

S.A #.342/2019

5th July, 2023

1. Learned counsel for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General for respondents present.

2. Names of respondents No.1 & 4 are deleted from the panel of respondents, being unnecessary parties. Learned counsel for the appellant requested for adjournment. Last opportunity is granted. To come up for arguments on 30.10.2023 before D.B. P.P given to the parties.

SCANNED
KPST
Peshawar



(Rashida Bano)
Member (J)



(Kalim Arshad Khan)
Chairman

Mutazem Shah

13.12.2022

Junior to learned counsel for the appellants present.

Mr. Muhammad Jan, District Attorney for the respondents present.

Former requested for adjournment due to engagement of learned senior counsel for the appellants in the Hon'ble Peshawar High Court today. Last opportunity is granted. To come up for arguments on 22.02.2023 before the D.B.


(FAREEHA PAUL)
Member(E)


(ROZINA REHMAN)
Member (J)

22.02.2023 Bench is incomplete, therefore, case is adjourned to 24.04.2023 for the same as before.


Reader

24th April, 2023

24th April has been declared as public holiday on account of Eid-Ul-Fitr, therefore, the case is adjourned. To come up for the same on 05.07.2023.


Reader

SCANNED
KPST
Peshawar

23.08.2022

Clerk of learned counsel for the appellant present: Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

Clerk of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is out of station today. Adjourned. To come up for arguments on 31.10.2022 before the D.B.



(Rozina Rehman)
Member (Judicial)




(Salah-Ud-Din)
Member (Judicial)

31st Oct., 2022

Counsel for the appellant present. Mr. Naseerud Din Shah, Assistant Advocate General for official the respondents and Assistant to counsel for private respondent No. 4 present.

Learned counsel for the appellant seeks adjournment in order to further prepare the brief. Adjourned To come up for arguments on 13.12.2022 before the D.B.



(Fareeha Paul)
Member (E)



(Kalim Arshad Khan)
Chairman

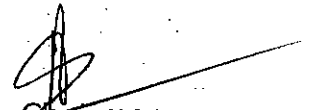
26.07.2021

Appellant present through counsel.

Muhammad Adeel Butt learned A.A.G alongwith for respondents present.

Former made a request for adjournment. Request is accorded. To come up for arguments on 14.12.2021 before D.B.


(Rozina Rehman)
Member (J)


Chairman

14-12-21

*D.B is on Tour case to come up?
For the same on Dated. 30-3-22*

Reader

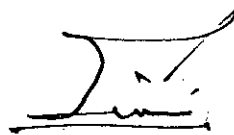
30.03.2022

Clerk of learned counsel for the appellant present.

Mr. Naseer ud Din Shah learned Assistant Advocate General for the respondents present.

Clerk of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy before Hon'ble Peshawar High Court. Adjourned. To come up for arguments before the D.B on 06.06.2022.


(Rozina Rehman)
Member (J)


(Salah-Ud-Din)
Member (J)

6th June, 2022

Proper D.B is not available. Therefore, case is adjourned to 23.08.2022 for the same as before.


Reader

17.08.2020

Due to summer vacations, the case is adjourned to 19.10.2020 for the same.


Reader

19.10.2020

Junior to counsel for the appellant and Zara Tajwar, DDA for the respondents present.

The Bar is observing general strike today, therefore, the matter is adjourned ^{to} 31.12.2020 for hearing before the D.B.


(Mian Muhammad)
Member


Chairman

31.12.2020

Due to summer vacation, case is adjourned to 12.04.2021 for the same as before.


Reader

12.04.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 26.07.2021 for the same as before.


Reader

13.01.2020

Appellant absent. Learned counsel for the appellant absent. Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith representative Tauseef Ullah S.O present and submitted reply. Due to general strike of the Bar on the call of Khyber Pakhtunkhwa Bar Council, the case is adjourned. To come up for further proceedings/arguments on 10.03.2020 before D.B. Appellant be put to notice for the date fixed.



Member



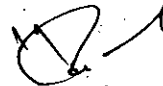
Member

10.03.2020

Learned counsel for the appellant present. Mr. Zia Ullah learned Deputy District Attorney for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 14.05.2020 before D.B.



Member



Member

14.05.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 17.08.2020 before D.B.



Reader

03.09.2019 Counsel for the appellant and Mr. Usman Ghani, District Attorney
alongwith Mr. Mehboob-ur-Rehman, Junior Clerk for the respondents
present.

