesses the said requirement but despite of that the appellant has not been granted B-16.

3 Incorrect. While para 3 of the appeal is correct.

4 It is Correct that departmental appeal was received and rejected by the department but without cogent reason.

GROUNDS:

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 officials have been granted BS-16.

D) Incorrect. The appellant possessed the same requirements on the basis of which respondent Deptt: has granted BS-16 to many officials 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.

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

H) Legal.

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

APPELLANT
Abdul Waheed

Through:

(M. ASIF YOUSAFZAI)
&

(TAIMUR ALI KHAN)
ADVOCATES, 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

ATTESTED
Muhammad Advocate
Oath Commissioner
Peshawar