

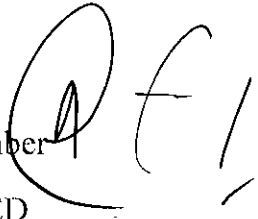
SANo. 1075/15

12.05.2016

Counsel for the appellant and Addl. AG alongwith Saleem Shah, Supdt. for the respondents present. Rejoinder submitted. Arguments heard and record perused.

Vide our detailed order of to-day in connected appeal No. 1113/2014, titled "Abdul Hameed Versus Secretary, Government of Khyber Pakhtunkhwa C&W Department, Peshawar etc.", this appeal is also disposed of as per detailed order. Parties are left to bear their own costs. File be consigned to the record room.

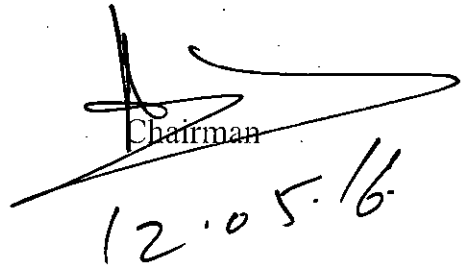
Member



ANNOUNCED

12.05.2016

Chairman



12.05.16

09.10.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was declined Grader-16 on the basis of passing Grade-B Examination vide final order passed in departmental appeal on 5.8.2015, communicated to the appellant on 16.9.2015 and hence the instant service appeal on 2.10.2015. Places reliance on decision of this Tribunal in service appeal enumerated in Para-F of the grounds of service appeal.

Appellant Deposited  
Security & Process Fee



Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 21.12.2015 before S.B.

Chairman

21.12.2015

Counsel for the appellant and Mr. Saleem Shah, Supdt. alongwith Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 22.2.2016 before S.B.

Chairman

22.02.2016

Counsel for the appellant and Mr. Saleem Shah, Supdt. alongwith Assistant AG for respondents present. Para-wise comments submitted. The appeal is assigned to D.B for rejoinder and final hearing for 12.5.2016.



Chairman

## FORM-A

## FORM OF ORDER SHEET

Court \_\_\_\_\_

Case No. 1075/2015

	Date of order/ proceedings	Order or other proceedings with signature of Judge/ Magistrate
1	2	3
1.	2.10.2015	<p>The appeal of Syed Azmat Ali Shah presented to-day by Mr. Muhammad Asif Yousafzai, Advocate, may be entered in the institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case be put up before the S.B for preliminary hearing on <u>9-10-15</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

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

Appeal No. 1075 /2015

Syed Azmat Ali Shah

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
5.	Copy of Rejection Order	- D -	12
6.	Copy of Order (4.9.2003)	- E -	13
7.	Copy of Order (5.12.2009)	- F -	14
8.	Copy of Judgment (07.05.2009)	- G -	15-17
9.	Copy of Judgment (07.05.2009)	- H -	18-19
10.	Copy of Judgment (06.06.2007)	I	20-26
11.	Copy of Judgment (07.09.1994)	J	27-33
12.	Copy of Judgment (23.04.2009)	K	34-36
13.	Vakalat Nama	----	37

APPELLANT

THROUGH:

  
( M. ASIF YOUSAFZAI )  
ADVOCATE, PESHAWAR.

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

K.W.P. Province  
Service Tribunal

Diary No. 11-4-10

Dated 2-10-2015

Appeal No. 1075 /2015

Syed Azmat Ali Shah,  
Sub Engineer,  
C&W Division, Tourghar.

**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 5.8.2015 COMMUNICATED TO  
APPELLANT ON 16.9.2015 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 05.8.2015 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*

Filed  
to-day  
2/10/2015

*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 30.06.2015 and the same was rejected for no good grounds on 05.08.2015 and communicated to appellant on 16.09.2015. Hence, the present appeal on the following grounds amongst the others. Copy of the appeal and rejection order is attached as Annexure – C&D

**GROUND:**

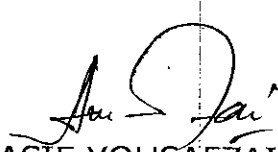
- A- That not granting B-16 as per rules and rejection of the departmental appeal of the appellant is against the law, rules and norms of justice.

- 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   
Syed Azmat Ali Shah

THROUGH:

  
( M. ASIF YOUSAFZAI )  
ADVOCATE, PESHAWAR.

