

149/2016

04.10.2016

Syed Noman Bukhari, junior to counsel for the appellant and Mr. Saleem Shah, Superintendent alongwith Additional AG for respondents present. Rejoinder on behalf of the appellant submitted which is placed on file. To come up for arguments on 13.2.17 before D.B.

  
(MUHAMMAD AMIR NAZIR)  
MEMBER

  
(PIR BAKHSH SHAH)  
MEMBER


13.02.2017

Appellant through learned counsel and Mr. Ziaullah, GP for respondents present. Learned counsel for appellant stated at the bar that larger bench of this Tribunal in detail judgment dated 02.03.2016 in Service Appeal No. 1330/2010 has already laid down the dictum and the instant service appeal stands on the same pedestal and requested that the same be treated accordingly to already passed judgment of the larger bench. The request seems proper and this appeal on same pattern and dictum laid down in the above mentioned judgment of the larger bench of this Tribunal stands disposed of accordingly. File be consigned to the record room.

ANNOUNCED

13.02.2017

  
(AHMAD HASSAN)  
MEMBER

  
(ASHFAQUR TAJ)  
MEMBER

22.02.2016

Counsel for the appellant present. Learned counsel for the appellant argued that identical service appeals including appeal No. 1418/2015 are already admitted to regular hearing.

In view of the above, this appeal is also admitted to regular hearing. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 13.4.2016 before S.B.

Appellant Deposited  
Security & Process Fee

  
Chairman


13.4.2016

Counsel for the appellant and Mr. Saleem Shah, Supdt. alongwith Addl. AG for the respondents present. Requested for adjournment. Last opportunity granted. To come up for written reply/comments on 02.06.2016 before S.B.

  
Chairman

02.06.2016

Counsel for the appellant, and Saleem Shah, Supdt. alongwith Addl. AG for the respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 04.10.2016.

  
Chairman



Form- A

FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. \_\_\_\_\_

149 / 2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	16.02.2016	<p>The appeal of Mr. Ghazanfarullah resubmitted today by Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>22-02-2016</u></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Ghazanfarullah Sub-Engineer C&W Department received to-day i.e. on 11.02.2016 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- Annexures-A, B, E, F, G, H and K of the appeal are illegible which may be replaced by legible/better one.

No. 199 /S.T,

Dt. 11/2 /2016

*Asif*  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Muhammad Asif Yousafzai Adv. Pesh.

*Respected Sir*

1- *Removed*



BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 149 /2016

Mr. Ghazanfarullah

V/S


C&W Department


**INDEX**

S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	01-03
2.	Copy of Rules	- A -	04-06
3.	Copy of Judgment	- B -	07-10
4.	Copy of Departmental Appeal	- C -	11
5.	Copy of Rejection Order	- D -	12
6.	Copy of Order (4.9.2003)	- E -	13
7.	Copy of Order (5.12.2009)	- F -	14
8.	Copy of Judgment (07.05.2009)	- G -	15-17
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10.	Copy of Judgment (06.06.2007)	I	20-26
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APPELLANT

THROUGH:

  
( M. ASIF YOUSAFZAI )  
ADVOCATE, PESHAWAR.

  
TAIMUR ALI KHAN  
Advocate

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

Appeal No. 149 /2016

**S.W.F. Province  
Service Tribunal  
Diary No 96  
Dated 11-2-2016**

Mr. Ghazanfarullah, Sub Engineer,  
Provincial Building (Const) Division-II,  
Peshawar.

**APPELLANT**

VERSUS

- 1- The Secretary, Government of Khyber Pakhtunkhwa, Works & Services Department, (Now C&W Department), Civil Secretariat, Peshawar.
- 2- The Chief Engineer, Works & Services Department (Central) (now C&W), Khyber Pakhtunkhwa, Peshawar.
- 3- The Secretary, Government of Khyber Pakhtunkhwa, Finance Department, Civil Secretariat, Peshawar.

**RESPONDENTS**

.....

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 02.02.2016 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT FOR GRANTING B-16 ON HAVING 10 YEARS SERVICE AND ALSO PASSED PROFESSIONAL EXAM HAS BEEN REJECTED.

*[Handwritten signature]*  
11/2/2016

PRAYER:

*That on acceptance of this appeal the order dated 02.02.2016 may be set aside with the direction to the respondents to grant B-16 senior scale according to the rules for having 10 years service + professional Exam with all consequential & back benefits from the date when juniors were given. Any other remedy*

re-submitted to-088  
and filed,  
*[Handwritten signature]*  
Registrar,

*which this august Tribunal deems fit that may also be granted in favour of appellant.*

.....

**RESPECTFULLY SHEWETH:**

- 1- That the appellant joined the W & S Deptt: in the year 1986 as Sub Engineer and also passed B grade departmental exam in the year 1996. Thus the appellant has more than 30 years service at his credit with good record throughout. All the dates are mentioned the departmental appeal of the appellant the copy of which is already attached as Annexure – C
- 2- Those according to the rules 25 % of the post of senior scale sub engineers are to be filled in on the basis of promotion from amongst persons who have ten years service and also passed B Grade exam. The appellant possesses the said requirement but despite of that the appellant has not been granted B-16. Copy of the Rules is attached as Annexure – A.
- 3- That the august Tribunal has also decided such similar 15 appeals on 11.12.2012. As the appellant is the similarly placed person, therefore the appellant is also entitled to the relief under the principles of consistency and Supreme Court's judgment reported as 1996 SCMR-1185, 2009 SCMR-01. Copy of judgment is attached as Annexure - B
- 4- That the appellant also filed departmental appeal for grant of B-16 on 04.01.2016 and the same was rejected for no good grounds on 02.02.2016. Hence, the present appeal on the following grounds amongst the others. Copy of the appeal and rejection order is attached as Annexure – C&D

**GROUND:**

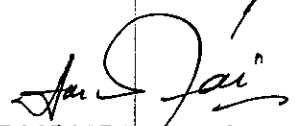
- A- That not granting B-16 as per rules and rejection of the departmental appeal of the appellant is against the law, rules and norms of justice.


- B- That the appellant has attained eligibility for B-16 much earlier than those who are enjoying the benefits of B-16, therefore the appellant has been discriminated and deprived from his rights in an arbitrary manner.
- C- That the appellant has not been dealt according to law and rules and has been discriminated by not extending the benefits of B-16 while the same has been given to the junior officials.
- D- That even the respondent Deptt; has granted B-16 to many officials vide order dated. 4.09.2003 & 5.12.2009. Thus the appellant is also entitled to the same relief. Copies of the orders are attached as Annexure- E & F.
- E- That the treatment of the respondent Deptt: is against the spirit of Article 4 and 25 of the constitution.
- F- That the rules regarding B-16 are still in field and this august Tribunal has also granted the same relief in appeals No.1685/08, 791/08 decided on 07.05.2009, Appeals NO.531/2001,533/2001, 534/2001, 535/2001, 537/2001 and 538/2001 decided on 06.06.2007, Appeal No.194/93 decided on 07.09.1994. and Appeal NO. 27/09, decided on 27.09.2008. Copies of some judgments are attached as Annexure – G, H, I, J & K .
- G- That the appellant is also entitled to the same relief according to the principles of consistency and equality.
- H- That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

APPELLANT   
M. ghazanfarullah

THROUGH:

  
( M. ASIF YOUSAFZAI )  
ADVOCATE, PESHAWAR.