Representative of the respondents requests for further time for
submission of written reply. Adjudged to 01.10.2019 before S.B.

proceedings/arguments on 10.03.2020
CHAIRMAN
Appellant to put to notice for the date fixed

Members

Members


01.10.2019 Appellant in person and Addl. AG alongwith Sajid
Superintendent for respondent No. 4 present.

Representative of the respondent No. 4 seeks further
time. Fresh notices be issued to respondents No. 1 to 3.
To come up for written reply/comments on 28.10.2019
by way of last chance.


Chairman

28.10.2019 Counsel for the appellant and Addl. AG alongwith Abbas
Khan, Senior Clerk for the respondents present.

Respondents have not furnished the requisite
reply/comments despite last opportunity. The matter is,
therefore, posted for arguments before D.B on 13.01.2020.

Chairman 

19.04.2019

Appellant with counsel present. Preliminary arguments heard.

The appellant (Retired Sub Engineer) has filed the present service appeal u/s 4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974 for the grant of notional promotion to the post of Assistant Engineer (BPS-17) under 20% quota.

Points urged need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 10.06.2019 before S.B.


Appellant Deposited
Security & Process Fee



Member

10.06.2019

Appellant in person and Addl: AG for respondents present. Written reply not submitted. Requested for adjournment. Adjourned. Case to come up written reply/comments on 08.07.2019 before S.B.



(Ahmad Hassan)
Member

08.07.2019

Appellant in person and Mr. Ziaullah, DDA for the respondents present.

Learned DDA requests for adjournment in order to procure written reply of the respondents.

Adjourned to 03.09.2019 for written reply/comments before S.B.






Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 342/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	07/03/2019 SCANNED KPST Peshawar	<p style="text-align: center;">The appeal of Mr. Sabit Khan resubmitted today by Mr. Taimur Ali Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	15/03/19	<p style="text-align: center;">This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>15/03/19</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
15.03.2019		<p style="text-align: center;">Counsel for the appellant present and seeks adjournment. Adjourned. To come up for preliminary hearing on 19.04.2019 before S.B.</p> <p style="text-align: right;"> (MUHAMMAD AMIN KHAN KUNDI) MEMBER</p>

The appeal of Mr. Sabit Khan EX-Senior Sub-Engineer C&W Department received today by i.e. on 21.02.2019 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

- 1- Index of the appeal may be prepared according to the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 2- Copies of impugned order and departmental appeal against it are not attached with the appeal which may be placed on it.
- 3- Copies of documents referred to in the memo of appeal are not attached with the appeal which may be placed on it.
- 4- Annexures of the appeal may be flagged.
- 5- Annexures of the appeal may be attested.
- 6- Six more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 315 /S.T,

Dt. 22-2- /2019

22/2/19
REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Taimur Ali Khan Adv. Pesh.

Respected Sir,

- 1- Removed
- 2- copy of impugned order at page 27 and departmental appeal at page 26.
- 3- Removed
- 4- Removed
- 5- Removed
- 6- Removed

*Resubmitted after
Compliance*

[Signature]
7/3/19

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Appeal No. 342 /2019

Sabit Khan

V/S

Govt: of KPK etc

INDEX

S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	01-03
2.	Copy of certificate	- A -	04
3.	Copies of judgment dated 02.03.2016 and 13.02.2017	- B&C -	05-21
4.	Copy of notification 30.04.2018	- D -	22
5.	Copy of the rules	- E -	23-25
6.	copies of departmental appeal and rejection order	- F&G -	26-27
7.	Vakalat Nama	-----	28

APPELLANT

THROUGH:



TAIMUR ALI KHAN
ADVOCATE HIGH COURT,
&

ASAD MAHMOOD
ADVOCATE HIGH COURT.

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

Appeal No. _____/2019

Sabit Khan , Retired Sub Engineer, (BPS-16)
C&W Department.

APPELLANT

VERSUS

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

RESPONDENTS

.....

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 24.01.2019, WHEREBY THE DEPARTMENTAL OF THE APPELLANT FOR NOTIONAL PROMOTION TO THE POST OF ASSISTANT ENGINEER (BPS-17) UNDER 20% QUOTA HAS BEEN REJECTED FOR NO GOOD GROUND.

PRAYER:

THAT ON ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 24.01.2019 MAY KINDLY BE SET ASIDE AND THE RESPONDENT DEPARTMENT MAY FURTHER BE DIRECTED TO CONSIDER THE APPELLANT FOR NOTIONAL PROMOTION UNDER 20% QUOTA TO THE POST OF ASSISTANT ENGINEER (BPS-17) FROM DUE DATE. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT THAT MAY ALSO BE GRANTED IN FAVOUR OF APPELLANT.

.....