BETTER COPY

Annexure-A

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

NOTIFICATION

Peshawar the 13 January, 1980

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

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

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

**ATTESTED**





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## COMMUNICATION AND WORKS DEPARTMENT SCHEDULE - 1

S.No.	Nomenclature of Post	Minimum qualification for initial recruitment or by transfer	Minimum qualification for appointment and promotion	Age limit for initial recruitment	Method of recruitment
1	2	3	4	5	6
1.	Chief Engineer Superintending Engineer		Degree in Engineering from a recognized University.		By selection on merit from amongst four senior most officers of the Department, with at least seventeen years experience as Government servant, seniority being considered only in the case of officers of practically the same standard of merit.
	Executive engineer				By selection on merit from amongst the Executive Engineers or holder of equivalent posts in Communication and Works Department, with at least twelve years service in Grade-17 and 18, seniority being considered only in the case of officers of practically the same standard of merit.
	Assistant Engineer	Degree in Civil Electrical or Mechanical Engineering from a recognized University as may be specified by Government for the respective posts.	Degree or Diploma in Engineering from recognized University or Institutions, as specified in column.		By selection on merit with due regard to seniority from amongst Assistant Engineers of Communication and Works Department with at least six years experience as such.
	Senior Scale Sub Engineer		Diploma in Engineering from a recognized Institute.		<ul style="list-style-type: none"> <li>(a) Seniority present by initial recruitment.</li> <li>(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 whichever ever is later.</li> <li>(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.</li> </ul>
					Twenty five percent of the total number of posts of the diploma holders Sub Engineers shall from the cadre of Senior Scale Sub Engineers and shall be filled by selection on merit with due regard to seniority from amongst Sub Engineers of the Department, who have passed the Departmental Examination and have at least ten years service as such.
					By selection on merit with due regard to seniority from amongst the holders of the posts of Senior Superintendent / Superintendants in the Department.

**ATTESTED**

COMMUNICATION AND WORKS DEPARTMENT

6

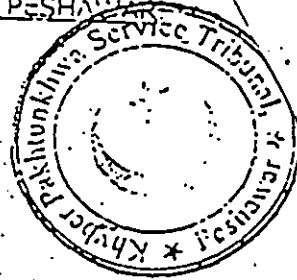
SCHEDULE - II

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.	Principal Engineer Refrigeration / Air-conditioning	M.Sc in Refrigeration / Air conditioning from a recognized University with 10 years experience.	1	5 30 to 45 years	6 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.			
		B.E.Sc in Highways Engineering from a recognized University with at least ten years professional experience in a National or International Organization.		30 to 45 years	By initial recruitment.
		Masters Degree in Civil Engineering from a recognized University with at least ten years professional experience in a National or International Organization.		30 to 45 years	By initial recruitment.

ATTESTED  
A

Appeal No. 994/NFEM/2004

Date of Institution: 03.12.2004  
Date of Decision: 11.12.2012



B  
7

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 13.6.2004 BUT THE SAME WAS NOT DISPOSED OF WITHIN STATUTORY PERIOD OF NINETY DAYS.

MR. MUHAMMAD ASIF YOUSAFZAI,  
Advocate

For appellant.

MR. SHERAFGAN KHATTAK,  
A/dl. Advocate General

For official respondents

MR. IJAZ ANWAR,  
Advocate

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

SYED MANZOOR ALI SHAH,  
MR. NOOR ALI KHAN

MEMBER  
MEMBER

JUDGMENT

SYED MANZOOR ALI SHAH, MEMBER

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

ATTESTED

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal

8

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).

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

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

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

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

ATTESTED  
EXAMINER  
Khyber Pakhtunkhwa

ATTESTED

[Signature]

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

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

5. 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 1.9.2003 and 19.1.2004. The appellant was not considered by the DPC due to his incomplete service record. The appellant did not challenge the seniority earlier seniority lists nor selection grade/Senior Scale at the relevant time and the present appeal is hopelessly time barred. Now the facility of Selection Grade/Move-over has already been withdrawn by the Provincial Government w.e.f. 1.12.2011, vide Finance Department letters dated 15.11.2001 and 6.4.2003 and in the prevalent circumstances, the present appeal has become infructuous. He requested that the

EXAD  
Khyber Pakhtunkhwa  
Tribunal

ATTESTED

ATTESTED

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

The Tribunal observes being term and condition of service, this Tribunal has ample jurisdiction to entertain the present appeal. In the matter of promotion and 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 Shaker 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, Mashtal Khan, and (14) No. 1675/2011, Naushad Khan-II. Our this judgment will also dispose of the aforementioned service appeals in the same manner.