  
TAIMUR ALI KHAN  
Advocate



Better copy

BETTER COPY

Annexure-A

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

NOTIFICATION


Peshawar the 13 January, 1980

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

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

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

**ATTESTED**



COMMUNICATION AND WORKS DEPARTMENT  
SCHEDULE - 1

S.No.	Nomenclature of Post	Minimum qualification for initial recruitment or by transfer	Minimum qualification for appointment and promotion	Age limit for initial recruitment	Method of recruitment
1	2	3	4	5	6
1.	Chief Engineer		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.
	Superintending 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.
	Executive engineer				By selection on merit with due regard to seniority from amongst assistant Engineers of Communication and Works Department with at least six years experience as such.
	Assistant Engineer	Degree in Civil Electrical or Mechanical Engineering from a recognized University as may be specified by Government for the respective posts.	Degree or Diploma in Engineering from recognized University or Institutions, as specified in column.		(a) 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 whichever is later. (c) Twenty percent by selection on merit with due regard to seniority from amongst the Senior Scale Sub Engineers of the Department who hold a diploma and have passed Departmental Professional Examination.
	Senior Scale Sub Engineer		Diploma in Engineering from a recognized Institute.		Twenty five percent of the total number of posts of the diploma holders Sub Engineers shall from the cadre of Senior Scale Sub Engineers and shall be filled by selection on merit with due regard to seniority from amongst Sub Engineers of the Department, who have passed the Departmental Examination and have at least ten years service as such.
					By selection on merit with due regard to seniority from amongst the holders of the posts of Senior Superintendent / Superintendants in the Department.



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## COMMUNICATION AND WORKS DEPARTMENT

### SCHEDULE - II

1	2	3	4	5	6
S.No.	Nomenclature of Post	Minimum qualification for initial recruitment or by transfer	Minimum qualification for appointment and promotion	Age limit for initial recruitment	Method of recruitment
1.	Principal Engineer Refrigeration / Air-conditioning	M.Sc in Refrigeration / Air conditioning from a recognized University with 10 years experience. 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.
		M.Sc in Highways Engineering from a recognized University with at least ten years professional experience in a National or International Organization.		30 to 45 years	By initial recruitment.
		Masters Degree in Civil Engineering from a recognized University with at least ten years professional experience in a National or International Organization.		30 to 45 years	By initial recruitment.

BETTER COPY

Annexure-A

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

NOTIFICATION

Peshawar the 13 January, 1980

No.SOR-1(S&GAD)1-12/74 - In exercise of the Powers conferred by Section 26 of the North West Frontier Province Civil Servants Act, 1973 (NWFP Act XVIII of 1973). In supersession of all previous rules on the subject on 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) These rules may be called the Communication and Work Department (Recruitment and Appointment) Rules, 1979.  
(2) They shall come into force at once.
- The Method of recruitment, minimum qualifications, age limit and other matters related there to for the Posts specified in column 2 of the Schedules annexed shall be as given in column 3 to 7 of the said Schedules.

**ATTESTED**

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## COMMUNICATION AND WORKS DEPARTMENT SCHEDULE - I

Sl. No.	Name 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 Superintending Engineer		1	5	
	Executive Engineer		Degree in Engineering from a recognized University.	1	6 By selection on merit amongst senior most officers of the Department, with at least seven years experience as Government servant, seniority being considered only in the case of officers of posts of the same standard of merit.
	Assistant Engineer	Degree in Civil Electrical or Mechanical Engineering from a recognized University as may be specified by Government for the respective posts.	Degree or Diploma in Engineering from recognized University or Institutions, as specified in column.		By selection on merit amongst the Executive Engineers or holders of equivalent posts in Communication and Works Department, with at least ten years service in Grade 17 and 18, seniority being considered only in the case of officers of posts of the same standard of merit. 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 based on merit. (b) 10% by promotion, on the basis of seniority cum fitness from amongst the Sub Engineers holding a degree in Engineering, seniority to be determined from the date of acquiring degree or initial appointment whichever 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 held 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 Senior Scale Sub Engineers and shall be filled by selection on merit with due regard to seniority from amongst Sub Engineers of the Department, who have passed the Departmental Examination and have at least ten years service as such.
					By selection on merit with due regard to seniority from amongst the holders of the posts of Senior Superintendent / Superintendents in the Department.

**ATTESTED**  
*[Signature]*



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COMMUNICATION AND WORKS DEPARTMENT

SCHEDULE - II

Sl. No.	Description of Post	Minimum qualification for initial recruitment or by transfer	Minimum qualification for appointment and promotion	Age limit for initial recruitment	Method of recruitment
1.	2	3	4	5	6
1.	Principal Engineer Refrigeration / Air-conditioning	i) Sc in Refrigeration / Air-conditioning from a recognized University with 10 years experience. ii) 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.
		iii) 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.
		i) Masters Degree in Civil Engineering from a recognized University with at least ten years professional experience in a National or International Organization.		30 to 45 years	By initial recruitment.

ATTESTED

*[Signature]*



- *Beare ZOR B* B 234

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 994/NEEM/2004

Date of Institution. .... 03.12.2004.  
Date of Decision .... 11.12.2012.

Naushad Khan, Sub Engineer O/O Deputy Director-I,  
Works & Services Department-Peshawar. .... (Appellant)

VERSUS

1. The Secretary, Government of Khyber Pakhtunkhwa, Works & Services Department, Peshawar.
2. The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariate, Peshawar.
3. The Departmental Promotion Committee through its Chairman (Respondent No.1).
4. Mr. Zafrullah Khan, Sub Engineer, Works & Services Department, Nowshera.
5. Mr. Tariq Usman, Sub Engineer, W&S Department, Khyber Agency, Jamrud.
6. Mr. Muhammad Javed Rahim, Sub-Engineer, W&S Deptt. D.I:Khan.
7. Mr. Jamshed Khan Sub Engineer, W&S Department, Buner.
8. Mr. Misal Khan, Sub Engineer, presently Assistant Director Works & Services Department Tank (S.W-Agency). .... (Respondents).

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

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

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

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

SYED MANZOOR ALI SHAH,  
MR. NOOR ALI KHAN, ... MEMBER —  
MEMBER

JUDGMENT

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

**ATTESTED**

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."

ATTESTED



FEDERAL GOVERNMENT  
 NATIONAL SERVICE TRIBUNAL  
 KARACHI  
 2010

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

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

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

7. The Tribunal observes being term and condition of service, this Tribunal has ample jurisdiction to entertain the present appeal. In the matter of promotion and pay, question of limitation does not arise. The august Supreme Court of Pakistan in a judgment as reported in PLD 2003-Supreme Court 724, decision of the cases on merits always to be encouraged instead of non-suiting the litigants for technical reasons including limitation. Private respondents have been granted Senior Scale BPS-16, the appellant being similarly placed person also entitled for the same benefit as per judgment of the august Supreme Court as reported in 1996-SCMR-1185.

8. In view of the above, the appeal is accepted and the respondents are directed to allow the appellant Senior Scale BPS-16 from due date. Parties are left to bear their own costs. File be consigned to the record.

9. It is to be noted that there are other connected appeals filed in the years 2010 and 2011 fixed for arguments to-day, vide Service Appeals (1) No. 106/2010, Karimullah Khan, (2) No. 107/2010, Gul Malook, (3) No. 510/2010, Sanaulah, (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.