RESPECTFULLY SHEWETH:

FACTS

- 1- That the appellant joined the C & W Deptt: on 14.03.1988 as Sub Engineer and has passed B Grade/departamental examination in the year 1996 and also passed departmental professional examination in 2006 and was retired on 16.12.2010 on attaining the age of superannuation. Thus the appellant has more than 22 years service at his credit with good record throughout. All the dates are mentioned in the certificate of the appellant. **(Copy of certificate is attached as Annexure-A)**
- 2- That the appellant filed service appeal No.920/2014 in this august Service Tribunal for grant of selection grade to BPS-16 under 25% quota fixed by the Government, which also allowed by this Honourable Service on 02.03.2016 along with other connected appeals and the same judgment was also uphold by the Supreme Court of Pakistan on 13.02.2017. **(Copies of judgment dated 02.03.2016 and 13.02.2017 are attached as Annexure-B&C)**
- 3- That on the basis of above mentioned judgments the appellant has granted senior scale/selection grade BPS-16 vide notification dated 30.04.2018 along with other sub engineers. **(Copy of notification 30.04.2018 is attached as Annexure-D)**
- 4- That according to the rules, 20 % of the post of Assistant Engineer (BPS-17) are to filled on the basis of promotion from amongst senior scale engineer who hold a diploma and have passed departmental professional examination. The appellant possesses the said requirement, but despite of that the appellant has not promoted to the post of Assistant Engineer (BPS-17) in time. **(Copy of the rules is attached as Annexure -E)**
- 5- That as the appellant did not promoted to the post of Assistant Engineer (BPS-17) on his due time, therefore he filed departmental appeal for notional promotion to the post of Assistant Engineer (BPs-17), which was rejected on 24.01.2019 for no good ground. **(Copies of departmental appeal and rejection order dated 24.01.2019 are attached as Annexure-F&G)**
- 6- That the appellant has no other remedy for redressal of his grievance except to file this service appeal on the following grounds amongst others.

GROUND:

- A- That rejection order dated 24.01.2019 and not promoting the appellant to the post Assistant Engineer (BPS-17) in his due time under 20% quota fixed by the Government are against the law, rules, material on record, norms of justice and fair play.

- B- That the appellant was legally entitled for promotion to the post of Assistant Engineer (BPS-17) under 20% quota in his due time, but he was deprived from his legal right of promotion by the arbitrary manner of the respondent department.
- C- That the Honourable Supreme Court of Pakistan has also held in many cases that promotion quota will always to be made from the date, when the post became available for an officials in his quota and the officials cannot be deprived from his right merely because the concerned department did not carry out the process of promotion in time.
- D- That the appellant was senior most, but could be promoted to the post of Assistant Engineer (BPS-17) in his due time under 20% quota, which is violation of law and rules.
- E- That the appellant has been kept deprived from his legal right of promotion from his due date for the fault and lethargy of the department, which is not sustainable in the eyes of law.
- F- That the appellant has not been dealt according to law and rules and has been kept deprived from his legal right of promotion to the post of Assistant Engineer (BPS-17) in fanciful manner.
- G- 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
Sabit Khan

THROUGH:


TAIMUR ALI KHAN
ADVOCATE HIGH COURT,
&

ASAD MAHMOOD
ADVOCATE HIGH COURT



GOVT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar the April 23, 2014

Certificate A (4)

CERTIFICATE

It is to certify that Mr. Sabit Khan S/O Rustam Khan was appointed as Sub Engineer (BS-11) on 14.03.1988 on regular basis, he stands retired from Government Service on attaining the age of superannuation i.e. 60 years w.e.f. 17.12.2010 and served the Department upto 16.12.2010. During his service he qualified the B-Grade Examination in 1996, besides passing professional Exam in 2006.

Sabit Khan
21/5/2014
Administrative Officer
O/O Chief Engineer (Centre)
C&W Peshawar

Tele No. 091-9210395

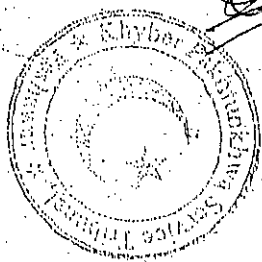
Administrative Officer (Centre)
Communication & Works Deptt:
Khyber Pakhtunkhwa Peshawar.

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 Abifal Salim, Advocates

For appellant(s)

Mr. Muhammad Adeel Butt,
Additional Advocate General
Nemo

For official respondents,
For private respondents

Mr. Muhammad Azim Khan Afridi
Mr. Pir Bakhsh 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.