ANNOUNCED  
11.12.2012.

*Sd/- Syed Mansoor Ali Shah*  
*Sd/- Mansoor Ali Shah*  
Members

Certified to be true copy  
MEMBER  
Hyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Application 22-7-2013  
Number of Words 1600  
Copies 10  
Urgency ---  
To ---  
No. ---  
Date of Copy 22-7-2013  
Date of Delivery of Copy 22-7-2013

ATTESTED  
*[Signature]*

11

11

30/07/15

The Secretary,  
Communication and Works Department,  
Government of Khyber Pakhtoonkhawa,  
Peshawar.

*Through proper channel.*

Subject:-

APPEAL FOR GRANTING BPS-16 ON PASSING B&A-GRADE  
"PROFESSIONAL" EXAMINATION AND 10-YEARS SERVICE (SI;No; 150.)

Respected Sir,

It is submitted for your kind perusal that I was appointed as  
Sub-Engineer on 16-03-1988,  
I had passed my B & A-Grade Examination on 1996 / 2008.  
I had completed my 10 years service on 16-03-1998.  
Previously many Junior Officials have been granted BPS-16, namely  
Misal Khan-II, SI;No 199 & Syed Sardar Shah SI;No:212 and Ajmal Anwar SI;No:187  
etc while at the same time the KPK Service Tribunal has also accepted the  
appeals of 14 Officials.

Thus under the principles of consistency and being similarly placed person, I am  
also entitled to the same benefits.

It is, therefore, requested that I may also be granted BPS-16 on  
the basis of A&B Grade "Professional" Examination and having 10-years Service  
with all consequence benefits from my due date.

Dated 30 -06-2015

Applicant  
*un*  
Syed Azmat Ali Shah  
Sub Engineer  
C&W Division Tourghar

ATTESSED

*[Signature]*



GOVT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT

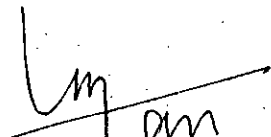
No. No.SOE/C&WD/13-21/2014  
Dated Peshawar, the August 05, 2015

TO

Syed Azmat Ali Shah  
Sub Engineer O/O  
XEN C&W Division TOR GHAR

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 30.06.2015 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 (East) Abbottabad
2. PS to Secretary C&W Department, Peshawar

SECTION OFFICER (Estb)



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E

13.

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

Annexure-10

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.

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

Copy forwarded to the:

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

ATTESTED

*[Handwritten signature]*

BETTER COPY

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Annexure-2

GOVERNMENT OF NWFP  
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar, the Dec 05, 2009

No.SOE-1(C&W) 4.2/91  
Consequent upon the recommendations of the Departmental Promotion committee during its meeting held on 16.11.2009, the competent authority has been pleased to grant Senior Scale BPS-16 in respect of Syed Sardar Shah, Sub Engineer of the C&W Department from the date from which his juniors were awarded BP-16, in order to implement the decision of the NWFP Service Tribunal in Service Appeal No.27/2000.

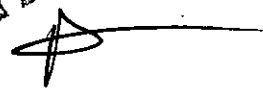
Sd/-  
SECRETARY TO GOVT. OF NWFP  
COMMUNICATION AND  
WORKS DEPARTMENT

Endst of even Number and date.

Copy is forwarded to the:

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

ATTESTED



BEFORE THE NWFP SERVICE TRIBUNAL PESHAWAR

Appeal No. 791 of 2008

Date of Institution. ... 22.05.2008  
Date of Decision. ... 07.05.2009

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

VERSUS

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

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

MUHAMMAD ASIF YOUSAFZAI,  
Advocate.

MR. ZAHID KARIM,  
Addl. Government Pleader.

MR. WAQAR AHMAD SETH,  
Advocate.

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

For appellant

For official respondents.

For respondents No.3, 5 to 7.

CHAIRMAN.  
MEMBER.

