

BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL, PESHAWAR.

Appeal No. 983 /2018

MR. Israr Ahmad

V/S


C&W Department

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APPELLANT

THROUGH:

  
TAIMUR ALI KHAN  
ADVOCATE HIGH COURT  
&  
ASAD MAHMOOD  
ADVOCATE HIGH COURT

BEFORE THE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL PESHAWAR

APPEAL NO. \_\_\_\_\_/2018

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 1218

Dated 02-8-2018

Israr Ahmad , then Sub Engineer, (Retired as Assistant Engineer BPS-17)  
Office EXN C&W Division Mansehra.

APPELLANT

VERSUS

1. The Secretary, Government of KPK through Secretary C&W, Civil Secretariat, Peshawar.
2. The Chief Engineer, C&W KPK, Peshawar.
3. The Secretary, Government of KPK through Secretary Finance Department , Civil Secretariat, Peshawar.

RESPONDENTS

APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNAL ACT, 1974 FOR GRANTING PBS-16 (SENIOR SCALE SUB ENGINEER) FOR HAVING 10 YEARS SERVICE AND ALSO PASSED DEPARTMENTAL EXAM AND AGAINST NOT TAKING ACTION ON THE DEPARTMENT APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF 90 DAYS.

Filed to-day

Registered

2/8/18, PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE RESPONDENTS MAY BE DIRECTED TO GRANT BPS-16 SENIOR SCALE SUB ENGINEER FROM DUE DATE ACCORDING TO THE RULES FOR HEAVING 10 YEARS SERVICE AND IN PASSED DEPARTMENTAL EXAM WITH ALL BACK AND CONSEQUENTIAL BENEFITS. THE RESPONDENTS MAY PLEASE FURTHER BE DIRECTED TO INCLUDE THE BENEFITS OF SECTION GRADE (BPS-16) IN THE PENSIONARY BENEFITS OF THE APPELLANT WITH ALL BACK DUE AREAS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

## RESPECTFULLY SHEWETH:

### **FACTS:**

- 1- That the appellant joined the C & W Deptt: in the year 1978 as Sub Engineer (BPS-11) and also passed departmental exam. The appellant was retired on 30.05.2016 on attaining the age of superannuation as Assistant Engineer (BPS-17) vide notification dated 03.05.2016 and as such has more than 35 years service at his credit with good record throughout. **(Copy of order dated 03.05.2016 is attached as annexure-A)**
- 2- That according to the rules 25 % of the post of Senior Scale Sub Engineers (BPS-16) are to filled in on the basis of promotion from amongst persons who have ten years service and also passed departmental exam. The appellant possesses the said requirement but despite of that the appellant has not be granted BPS-16 (Senior Scale Sub Engineer). **(Copy of the rules is attached as Annexure-B)**
- 3- That the august Tribunal has decided such similar 52 appeals on 02.03.2016 in the favour of the appellants against which the department filed CPLA in the Supreme Court of Pakistan which was also dismissed by the Supreme Court Pakistan on 13.02.2017. 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. **(Copies of judgment dated 02.03.2016 are 13.02.2017 are attached as Annexure-C&D)**
- 4- That the appellant filed departmental appeal for grant of BPS-16 (Senior Scale Sub Engineer) and send through courier/TCS on 27.03.2018 and waited for 90 days, but no reply has been received so far. Hence the present appeal on the following grounds amongst the others. **(Copy of the departmental appeal and courier are attached as annexure –E&F)**

### GROUND:

- A- That not granting BPS-16 (Senior Scale Sub Engineer) as per rules and not taking action on the departmental appeal of the appellant is against the law, rules and norms of justice.
- B- That the appellant has attained eligibility of BPS-16 (Senior Scale Sub Engineer) much earlier than those who are enjoying the benefits of BPS-16 (Senior Scale Sub Engineer), therefore the appellant has been discriminated and deprived from his rights in an arbitrary manner.

- 63
- C- That the appellant has not been dealt according to law and rules and has been discriminated by not extending the benefits of BPS-16 (Senior Scale Sub Engineer) and while the same has been given to the junior officials.
  - D- That even the respondent Deptt; has granted BPS-16 (Senior Scale Sub Engineer) 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 dated 4.09.2003 and 05.12.2009 are attached as Annexure- G&H)**
  - E- That the rules regarding BPS-16 (Senior Scale Sub Engineer) are still in field and this august Tribunal has also granted the same relief in appeals No.994/2004 along with 15 connected appeals decided on 11.12.2012. **(Copy of judgment are attached as Annexure-I)**
  - F- That the treatment of the respondent Deptt: is against the spirit of Article 4 and 25 of the constitution.
  - 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**  
Israr Ahmad

THROUGH:

**TAIMUR ALI KHAN**  
**ADVOCATE HIGH COURT**  
**&**

**ASAD MAHMOOD**  
**ADVOCATE HIGH COURT**

BEFORE THE KHYBER KPK, PESHAWAR.

Appeal No. \_\_\_\_\_/2018

Mr. Israr Ahmad

V/S

C&W Department

.....  
**APPLICATION FOR CONDONATION**  
**OF DELAY IN THE INSTANT APPEAL**

**RESPECTFULLY SHEWETH:**

1. That the appellant has filed the instant appeal for granting BPS-16 in which date is fix so for.
2. That the appellant has filed departmental appeal on 27.03.2018 which was not responded within the statutory period of ninety days and the instant shall file the instant appeal on or before 24.07.2018, but the appellant have Arthritis problem and is under treatment due to which he was unable to file service appeal before this august Service Tribunal in time, otherwise, the appeal of the appellant on merit is good enough to be decided on merits. (Copy of medical certificate is attached as annexure-A-1)
3. That the august Supreme Court of Pakistan has held that decision on merit should be encouraged rather than knocking-out the litigants on technicalities including limitation. Therefore, appeal needs to be decided on merit (2003, PLD (SC) 724.

It is therefore most humbly prayed that the instant appeal may be decided on merit by condoning the delay to meet the ends of justice.

APPELLANT

THROUGH:

  
TAIMUR ALI KHAN  
ADVOCATE HIGH COURT

AFFIDAVIT

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

DEPONENT





**Dr. Maj (R) Tayyab Iqbal (Homoeo)**

M.P.A.(UK) M.D.S.S.(Pak) D.E.H.M. (Pak) Reiki (Pak)  
DHMS (Pak) Acupuncture (CHINA), R.M.P  
Herbo Acupuncture Homoeo Health Systems  
Specialist in Spondylopathy  
Sciatic, Muscular, Arthritis & Back Pain,  
**Formerly: Personal Physician to**  
**The Prime Minister of Pakistan**  
(With appointment only)

Regd. Number: 87469

TO WHOM IT MAY CONCERN

It is certified that Mr Israr Ahmad  
of Mansobra has been under my  
treatment on account of Arthritis / Knee  
Pain from 25 June 2018 to 02 Aug 2018.

He is advised to visit us again if  
he feels intolerable pain.

  
12/11/2018  
Dr. Maj (R) Tayyab Iqbal

M.P.A.(UK) M.D.S.S.(Pak) D.E.H.M.(Pak) Reiki (Pak)  
DHMS (Pak) Acupuncture (CHINA), R.M.P  
Formerly: Personal Physician to  
The Prime Minister of Pakistan  
Regn No. 87469

(Not valid For Court)

Family Clinic, Block III B, Sitara Market, G-7, Islamabad.  
Cell # 0300-9501244, Fax: 2255196

GOVERNMENT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar the May 03, 2016

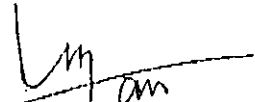
**NOTIFICATION:**No.SOE/C&WD/1-23/2013:

In terms of Section-13 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, Mr. Israr Ahmad Assistant Engineer (BS-17), presently working as SDO C&W Sub Division Mansehra shall stand retire from Government Service with effect from 29.05.2016 (A.N) on attaining the age of superannuation i.e. 60 years, as his date of birth according to the record is 30.05.1956.