- (3) 6
- (37) 513/2014 titled Irshad Ahmed Khan-vs-Govt. of KPK through Secretary C & W etc.
- (38) 699/2014 titled Muhammad Akram-vs-Govt. of KPK through Secretary C & W etc.
- (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 etc.
- (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 Yousof Khan, Hidayatullah-I s/o Anayatullah Khan, Sanaullah Tajori-III s/o Muslim Khan, Zaffarullah Khan s/o Ahsanullah, 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

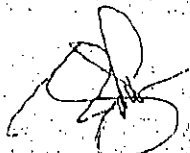
Department as Sub-Engineer on 9.12.1981 and has passed B-Grade Departmental Examination in the year 1994 and has more than 30 years service to his credit including good service record and entitling him to the grant of Senior Scale on the strength of 75% of the total number of posts of Sub-Engineers.

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, 1199/2013, 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 Muhammad 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


K. M. A. Khan
Secretary
F. S. H. W. U. R.

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13. 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 Misar Ahmed in appeal No. 1112/2014.

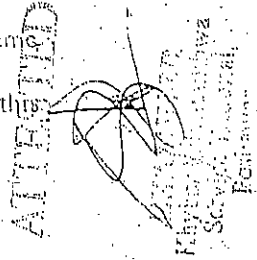
12. In appeal No. 1223/2015, appellant Sardar Naeem Ahmed has prayed for Senior Scale being senior as his junior colleagues were granted the same and he was ignored. He has also prayed for grant of Senior Scale (BPS-16) on the rule of alike treatment as extended to similarly placed employees in appeals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

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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

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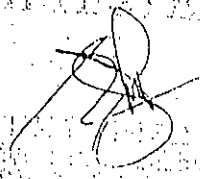
posts meant for Senior Scale Sub-Engineers and the scheme of grant of the said Senior Scale stood abolished under the Pay Revision Rules, 2001 by December 1, 2001, as such the appellants were not entitled to the Selection Grade claimed through the instant service appeals. He further argued that the authorities 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:

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Secretary

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

NOTIFICATION

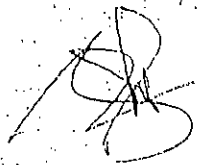
Peshawar the 13 January, 1980

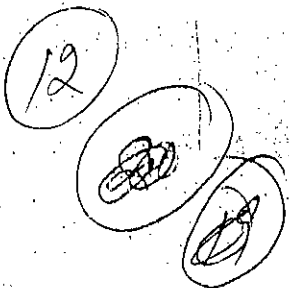
No. SOR-I(S&GD)1-12/74.---In exercise of the Powers conferred by Section 26 of the North West Frontier Province Civil Servant Act, 1973 (NWFP Act XVIII of 1973), in supersession of all previous rules on the subject in this behalf the Governor of the North-West Frontier Province is pleased to make the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

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

- (1) These rules may be called the Communication and Works Department (Recruitment and Appointment) Rules, 1979.
- (2) They shall come into force at once.

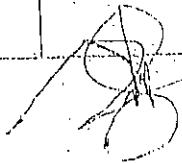
2. *The Method of recruitment, minimum qualifications, age limit and other matters related thereto for the Posts specified in column 2 of the Schedules annexed shall be as given in column 3 to 7 of the said Schedules.*



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COMMUNICATION & WORKS DEPARTMENT
 SCHEDULE-I

NO.	Nomenclature of post	Minimum Qualifications for Appointments		Age for initial Recruitment		Method of Recruitment
		Initial Recruitment by Transfer	Promotion	Minimum	Maximum	
	2	3	4	5	6	7
to 4	<i>Irrelevant</i>					
	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.
and onwards	<i>Irrelevant</i>					



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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 senior among his colleagues, shall hold a position falling within domain and sphere of 25% of the total number of posts of the Sub-Engineers, shall have at least 10 years service as Sub-Engineer and shall have passed the prescribed departmental examination 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:

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

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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 1st, 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

cc - Date of Judgment
2-3-2015

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made in the prescribed manner 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.

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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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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/leaver 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 Hamced 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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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 ^{Scale} Sub-Engineer at the relevant time.

31. In case of Fida Hussain reported as PBD 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.

SD/- (MUHAMMAD AZIM KHAN AFRIDI), CHAIRMAN

SD/- (PIR BAKHSH SHAH), MEMBER

SD/- (ABDUL LATIF), MEMBER

ANNOUNCED
02.03.2016

Original to be sent copy
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Issue: 10-03-2016
Number of Pages: 5600
Copies: 20
Hh: 2
Total: 32
Name of Officer: [Signature]
Date of Issue: 10-03-2016
Date of Delivery: 10-03-2016

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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

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

Civil Petitions No. 223-E, 303-P to 353-P, 391-P to 394-P and 493-P of 2014
(On appeal against the judgment of 02.03.2014 passed by the High Court of Peshawar in Service Appeal No. 1330 of 2014, 1331/14, 1740/14, 045/14, 040/14, 977/14, 1009/14, 1015/14, 1104/14, 1105/14, 1106/14, 1107/14, 1108/14, 1109/14, 1110/14, 1111/14, 1112/14, 1300/14, 1330/14, 1431/14, 1446/14, 1541/14, 1631/14, 1637/14, 1638/14, 95/14, 96/14, 777/14, 246/14, 363/14, 336/14, 307/14, 393/14, 471/14, 477/14, 481/14, 487/14, 113/14, 049/14, 700/14, 775/14, 779/14, 832/14, 811/14, 912/14, 920/14, 1033/14, 1102/14, 1112/14, 1137/14, 1723/14 and 1704/2015).