JUDGMENT

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

ATTESTED

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

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

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

4. We heard the arguments and perused the record.

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

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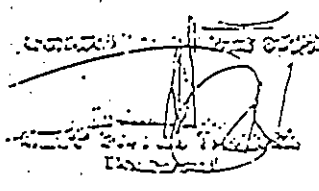
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appellants were merely deferred due to incomplete record. It was the responsibility of the official respondents to complete the record of the appellants as early as was practicable, to consider their cases for grant of selection grade, in preference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

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

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

ANNOUNCED  
07.5.2009



*Judge Justice S. Subramanian*  
*Chairman*  
*Shri. Abdul Jalil Khan*  
*Member*

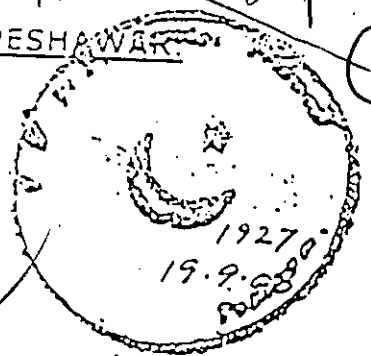
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BEFORE THE NWFP SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1675/08.

18



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

VERSUS

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

.....Respondents.

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

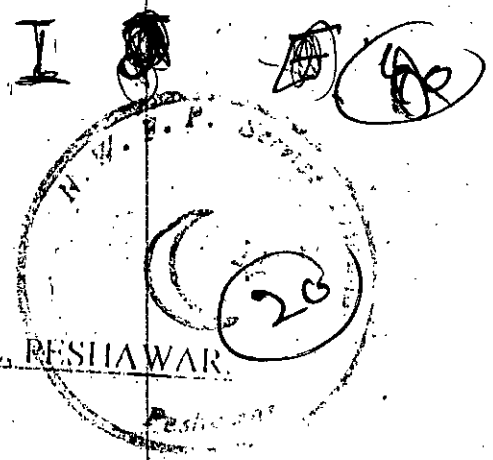
PRAYER: That on acceptance of this appeal the respondent Deptt: may please be directed to grant the appellant B-16 from his due date and to fix the seniority of appellant over and above the private respondents by setting aside the impugned order dated.8.4.08. Any

WITNESSED  
EXAMINER  
NWFP Service Tribunal  
Peshawar

ATTACHED



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 Woks & Services Department Peshawar and 45 others.....(Respondents)

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

Haji Shamsul Qaimar & 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

  
 EXAMINER  
 NWFP Service Tribunal  
 Peshawar



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 G & 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

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21

18/11/81

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.

4. Arguments heard and record perused.

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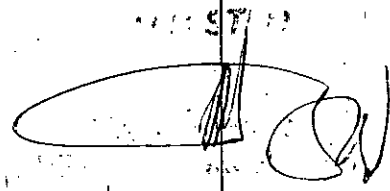
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5. The learned counsel for the appellant contended that the appellant, having passed departmental Grade "B" Examination in 1984 and completed 10 years service in 1989, had been entitled to the grant of BPS-16 in the cadre of Senior Scale Sub-Engineers 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

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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

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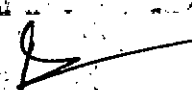
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Cadre in all respects. Similarly, the appeal had been time bared as the appellant had acknowledged the meeting of the Departmental Promotion Committee that recommended the grant of BPS-16 in the Cadre of Senior Scale Sub-Engineers with effect from 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

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 EXAMINER  
 NORTH WEST FRONTIER PROVINCE  


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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.

ACCEPTED

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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.

(SULTAN MAHMOOD KHATTAK)  
MEMBER.

  
(SHAH SAHIB)  
MEMBER.

ATTESTED

Date of Presentation of Applicant. 6.7.07  
 Number of Petitions 2800  
 ( ) 16  
 ( ) 2  
 ( ) 18  
 Date 6.7.07  
 Date 6.7.07

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BEFORE THE P.W.D. SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 194/1993

Date of institution... 22.6.1993

Date of decision ... 7.9.1994

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Qalbe Saleem S/O Himat Khan, Sub-Engineer, C&W Department (Development Division) Guk-zai 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 Karam Agency and 30 others.

(RESPONDENTS)

Mr. Abdul Rauf Rehalla, Advocate.

For appellant.

Mr. Muhammad Shah, Government Pleader.