*scf*  
(NOOR ALI KHAN)  
MEMBER

*scf*  
(SYED MANZOOR ALI SHAH)  
MEMBER

Certified to be true copy

Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

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*AV*

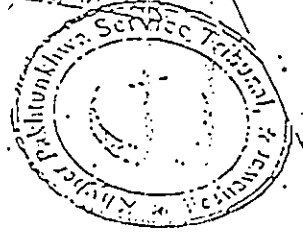
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HYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

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-1,  
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. Zafarullah Khan, Sub Engineer, Works & Services Department, Nowshera.
5. Mr. Tariq Usman, Sub Engineer, W&S Deptt. D.I. Khan.
6. Mr. Muhammad Javed Rahim, Sub-Engineer, W&S Department, Buner.
7. Mr. Jamshed Khan Sub Engineer, presently Assistant Director Works & Services Department Tank (S.W. Agency).
8. Mr. Misal Khan, Sub Engineer, presently Assistant Director Works & Services Department Tank (S.W. Agency).

(Respondents)

EXAMINER  
ATTESTED

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDERS DATED 19.9.2003 AND 19.1.2004 PASSED BY RESPONDENT NO. 1 THEREBY ON THE RECOMMENDATION OF RESPONDENT NO. 2. THIS APPEAL WAS FILED WITHIN THE STATUTORY PERIOD OF NINETY DAYS AGAINST THE ORDER DATED 13.6.2004 WHICH WAS GRANTED SENIOR SCALE (SPS-16) TO RESPONDENT NO. 1 TO 8 IRRESPECTIVE OF THEIR INELIGIBILITY DATED 13.6.2004 BUT THE SAME WAS NOT DISPOSED OF WITHIN STATUTORY PERIOD OF NINETY DAYS.

MR. MUHAMMAD ASIF YOUSAFZA  
Advocate

For appellant

MR. SHERAFGAN KHATTAK  
Addl. Advocate General

For official respondents

MR. IJAZ ANWAR  
Advocate

For private respondents No. 4, 5, 7 & 8.

SYED MANZOOQ ALI SHAH  
MR. NOOR ALI KHAN

MEMBER  
MEMBER

JUDGMENT

SYED MANZOOQ 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 19.9.2003 and order dated 19.1.2004.

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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).

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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-D and A examination in the years 1996 and 1997 respectively. Final seniority list of Sub Engineers as stood on 31.12.1999 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, 51, 63, 72 and 236. It shows that the appellant was senior to private respondents No. 4 to 8 who were allotted Senior Scale BPS-16 by respondent No. 1 through orders dated 4.9.2003 and 19.1.2004 while the impugned orders, so he immediately filed departmental appeal on 13.3.2004 which elicited no response within the statutory period of ninety days, hence he filed service appeal No. 994/2004 before this Tribunal.

The appeal was admitted to regular hearing on 5.1.2005 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 13.3.2010, the case has been remanded in the following terms:-

ATTESTED

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 impugned judgment is barred by time; therefore, on setting aside the departmental appeal, the 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 thereof.

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4. After receipt of the appeal from the august Supreme Court of Pakistan and  
advice and their counsel were summoned for arguments. Arguments heard at  
length, counsel for the appellant argued that the appellant was  
appointed by the respondent department as Sub Engineer on 28.5.1980 and pursued  
seniority list of Sub Engineers as it stood on 31.12.1991  
and respondents were at S.No. 52, 63, 63, 72 and 236 respectively. The private  
respondents were considered for Senior Scale BPS-16 while the names of  
his incomplete record. It was the responsibility of the respondent department to  
maintain 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  
this appellant relied on 2006-SCMR-1082, 2007-PLC(C.S) 663, 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) 267, 2002-PLC (CS) 1389 and 2003-PLC (CS)  
271. In a reported judgment of the august Supreme Court of Pakistan as reported  
in 2007-supreme Court 724, decision of the cases on merits always to be  
made. He requested that the appeal may be accepted as prayed for.

The learned counsel for private respondents on the other hand argued that  
recommendations of the Departmental Promotion Committee vide orders dated  
7.9.2001 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  
already been withdrawn by the Provincial Government vide orders dated  
15.11.2001 and 6.4.2003 and in the present  
circumstances, the present appeal has become infructuous. He requested that the  
appeal is hopelessly time barred. Now the facility of Selection Grade/Move-over has  
been withdrawn by the Provincial Government vide orders dated 1.12.2011, vide  
maintainance, the present appeal has become infructuous. He requested that the  
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been withdrawn by the Provincial Government vide orders dated 1.12.2011, vide  
maintainance, the present appeal has become infructuous. He requested that the

EXAMINED  
Khyber Pakhtunkhwa

ATTESTED

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

The Tribunal observes being term and condition of service, this Tribunal has 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 its judgment as reported in P.D 2003-Supreme Court 724, decision of the cases on merits always to be encouraged. Private respondents have been granted Senior Scale reasons including limitation. Appellant being similarly placed person also entitled for the same. In S-16, the appellant being similarly placed person also entitled for the same. In S-16, the appellant being similarly placed person also entitled for the same. In S-16, the appellant being similarly placed person also entitled for the same.

8. In view of the above, the appeal is accepted and the respondents are directed to allow the appellant Senior Scale SPS-16 from due date. Parties are left to bear their own costs. This 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, Malik Muhammad, (4) No. 511/2010, Syed Muhammad Tariq, (5) No. 512/2010, Malik Muhammad Zahir Shah, (6) No. 579/2010, Muhammad Zahir Shah-III, (7) No. 1014/2010, Muhammad Zahir Shah, (8) No. 230/2010, Muhammad Asique Farooq, (9) No. 1017/2010, Tariq Yousaf, (10) No. 1818/2010, Muhammad Najeed, (11) No. 1908/2010, Ajmal Anwar, (12) No. 3121/2010, Jamal Khan, (13) No. 1254/2011, Mustafiz Khan, and (14) No. 1675/2011, Naveed Khan. Our this judgment will dispose of the aforementioned service appeals in the same manner.

ANNOUNCED  
11.12.2012

Signature of the Tribunal member

Signature of the Tribunal member

Date of presentation of Application 22-7-2013  
Number of Pages 16  
Copy to be made 10  
To: \_\_\_\_\_  
By: \_\_\_\_\_  
Date of Copy 22-7-2013

ATTESTED

To

The Secretary to Govt. of Khyber Pakhtunkhwa,  
Communication & Works Department,  
Peshawar.

Through: Proper Channel.

Subject: REQUEST FOR THE GRANT BPS-16 ON THE BASIS OF B-GRADE + 10-YEAR SERVICE.

Respected Sir,

I have the honour to state that the facts and the date is detailed as under:

1. I was appointed as Sub-Engineer on 21.10.1986.
2. I Passed B-Grade Examination in 1996.
3. I further passed Professional Examination in 2006.

Whereas Mr. Misal Khan Sub-Engineer who is junior than me holds:

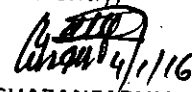
1. Appointed as Sub-Engineer on 22.3.1988
2. He passed B-Grade Examination in 08/1994.
3. He passed professional examination in 2006.

Recently the Khyber Pakhtunkhwa Service Tribunal has also granted the benefits to 17 other Sub-Engineers of this department, thus I am also entitled to the same benefit under principals of consistency.

It is therefore requested that I may very kindly be granted BPS-16 from my due date by extending the benefits of Judgement of Service Tribunal please.


Thanking you Sir,

Yours obediently,

  
(MUHAMMAD GHAZANFARULLAH KHAN)

Sub-Engineer  
O/O the Executive Engineer  
Provincial Building (Construction)  
Division-II, Peshawar.