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

VERSUS

Muhammad Shafiq and others.
Khalid Naeem.
Daulat Khan.
Saeedullah.
Mudassar Sahgir.
Ghulam Qadir and others.
Riaz Ahmad.
Muhammad Idrees and others.
Zia-ud-Din.
Abdul Qayyum-I.
Sarfaraz 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 Anif Saeed Diyari.
Muhammad Khalid Noor.
Muhammad Saeed-II.
Zahir Gul.
Muhammad Zubair.
Abdur Rahim.
Zulfiqar Ahmad.
Naseem Ahmad.
Mutahir Khan and another.
Muhammad Javed and others.
Saleem Ibrar and another.
Lal Badshah.
Abdul Khalil.
Abdul Farooq.
Ishad Ahmad Khan.
Muhammad Akram.
Abdul Qayyum.
Fatehullah Khan-II.
Zamir Jang.
Syed Tariq Mahmood.
Ghulam Rahim.
Liaqat Shah.
Noor ul Basar.
Sabir Khan.

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Court Associate
Supreme Court of Pakistan
Islamabad

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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 Anshad 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

Order

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Attesting Officer of Pakistan
13/02/2017

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Case No. 124, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

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 the reasons that the same is granted by ignoring the prescribed limit of 25% including the time frame ending on December 31, 2001. The practice adopted is not only condemnable but also worth taking note of because of overburdening the public exchequer offensively.

24. Section 3 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 vitious 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 entailing 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 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

ATTESTED

ATTESTED

Court Associate
Supreme Court of Pakistan
Islamabad

21

21

Case No. 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400

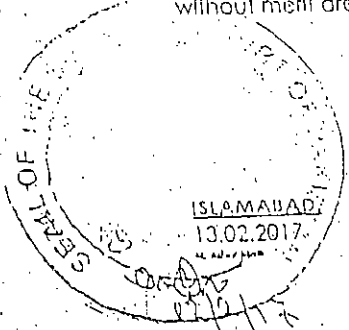
maintaining, updating and completing the record of the officers, but ignoring their responsibilities and thus giving space to irregularities and illegalities thereby causing and inflicting losses on public exchequer."

6. Having read the paragraphs reproduced above from the impugned judgment, we don't find anything anomalous or inconsistent with the relevant rules and dispensation. It in our view suggested a balanced mode to resolve the anomalies and redress the grievances of those who are victims of unfair and unjust apportionment. When this being the case the better course for the petitioners is to implement the impugned judgment rather than question it on any hyper technical ground particularly when none of the persons aggrieved by it has filed any petition thereagainst in this Court. We, thus, don't feel persuaded to interfere therewith.

7. For the reasons discussed above, these petitions being without merit are dismissed and the leave asked for is refused.

Sd/-Ejaz Afzal Khan, J
Sd/-Gulzar Ahmed, J

Certified to be True Copy



[Signature]
Court Associate
Supreme Court of Pakistan
Islamabad
1-3-17

2790/17

GR No: _____
Date of Receipt: 7-3-17
No of Writs: 120
No of Cases: 50
Remarks: 7 W
Court: 13 W
Date: 1-3-17
Date: 1/3/17
Collected by: *[Signature]*

ATTESTE



Dated Peshawar, the April 30, 2018

D 22

NOTIFICATION

No. SOE/C&WD/4-2/2018: Pursuant to Khyber Pakhtunkhwa Service Tribunal Judgment dated 02.03.2016 upheld by Supreme Court of Pakistan vide its order dated 13.02.2017 duly opined by Law Department and in consultation with the Departmental Promotion Committee, the Competent Authority has been pleased to grant Senior Scale/selection grade BS-16 in respect of the following Sub Engineers of C&W Department w.e.f. 04.09.2003 i.e. the date on which their juniors were awarded Senior Scale (BS-16) or from the dates they become qualify, whichever is latter, as per prevailing policy.