For respondents No. 1 to

MR. SARIN DAB BHARTAK  
MR. TAJ MUHAMMAD KHAN

MEMBER.  
MEMBER.

JUDGMENT

SARIN DAB BHARTAK, MEMBER: - This appeal has been filed by Qalbe Saleem u/s 4 of the NWFP Service Tribunal Act 1977 against the order dated 26.5.1993, whereby the request of the appellant for seniority over respondents Nos. 5 to 30 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 21.1.69. He passed the B Grade Departmental Examination in 1974. Respondent No. 1 vide his letter dated

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ATTESTED

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17.11.89. (Annexure-A) directed all the Executive Engineers in  
 CEM Department to collect and supply the ACRs and bio-data  
 of 24 Sub Engineers for filling the available 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.2 by respondent  
 No.1 on 11.2.90. It has been alleged that there  
 were 67 vacant posts in the Senior Scale of Sub Engineers  
 (BPS-16) in CEM Department on 5.6.1990. Several meetings of  
 the Departmental Promotion Committee were held but the appel-  
 lant 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 appel-  
 lant was unnecessarily delayed. In fact the appellant should  
 have been granted the higher scale after passing the depart-  
 mental examination on 20.1.91. On 17.11.91, the result of the  
 second batch of departmental examination was declared in which  
 167 officials were declared as successful. The respondents  
 directed the <sup>superintending</sup> Engineers vide and again he forward the ACRs  
 of the officials who had passed the Departmental Examination  
 in second batch in order to consider their names for the  
 of senior scale (BPS-16). The appellant's case should have  
 placed before the Departmental Promotion Committee first and he  
 should have been granted the senior scale earlier. The respon-  
 dents, however, vide their order dated 5.2.92 read with that of  
 4.4.93 placed the appellant alongwith respondents No.5 to 9  
 and placed him junior to them. The appellant preferred a repre-  
 sentation to respondent No.1 on 1.8.92 who conveyed his inabil-  
 ity 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. In fact it has been averred  
 that firstly his ACRs were completed on 11.2.90 as is clear



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From Annexure -B to the appeal. Secondly he was the junior 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 Engineers upto S.No. 159 were considered by granting them Grade-16 w.e.f. 20.11.89. 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 condal requirement is held periodically. The last examination was held on 05th to 13th December 1989 and the result declared on 17.11.91 (not on 12.11.92 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 (alongwith 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 58) 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 in-service seniority as in the lower grade under Sub Rule (c) of Rule 3 of the MP Civil Servants Act 1993 r/w Government of MP's ESSAI Notification No.SOR-I(CEGAB)-33/75 dated 15.4.1987. As such he was correctly placed below respondents K.5 to 8 who were senior to him in the lower grade. It has been prayed that the appeal be dismissed with costs.

Arguments heard and record perused.

5. The appellant made departmental representation on 1.8.92, it was rejected and he was informed about the same

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on 26.5.85. 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 & G.A. D. Notification No. LORI(386AD)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 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 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-10) 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 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-10). 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. 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 (Annex- ), respondent No. 1 announced the result of another batch of

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489

declared 167 Sub Engineers (including respondents No. 5 to 22) as successful in the Grade-B Departmental Examination. In the subsequent meeting of the BPC held on 30.6.92, 73 Sub Engineers were cleared for the grant of Senior Scale. Respondent No. 2 accordingly issued necessary orders of promotion on 5.7.92 retrospectively from various dates as under :-

- ✓ i) From 1.2.1986... 2 Sub Engineers
- ✓ ii) From 20.11.89... 3 - do -
- ✓ iii) From 17.11.91... 58 (including the appellant) - do -
- iv) From 1.2.92... 2 - do -
- v) From 23.5.92... 1 - do -

8. Respondents at S.No. 5 to 58 were appointed as Sub Engineers during the period from 17.1.74 to 24.11. 1978. The appellant having been appointed as such on 14.1.75, the above respondents were decidedly senior to the appellant in the rank of Sub Engineers. However, the grant of senior scale in the case of Sub Engineers was 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 16.11.91 (when the respondents qualified the Departmental Examination). The appellant was eligible for the grant of the senior scale right from 27.1.89 v. i. e. vis, the above respondents who were eligible w.e.f. 1.11.91. 33 (37-38) vacancies of senior scale Sub Engineers were still available upto and including 27.1.90. The respondent department should have precisely looked at the vacancies and suitable Sub Engineers should have been considered for their prospective grant of senior scale in the

At  
[Signature]

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 <sup>become</sup> eligible or the date of availability of vacancy to his share, whichever was later. However no such exercise has been carried out by the respondents as we observe that as against 67 vacancies of Senior Scale Sub Engineers available upto 27.5.90, only 32 were utilized vide respondent No. 7 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 between 1.2.86 and 20.11.89 vide orders of 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 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.