Copy for information in advance is submitted to the Section Officer (Establishment) C&W Department, Peshawar please.

  
(MUHAMMAD GHAZANFARULLAH KHAN)

Sub-Engineer

ATTESTED





GOVT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT

No. No.SOE/C&WD/13-21/2014  
Dated Peshawar, the February 02, 2016

TO

Mr. Muhammad Ghazanfarullah Khan  
Sub Engineer O/O XEN  
Provincial Building (Construction)  
Division No.II, Peshawar

Subject: Request for Grant of BS-16 on the basis of B-Grade plus 10 years Service

I am directed to refer to your appeal/representation dated 04.01.2016 on the subject noted above and to state that your appeal/representation has been examined by the Department and regretted as the policy of Selection Grade has been discontinued by the Provincial Government.

  
(USMAN JAN)  
SECTION OFFICER (Estb)

Endst even No. & date

Copy forwarded to the:

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

SECTION OFFICER (Estb)

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E = (13)

BETTER COPY

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

Annexure-10

Dated Peshawar, the 04.09.2003.

ORDER

No. SOE-W&SS/4-2/2003/S.S. Consequent upon the recommendation of the Departmental Promotion Committee of the Works & Services Department during its meeting held on 12.03.2003, the competent authority has been pleased to the grant of Senior Scale (BS-16) in respect of the following Sub Engineer (BS-11) of the Works and Services Department, with immediate effect:

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

Sd/-  
SECRETARY TO GOVT.  
OF NWFP  
WORKS & SERVICES  
DEPARTMENT.

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.

ATTACHED  
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F = F  
Annexure-8

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GOVERNMENT OF NWFP  
COMMUNICATION & WORKS DEPARTMENT

14

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 SPS-16 in respect of Syed Sardar Shah, Sub Engineer of the C&W Department from the date from which his juniors were awarded BP-16, in order to implement the decision of the NWFP Service Tribunal in Service Appeal No.27/2000.

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

Endst of even Number and date.

Copy is forwarded to the:

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

ATTESTED

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BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 791 of 2008

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

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

VERSUS

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

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

MUHAMMAD ASIF YOUSAFZAI,  
Advocate. ....

For appellant

MR. ZAHID KARIM,  
Addl. Government Pleader. ....

For official respondents.

MR. WAQAR AHMAD SETH,  
Advocate. ....

For respondents No.3, 5 to 7.

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

CHAIRMAN.  
MEMBER.

JUDGMENT

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

ATTESTED



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

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

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

4. We heard the arguments and perused the record.

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

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b

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

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

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

ANNOUNCED  
07.5.2009

*Ed/- Justice S. Salimullah  
Chairman*  
*Ed/- Abdul Jalil Khan  
Member*

*[Handwritten signature and stamp]*

**ATTESTED**  
*[Handwritten signature]*

BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR

Appeal No. 791 of 2008

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

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

VERSUS

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

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

MUHAMMAD ASIF YOUSAFZAI,  
Advocate.

For appellant

MR. ZAHID KARIM,  
Addl. Government Pleader.

For official respondents

MR. WAQAR AHMAD SETH,  
Advocate.

For respondents No.3, 5 to 7.

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

CHAIRMAN.  
MEMBER.

JUDGMENT

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

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

2. Sher Wali Jang, appellant was appointed as Sub Engineer on 14.2.1981, while respondent No.4 was so appointed on 16.2.1981, respondent No. 5 on 01.4.1981, respondent No.6 on 22.11.1981 and respondent No.7 on 22.3.1988. The seniority list of January, 2008 shows that BPS-15 Selection Grade was granted to the private respondents. The application of the appellant dated 27.2.2008 was refused on 08.4.2008. The departmental appeal dated 21.5.2008 of the appellant was not decided.

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

4. We heard the arguments and perused the record.

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

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

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

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

ANNOUNCED  
07.5.2009

*sd/- Justice S. Lalit*  
*sd/- Abdul Jalil*

ATTESTED

BEFORE THE NWFP SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1685 /08.



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

VERSUS

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

.....Respondents.

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

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

Registered  
4/12/08

ATTESTED  
BY  
NWFP Service Tribunal  
Peshawar

ATTESTED

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07.5.2009

Counsel for the appellant  
 A.G.F (Zahid Karim) alongwith Anwarul Haq,  
 S.O for official respondents and counsel for  
 private respondents present. Arguments heard  
 and record perused. Vide our detailed  
 judgment of to-day in connected Service.  
 Appeal No. 791 of 2008, titled "Ikramullah  
 Versus Secretary to Government of NWFP,  
 Works & Services Department Peshawar etc.",  
 we ~~also~~ accept the present appeal <sup>also</sup> per  
 para-6 of the judgment, with costs.

ANNOUNCED.

07.5.2009.

*[Signature]*

MEMBER

*[Signature]*

CHAIRMAN

*[Signature]*

11-3-10  
 I have read the  
 records of this  
 appeal and  
 find that  
 the appeal is  
 allowed  
 with costs  
 of Rs. 10,000/-  
 and of costs of case

ATTESSED



BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR

I 20



Appeal No. 531/2001

Date of institution - 18.04.2001

Date of decision - 06.06.2007

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

VERSUS

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

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

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

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

ATTESTED  
EXAMINER  
NWFP Service Tribunal  
Peshawar

ATTESTED

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JUDGEMENT.



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

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

"Twenty five per cent of the total number of posts of the Diploma holder Sub-Engineers shall form the cadre of Senior Scale Sub-Engineers and shall be filled by selection on merit with due regard to seniority from amongst Sub-Engineers of the Department, who have passed the Departmental Examination and have at least ten years service as such."

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

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Grade "B" Examination, fulfilling the requirements laid down for entitling him to placement in the cadre of Senior Scale Sub-Engineers (BPS- 6). But, the respondent department did not process the appellant's case, though the Departmental Selection Committee met a number of times during this period. The seniority list issued on 1.12.2000 did not contain the appellant's name in the said Cadre. The appellant had preferred a departmental representation for placing him in the Senior Scale Sub-Engineer (BS-16) and re-fixing his seniority in the said Cadre but the same had not been disposed of within the statutory period of 90 days. Hence, he had filed the instant appeal on the following grounds on 18.04.2001:-

- a. That the appellant, having completed 10 years service and passed departmental B-Grade examination, was entitled to the grant of BPS-16 in the Cadre of Senior Scale Sub Engineers as had been granted to his colleague Mr. Qalb-e-Saleem Sub Engineer;
- b. That vacancies in the Cadre following his acquiring the requisite qualification had been available;
- c. That the Service Tribunal had already laid down the criteria applicable to the matter while deciding Appeal No. 194/1993 Qalb-e-Saleem Vs. Govt. of NWFP etc, but the respondents have committed gross illegalities while denying him the grant of the post of Senior Scale Sub Engineer (BPS-16);

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

4. Arguments heard and record perused.

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

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

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

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

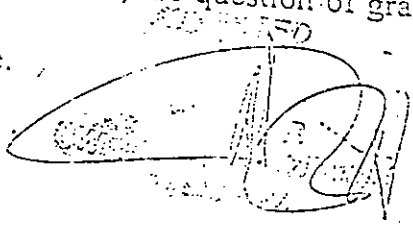
7. After hearing arguments on both sides at a considerable length, the Tribunal holds that a number of vacancies existed in the cadre of Senior Scale Sub-Engineers (BPS-16) following acquiring the requisite eligibility by the appellant in 1989. However, the respondent department had referred the appellant's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