- | | | |
|----------------------------------|----------------------------|-----------------------|
| 1. Muhammad Zubair | 2. Muhammad Akram | 3. Irshad Ahmad |
| 4. Abdul Qayum | 5. Abdul Farooq | 6. Saeedullah |
| 7. Ghulam Qadar (rtd) | 8. Muhammad Idrees Alizai | 9. Khalid Naeem |
| 10. Syed Tariq Mehmood | 11. Muhammad Sagheer | 12. Zahir Gul (rtd) |
| 13. Muhammad Zaka Khan | 14. Muhammad Saeed | 15. Aurangzeb |
| 16. Daulat Khan (rtd) | 17. Naseem Ahmad | 18. Abdur Rahim (rtd) |
| 19. Sarfaraz Alam (rtd) | 20. Niaz Muhammad | 21. Riaz Ahmad (rtd) |
| 22. Zulfiqar Ahmad | 23. Syed Abdullah Shah | 24. Yousaf Ali |
| 25. Syed Qasir Shah | 26. Syed Nawazish Ali Shah | 27. Abdul Qayum |
| 28. Muhammad Hamid Zia | 29. Mian Jehanzeb | 30. Zia-ud-Din |
| 31. Malik Arif Saeed | 32. Muhammad Shakeel Athar | 33. Said-ul-Ibrar |
| 34. Muhammad Khalil Noor | 35. Muhammad Shafiq | 36. Fazal Mehmood |
| 37. Taj Muhammad (rtd) | 38. Sabit Khan (rtd) ✓ | 39. Liaqat Shah (rtd) |
| 40. Noor-ul-Basar | 41. Muhammad Javed | 42. Ghulam Rahim |
| 43. Lal Badshah (rtd) | 44. Inam-ul-Haq Babar | 45. Fazal Rehman |
| 46. Syed Azmat Ali Shah | 47. Saif-ur-Rehman | 48. Aynjal Khan |
| 49. Abdul Waheed | 50. Abdul Khalil | 51. Hassan Jan |
| 52. Roidar Muhammad | 53. Ejaz Rasood (died) | 54. Sibghatullah |
| 55. Muhammad Ghazanfarullah Khan | | |

2. The posts shall automatically stand downgraded to their original status as and when vacated by the present incumbents.

SECRETARY TO
Government of Khyber Pakhtunkhwa
Communication & Works Department

P.T.O

BETTER COPY

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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:-

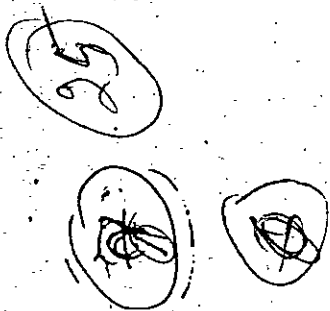
THE COMMUNICATION AND WORKS DEPARTMENT
(RECRUITMENT AND APPOINTMENTS) RULES, 1979

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 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.

B

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.	Chief Engineer			5	6
1.	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 3.		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.		(a) Seniority present by initial recruitment. (b) 10% by promotion, on the basis of seniority cum fitness from amongst the Sub Engineers holding a degree in Engineering, seniority to be determined from the date of acquiring degree or initial appointment which ever is later. (c) Twenty percent by selection on merit with due regard to seniority from amongst the Senior Scale Sub Engineers of the Department who hold a diploma and have passed Departmental Professional Examination.
					Twenty-five percent of the total number of posts of the diploma holders Sub Engineers shall from the cadre of 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.

52


7

COMMUNICATION AND WORKS DEPARTMENT

SCHEDULE - II

S.No.	Nomenclature of Post	Minimum qualification for initial recruitment or by transfer	Minimum qualification for appointment and promotion	Age limit for initial recruitment	Method of recruitment
1.	Principal Engineer Refrigeration / Air-conditioning	B.Sc in Refrigeration / Air-conditioning from a recognized University with 10 years experience. By Mechanical Engineer with 15 years experience with National or International Organization of repute in Design Installation and running of Air-conditioning and Refrigeration.		30 to 45 years	By initial recruitment.
		B.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.

To:

The Honorable, Chief Minister,
Khyber Pakhtunkhwa

F (26)

Subject: **REQUEST FOR GRANT OF PROMOTION FROM B-16 TO B-17**

Request Sir,

Respectfully, It is stated that I was appointed as Sub Engineer (B-11) in the C&W Department on 14/03/1988.