SECRETARY TO  
Government of Khyber Pakhtunkhwa  
Communication & Works DepartmentEnds of even number and date

Copy is forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa, Peshawar.
2. Chief Engineer (East) Abbottabad
3. Superintending Engineer C&W Circle Battagram
4. Executive Engineer C&W Division Mansehra
5. District Accounts Officer Mansehra
6. Mr. Israr Ahmad SDO C&W Sub Division Mansehra
7. Incharge Computer Cell, C&W Department, Peshawar
8. PS to Secretary, C&W Peshawar
9. Office order File/Personal File

  
(USMAN JAN)  
SECTION OFFICER (Estb)



BETTER COPY

B B CP CP CP  
Annexure B  
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.

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

NOTIFICATION

Dated Peshawar, the 13<sup>th</sup> January, 00

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

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

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

Sd/--

SECRETARY TO GOVERNMENT OF NWFP  
SERVICES AND GENERAL ADMN DEPARTMENT

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

Dated Peshawar, the 13<sup>th</sup> Jan, 1990

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

Sd/-

Syed Noor Badshah  
Secretary C&W Department

**ATTESTED**

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COMMUNICATION & WORKS DEPARTMENT  
SCHEDULE-I

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

ATTESTED

*[Handwritten Signature]*  
B (C) 1  
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(10)

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

ATTESTED

C      11

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.

SERVICE APPEAL NO. 1330/2010

Date of institution ... 01.07.2010

Date of judgment ... 02.03.2016



Muhammad Shafiq S/o Kala Khan,  
Sub-Engineer C&W Division, Tehsil & District,  
Abbottabad.

(Appellant)


VERSUS

1. Government of Khyber Pakhtunkhwa Peshawar,  
through Secretary C & W Peshawar.
2. Chief Engineer Centre, C & W, KPK Peshawar.
3. XEN, C & W, Abbottabad.
4. Superintending Engineer, C & W, Abbottabad.
5. Akramullah S/o Nasrullah and 8 others.

(Respondents)

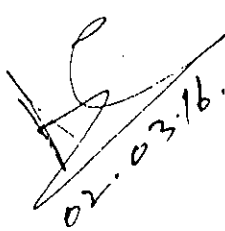
M/S Aqil Naveed Sulemani, Muhammad Asif Yousafzai,  
Khalid Rehman, Adam Khan, Muhammad Ismail Alizai,  
Sardar Ali Raza, Rizwanullah and Abdul Salim, Advocates

**ATTESTED**

  
**EXAMINER**  
For appellant(s) **Khyber Pakhtunkhwa**  
**Service Tribunal,**  
**Peshawar**

Mr. Muhammad Adeel Butt,  
Additional Advocate General  
Nemo

For official respondents  
For private respondents

  
02.03.16.  
Mr. Muhammad Azim Khan Afridi  
Mr. Pir Bakhsb Shah  
Mr. Abdul Latif

Chairman  
Member (Judicial)  
Member (Executive)

JUDGMENT

MUHAMMAD AZIM KHAN AFRIDI CHAIRMAN:

This judgment is

aimed at disposal of instant service appeal No. 1330/2010 as well as service appeals No.

(2) 1321/2011 titled Khalid Naeem-vs-Govt. of KPK through Secretary C & W etc.

(3) 1248/2012 titled Daulat Khan-vs-Govt. of KPK through Secretary C & W etc.

(4) 845/2013 titled Saeedullah-vs-Govt. of KPK through Secretary C & W etc.

(5) 848/2013 titled Muddasar Saghir-vs-Govt. of KPK through Secretary C & W etc.

(6) 972/2013 titled Ghulam Qadir-vs-Govt. of KPK through Secretary C & W etc.

(7) 1009/2013 titled Riaz Ahmed-vs-Govt. of KPK through Secretary C & W etc.

(8) 1015/2013 titled Muhammad Idress-vs-Govt. of KPK through Secretary C & W etc.

- (9) 1184/2013 titled Abdul Qayyum-vs-Govt. of KPK through Secretary C & W etc.
- (10) 1185/2013 titled Sarfaraz Alam-vs-Govt. of KPK through Secretary C & W etc.
- (11) 1186/2013 titled Muhammad Hamid Zia-vs-Govt.of KPK through Secretary C& W
- (12) 1188/2013 titled Shad Muhammad Khan-vs-Govt.of KPK through Secretary C&W
- (13) 1189/2013 titled Syed Abdullah Shah-vs-Govt. of KPK through Secretary C & W
- (14) 1190/2013 titled Nawazish Ali-vs-Govt. of KPK through Secretary C & W etc.
- (15) 1191/2013 titled Niaz Muhammad-vs-Govt. of KPK through Secretary C & W etc.
- (16) 1139/2013 titled Zia-ud-Din -vs- Govt. of KPK through Secretary C & W etc.
- (17) 1300/2013 titled Qaiser Shah -vs- Govt. of KPK through Secretary C & W etc.
- (18) 1338/2013 titled Aurangzeb -vs- Govt. of KPK through Secretary C & W etc.
- (19) 1431/2013 titled Habib Ullah -vs- Govt. of KPK through Secretary C & W etc.
- (20) 1446/2013 titled Mian Jehanzeb Khattak-vs-Govt.of KPK through Secretary C& W
- (21) 1561/2013 titled Yousaf Ali -vs- Govt. of KPK through Secretary C & W etc.
- (22) 1631/2013 titled Muhammad Shakeel Athar -vs- Secretary C & W KPK etc.
- (23) 1632/2013 titled Malik Arif Saeed Diyal-vs-Govt. of KPK through Secretary C&W
- (24) 1633/2013 titled Muhammad Khalil Noor-vs-Govt.of KPK through Secretary C&W
- (25) 95/2014 titled Muhammad Saeed-vs-Govt. of KPK through Secretary C & W etc.
- (26) 96/2014 titled Zahir Gul -vs- Govt. of KPK through Secretary C & W etc.
- (27) 224/2014 titled Muhammad Zubair-vs-Govt. of KPK through Secretary C & W
- (28) 246/2014 titled Abdul Rahim -vs- Govt. of KPK through Secretary C & W etc.
- (29) 365/2014 titled Zulfiqar Ahmad-vs-Govt. of KPK through Secretary C & W etc.
- (30) 366/2014 titled Naseem Ahmed-vs-Govt. of KPK through Secretary C & W etc.
- (31) 367/2014 titled Mazhar Khan -vs- Govt. of KPK through Secretary C & W etc.
- (32) 393/2014 titled Muhammad Javed-vs-Govt. of KPK through Secretary C & W etc.
- (33) 471/2014 titled Said-ul-Ibrar -vs- Govt. of KPK through Secretary C & W etc.
- (34) 477/2014 titled Lal Badshah -vs- Govt. of KPK through Secretary C & W etc.
- (35) 484/2014 titled Abdul Khalil -vs- Govt. of KPK through Secretary C & W etc.
- (36) 489/2014 titled Abdul Farooq -vs- Govt. of KPK through Secretary C & W etc.