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

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

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that they are also supportive of the appellant's view point. The letter-enters with the suggestion to treat the appellant's case on the analogy of Mohammad Yousaf, whose case was similar and had been granted BPS-15 w.e.f 15/4/1983 vide order No. SOG /C&W/13/21/2000 dated 14.5.2000. Likewise, the respondent department had moved a mile further and had prepared a Working Paper on 6.12.2006 for convening the meeting of the Departmental Promotion Committee with the suggestion that the appellant may be granted BPS-16 with effect from 20.11.1989 and fixing his ante-date seniority on the analogy of Mr. Qaib-e- Saleem, Sub Engineer by placing him at his appropriate place after the latter as per conditions of the Review Committee's recommendations. The counsel for the appellant gave an undertaking on behalf of the appellant that his client would not claim arrears if annual increments were allowed. Thus in the given circumstances the appellant appears to have made out a fit case for the Tribunal's interference in the matter. Accordingly, we accept the appeal and direct the respondent department to consider the grant of BPS-16 to the appellant, if he is otherwise fit/eligible, on the analogy of Mohammad Yousaf with effect from 20.11.1989, the day he had attained eligibility on the basis of completing his requisite ten years service coupled with passing Grade "B" examination. He is also entitled to annual increments as admissible to him under the rules and fixing his interse seniority on the Cadre of Sub Engineers (BPS-16). However, since he has voluntarily forgone his claim to the arrears, the question of grant of the back benefits therefore, does not arise.

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

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

ANNOUNCED.  
06.06.2007.

(SULTAN MAHMOOD KHATTAK)  
MEMBER.

(SHAM SAHIB)  
MEMBER.

13.5.10  
 Date of presentation of the case  
 Date of hearing 16  
 Date of judgment 13.5.10  
 Date of delivery of judgment 10

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

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

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

4. Arguments heard and record perused.

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

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

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

"Twenty five percent of the total number of posts of the diploma holder Sub Engineers shall form the cadre of senior scale Sub Engineers and shall be filled by selection on merit with due regard to seniority from amongst Sub Engineers of the Department, who have passed the Departmental Examination and have at least ten years services as such".

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

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

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

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

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

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

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

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

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

ANNOUNCED:  
7.9.1994.

Sd/-  
( ZARIN DAD KHATTAK )  
MEMBER

Sd/-  
( TAJ MUHAMMAD KHAN )  
MEMBER

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BEFORE THE ... SERVICE TRIBUNAL

Appeal No. 194/1993

Date of institution... 20.6.1993

Date of decision... 7.9.1993

Qaib Saleem S/O. Himat Khan, Sub-Engineer, C&M Department (Development Division) (Karakoram Agency) ... (APPELLANT)

VERSUS

- 1. Government of NWFP, through Secretary to Government of NWFP C&M Department.
- 2. Chief Engineer, C&M Department, Peshawar.
- 3. Executive Engineer Development, C&M Division Bangu.
- 4. Administrative Officer, C&M Department, Peshawar.
- 5. Sabir Hussain, Sub Engineer, C&M Karoram Agency and 36 others. ... (RESPONDENTS)

Mr. Abdul Rauf Rahzala, Advocate.

For appellant

Mr. Muhammad Shahi, Government Pleader.

For respondents No. 1 to 36

MR. FARIN DAW KHATTAK  
MR. SAJID MUHAMMAD KHAN

MEMBER.  
MEMBER.

JUDGMENT

1. FARIN DAW KHATTAK, MEMBER: In appeal No. 194/1993 by Qaib Saleem s/o S of the NWFP ... against the order dated 26.5.1993. ... the request of appellant for seniority over respondents 1 to 36 was refused.

2. Brief history of the case in per ... of appeal is that the appellant joined service as Sub Engineer in the C&M Department on 21.1.59. He passed the ... Departmental Examination in 1959. Respondent No. 1 vide his letter dated

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17-1-69 (Annexure-A) discussed all the documents concerning the  
 Civil Department to collect and supply the 7th and 8th days  
 of the 2nd instance for filling the available period of 30-  
 31-1-69 and instances (195-10). The date for the period from  
 29-1-69 to 31-1-69 in respect of the applicant were indicated  
 for were duly supplied to respondent No. 2 by respondent No. 1  
 on 17-1-69. The date of 17-1-69 has been indicated that there  
 were 67 vacancies in the Senior Grade Civil Engineers  
 (195-16) in Civil Department on 2.6.1960. In that meeting of  
 the Departmental Promotion Committee held on the 29th of  
 1-1-69, the applicant was considered for promotion with the  
 result that the grade of senior scale in respect of the applicant  
 has been necessarily delayed. In fact the applicant should  
 have been placed in higher scale after passing the departmental  
 examination on 20.1.59. On 17.1.69, the result of the  
 exam held but it of departmental examination was delayed in  
 1967, office in which department was concerned. The respondent  
 directed the respondent that and again he forwarded the result  
 of the exam, who had passed the departmental examination.  
 It should be noted in order to consider that names for the  
 of senior scale (195-16). The applicant, who could have  
 placed had he the Departmental promotion committee a direct  
 should have been placed the senior scale grade. The respondent  
 says, however, that grade given dated 21.02.69 with that  
 and 1969 are stated the applicant although respondent No. 2 to  
 separation as respondent No. 1 on 4.3.69 and conveyed his final  
 reply to accept the re-promotion on 26.5.69 when a child effect  
 of respondent No. 2 and 4 have been that written  
 comments contained the applicant preliminary object has been  
 been raised that the applicant has no claim of senior and  
 that the applicant was promotion there is not to be overruled.  
 That first of his case were completed on 11.2.69 as is clear.

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Annexure-B to the appeal. Secondly in the seniority list standing at S.No.159 in the seniority list and as such was considered for Grade B-16 in Departmental Promotion Committee meeting dated 25.9.99. Therein Sub Engineer upto 1.10.99 were considered by treating them Grade 16 w.e.f. 20.11.99. All seniors to the appellant, as in column four of the appeal, there were 99 vacancies (not 97) and the remaining Sub Engineers were not to be considered for Grade-16 w.e.f. 20.11.99. Conduct of Dept. Examinations being a condition required for all persons. The last examination was held on 04th 11.99 (not on 12.11.99 as the results declared on 17.11.99). Necessary entries to Annexure-B to the appeal). Necessary entries to the seniority list as it stood on 31.12.99 wherein the appellant stood at S.No.112. In the subsequent Departmental Promotion Committee meeting held on 30.5.99, the appellant along with his seniors in one batch) was approved for Grant of Grade-16 retrospectively with effect from 17.11.99. The respondents No.1 to 99 were up-graded. The appellant was allowed Grade-16 w.e.f. 17.11.99, from which his seniors were upgraded. Since he was considered for upgradation alongwith the seniors in one batch he on his promotion will retain his increased seniority in the lower grade under Sub Rule (4) of Sec 3 of the Government of India Act 1993 w/o Government of H.P. 1993. Application No. FOR-I (G.O.A.S)-23/75, dated 13.4.1975. As such the appellant was placed below respondents No.1 to 99 who were placed above him in the lower grade. It has been proved that the appellant was not considered for promotion to Grade-16. The appeal is allowed with costs.

The appellant made departmental representation on 18.9.99. The appeal is allowed and he was informed about the same on 18.9.99.