This Tribunal therefore accept 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 (BPS-18) from 1.1.76 till 15.11.92 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 vacancy. Thereafter they may be considered for the grant of senior scale to him from the date of availability of the vacancy to his share and his eligible date whichever is later. If he is not considered for the grant of senior scale, he shall retain his due seniority in the cadre of senior scale. The order dated 5.7.92 issued by respondent

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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 to be consigned to the record.

ANNOUNCED.

17.9.1994

*Taq Muhammad*

(TAQ MUHAMMAD KHAN)  
MEMBER.

*Z. Michelle*

(SARIN DAB KHATTAK)  
MEMBER

Consent to be given

*[Signature]*

NAME OF THE...

Date	17-9-95
No.	2802
Case	87-02
Off.	2-02
10.	14-02
Name	A.P.S. KHATTAK
Date	17-9-95
Date	17-9-95

ACCEPTED

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D.

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BEFORE THE NWFP SERVICE TRIBUNAL PESHAWAR

Appeal No. 27/09

Date of institution - 27.09.2008

Date of decision - 23.04.2009

K.A.  
39

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.

ATTESTER  
EXAMINER  
TRIBUNAL

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

ATTESTER  
[Signature]

35

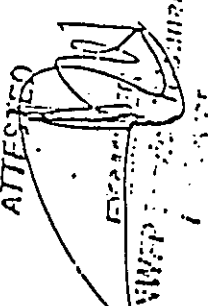
under the rules. After the directions of the Tribunal the Respondents wanted to file CPLA in the Supreme Court but the same was decided unfit by the Law Department on 22.1.2007. Thereafter the appellant filed implementation petition in this Tribunal. The said implementation petition was filed on 28.4.2008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

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

4. Arguments heard and record perused.

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

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

ATTESTED  
  
 W&S Department

X

36

A

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) 15/01 dated 15.11.2001 and dated 6.4.2001 and in the prevalent circumstances the plea taken by the appellant has been infructuous. The Services Tribunal NWFP has directed in his decision dated 5.12.2006 that the appeal is disposed of with the direction to Respondents No.1 to 3 that the appellant be consider for BPS-16 if he has otherwise qualified and entitled for same under the relevant rules which was examined in the department and the appellant was not entitled to the grant of selection grade BPS-16 on the ground that according to the seniority position at the time, the appellant was at serial No.244. As per service record to the Respondent Sub Engineers who have already granted selection grade are senior to him. Moreover, the Government has discontinued the grant of selection grade to all the Government servants' grade. He prayed that the appeal may be dismissed.

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

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

ANNOUNCED  
23.04.2009.

*Md. Abdul Jabir*  
Member  
*Sd/- Sultan Mahmood Chhattani*  
Member

*(Signature)*  
Secretary  
Services Tribunal  
NWFP

ATTACHED

D



# VAKALAT NAMA

37

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

IN THE COURT OF Service Tribunal Peshawar

Syed Azmat Ali Shah (Appellant)  
(Petitioner)  
(Plaintiff)

VERSUS

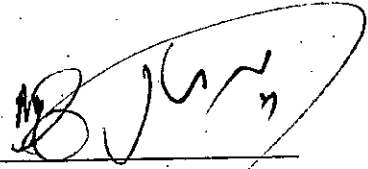
C & W Dept (Respondent)  
(Defendant)

I/We Syed Azmat Ali Shah (Appellant)

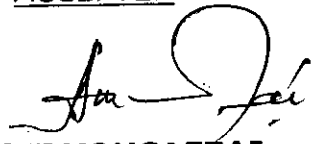
Do hereby appoint and constitute **M.Asif Yousafzai, Advocate, Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel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

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

Dated \_\_\_\_\_/20

  
( CLIENT )