02.03.16

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal.  
Peshawar

ATTESTED

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- (37) 513/2014 titled Irshad Ahmed Khan-vs-Govt. of KPK through Secretary C & W  
 (38) 699/2014 titled Muhammad Akram-vs-Govt. of KPK through Secretary C & W  
 (39) 700/2014 titled Abdul Qayum-vs-Govt. of KPK through Secretary C & W etc.  
 (40) 722/2014 titled Faiz Ullah Khan-vs-Govt. of KPK through Secretary C & W etc.  
 (41) 749/2014 titled Zamir Jang -vs- Govt. of KPK through Secretary C & W etc.  
 (42) 770/2014 titled Syed Tariq Mahmood-vs-Govt. of KPK through Secretary C & W  
 (43) 852/2014 titled Ghulam Rahim-vs-Govt. of KPK through Secretary C & W etc.  
 (44) 907/2014 titled Liaqat Shah -vs- Govt. of KPK through Secretary C & W etc.  
 (45) 915/2014 titled Noor-ul-Basar -vs- Govt. of KPK through Secretary C & W etc.  
 (46) 920/2014 titled Sabit Khan -vs- Govt. of KPK through Secretary C & W etc.  
 (47) 1035/2014 titled Manzoor Ilahi -vs- Govt. of KPK through Secretary C & W etc.  
 (48) 1100/2014 titled Fazal Mehmood-vs-Govt. of KPK through Secretary C & W etc.  
 (49) 1112/2014 titled Nisar Ahmed -vs- Govt. of KPK through Secretary C & W etc.  
 (50) 1132/2014 titled Taj Muhammad-vs-Govt. of KPK through Secretary C & W etc.  
 (51) 1223/2015 titled Sardar Naeem Ahmed-vs-Govt. of KPK through Secretary C & W  
 etc. and (52) 1284/2015 titled Muhammad Zaka Khan-vs-Govt. of KPK through  
 Secretary C & W etc as common questions of law and facts are involved therein.

2. In appeal No. 1330/2010, Muhammad Shafiq appellant has prayed for grant of BPS-16 being senior to private respondents No. 5 to 13 i.e Akramullah s/o Nasrullah, Sher Wali Jhang s/o Amirzada Khan, Misal Khan s/o Yousaf Khan, Hidayatullah-I s/o Anayatullah Khan, Sanaullah Tajori-III s/o Muslim Khan, Zaffarullah Khan s/o Ahbebullah, Tariq Usman s/o Noor Zahib Khan, Muhammad Javed Rahim s/o Abdur Rahim and Jamshid Khan-I s/o Saif-ur-Rehman. According to his stance the said respondents were granted Senior Scale and appellant ignored despite the fact that he was senior and fit and fulfilling the prescribed criteria.

3. In appeal No. 1321/2011 instituted on 11.7.2011, appellant Khalid Naeem is seeking directions of this Tribunal so as to grant him B-16 as he has joined the C & W

ATTESTED

KPK  
 Secretary  
 02.03.16

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Department as Sub-Engineer on 9.12.1981 and has passed B-Grade Departmental Examination in the year 1994 and has more than 30 years service to his credit including good service record and entitling him to the grant of Senior Scale on the strength of 25% of the total number of posts of Sub-Engineers.

4. In appeal No. 1248/2012, appellant Daulat Khan has prayed for grant of BPS-16 as per rules with all consequential benefits from due date as he has qualified the prescribed examination and rendered more than 10 years service.

5. In appeal No. 845/2013, appellant Saeedullah has prayed for grant of Senior Scale (BPS-16) mainly on the ground that this Tribunal has granted the Senior Scale to similarly placed employees vide judgment dated 11.12.2012 and as such he is entitled to alike treatment. Similar prayers are made by appellants in appeals No. 848/2013, 1009/2013, 1184 to 1186/2013, 1188 to 1191/2013, 1139/2013, 1300/2013, 1338/2013, 1446/2013, 1561/2013, 224/2014, 246/2014, 365/2014, 366/2014, 489/2014, 513/2014, 699/2014, 700/2014, 722/2014, 749/2014, 852/2014, 907/2014, 915/2014, 920/2014, 1035/2014 and 1132/2014.

6. In appeal No. 972/2013, appellant Ghulam Qadir has prayed for grant of BPS-16 with all back benefits on the ground of fulfilling the prescribed criteria and on the rule of alike treatment extended to similarly placed employees. He has also prayed for special cost on the ground that he was deprived of his due right by the respondents and compelled to litigate for his right as similarly placed Sub-Engineer were extended benefits of litigation while appellant was discriminated for no fault on his part.

7. In appeal No. 1015/2013, appellant Muhamamad Idrees Alizai has prayed for grant of Senior Scale (BPS-16) with back benefits and imposition of Special Cost as despite his entitlement to the said scale and judgment of this Tribunal in service appeal

AS  
02.03.16

ATTESTED  
Secretary  
Khyber Pakhtunkhwa  
Service Tribunal



titled "Noshad Khan-vs-Government of KPK", he was deprived of his entitlement to Senior Scale and forced to litigate.

8. In appeal No. 1631/2013, appellant Muhammad Shakeel Athar has prayed for grant of Senior Scale on the ground that junior to him namely M/S Mashal Khan, Misal Khan-II and Syed Sardar Shah were granted the same while he ignored despite entitlement on the analogy of similar treatment extended to similarly placed employees.

9. In appeal No. 1632/2013, appellant Malik Arif Saeed Diyal has prayed for grant of Senior Scale (BPS-16) on the ground that his junior colleagues were granted the same and he was discriminated. Similar prayers are made by the appellants in appeals No. 1431/2013, 95/2014, 96/2014, 393/2014, 471/2014, 477/2014, 484/2014, 770/2014 and 1100/2014.

10. In appeal No. 1633/2013, appellant Muhammad Khalil Noor has impugned order dated 22.5.2013 with a prayer that the same be set-aside and he may be granted Senior Scale (BPS-16) with effect from the date of qualifying Departmental Examination and 10 years qualifying service with all back benefits.

11. In appeal No. 367/2014, appellant Mazhar Khan has prayed that his junior colleagues were granted Senior Scale and he was ignored and discriminated. He has also prayed for grant of Senior Scale (BPS-16) on the rule of alike treatment as extended to similarly placed employees in appeals by this Tribunal vide judgment dated 11.12.2012. A similar prayer is made by appellant Nisar Ahmed in appeal No. 1112/2014.

In appeal No. 1223/2015, appellant Sardar Naeem Ahmed has prayed for Senior Scale being senior as his junior colleagues were granted the same and he was ignored. He has also prayed for grant of Senior Scale (BPS-16) on the rule of alike treatment as extended to similarly placed employees in appeals by this Tribunal vide judgments

ATTESTED

KHAWA  
SOFIA  
POSSESSOR

02.03.16.

dated 23.4.2009 and 11.12.2012. A similar prayer is made by appellant Muhammad Zaka Khan in appeal No. 1284/2015.

13. Learned counsel for the appellants as well as appellants argued that according to Schedule-I of Communication and Works Department (Recruitment and Appointment) Rules, 1979, appellants were entitled to appointment as Senior Scale Sub-Engineers as they were fulfilling the pre-requisites and prescribed criteria. That even junior civil servants serving as Sub-Engineers were promoted and even appointed as Sub Divisional Officers in their own pay scale while appellants ignored for no fault or omission on their part. That earlier this Tribunal has granted Senior Scale to the aggrieved civil servants approaching this Tribunal and that keeping in view the criteria laid down for grant of Senior Scale and judgments of this Tribunal, the appellants are entitled to alike treatment. Reliance was placed on case-law reported as 2009 SCMR 1 (Supreme Court of Pakistan), 2002 SCMR 71 (Supreme Court of Pakistan), 1996 SCMR 1185 (Supreme Court of Pakistan) and PLD 2002 Supreme Court 46 as well as judgments of this Tribunal dated 23.4.2009 and 11.12.2012.

14. Learned Additional Advocate General has argued that the C & W Department was obliged to restrict grant of Senior Scale to the extent of criteria laid down at S.No.5 of Schedule-I of the said Rules and that on the strength of the same 25% of total sanctioned posts were treated as Senior Scale posts (BPS-16) and the concerned civil servants accordingly up-graded at the relevant times as per laid down criteria. He further argued that due to improprieties, undue favours, incorrect interpretation of rules and erroneous interpretation of the judgments of this Tribunal and the rule of alike treatment the said scheme of grant of Senior Scale was frustrated at different levels and times and as a consequence thereof Senior Scale (B-16) was granted to Sub-Engineer in excess of 25% of the sanctioned strength of Sub-Engineers and, therefore, Provincial Exchequer was exposed to sustain huge and constant financial liability. That since the respondent-department has exhausted the prescribed 25% of total number of sanctioned

02.03.16

Khoshdel  
Services  
Khyber Pakhtunkhwa  
Government

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posts meant for Senior Scale Sub-Engineers and the scheme of grant of the said Senior Scale stood abolished under the Pay Revision Rules, 2001 by December 1, 2001, as such the appellants were not entitled to the Selection Grade claimed through the instant service appeals. He further argued that the authorities involved in illegal appointments and grant of Senior Scale were accountable to Provincial Government and irregularities carried out in the process were liable to be declared null and void.