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On 20.5.93. The appellant came in before this Tribunal on 27.6.93. This Tribunal therefore, holds that the appeal is within time. The objection is therefore rejected.

The method of recruitment for the post of Senior Scale Sub Engineer prescribed vide Govt Department (Recruitment and appointment) Rules 1979, notified vide S & O/A 9/74 Notification No. LORI (SERV) 3-12/74 dated 13.1.80 is as under "Twenty five percent of the total number of posts of the diploma holders (BPS-11) Sub Engineers shall form the cadre of Senior Scale Sub Engineers and shall be filled by selection on merit with due regard to seniority from amongst Sub Engineers of the Department, who have passed the Departmental Examination and have at least ten years service as such".

The appellant was appointed as Sub Engineer in Govt Department on 24.1.79. He passed the prescribed Grade-11 Departmental examination on 30.7.84. He completed 10 years service as Sub Engineer on 20.1.89 as such was eligible for promotion subject to availability of vacancies and his seniority position in the cadre of Sub Engineer (BPS-11). The list of vacant posts of Senior Scale Sub Engineers (BPS-12) provided by the Administrative Department (Annex-C) shows that there were 67 vacant posts of Senior Scale Sub Engineers in the department on 5.6.1990, out of these 14 vacancies had occurred in May 1990. The remaining vacancies had occurred upto and for 18.3.89. The departmental promotion Committee in its meeting held on 25.9.89, cleared 32 Sub Engineers for the grade of Senior Scale (B-11). Respondent No. 1 issued necessary orders on 29.11.89. It is therefore clear that 35 more vacancies of Senior Scale Sub Engineers are available as on 27.8.90. It is also observed that Respondent No. 3 vide memo dated 14.2.90 (Annex-D) already sent the complete ACRs of the appellant from 24.1.79 to 31.12.89, to respondent No. 1. The list of Senior Scale to the appellant was kept in the best known to the respondents. Vide list dated

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167 Sub Engineers (including respondents No. 5 to 10) discussed in the General Departmental Examination. In the subsequent meeting of the SPC held on 23.11.91, the Sub Engineers were cleared for the grant of Senior Scale Respondent No. 2 accordingly issued necessary orders on 27.11.91 prospectively from various dates as under:-

- 1) From 1.2.1926... 2 Sub Engineers
- ii) From 20.11.09... - do -
- iii) From 17.11.91... 52 - do - (including the appellant)
- iv) From 1.2.92... 2 - do -
- v) From 23.5.92... 1 - do -

Respondents at S.No. 5 to 53 were Sub Engineers during the period from 17.1.74 to 17.11.91. The appellant having been appointed on such on 17.11.91, the respondents were decidedly senior to the appellant in the rank of Sub Engineers. However, the grant of senior scale to the appellant was contingent upon:-

- a) Selection on merit with due regard to seniority from among Sub Engineers of the department.
  - b) Having passed the departmental examination and
  - c) Having at least ten years service in such posts.
- The respondents having not qualified the departmental examination till 16.11.91 as such were not eligible for the grant of senior scale during the period from 16.11.91 (when the earlier batch was granted senior scale) to 16.11.91 (when the respondents qualified the departmental examination). The appellant was eligible for the grant of the senior scale right from 27.1.89 via-via, the above respondents who were appointed on 17.11.91, 53 (67-53) respondents were not eligible for the grant of senior scale as they were appointed on 17.11.91. Hence, the appellant should have precedence over the respondents and the Sub Engineer should be granted senior scale prospectively from 17.11.91.

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board's selection on merit with due regard to seniority. They brought the eligible Sub Engineers of the Department to the attention of their respective offices on the date of availability of vacancy to his office, whichever was later. However no such exercise has been carried out by the Senior Engineer in the office of the respondent. It is observed that an appeal of 67 vacancies of Senior Scale Sub Engineers available upto 27.5.90, only 2 were retained vide respondent's No. order dated 20.11.90. Against the remaining 35 (67-32) vacancies available upto 27.5.90, 15 more Sub Engineers were appointed senior scale (dates 1.12.86 and 30.11.89 vide orders of respondent No.1 dated 5.7.82. Since the senior scale is granted to all the persons retroactively from the date of availability of vacancy on such the appellants would therefore consequently be considered for the Grant of Senior Scale. For the sake of explanation on merit with due regard to seniority in this case of the vacancies of Senior Scale Sub Engineers, it is observed that the respondent has been considered against any of the vacancies then available upto this date. The respondent has been placed senior to respondents No.5 to 10. This Tribunal therefore accepts the appeal to the extent that we remand the case and directs the respondent to file a report precisely detailing number of vacancies in Senior Scale of Sub Engineers (SRS-1a) from 1.1.76 till 15.11.91 a day before the result of departmental examination was announced. As the selection made is intended to the extent of civil servants from the date of availability of vacancies in the respondent's office as to be under the respondent's control. In the event of the respondent's failure to file a report to the extent of vacancies in the respondent's office as to be under the respondent's control, the order dated 5.7.82 is null and void.

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be appropriately revised and a fresh seniority list  
prepared for Sub Engineers NPS-16 as per record on 13.4.95  
The wide respondent No.2 memo of 01.10.95 be issued.  
They are left to bear their own costs. File a consolidated  
account.



*Q. Khattar*

(SARIN BAB KHATTAR)  
MEMBER

*M. Khan*

(TAN MUHAMMAD KHAN)  
MEMBER.

(SARIN BAB KHATTAR)

*[Signature]*

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*M. Khan*

17-7-95

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*[Signature]*

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BEFORE THE NWP SERVICE TRIBUNAL, PESHAWAR

Appeal No. 2709

Date of Institution: 27.09.2005  
Date of decision: 25.04.2009

Syed Sardar Shah, Sub Engineer, Works and Services Deptt.  
The Chief Secretary NWP, Peshawar.  
The Secretary Works and Services Deptt NWP, Peshawar.  
The Secretary Finance Deptt NWP, Peshawar.

VERSUS

Appellant vs Respondents.  
Appel U/S 4 of the NWP Service Tribunals Act 1974 for granting B 16 to the appellant and against not taking action on the departmental appeal of the appellant.  
Mr. M. Asif Yousef Zai, Advocate.  
Mr. Ghulam Mueen, A.C.P.

MR. ABDUL JALIL ..... For Appellant.  
MR. SULTAN MEERMOOD KHATTAK ..... For Respondents.

JUDGMENT

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ABDUL JALIL MEMBER  
MEMBER

of D- 16 as per rules and against not taking action on the departmental appeal of the appellant. He has prayed that the Respondents may be directed to grant BPS-16 to him on acquiring Diploma and B-grade examination as per Rules from his due date.  
2. Brief facts of the case as narrated in the memo of appeal are that the appellant was appointed as Road Inspector in the Respondent Department vide order dated 17.4.1991. The appellant was promoted as Sub Engineer (B-11) vide order dated 28.5.1990. The appellant has also passed B-grade departmental examination on 17.11.1991 and has more than 10 years service at his credit. Some Junior Sub Engineers were granted B-10 on 15.12.2005 and 12.4.2004. The appellant filed a departmental appeal against those order on 15.12.2005 which was not disposed. Therefore the appellant filed a service appeal bearing No. 607/2005 in this Tribunal. The said appeal was finally disposed of on 15.12.2005 in terms that the appellant be considered for BPS-16 if he otherwise eligible and qualified.