According to the Government Policy out of the total strength, some have to be placed as senior scale Sub Engineer (B-16). The Administrative Department through the above policy promoted number of Sub Engineer (B-11) to the Senior Scale Sub Engineer (B-16) junior to me by superseding me while I was senior to them seniority wise as well as age wise vide Service rule part VI para 4 **Provided that If the date of regular appointment of two or more civil servants in the lower post is the same, the civil servant older in age, shall be treated senior.**

I requested the concerned authority to give my right to me/place me at the right place which I deserve but in vain. Then lastly after my retirement I was considered for promotion to the Senior Scale Sub Engineer (B-16) after court order on 30/04/2018. Due to this discrepancies I could not get my due pay, allowances, gratuity & pension.

In view of the above & being slogan of the PTI Government to provide **Insaf** to everyone, I request your good self to direct C&W Department to revisit/open my case of seniority, promotion to Senior Scale Sub Engineer B-16, as well as to SDO B-17 and thereafter placing me at the right place, calculate my arrears of emoluments so as to avoid to knock at the doors of courts for my rights.

Thanking you in anticipation. (Documents attached)

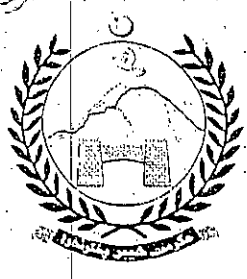
Yours Sencierely

21/08
26/11/2018

Private Secy
Hashim Khan

(SABIT KHAN)
EX-SUB ENGINEER
C&W DEPARTMENT
Cel No:0300-5689079

6027



GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

No. SOE/C&WD/11-270/2018
Dated Peshawar, the Jan 24, 2019

To
The Section Officer-VI
Chief Minister's Sectt:
Khyber Pakhtunkhwa
Peshawar

Subject: REQUEST FOR GRANT OF PROMOTION FROM BS-16 TO BS-17

I am directed to refer to your letter No.SOVI/CMS/KPK/1-13/2018/22345 dated 17.12.2018 on the subject noted above and to state that Mr. Sabit Khan was appointed as Sub Engineer in C&W Department on 13.03.1988 and later-on along-with his other colleagues, he was granted Senior Scale BS-16 in light of court orders dated 30.04.2018. Moreover, he has already retired from Government service w.e.f. 17.12.2010 on attaining the age of superannuation. It is pertinent to mention that the said ex-official was at Sr.No.173 of the seniority list of Sub Engineers issued on 25.03.2010 by CE. (Centre) C&W Peshawar at the time of superannuation.

2. In view of above, this Department regrets its inability to promote him as requested by the applicant Mr. Sabit Khan.

(ABDUR RASHID KHAN)
SECTION OFFICER (Estb)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
(CAMP COURT DIKHAN)

Service Appeal No.342 OF 2019

Mr. Sabit Khan
Sub Engineer (rtd)
C&W Department

..... (Appellant)

V/S


Government of Khyber Pakhtunkhwa through
Chief Secretary Civil Secretariat Peshawar *and others*

..... (Respondents)

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S.NO.	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGE
1	Parawise Comments on behalf of Respondent No.1 to 4	-	1-2
2	Affidavit	-	3

Deponent


Tauseef Ullah,
Section Officer (Litigation),
C&W Department Peshawar

L

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR
SERVICE APPEAL NO.342/2019

Mr. Sabit Khan
Sub Engineer (rtd)
C&W Department

---- Appellant.

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat, Peshawar ---- Respondents
2. Government of Khyber Pakhtunkhwa through Secretary C&W Department, Peshawar
3. Chief Engineer (Centre)
C&W Peshawar
4. Government of Khyber Pakhtunkhwa through Secretary Finance Department, Peshawar

Joint Parawise comments on behalf of Respondents No. 1, 2, 3 and 4

Respectfully Sheweth

Preliminary Objections

1. That the appeal is not maintainable for mis-joinder and non-joinder of necessary parties.
2. That the appellant has never challenged in time any order in which his rights were to be ignored
3. That the appeal is premature, as the applicant is no more Govt servant
4. That the appellant has got no cause of action and no locus standi to file the instant appeal
5. That the appeal is time barred

FACTS

1. Contents need no reply. It pertains to record.
2. Contents need no reply. It pertains to record.
3. Contents need no reply. It pertains to record.
4. Correct to the extent that according to the recruitment rules of C&W Department notified on 25.03.2010 which were amended in 14.10.2014 and 26.03.2018, the method of recruitment for the post of Assistant Engineer/ SDO was as under:
 - (a) sixty five percent (65%) by initial recruitment;
 - (b) sixteen and half percent (16.50%) by promotion, on the basis of seniority-cum-fitness, from amongst the Sub Engineers who hold a Diploma of (Civil, Mechanical or Electrical) and have passed Departmental Professional Examination with 10 (ten) years service as such;
 - (c) five percent (5%) by promotion, on the basis of seniority-cum-fitness, from amongst the Sub Engineers who possess Degree of B.E or B.Sc. Engineering (Civil, Mechanical or Electrical) at the time of their joining service and have passed Departmental Professional Examination with 05 (five) years service as such;
 - (d) three and half percent (3.5%) by promotion, on the basis of seniority-cum-fitness, from amongst the Sub Engineers who acquired Degree of B.E or B.Sc. Engineering (Civil, Mechanical or Electrical) during service and have passed Departmental Professional Examination with 05 (five) years service as such; and
 - (e) ten percent (10%) by promotion, on the basis of seniority-cum-fitness, from amongst the Sub Engineers having Degree of B-Tech (Hons) and have passed Departmental Professional Examination with 05 (five) years service as such"