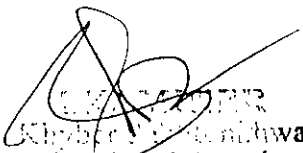
15. We have heard arguments of the learned counsel for the parties and perused the record.

16. Keeping in view the pleadings, record placed before us and arguments of learned counsel for the parties and appellants, the following emerging controversies and points need determination:

- i. Impact of Recruitment and Appointment Rules, 1979 and its life cycle vis-a-vis claims of appellants.
- ii. Entitlement of appellants to Senior Scale on the rules of alike treatment and grant of the same to civil servants ignored despite seniority.
- iii. Legal status of appointments against higher posts in Own Pay Scale.
- iv. Impact of judgments of this Tribunal dated 11.12.2012 and 23.4.2009.

17. For answering and determining the points in issue, we deem it appropriate to refer to and reproduce the Notification of the then Provincial Government, Services, General Admn. Tourism and Sports Department dated Peshawar, the 13th January, 1980 on the basis whereof Communication and Works Department (Recruitment and Appointment) Rules, 1979 were promulgated and which reads as under:

**ATTESTED**

  
 MEMBER  
 Khushal Khan Khattak  
 Service Tribunal,  
 Peshawar

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

NOTIFICATION

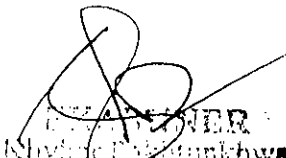
Peshawar the 13 January, 1980

No. SOR-I(S&GD)1-12/74.---In exercise of the Powers conferred by Section 26 of the North West Frontier Province Civil Servant Act, 1973 (NWFP Act XVIII of 1973), 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 & WORKS DEPARTMENT  
(RECRUITMENT AND APPOINTMENTS) RULES, 1979.

- 02.03.16.
1. (1) These rules may be called the Communication and Works Department (Recruitment and Appointment) Rules, 1979.
  - (2) They shall come into force at once.
2. *The Method of recruitment, minimum qualifications, age limit and other matters related thereto for the Posts specified in column 2 of the Schedules annexed shall be as given in column 3 to 7 of the said Schedules.*

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SECRETARY  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

19

COMMUNICATION & WORKS DEPARTMENT  
SCHEDULE-I

S.NO.	Nomenclature of post	Minimum Qualifications for Appointments		Age for initial Recruitment		Method Recruitment
		Initial Recruitment by Transfer	Promotion	Minimum	Maximum	
1	2	3	4	5	6	7
1 to 4	<i>Irrelevant</i>	-	-	-	-	-
5	Senior Scale Sub-Engineer		Diploma in Engineering from a recognized Institute			Twenty five per cent of the total number of posts of diploma holders Sub-Engineers from the cadre Senior Scale Engineers and be filled by selection on merit with regard to seniority from amongst Engineers of Department, who have passed Departmental Examination and have at least 5 years service as
6 and onwards	<i>Irrelevant</i>	-	-	-	-	-

*[Signature]*  
02.03.16

**ATTESTED**

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OFFICER  
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18. A plain reading of the text appearing at serial No. 5 of the schedule reproduced above would suggest that a civil servant aspiring for the Senior Scale Sub-Engineer shall hold a Diploma in Engineering from a recognized Institute, shall rank <sup>①</sup> senior among his colleagues, shall hold a position falling within domain and sphere of <sup>②</sup> 25% of the total number of posts of the Sub-Engineers, shall have at least 10 years <sup>③</sup> service as Sub-Engineer and shall have passed the prescribed departmental examination <sup>④</sup> at the relevant time. In other words a Sub-Engineer devoid of the above criteria and traits would not be entitled to claim Senior Scale. The said rule and schedule has explicitly curtailed the magnitude, size and sphere of the Senior Scale Sub-Engineers to 25% of the total sanctioned posts of Sub-Engineers and, therefore, no authority was empowered to exceed or surpass the said number of Senior Scale Sub-Engineers.

19. The operation of the said rules applicable to Sub-Engineer with reference to grant of Senior Scale to 25% of the total number of posts has come to an end with effect from December 1, 2001 in view of notification dated 27.10.2001 whereby the scheme of selection grade and Move-over stood discontinued as laid down in para-7 of the said Pay Revision Rules, 2001.

20. It is, therefore, held and concluded that the Senior Scale admissible to Sub-Engineers could only be granted and restricted to those Sub-Engineers who were fulfilling the prescribed criteria in the above manners on or before December 1, 2001.

21. Record placed before us in different appeals would suggest that to implement the said rule in letter and spirit, the Establishment Department was constrained to issue letter No. SO(PSB)ED/1-23/2002 dated Peshawar, the 3.7.2004 wherein cut off date for processing pending cases was extended to 31.8.2004 with certain observations, relevant portion whereof is reproduced herein for facilitation and ready reference:

**ATTESTED**

*"All left over cases of Government Servants who were eligible for Selection Grade/Moveover before 1.12.2001 may be placed before PSB/*

*[Signature]*  
 PSB/ED/1-23/2002  
 Peshawar

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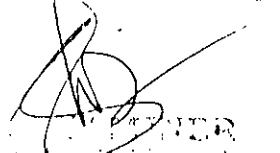
*DPC for consideration as per instructions/policy on the subject at the latest otherwise strict disciplinary action would be taken against the defaulting official under the NWFP Removal from Service (Special Powers) Ordinance, 2000."*

22. Authorities at the helm of affairs were conscious and cognizant of the facts and law that a civil servant otherwise entitled to Senior Scale could not be deprived of the same because of incomplete service record including Performance Evaluation Reports (PERs) etc. and for reasons not attributable to such a civil servant. To achieve the righteous outcome and to avoid irregularities the defaulting officers were warned to be proceeded against under the punitive rules then in-vogue. Miseries of the aspiring and deserving Sub-Engineers came to surface when instead of competing and submitting the cases, junior officers were favoured and elevated to the Senior Scale prompting those ignored to approach this Tribunal for redressal of their grievances and this Tribunal, vide judgments dated 23.4.2009 and 11.12.2012 granted the relief by directing the respondents to extend similar treatment to equally placed employees by granting them Senior Scale.

23. The department and authority responsible to restrict Senior Scale to the prescribed 25% limit of posts and bound to raise concerns over such irregularities and state of affairs simply granted Senior Scale to Sub-Engineers in excess of 25% of the total number of posts in disregard of the rules. The grant of the said Senior Scale has not come to an end till date for the reasons that the same is granted by ignoring the prescribed limit of 25% including the time frame ending on December 1<sup>st</sup>, 2001. The practice adopted is not only condemnable but also worth taking note of because of overburdening the public exchequer offensively.