ATTESTED

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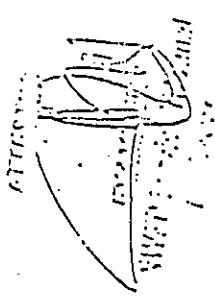
under the rules. After the directions of the Tribunal the Respondents wanted to file an appeal in the Supreme Court but the same was denied, writ by the Law Department on 22.1.2007. Thereafter the appellant filed implementation petition in this Tribunal. The said implementation petition was filed on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

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

4. Arguments heard and record perused.

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

6. The learned AGP argued that in light of the recommendations of the standing Service Rules Committee, the W&S Department has been issued Notification on 19.4.2005 wherein all senior scale Sub Engineers (B-16) in the W&S Department, shall, with immediate effect, be re-designated as Sub Engineers in their existing pay and scale and shall be merged with the cadre of Sub Engineers in the Department, provided that for purpose of maintaining their inter-se-seniority, they shall rank senior to the existing Sub Engineers. On the basis of above Notification, W&S Department sanctioned the service of the Sub Engineers on 04.01.2005. Some senior Sub Inspectors junior to him have attained senior scale (B-16) on the recommendation of Departmental Promotion



**ATTESTED**

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Committee at that time. The Government allowed selection grade (B-16) to 25% of the Sub Engineer (B-11) and the basic condition for the grant of selection grade was 10 year service and passing of B. Grade examination. The appellant was not considered by the DPC due to his incomplete record. The facility of selection grade has already been discontinued by the Provincial Government w.e.f 01.12.2001 vide Finance Department's letter No. FD (PRC) 15/70 dated 15.11.2001 and dated 6.4.2001 and in the prevalent circumstances the plea taken by the appellant has been infructuous. The Services Tribunal NWFP has directed in his decision dated 5.12.2006 that the appeal is disposed of with the direction to Respondents No. 1 to 3 that the appellant be consider for BPS-16 if he has otherwise qualified and entitled for same under the relevant rules which was examined in the department and the appellant was not entitled to the grant of selection grade BPS-16 on the ground that according to the seniority position at the time, the appellant was at serial No. 24. As per service record to the Respondent Sub Engineers who have already granted selection grade are senior to him. Moreover, the Government has discontinued the grant of selection grade to all the Government servants' grade. He prayed that the appeal may be dismissed.

After hearing arguments of the learned counsel for the parties, the Tribunal is of the view that there is sufficient weight in the arguments put forth by the learned counsel for the appellant. It was the responsibility of the department as per instruction on performance Evaluation report containing instruction 1.0 and 1.4. The appellant cannot be deprived from grant of BPS-16 due to incomplete record. It was the responsibility of the appellant to maintain his record. In view of the above the appeal is accepted and his grant of BPS-16 may be antedated from the date it was due to him. The parties are, however, left to bear their own costs. File 5

*Muhammad Faruk*  
*Shabbir Mahmood*

INCIRD  
2009

JULY  
*[Signature]*

ATTESTED  
*[Signature]*

**BEFORE THE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL PESHAWAR**  
**APPEAL NO. 149 OF 2016**

Ghazanfarullah, Sub Engineer --- Appellant  
O/O XEN Provincial Building (Construction)  
Division No.II, Peshawar

**Versus**

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

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

Respectfully Sheweth

**Preliminary Objections**

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

**Facts**

1. Subject to proof
2. Correct to the extent that in fact the selection grade BS-16 @25% of the total posts of the Diploma Holder Sub Engineers (BS-11) was allowed by the Government with the condition that ~~the~~ the post shall be filled by selection on merit with due regard ~~to~~ to seniority from amongst Sub Engineers of the Department, who have passed the Departmental B-Grade Examination and have at-least ten (10) years service as such.
3. The facility of selection grade BS-16 has been discontinued by the Provincial Government w.e.f. 01.12.2001 vide Finance Deptt letter No.FD(PRC)1-1/2001 dated 06.04.2003 (**Annex-I**). The Establishment Deptt had issued a circular to all Administrative Secretaries and directed to clear all left over cases of Govt servants who were eligible for selection grade/move over on or before 01.12.2001 (**Annex-II**). Consequently the Respondent Department granted selection grade (BS-16) to 10 Sub Engineers in the year 2003 and 2004 (**Annex-III**) who were eligible and posts were available/vacant before 01.12.2001. Although the name of the appellant was at Sl.No. 115 of the seniority list of Sub Engineers dated 12.12.2000 (**Annex-IV**), the appellant was not considered by the Departmental Promotion Committee due to incomplete record at that time, therefore, in the prevailing circumstances, the plea of the appellant is infructuous.

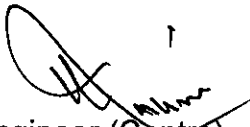
The appellant's right has not been affected due to the reason that the grant of Senior Scale BS-16 awarded during 2003-04 as the seniority of the appellant was at very low position and was in no way entitled for the grant of senior scale BS-16 as per Govt policy of 25% posts in senior scale BS-16 of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


- 119
4. Departmental appeal was received and processed in the Department and he has been informed about the grounds of rejection of departmental appeal accordingly.


**Grounds**

- A. Incorrect, as explained in para-2 of the facts. Moreover, the appellant was not entitled to the said scale as selection grade is not granted on the basis of seniority-cum-fitness rather selection on merit.
- B. Incorrect. The selection grade cases are considered by the Departmental Promotion Committee as per Service Rules and on the completion of codal formalities. Furthermore, the orders of selection grade BS-16 in favour of the Sub Engineers were issued in 2003, 2004 but the appellant remained silent and filed no appeal against the orders in specified period.
- C. Incorrect, as explained in Para-B of the ground.
- D. Incorrect, as explained in Para-B of the ground.
- E. Incorrect, as explained in the above parars.
- F. Incorrect. The selection grade cases are considered by the Departmental Promotion Committee as per service rules and on the completion of codal formalities.
- G. Incorrect, as explained in para-3 of the facts
- H. The Respondents would like to seek permission of this Hon'able Tribunal to advance more grounds during the time of arguments.

In view of the above, it is submitted that the Appeal may kindly be dismissed with cost, as this Appeal is time barred and the same facility has been discontinued by the Provincial Govt. Moreover, no post of BPS-16 (Selection Grade) exists in C&W Department.

  
Chief Engineer (Centre)  
C&W Peshawar  
(Respondent No. 2)

  
Secretary to Govt of  
Khyber Pakhtunkhwa  
C&W Department  
(Respondents No. 1)

  
Secretary to Govt of  
Khyber Pakhtunkhwa  
Finance Department  
(Respondent No. 3)

*S.O. 11*

BETTER COPY

GOVERNMENT OF NWFP  
FINANCE DEPARTMENT

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

Yours faithfully,

SD/-  
(ABDUL LATIF)  
DEPUTY SECRETARY (REG)

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

Dated Peshawar the April 6, 2003

A copy is forwarded for information to:-

- 1- All autonomous/Semi Autonomous Bodies/Corporation in NWFP

SD/-  
(ABDUL LATIF)  
DEPUTY SECRETARY (REG)

IMMEDIATE

Am 25/11

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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

*17/5/04*  
*7/7/04*  
*DSA*  
*Implementation of instructions*  
*HAR*  
*60*  
*508*

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

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

Dated Peshawar, the 3.7.2004

A copy is forwarded to:-

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

  
SECTION OFFICER (PSB)



Fair Copy

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

Dated Peshawar the 04/09/2003.