ACCEPTED

  
**M. ASIF YOUSAFZAI**  
Advocate

**M. ASIF YOUSAFZAI**  
Advocate High Court,  
Peshawar.

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

**BEFORE THE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL PESHAWAR**  
**APPEAL NO. 1075 OF 2015**

Syed Azmat Ali Shah, Sub Engineer  
C&W Division TOR GHAR

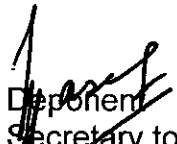
--- Appellant

**Versus**

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

**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.

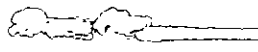
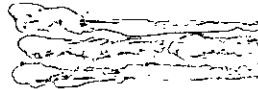
  
Deponent  
Secretary to  
Govt of Khyber Pakhtunkhwa  
C&W Department

**BEFORE THE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL PESHAWAR**  
**APPEAL NO. 1075 OF 2015**

Syed Azmat Ali Shah, Sub Engineer  
C&W Division TOR GHAR

--- Appellant

**Versus**

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

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

Respectfully Sheweth

**Preliminary Objections**

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

**Facts**

1. Subject to proof
2. 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 ~~order~~ 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 01.12.2001. Although the name of the appellant was at Sl.No. 173 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, 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.

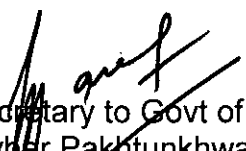
4. Departmental appeal was received and processed in the Department and he has been informed about the grounds of rejection of departmental appeal accordingly.


### 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)

*50/10/22*

(BETTER COPY)

Annex-I

GOVERNMENT OF NWFP  
FINANCE DEPARTMENT

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

From Secretary to Govt. of NWFP  
Finance Department

To

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

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

Dear Sir,

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

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

Yours faithfully,

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

Dated Peshawar the, April 6, 2003

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

A copy is forwarded for information to:-

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

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

GOVERNMENT OF N.W.F.P.,  
ESTABLISHMENT DEPARTMENT

NO.SO (PSB) ED/1-23/2002  
Dated Peshawar, the 3.7.2004

To

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

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

Dear Sir,

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

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

Yours faithfully


1733  
3/7/04  
DSA  
HAROON-UR-RASHID  
(HAROON-UR-RASHID)  
SECTION OFFICER (PSB)

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

Dated Peshawar, the 3.7.2004

A copy is forwarded to:-

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

  
SECTION OFFICER (PSB)

Annex-III

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

Dated Peshawar the 04 / 09 / 2003

**ORDER**

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

Consequent upon recommendations of the Departmental Promotion Committee of the Works & Services Department during its meeting held on 12.08.2003, the competent authority has been pleased to the grant of Senior Scale (BS-16) in respect of the following Sub Engineers (BS-11) of the Works & Services Department, with immediate effect:-

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

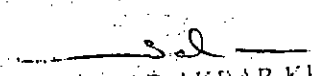
SECRETARY TO GOVT OF NWFP  
WORKS & SERVICES DEPARTMENT

Dated Peshawar, the 04.09.2003

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

Copy forwarded to the:-

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

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



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

Dated Peshawar the 19/04/2004

**ORDER**

No: SOE-I/W&S/4-2/2004/S.S

Consequent upon recommendations of the Departmental Promotion Committee of the Works & Services Department during its meeting held on 25/03/2004, the competent authority has been pleased to the grant of Senior Scale (BS-16) in respect of the following Sub Engineers (BS-11) of the Works & Services Department, with immediate effect:-

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

SECRETARY TO GOVT OF NWFP  
WORKS & SERVICES DEPARTMENT

Dated Peshawar, the 19/04/2004

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

Copy forwarded to the:-

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

(NOORULLAH)  
SECTION OFFICER (ESTT-I)

2/27/2000  
1682  
13-12-2000OFFICE OF THE CHIEF ENGINEER (CIVIL)  
C&W DEPARTMENT N.W.F.P. PESHAWAR  
No. 7564-ET-4574 (E-1(2))  
Dated Peshawar the 12/16/2000FINAL SENIORITY LIST OF SUB ENGINEERS GRADE - I  
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 - I of C&W Department NWFP, as it stood on 31-12-1999 is notified as under:-