Note: The seniority in all cases shall be determined from the date of initial appointment

2

3


It is further to mention that the appellant (Sabit Khan) Diploma Holder Sub Engineer BS-16 was appointed as Sub Engineer in C&W Department on 13.03.1988 and later on he along-with other colleagues was granted Selection Grade BS-16 is eligible by court orders dated 30.04.2019. Moreover, the applicant had already been retired from Govt service on attaining the age of superannuation i.e. 60 years w.e.f. 17.12.2010. Hence there is no provision in the existing service rules for the post of Assistant Engineer/SDO (BS-17) by way of promotion on the basis of seniority-cum-fitness from amongst the Sub Engineers who holds a Diploma of Associate Engineering (Civil/Mechanical/ Electrical). It is pertinent to mention that the applicant was at Sr.No.173 of the seniority list of Diploma Holder Engineers issued on 25.03.2010. Therefore, the applicant was not promoted to the rank of AE/SDO (BS-17), being a junior most Sub Engineer.


5. As per record, the departmental appeal of the appellant was processed and regretted by the competent authority.
6. Incorrect, as explained in para-4 above.

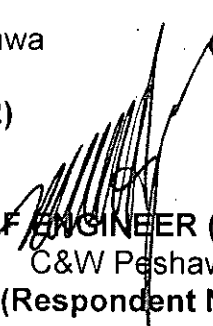
GROUNDS

- A. Incorrect, there is no mala-fide, no discrimination and violation of rights of the petitioners has been made. In fact, the Department is followed rules/policy strictly in the cases of promotion of officers/officials of C&W Department.
- B. Incorrect, neither discrimination to any individual, including the appellant was done nor any rule or principle of law infringed, the apprehension of the appellant is mis-leading.
- C. Incorrect, as explained in para-4 of the facts
- D. Incorrect, mis-conceive, all relevant rules have been followed and action taken by the Department are within the prescribed laws as explained in para-4 of the facts.
- E. Incorrect, as explained in para-4 of the facts. No right of the appellant has been violated.
- F. Incorrect, no discrimination to any individual, including appellant nor any rule or Principle of law infringed. The apprehension of the appellant is mis-happed.
- G. The respondents would like to seek permission of this Hon'able Court to adhere more grounds during the time of arguments.

In view of the above, it is prayed that the instant service appeal may kindly be dismissed with costs having no substance.


SECRETARY TO
Govt of Khyber Pakhtunkhwa
C&W Department
(Respondent No. 1 & 2)


SECRETARY TO
Govt of Khyber Pakhtunkhwa
Finance Department
(Respondent No.4)


CHIEF ENGINEER (CENTRE)
C&W Peshawar
(Respondent No.3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
(CAMP COURT DIKHAN)

Service Appeal No.342 OF 2019

Mr. Sabit Khan
Sub Engineer (rtd)
C&W Department

..... (Appellant)

V/S

Government of Khyber Pakhtunkhwa through
Chief Secretary Civil Secretariat Peshawar *and others*

..... (Respondents)

AFFIDAVIT

I, Mr. Tauseef Ullah 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



Tauseef Ullah,
Section Officer (Litigation),
C&W Department Peshawar

23/10/19

50 روپے	3678			
ایڈویکٹ: <u>شمس المل خان</u>		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل ایسوسی ایشن نمبر: <u>10-4240</u>				
رابطہ نمبر: <u>0333-9390916</u>				

بعدالت جناب: خیبر پختونخواہ سروس ٹریڈیوٹل کمپنی

مخاطب: <u>ثابت خان</u>	دعویٰ نمبر: <u>342/2019</u>
	علت نمبر:
	موردہ:
	جرم:
	تھانہ:
باعث تحریر آئکہ	

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ

آن مقام گڑھی پور کیلئے شمس المل خان اور امسر محمد اور گڑھی پور کے وکیل صاحب کو کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

Accepted & Accepted

المقوم: _____
 العبد _____
 مقام _____ کے لیے منظور ہے۔