ORDER

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

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

SECRETARY TO GOVT. OF NWFP  
WORKS & SERVICES DEPARTMENT.

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

Dated Peshawar the 04.09.2003.

Copy forwarded to the:-

1. Accountant General NWFP, Peshawar.
2. Chief Engineer Works & Services Peshawar.
3. Chief Engineer Works & Services (FATA) Peshawar.
4. Managing Director Frontier Highways Authority Peshawar.
5. Deputy Secretary (Reg-III) Establishment Department Peshawar.
6. Deputy Secretary (Reg) Finance Department Peshawar.
7. All Superintending Engineers 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.

Sd/-  
(MUHAMMAD AKBAR KHAN)  
SECTION OFFICER (ESTT-I).

Fair Copy

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

Dated Peshawar 19/04/2004

ORDER

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

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

SECRETARY TO GOVT. OF NWFP  
WORKS & SERVICES DEPARTMENT.  
Dated Peshawar, the 19/04/2004.

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

Copy forwarded to the:-

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

Sd/-  
(NOORULLAH)  
SECTION OFFICER (ESTT-I)

OFFICE OF THE CHIEF ENGINEER (NORTH)  
 C&W DEPARTMENT N.W.F.P. PESHAWAR.  
 No. 756/4 -E(T) 45.74 /E-1(2)  
 Dated Peshawar the 12/12/2000

FINAL SENIORITY LIST OF SUB ENGINEERS GRADE -11  
 ON THE BASIS OF DATE OF APPOINTMENT IN THE  
 DEPARTMENT AS IT STOOD ON 31-12-1999.

In pursuance of sub section (1) of section -(8) of NWFP Civil Servants Act 1973, Seniority list of Sub-Engineers  
 Grade -11 of C&W Department NWFP. as it stood on 31-12-1999 is notified as under:-

Sl No	NAME	EDUL./TECH: QUALIFICATION	HOME DISTRICT	DATE OF BIRTH	DATE OF APPOINT MENT	TO CLASS	YEAR OF PASSING.		REMAI
							Grade-B Exam:	Proffi: Exam:	
1	Fazli Raziq -I S/O	B.A.	Swat	5.4.43	1.7.61	-	11/91	-	
2	Gul Zaman S/O	Matric DAE (Civ.)	Malakand Agy:	6-6-40	1-1-73	-	-	-	
3	Payo Rehman S/O	Matric DAE (Civ.)	Karak	9-8-42	11-1-74	-	-	-	
4	Faizur Rehman-II S/O	-do-	Peshawar	2-9-45	21-11-74	-	-	-	
5	Fayaz Gul-I S/O	-do-	NW.A	20-6-51	19-12-74	-	6/96	-	

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Sl No	NAME	EDUL/TECH: QUALIFICATION	HOME DISTRICT	DATE OF BIRTH	DATE OF APPOINT MENT	TO CLASS	YEAR OF PASSING.	REMARKS.
112	Naseem Ahmad Shah S/O Hazrat Shah	Matric DAE(Civ.)	Peshawar	10-12-63	19-5-85	-	6/96	-
113	Muhammad Wazir S/O M. Rashid Khan	-do-	Dir	2-5-59	5-9-85	-	6/96	-
114	Muhammad Amin S/O	Matric	D.I.Khan	12-2-48	18-10-86	-	1984	-
115	Ghazanfarullah S/O Shafiullah	DAE (Civ.)	Bannu	4-5-64	21-10-86	-	6/96	-
116	Ibadullah S/O Muhammad Karim	FSc/ DAE (Civ.)	Charsadda	16-1-62	22-10-86	-	8/94	5/96
117	Sharafatullah S/O Walizar Khan	Matric DAE (Civ.)	Kohat	5-1-60	23-10-86	-	11/91	4/93
118	M.Shafiq III S/O Abdal Khaliq	-do-	Mkd.Agcy:	18-1-62	23-10-86	-	-	-
119	Iyshad Ahmad S/O Sardar Kala Khan	-do-	Abbtabad	16-4-61	24-10-86	-	6/96	-
120	Mudasar Saghir S/O Malik Ghulam Rasul	-do-	Kohat	3-5-56	4-11-86	-	11/91	-

*Wazir*

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23/12

Sl No	NAME	EDUL/TECH: QUALIFICATION	HOME DISTRICT	DATE OF BIRTH	DATE OF APPOINTMENT	TO CLASS	YEAR OF PASSING.
314	Anees Kalim S/O Abdul Rub Kalim	BA/ DAE (Civ:)	Swabi	30-3-64	17.6.97	15.10.99	-
315	Mr, Murad Ali S/O Marhamat Khan	MA/ DAE (Civ:)	Bannu	20-1-64	31.10.97	18.10.99	-

(43)

Copy to the:-

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

*Signature*  
CHIEF ENGINEER ( NORTH )  
7/9 9/9 14/12

*Signature*  
CHIEF ENGINEER ( NORTH )  
7/9 9/9 37/51

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BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR  
APPEAL NO. 149 OF 2016

Ghazanfarullah, Sub Engineer  
O/O XEN Provincial Building (Construction)  
Division No.II, Peshawar

--- Appellant


**Versus**

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

--- Respondents

**COUNTER AFFIDAVIT**

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

  
Deponent  
Secretary to  
Govt of Khyber Pakhtunkhwa  
C&W Department

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

Service Appeal No. 149/2016

Ghazanfarullah

VS

C&W Deptt:

.....

**REJOINDER ON BEHALF OF APPELLANT**

.....

**RESPECTFULLY SHEWETH:**

**Preliminary Objections:**

(1-7) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

**FACTS:**

- 1 Admitted correct by respondents because the service record of the appellant is laying in the custody of respondent department.
- 2 Partially admitted by the respondents. According to the Rules 25% of the post of Sub Engineer is to be filled on the basis of promotion from amongst person who 10 years service plus B-Grade exam. The appellant possess the said requirements and entitled to promotion.
- 3 Not replied accordingly to Para-3, Hence Denied, it is not the fault of the appellant to deprive from promotion due to incomplete record as maintainability of record is the responsibility of the department. Moreover the Govt: fixed 25% quota for senior scale sub engineer for promotion who possess the said requirements i.e ten years service plus B-Grade exam and to deprive the appellant and others from promotion is the clear violation of Govt: policy. Furthermore the August

violation of Govt: policy. Furthermore the August Tribunal has also decided such similar 15 appeals as the appellant is similar placed person therefore entitled to the same relief.

- 4 Incorrect. the departmental appeal was rejected on flimsy grounds not on merits.

**GROUND:**

- A) Incorrect, the Govt fixe 25% quota for senior scale sub engineer for promotion who possess the said requirements i.e ten years service plus B-Grade exam and the appellant was entitled for promotion on the basis of seniority- cum-fitness. Therefore to deprive the appellant from promotion is against the law, rules and norms of natural justice.
- B) Incorrect, while Para-B of appeal is correct.
- C) Incorrect. The appellant is also eligible for grant of selection grade (BS-16) as he possessed the requirements of selection grade (BS-16).
- D) Incorrect, while Para-D of the appeal is correct.
- E) Incorrect, while Para-E of the appeal is correct.
- F) Incorrect. The appellant also possessed the same requirements on which selection grade were given to other sub engineers, therefore the appellant is also entitled for the same benefits.
- G) Incorrect, while Para-G of the appeal is correct.
- H) Legal.

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



**APPELLANT**

Through:



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

**AFFIDAVIT**

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



DEPONENT