24. Section-5 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 hereinafter referred to as the Civil Servants Act, 1973 mandates that appointment to a civil service of the Province or to a civil post in connection with the affairs of the Province shall be

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 MEMBER  
 Khyber Pakhtunkhwa  
 Service Tribunal,  
 Peshawar

made in the prescribed manners by the Governor or by a person authorized by the Governor in that behalf. Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, hereinafter referred to as APT Rules, 1989 framed under the provisions of section-26 of the Act, 1973 restricts but empowers the competent authority to make appointments, in case of exigencies prescribed in Rule-9, on acting or current charge basis in the public interest. Appointment to a higher post in own pay scale is a practice ruinous to Service Rules and structure of civil service and is ordinarily adopted by the authority to either favour their nears and dears or to distant the deserving civil servants due for promotion or to delay or beat timely inductions through initial appointments. This practice is frequently adopted and applied by the authorities despite the fact that the same is illegal and condemnable. We, therefore, hold that appointment of a civil servant in his own pay scale against a higher post is a practice derogatory to law and rules and good governance and we, therefore, accordingly direct that the same be discontinued by the authorities concerned forthwith but not beyond a period of one month. We further resolve and hold that the authorities failing to discontinue or pursuing such unlawful practices in future be dealt with under the relevant punitive laws and that departmental action against such incumbents for misusing and abusing authority vested in them by virtue of their office shall be initiated and concluded to logic end.

25. We are conscious of the fact that giving definite findings about the validity of judgments of this Tribunal entitling appellants in the stated appeals to Senior Scale are not warranted at this stage as the said matter is not agitated before us in the manners prescribed by law. We, therefore, direct that in case a Sub-Engineer not falling within the parameters of selection to Senior Scale on the above criteria but availing the privileges of such scale on the strength of any office order or judgment of this Tribunal be dealt with in accordance with law and subject to legal process and if so permitted by law, recoveries be made from their persons.

26. We further hold and direct that slots at the prescribed ratio available for grant

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Khyber Pakhtunkhwa  
Civil Servants Tribunal  
Dera Ismail Khan  
02.03.16.



of Senior Scale at the relevant times be calculated by the department and those fulfilling the criteria for Senior Scale but ignored due to lapses not attributable to ignored/leftover officers be granted the Senior Scale from the date of entitlement i.e accruing of vacancies in the Senior Scale but subject to the provisions of the Pay Revision Rules, 2001. We also direct that the Provincial Government shall honour its directive and shall take disciplinary action against those responsible for maintaining, updating and completing the record of the officers, but ignoring their responsibilities and thus giving space to irregularities and illegalities thereby causing and inflicting losses on public exchequer.

27. We are alive to the situation that while computing the seats of Sub-Engineer in the Senior Scale and eligibility of the senior officers against the same the authorities concerned may find grant of selection grade allowed in excess of the prescribed limit and ratio. We, therefore, direct that the situation be addressed by the authorities concerned by resorting to legal course and in case any officer granted Senior Scale in excess of prescribed limit is found protected by any law, rules or judgment of the Court then, in such eventuality, the officers of the administrative department responsible for handling the affairs relating to grant of Senior Scale at the relevant time be sorted out and be proceeded against for realization of monetary loss caused to the public exchequer as a consequence of their irresponsible and undesirable behavior.

28. Before parting with this judgment we deem it our duty to discuss the case law cited at the Bar at the time of arguments by the learned counsel for the parties.

29. In case of Hameed Akhtar Niazi reported as 1996 SCMR 1185 and Sameena Perveen reported as 2009 SCMR 1, the august Supreme Court of Pakistan has observed that if the Service Tribunal or Supreme Court decides a point of law relating to the terms and conditions of service of a civil servant which covers not only the case of civil servant who litigated but also of other civil servants who may have not taken any legal proceedings, in such a case, the dictates and rule of good governance

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Service Commission

demand that the benefit of such judgment by Service Tribunal/Supreme Court be extended to other civil servants who may not be parties to the litigation instead of compelling them to approach the Service Tribunal or any other forum.

30. Though adequate number of Sub-Engineers seeking Senior Scale are present before us but there is likelihood that certain civil servants might not have approached this Tribunal to litigate for their claims. We, therefore, direct that the benefit of this judgment be extended to those Sub-Engineers who fulfilled the criteria of becoming Senior <sup>scale</sup> Sub-Engineer at the relevant time.

31. In case of Fida Hussain reported as PLD 2002 Supreme Court 46 and Abdul Samad reported as 2002 SCMR 71 it was observed by the august Supreme Court of Pakistan that rule of consistency must be followed in order to maintain balance and the doctrine of equality before law. That dictates of law, justice and equity required exercise of power by all concerned to advance the cause of justice and not to thwart it.

32. Deriving wisdom from the mandates of law, judgment of the august Supreme Court of Pakistan and to advance the cause of justice and to frustrate efforts and attempts of thwarting just and fair-play we direct that the judgment be giving effect by the respondents in letter and spirit.

33. The appeals are disposed of in the above terms. Parties are, however, left to bear their own costs. File be consigned to the record room.

34. In the end we direct the Registrar of this Tribunal to circulate a copy of this judgment among all concerned departments of the Provincial Government for guidance and compliance.

(PIR BAKHSH SHAH)  
MEMBER

(MUHAMMAD AZIM KHAN AFRIDI)  
CHAIRMAN

(ABDUL LATIF)  
MEMBER

Certified to be true copy

Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

ANNOUNCED  
02.03.2016

D (25)

B

IN THE SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)

PRESENT:  
MR. JUSTICE EJAZ AFZAL KHAN  
MR. JUSTICE GULZAR AHMED.

Civil Petitions No. 223-P, 303-P to 353-P, 391-P to 394-P and 493-P of 2016  
(On appeal against the Judgment of 07.01.2016 passed by the District Judge, Peshawar Bench, Peshawar in Service Appeal No. 1330 of 2010, 1371/12, 1740/12, 043/12, 040/12, 077/12, 1029/12, 1011/12, 1161/12, 1167/12, 1165/12, 1160/12, 1159/12, 1150/12, 1149/12, 1340/12, 1330/12, 1437/12, 1446/12, 1361/12, 1631/12, 1677/12, 1633/12, 057/12, 051/12, 274/12, 240/12, 343/12, 356/12, 342/12, 393/12, 471/12, 471/12, 1011/12, 1097/12, 1131/12, 069/12, 1001/12, 1127/12, 1491/12, 2701/12, 632/12, 807/12, 813/12, 920/12, 1032/12, 1100/12, 1111/12, 1131/12, 1722/12 and 1704/2013.)

Government of KPK, through Secretary (C & W), Peshawar and others,  
...Petitioner(s) (In all cases)

VERSUS

- Muhammad Shafiq and others.
- Khalid Naqom.
- Daulat Khan.
- Sanaullah.
- Muhammad Sahgir.
- Ghulam Qadir and others.
- Riaz Ahmad.
- Muhammad Idrees and others.
- Zia-ud-Din.
- Abdul Qayyum-I.
- Sarfraz Alam.
- Muhammad Hamid Zia.
- Shad Muhammad Khan.
- Syed Abdullah Shah.
- Nawazish Ali Shah.
- Riaz Muhammad.
- Qasim Shah.
- Aurangzeb.
- Habibullah.
- Mian Jehanzeb Khattak.
- Yousaf Ali-III.
- Muhammad Shakeel Athar.
- Malik Arif Saeed Dyal.
- Muhammad Khalid Noor.
- Muhammad Saeed-II.
- Zahir Gul.
- Muhammad Zubair.
- Abdul Rahim.
- Zulfiqar Ahmad.
- Naseem Ahmad.
- Muhammad Khan and another.
- Muhammad Javed and others.
- Saidul Ibrar and another.
- Lal Badshah.
- Abdul Khalil.
- Abdul Farooq.
- Ishad Ahmad Khan.
- Muhammad Akram.
- Abdul Qayyum.
- Fazlullah Khan-II.
- Zamir Jang.
- Syed Tariq Mahmood.
- Ghulam Rahim.
- Liaquat Shah.
- Noor ul Basar.
- Sabit Khan.

ATTESTED

*[Signature]*

Court Associate  
Supreme Court of Pakistan  
Islamabad

ATTESTED

26

(Signature)

Manzoor Elahi,  
Fazal Mehmood,  
Nisar Ahmad,  
Taj Muhammad,  
Sardar Naeem Ahmad,  
Muhammad Zaka Khan,  
Abdul Hameed,  
Syed Azmat Ali Shah,  
Inamul Haq,  
Imtiaz Ali Khan,  
Saif-ur-Rahman.