Sl No	NAME	EDUC/TECH: QUALIFICATION	HOME DISTRICT	DATE OF BIRTH	DATE OF APPOINT- MENT	TO CLASS	YEAR OF PASSING		REMARKS
							Grade-B Exam:	Proff: Exam:	
1	Fazl Raziq - I S.C	B.A.	Swat	5-4-43	7-61	-	11-91		
2	Gul Laman S.C	Matric DAE (Civ.)	Malakand Agy.	6-6-40	1-73	-			
3	Fazl Rehman S.C	Matric DAE (Civ.)	Karak	2-8-42	1-74	-			
4	Fazl Rehman - II S.C	-do-	Peshawar	2-9-45	11-74	-			
5	Fazl Gul-I S.C	-do-	N.W.A	20-6-51	12-74	-	896		

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

S. No.	NAME	EDUCATION QUALIFICATION	HOME DISTRICT	DATE OF BIRTH	DATE OF APPOINTMENT	TO CLASS	YEAR OF PASSING	REMARKS
165	Mir Salim Khan S/O Abdul Ghaffoor Khan.	Matric / DAE (C) Do	Mkd: Agency	2-2-64	15-3-88			
167	Fariq Hussain Shah S/O S. Irfan Shah.	Do	Manshera	1-4-64	15-3-88			
168	Muneeb Khan S/O Jaffar Khan	F.A. / DAE (Civ) Do	MKD: Agency	16-4-64	15-3-88		6/96	
169	Murat az Ahmad Malik S/O Malik M. Asghar	Matric DAE (C)	Haripur	6-6-66	15-3-88			
170	Muhammad Saeed-II S/O Muhammad Yousaf	F.A. / DAE (Civ) Do	Mardan	3-5-60	15-3-88		6/96	
171	Muhammad Naeem Jan S/O Mahabat Khan	Matric DAE (Elect)	Charsada	15-4-61	15-3-88		6/96	
172	Aamzeb-I S/O Rehmanullah Khan	-do- DAE (Civ)	Mardan	1-3-63	15-3-88		6/96	
173	Azmat Ali Shah S/O Wahid Ali Shah	-do-	Manshera	15-12-63	15-3-88		6/96	

Sl No	NAME	EDUC. TECH. QUALIFICATION	HOME DISTRICT	DATE OF BIRTH	DATE OF APPOINTMENT	TR. CLASS	YEAR OF PASSING
314	Anees Malik S.C. Jodai Rab Kalim	BA DAE (Civ)	Sothi	30-3-54	17-1-57	15.10.99	
315	Mr. Muzaffar Ali S.I Murhamat Khan	MA DAE (Civ)	Banna	20-1-54	31-1-57	18.10.99	

(5)

Copy to the-

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

*[Signature]*  
 CHIEF ENGINEER (NORTH)  
 7/9/99

*[Signature]*  
 CHIEF ENGINEER (NORTH)  
 7/9/99

**BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.**

Service Appeal No. 1075/2015

Mr.Syed Azmat Ali Shah, 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 No comments.
- 2 Admitted correct by the respondent's department that according to the rules 25% of the post of Sub Engineer is to be filled on the basis of promotion from amongst person who have 10 years service plus B-Grade exam. The appellant possessed the same requirements and therefore eligible for Senior Scale Sub Engineer (BPS-16).
- 3 Incorrect. the right of promotion to BS-16 to the appellant as well as others official was given by Govt: on notification dated 13.01.1980 and the august Tribunal decided the cases on basis of this notification and given promotion to these official and the appellant is similarly placed person and also entitled to relief under the principles of consistency and Supreme Court's judgment. It is not the fault of appellant to deprive from due to incomplete record as maintainability of record is the responsibility of the department.

- 4 Incorrect. The appellant filed departmental appeal for grant of BS-16 for his claim but was rejected without showing any reason and not on merits.

**GROUND:**


- A) 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 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. While Para-B of the appeal is correct.
- C) Incorrect. the appellant is also eligible for grant of selection grade (BS-16) as he possessed the requirements of selection grade (BS-16).
- D) Incorrect. While Para-D of the appeal is correct.
- 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**

Syed Azmat Ali Shah

Through:

  
**(M. ASIF YOUSAFZAI)**  
**ADVOCATE, PESHAWAR.**

**AFFIDAVIT**

It is affirmed and declared that the contents of rejoinder and appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from Hon'able Tribunal.

  
**DEPONENT**

**ATTESTED**