...Respondent(s)

For the Petitioner(s): Mian Arshad Jan, Addl. A. G. KPK,  
Mian Saadullah Jandali, AOR. (Absent)

For the respondent(s): Mr. Ijaz Anwar, ASC,  
Mr. M. S. Khattak, AOR.

Date of Hearing: 13.02.2017

ORDER

EJAZ AFZAL KHAN, J.:- These petitions for leave to appeal have arisen out of the judgment dated 02.03.2016 of the KPK Service Tribunal, Peshawar whereby it allowed the appeal filed by the respondents.

2. The learned Addl. A. G. appearing on behalf of the petitioners contended that he does not tend to question the impugned judgment on the questions of law and fact all the same he would have very serious reservations about the mode suggested therein to resolve the anomalies.

3. Learned ASC appearing on behalf of the respondents contended that the impugned judgment resolving anomalies created on account of exceeding quota prescribed for grant of senior scale is perfectly in accordance with the relevant rules, therefore, it is not open to any exception.

4. We have gone through the record carefully and considered the submissions of the learned Addl. Advocate General appearing on behalf of the petitioners as well as learned ASC for the respondents.

5. A look at the impugned judgment would reveal that a Full Bench of the Service Tribunal took pains to examine all the excesses and irregularities committed in the grant of senior scale to many in derogation

(Signature)

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Secretary General of Pakistan

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of relevant rules. Not only that it also issued directions to undo them. Paragraphs 23, 24, 25 and 26 of the impugned judgment merit a reproduction for facility of reference which read as under:-

23. The department and authority responsible to restrict senior scale to the prescribed 25% limit of posts and bound to raise concerns over such irregularities and state of affairs simply granted senior scale to Sub-Engineers in excess of 25% of the total number of posts in disregard of the rules. The grant of the said senior scale has not come to an end till date for he reasons that the same is granted by ignoring the prescribed limit of 25% including the time frame ending on December 1<sup>st</sup>, 2001. The practice adopted is not only condemnable but also worth taking note of because of overburdening the public exchequer offensively.

24. Section 5 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 hereinafter referred to as the Civil Servants Act, 1973 mandates that appointment to a civil service of the Province or to a civil post in connection with the affairs of the Province shall be made in the prescribed manners by the Governor or by a person authorized by the Governor in that behalf. Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, hereinafter referred to as APT Rules, 1989 framed under the provisions of section-26 of the Act, 1973 restricts but empowers the competent authority to make appointments, in case of exigencies prescribed in Rule-9, on acting or current charge basis in the public interest. Appointment to a higher post in own pay scale is a practice ruinous to Service Rules and structure of civil service and ordinarily adopted by the authority to either favour their nears and dears or to distant the deserving civil servants due for promotion or to delay or beat timely inductions through initial appointments. This practice is frequently adopted and applied by the authorities despite the fact that the same is illegal and condemnable. We, therefore, hold that appointment of a civil servant in his own pay scale against a higher post is a practice derogatory to law and rules and good governance and we, therefore, accordingly direct that the same be discontinued by the authorities concerned forthwith but not beyond a period of one month. We further resolve and hold that the authorities failing to discontinue or pursuing such unlawful practices in future be dealt with under the relevant punitive laws and that departmental action against such incumbents for misusing and abusing authority vested in them by virtue of their office shall be initiated and concluded to logic end.

25. We are conscious of the fact that giving definite findings about the validity of judgments of this Tribunal entitling appellants in the stated appeals to senior scale are not warranted at this stage as the said matter is not agitated before us in the manner prescribed by law. We, therefore, direct that in case a Sub-Engineer not falling within the parameters of selection to senior scale on the above criteria but availing the privileges of such scale on the strength of any office order or judgment of this Tribunal be dealt with in accordance with law and subject to legal process and if so permitted by law, recoveries be made from their persons.

26. We further hold and direct that slots of the prescribed rolló available for grant of senior scale at the relevant times be calculated by the department and those fulfilling the criteria for senior scale but ignored due to lapses not attributable to ignored/leftover officers be granted the senior scale from the date of entitlement i.e. accruing of vacancies in the senior scale but subject to the provisions of the Pay Revision Rules, 2001. We also direct that the Provincial Government shall honour its directive and shall take disciplinary action against those responsible for

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*[Handwritten signature]*

Court Associate  
Supreme Court of Pakistan  
Islamabad

E (28)

26<sup>th</sup> March 2018

**The Respected & Distinguished Secretary**  
Communication & Works Department  
Khyber Pakhtunkhwa  
Peshawar

Subject: Grant of Senior Scale / Selection Grade (BS-16) in the Light of Khyber Pakhtunkhwa Service Tribunal Judgment dated 02.03.2016 - Inclusion of name in the List and grant of benefits

Dear Sir,

I joined the Communication & Works Department ("C & W") on 19/10/1978 in BPS-11 and remained in the said grade till 03/07/2013 when I was promoted as SDO.

2. That on 02.03.2016, the learned Khyber Pakhtunkhwa Service Tribunal rendered a judgment in Service Appeal No. 1330/2010 (and others) directing the provincial government to grant Senior-Scale (and resultantly the benefits) to Sub-Engineers who were eligible as per the applicable Rules for the grant of BPS 16. The applicant was also an eligible employee who had passed departmental examination and rendered more than thirty years of service to the Department, therefore is entitled to the similar treatment to those similarly placed employees of the C & W Department.

3. The learned Tribunal has categorically held and directed the department to grant the similar benefit to other similarly placed employees without forcing them to approach the Service Tribunal, in the following pearls of wisdom:

*"29. In case of Hameed Akhtar Niazi reported as 1996 SCMR 1185 and Sameena Parveen reported as 2009 SCMR 1, the august Supreme Court has observed that if the Service Tribunal or Supreme Court decides a point of law relating to the terms and conditions of service of a civil servant which covers not only the case of civil servant who litigated but also of other civil servants who may have not taken any legal proceedings, in such case, the dictates and rule of good governance demand that the benefit of such judgment by Service Tribunal/Supreme Court be extended to other civil servants who may not be parties to the litigation instead of compelling them to approach the Service Tribunal or any other forum.*

*30. Though adequate number of Sub-Engineers seeking Senior Scale are present before us but there is likelihood that certain civil servants might not have approached this Tribunal to litigate for their claims. We therefore, direct that the benefit of this judgment be extended to those Sub-Engineers*

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who fulfilled the criteria of becoming Senior Scale Sub-Engineer at the relevant time."

4. Resultantly, and in the light of the aforesaid direction, the office prepared a list of employees who are to be granted the Senior Scale and benefits dated 27/02/2018, but unfortunately the name of the undersigned has been missed from the same despite that;

(a) The Applicant is senior to most of the employees already granted the Senior Scale and also those entered into the aforesaid list, and

(b) Entitled to the benefit of the Judgment rendered by the learned Service Tribunal dated 02.03.2016 in the like manner as other Sub-engineers who have been extended such benefit.

5. The applicant has visited the office and was informed that a list of the entitled employees was being prepared in the light of the aforesaid judgment of the Service Tribunal for grant of Senior Scale to other Sub-Engineers. The preparation of the list dated 27/02/2018 whereby the Applicant has been missed is not in accord with the dictate of law. The applicant has recently retired on 29.05.2016, and is entitled to the benefits of the Senior Scale Sub-Engineer as per the aforesaid judgment for ten years (from the year 2003 till 2013) just like the others similarly placed - 11 retired while 1 died person is also included in the aforesaid list.

6. It is therefore most humbly requested that the name of the applicant may kindly be placed in the list of the candidates entitled for grant of Senior Scale Sub-Engineer, the Applicant being senior to many in the list dated 27/02/2018 and those already granted Senior Scale Sub-Engineer therefore entitled to benefit of the Judgment of the Khyber PakhtunKhwā Service Tribunal dated 02-03-2016 in the similar manner and to meet the dictate of law in letter and spirit.

I shall be highly obliged and grateful for your such an act of grace and generosity.

Thanking you in anticipation and best regards,

**Israr Ahmad s/o Muhammad Akbar Khan**  
SDO (r) C & W Department  
Ali House  
Akbar Khan Road,  
Mansehra  
Ph: 0334 9279668, 0345 9553221



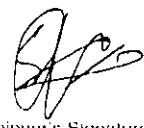
Shipper's A/c. No.
Reference / Job

History ID 0318ISBX282109091694574

2364533040

**COURIER** 30

Origin	Destination
ISB	PEW

<p><b>From (Shipper)</b></p> <p>SRAR</p> <p>ALI HOUSE AKBAR KHAN RD MANSEHIRA KPK</p> <p>Phone# SMS 03349279668</p> <p>Email</p>
<p><b>To (Consignee)</b></p> <p>THE SEC OFI</p> <p>THE SECRETARY TO C&amp;W DEP GOVT OF KPK</p> <p>Phone#</p>
<p><b>Sender's Authorization</b></p> <p>I warrant that I have read the terms and conditions on the reverse of this assignment note and that all details given herein are true and correct. I further declare that the contents of the consignment do not contain any matter the exclusion of the consignment note is prima facie evidence of the conclusion of contract between shipper and TCS (PVT) LTD.</p> <p></p> <p>Shipper's Signature</p>

<p><b>Shipment Detail</b>   Coupon:   Discount:</p>
<p>Declared Value 0.00</p>
<p>Ref. No.</p>
<p>dox</p>
<p><b>Receiver's Signature</b></p>
<p>Shipment Booked After Date 27/03/2018 Time 13:06:39</p>
<p><b>Booking Details</b></p> <p>Staff#90916 S NAVEED AKHTAR</p> <p>Route X28210 Date 27/03/2018 13:06:39</p> <p>Receiver BLUE AREA FRANCHISE, MANSEHIRA (P) Signature Time</p>

Pieces	Weight
1	0.50
Dimension of Shipment	
0 0 0	
Service Type	
OVERNIGHT	
Mode of Payment	
CASH	
Charges	Pak. Rupees
Service	172.00
	0.00
Out of Serv	0.00
Handling	0.00
Others	0.00
GST	28.00
Ins. Chg	0.00
Partner Amt.	0
<b>Total</b>	<b>200</b>
Shipper Copy	



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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.

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

Copy forwarded to the:

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

Anex-I

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

Dated Peshawar the 04/09/2003

ORDER

No. SOE-I/W&S/A-2/2003/S.S. Consequent upon recommendations of the 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 promotion (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

Order No. SOE-I/W&S/A-2/2003/S.S.

Dated Peshawar, the 04.09.2003

Copy forwarded to the:-

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

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

ATTESTED

BETTER COPY

GOVERNMENT OF NWFP  
COMMUNICATION & WORKS DEPARTMENT

Annexure-E

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.

H/32

GOVERNMENT OF NWFP  
COMMUNICATIONS & WORKS DEPARTMENT

Dated Peshawar, the Dec 05, 2009

**ORDER:**


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

Secretary to Govt of NWFP  
Communication & Works Department.

End of even number and date

Copy is forwarded to the:-

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

  
(RAHIM BADSHAH)  
SECTION OFFICER (ESTT)

**ATTESTED**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 994/NFEM/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. Zafullah 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.

MIR. MUHAMMAD ASIF YOUSAFZAI,  
Advocate

For appellant.

MIR. SHERAFGAN KHATTAK,  
Addl. Advocate General

For official respondents.

MIR. IJAZ ANWAR,  
Advocate

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

SYED MANZOOR ALI SHAH,  
MR. NOOR ALI KHAN,

MEMBER  
MEMBER

JUDGMENT

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

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

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

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

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

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

3  
After receipt of the appeal from the august Supreme Court of Pakistan and parties and their counsel were summoned for arguments. Arguments heard at length. Record perused.

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

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

4  
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-1135.

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.

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Sd/- Syed Manzoor Ali Sheikh  
Member  
Sd/- Noor Ali Khan  
Member

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12-00  
24-1-13  
26-1-13

Certified copy  
[Signature]



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No.983 OF 2018

Israr Ahmad

(Appellant)....

V/S

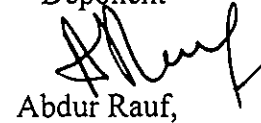
Secretary to Govt of Khyber Pakhtunkhwa  
Communication & Works Department and others

(Respondents)....

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Deponent



Abdur Rauf,

Section Officer (Litigation),  
C&W Department Peshawar

**BEFORE THE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL PESHAWAR**  
**APPEAL NO. 983 OF 2018**

Israr Ahmad  
The then SDO C&W Sub Division  
Mansehra

--- 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 appellant has never challenged in time any order in which his rights were ignored
3. That the appeal is premature.
4. That the appellant has no cause of action and locus standi.
5. That the appeal is time barred.
6. That the appeal is liable to be rejected on ground of non-joinder and mis-joinder of necessary parties
7. That the appellant is estopped by his own conduct to file the instant appeal

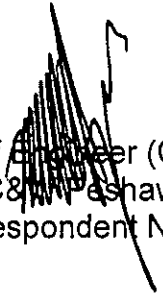
**Facts**

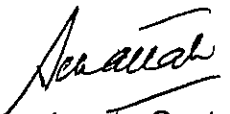
1. Incorrect, in fact the selection grade BS-16 @25% of the total posts of the Diploma Holder Sub Engineers (BS-11) was allowed by the Government with the condition that holder of the post shall be filled by selection on merit with due regard to seniority from amongst Sub Engineers of the Department, who have passed the Departmental B-Grade Examination and have at-least ten (10) years service as such.
2. Incorrect, In fact 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 has issued a circular to all Administrative Secretaries and directed to clear all left over cases of Govt servants who were eligible for selection grade/move over on or before 01.12.2001 (**Annex-II**). Consequently the Respondent Department granted selection grade (BS-16) to 10 Sub Engineers in the year 2003 and 2004 (**Annex-III**) who were eligible and posts were available/vacant before 01.01.2001. Although the name of the appellant was at Sl.No. 09 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 not passing B-Grade Exam which was mandatory for selection grade BS-16 at that time, therefore, in the prevailing circumstances, the plea of the appellant is infructuous.
3. Correct to the extent that on the decision of Service Tribunal upheld by Supreme Court of Pakistan and on the recommendation of Departmental Promotion Committee, 52 Nos Sub Engineers who were eligible and passed B-Grade Exam granted Selection Grade BS-16.
4. Departmental appeal was received, which were processed in the Department and filed by the Competent Authority due to not passing B-Grade Exam which was mandatory for selection grade BS-16 at that time.

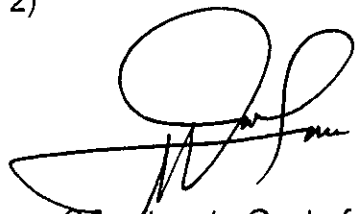
**Grounds**

- 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-2 of the facts.
- 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. No comments
- 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)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No.983 OF 2018**

Israr Ahmad

(Appellant)....

V/S

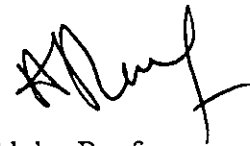
Secretary to Govt of Khyber Pakhtunkhwa  
Communication & Works Department and others

(Respondents)....

**AFFIDAVIT**

I, Mr. Abdur Rauf Section Officer (Litigation) C&W Department Peshawar hereby affirm and declare that all the contents of the reply / comments are correct to the best of my knowledge and belief and nothing has been concealed.

Deponent



Abdur Rauf,  
Section Officer (Litigation),  
C&W Department Peshawar

(BETTER COPY)

GOVERNMENT OF NWFP  
FINANCE DEPARTMENT

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

From Secretary to Govt. of NWFP  
Finance Department

To

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

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

Dear Sir,

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

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

Yours faithfully,

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

Dated Peshawar the, April 6, 2003

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

A copy is forwarded for information to:-

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

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

7667  
2003

MEDIATE

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

11733  
3/7  
DSA

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

667  
5082

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.

*H. J. Khan*  
SECTION OFFICER (PSB)

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

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Amn III

Dated Peshawar the 04 / 09 / 2003

X

ORDER

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

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

SECRETARY TO GOVT OF NWFP  
WORKS & SERVICES DEPARTMENT

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

Dated Peshawar, the 04.09.2003

Copy forwarded to the:-

1. Accountant General NWFP, Peshawar.
2. Chief Engineer Works & Services Peshawar.
3. Chief Engineer Works & Services (FATA) Peshawar.
4. Managing Director Frontier Highways Authority Peshawar.
5. Deputy Secretary (Reg-II) 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)

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

Dated Peshawar the 19/04/2004

**ORDER**

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

1.	Mr. Muhammad Shah, Sub Engineer O/o the Deputy Director- City Dist: 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 Dist: Govt Peshawar.
4.	Mr. Sanaullah, Sub Engineer O/o the Deputy Director W&S Lakki Marwat.
5.	Mr. Zafirullah, 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 Bunair.

SECRETARY TO GOVT OF NWFP  
WORKS & SERVICES DEPARTMENT

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

Dated Peshawar, the 19/04/2004

Copy forwarded to the:-

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

(NOORULLAH)  
SECTION OFFICER (ESTT-I)

Annex-I

When select of RSI after merge

9  
33  
58

2/07  
1633  
93-12-2000

OFFICE OF THE CHIEF ENGINEER (CARTH)  
C&W DEPARTMENT NWFP PESHAWAR  
No. 5624-E-4574-SE-1(2)  
Dated Peshawar the 12/16/2000

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

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

Sl No	NAME	EDUL/TECH. QUALIFICATION	HOME DISTRICT	DATE OF BIRTH	DATE OF APPOINTMENT	TO CLASS	YEAR OF PASSING		REMARKS
							Grade-B Exam	Profici Exam	
1	Fazl Raziq - I SC	B.A	Swat	5-4-43	1-7-61		1991		
2	Gil Razdan SC	M.A D.A.E (Civ)	Milakund Agy	6-8-40	1-1-73				
3	Fazl Rehman SC	M.A D.A.E (Civ)	Karat	9-8-42	1-1-74				
4	Fazl Rehman - II SC	-	Peshawar	2-9-45	1-11-74				
5	Fazl Gul - I SC	-	N.W.A	20-6-51	12-12-74		1996		

MCC

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

06.04.2003 (Annex-I). The Establishment Deptt has issued a circular to all Administrative Secretaries and directed to clear all left over cases of Govt servants who were eligible for selection grade/move over on or before 01.12.2001 (Annex-II). Consequently the Respondent Department granted selection grade (BS-16) to 10 Sub Engineers in the year 2003 and 2004.

Sl No	NAME	EDUL/TECH: QUALIFICATION	HOME DISTRICT	DATE OF BIRTH	DATE OF APPOINT MENT	TO CLASS	YEAR OF PASSING.	REMARKS.
6	Tariq Shah S/O	-do-	Kohat	5-2-54	13-10-75	-	8/94	
7	Pir Shah Wali Shah S/O Mehmood Ayub Shah	-do-	SW.A	15-5-50	16-10-75	-	6/96	(∞)
8	M. Zahir Shah-II <del>S/O Abdul Malik</del>	-do-	Dir	3-11-50	27-11-76	-	6/96	
9	Israr Ahmad S/O M. Akbar Khan	-do-	Mansehra	30-5-56	19-10-78	-	-	
10	Mian Islamud Din S/O Mian Hazrat yousaf.	-do-	Dir	5-4-55	25-10-78	-	-	
11	Maqsood Khan. S/O Haji Mohib ullah.	-do-	Bannu	8-4-52	9-11-78	-	6/96	
12	Hidayatullah Jan. S/O	Matric	Peshawar	21-6-45	2-12-78	-	1978	
13	Salim Khan Afridi-II. S/O	Matric	Khy: Agey.	5-2-47	4-12-78	-	1978	
14	Muhammad Naseem. S/O	Matric	Mardan.	10-1-42	5-12-78	-	1978	

No	NAME	EDUCATION QUALIFICATION	PROV. DISTRICT	DATE OF BIRTH	AGE	HT	FOOT CLASS	YEAR OF PASSING
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214 Anoop Kumar S. S. Jaisi BA BAE CIVIL BAREILLY 30-03-86 27-11 1511099

215 Anand Kumar S. S. Jaisi BA BAE CIVIL BAREILLY 30-03-86 27-11 1511099

Copy to:-

1. Secretary, Govt of NWP, C&W Department, Peshawar
2. Chief Engineer, C&W Department, NWP, Peshawar
3. Superintendent Engineers, Div. C&W Circle Deraan Peshawar
4. All Engineer, Director in C&W Department, NWP
5. All Engineer, Director in C&W Department, NWP
6. Director, NWP (North South) C&W Department, Peshawar

CHIEF ENGINEER (NORTH)

*[Handwritten signature]*  
7/19/19

*[Handwritten signature]*  
CHIEF ENGINEER (NORTH)

2. The facility of selection grade Government w.e.f. 01-12-2000 shall be fill  
"urn amongst Sub Engineers d  
Grade Examination and have a  
Government w.e.f. 01-12-2000 shall be fill  
06/04/2000 BS-16-1999

*[Handwritten marks]*

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

Service Appeal No.983/2018

Israr Ahmad

V/S

C&W Department etc.

**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. Correct to the extent of selection grade of BS-16 @ 25% of the total posts of 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 Engineer of the Department, who have passed the Departmental B-Grade Examination and at least 10 Years as such, but lastly the department has conducted departmental examination (B-Grade) in the year 1996 and after that the department did not conduct departmental examination B-Grade Exam so that the appellant could appear in that Exam. Therefore, the appellant could not be deprived from selection grade BS-16 that he has not passed departmental exam (B-Grade) although he has passed higher and more though exam of professional examination (Grade-A).
2. Incorrect as replied in Para-1 above.
3. First portion of Para-3 is admitted correct, hence no comments. While the rest of Para is incorrect, hence denied. As the department lastly has conducted departmental examination (B-Grade) in the year 1996 and after that the department did not conduct departmental examination B-Grade Exam so that the appellant could appear in that Exam. Therefore, the appellant could not be deprived from selection grade BS-16 that he has not passed departmental exam (B-Grade) although he has passed higher and more though exam of professional examination (Grade-A).



4. Incorrect the departmental appeal of the appellant was not filed by the competent authority. Moreover the department has conducted departmental examination (B-Grade) in the year 1996 and after that the department did not conduct departmental examination B-Grade Exam so that the appellant could appear in that Exam. Therefore, the appellant could not be deprived from selection grade BS-16 that he has not passed departmental exam (B-Grade) although he has passed higher and more though exam of professional examination (Grade-A).

**GROUND:**

- A) Incorrect. As replied in Para-2 above.
- B) Incorrect. While Para-B of the appeal is correct.
- C) Incorrect while Para-C of the appeal is correct.
- D) Incorrect as explained in Para-2 above.
- E) Incorrect. As replied in above Paras.
- F) Incorrect. While Para-F of the appeal is correct.
- G) No comments, endorsed by the department that Para-G of the appeal is correct.
- H) Legal.

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

Through:

  
APPELLANT  
  
(TAIMUR ALI KHAN)  
ADVOCATE HIGH COURT

**AFFIDAVIT**

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

  
DEPONENT