

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1434 of 2023

Azhar Ali (Sub Divisional Officer),
C&W Building Division-II,
Peshawar.

.....**APPELLANT**

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary, Communication & Works Department, Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary, Establishment Department, Peshawar
3. Chief Engineer (Centre), Communication and Works Department, Peshawar

.....**RESPONDENTS**

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Zahid Habib
Administrative Officer

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

①

Service Appeal No. 1434 of 2023

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 10048

Dated 22-12-2023

Azhar Ali (Sub Divisional Officer),
C&W Building Division-II,
Peshawar.

.....**APPELLANT**

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary, Communication & Works Department, Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary, Establishment Department, Peshawar
3. Chief Engineer (Centre), Communication and Works Department, Peshawar

.....**RESPONDENTS**

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS

Respectfully Sheweth!

PRELIMINARY OBJECTIONS:

1. That the instant Appeal as before the court is not entertainable on the grounds that neither any reference to his seniority position in the then seniority as notified on 12/12/2000 has been expressed nor annexed on the one and the others, failed to give any reference of his juniors who are placed/granted the Senior Scale BS-16.
2. That the Appellant has never challenged any orders in which his right had been ignored at any time in the past.
3. That the Appeal is also time barred.
4. That the Appellant has got no cause of action or locus standi.
5. That the Appellant is estopped by his own conduct to file the instant appeal.

6. That the Appeal is liable to rejection on the grounds of non-joinder and mis-joinder of necessary parties. The grant of Senior Scale rests with the Departmental Promotion Committee according to the Government rules, which he has not made parties.

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INTRODUCTORY: -

There is no objection so far the question of law, Apex Supreme Court orders and the rules governing to this affect, grant of Senior Scale Selection Grade BPS-16 to those Diploma holders Sub Engineers who passed "B" Grade Examination and having 10-Years' Service as such are/were entitled to the BPS-16 on the share of 25% of the total Post of Diploma Sub Engineers as per the Finance Department Circular letter No.FD(SR-I)2-25/72-vol-II, dated 19/12/1975 (**Annexed-I**) and in sequence thereof the C&W Department notified amendments in the existing Appointment/Recruitment Rules, 1978 at SI.No.5 in column-2 and column-6 vide Notification No. SOE/C&W/23-5/73/592, dated 28-01-1979 (**Annexed-II**).

ON FACTS: -

1. Pertains to record.
2. The Government expects that each Government Servant shall have to maintain the discipline and proper decorum.
3. Correct to the extent, passing "B" Grade Examination which was important for the purpose to enter with other colleagues to BPS-16 on the availability of Post within 25% share as described above and passing of Professional Examination is mandatory for Promotion to the Post of Sub Divisional Officer/Assistant Engineer/Junior Engineer (BPS-17), it has no binding effect for the grant of BPS-16.
4. Correct to the extent that the seniority list as Annexed with the Appeal is actually to resolve the issue with regard to maintain separate seniority lists of Diploma holder Sub Engineers and Senior Scale Sub Engineers which in past were notified independently. The Diploma holder Sub Engineers went in representation that when the govt. has discontinued the Move-overs and the Selection Grades to Government Servant, thus

the seniority shall be clubbed into one. The matter was taken up with Law for advice. On the advice of Law Department No.OP.5(64)LD/2010/19101, dated 30/11/2010 (Annexed-III) all such seniorities of Diploma of Associate Engineers and those who were placed Senior Scale BPS-16 were merged into one class hence its reference in the present case is baseless try. Actually he had kept concealed that in the seniority list no one junior to him is placed or granted Scale: Grade BPS-16 and as such he have to mentioned his seniority position and the position of those Sub Engineers who got/awarded Senior Scale Selection Grade BPS-16, if there any^{of} his juniors is awarded or extended the benefit of BPS-16 then have to be agitated. However despite adjudication the matter before this honorable Tribunal in Service Appeal 1330/2010 and similar 51-more Appeals as decided on 02/03/2016, none of his juniors have been awarded the Senior Scale Selection Grade-BPS-16, but not awarded or considered for Senior Scale Selection Grade, BPS-16, due to non-passing of "B" Grade Examination.

5. Mis-cheiving. On the decision of the Government (as expressed in the Introductory part of the case) to place 25% of the total posts of Diploma holder Sub Engineers in BPS-16, the Department then incepted the Post of Senior Scale Sub Engineers in the C&W Appointment/Recruitment Rules, 1979. There was no direct room that everyone who passed departmental "B" Grade Exam, and having 10-Years' Service shall be awarded BPS-16, that was restricted to 25% of the total post of Diploma holders on seniority. So far the question and reference made to the Service Tribunal Judgment (upheld by the Apex Supreme Court of Pakistan) nowhere it is explicitly stated that all those who having passed "B" Grade and 10-years' service at their length shall be given the Senior Scale Selection Grade-BPS-16, the limit viz 25% of the total post of Diploma holders shall prevail in all respect.
6. Correct to the extent that those who were fulfilling the requisite conditions as per the rules and as held by the Service Tribunal in his Judgment dated 02/03/2016, passed in Service Appeal No.1330/2010 along with connected appeal (51- in Nos) have been awarded the Senior Scale

Grade BPS-16. Here to add that he according to the seniority list as expressed in above paras he stand at Sl.No.266, and the last individual, person falling at Sl.No.250 (Mr.Aurangzeb-IV) has been allowed the Senior Scale Selection Grade BPS-16 vide Notification No.SOE/C&WD/4-2/2018, dated 30/04/2018. The Appellant is thus not coming within the ambit of 25% of the total posts of Diploma holders to be placed in Senior Scale BPS-16.

(4)

7. There was no force in the Departmental Appeal, hence filed.
8. As narrated in the above paras of reply, the Appellant is not entitled to such benefit on the assumptions taking the advantages of this honorable Tribunal Orders dated 02/03/2016. He is standing at the most junior position viz 266 than his seniors who have been awarded the Senior Scale Selection Grade BPS-16.

ON GROUNDS: -

- A. Incorrect and frivolous, he has not secured the very position to avail the benefit of Senior Scale Selection grade BPS-16, no right thereof has been violated.
- B. Mis-conceiving, actually the Government in Finance Department upgraded the Post of Sub Engineers to BPS-16 by virtue of Notification No. SO (FR)7-13/2017/6263 dated 07/03/2018 (**Annexed-IV**). Which's benefit have been availed by all those Sub Engineers who were having 10-years or more length of service. There was no binding restriction to have passed Departmental Exam as it being general policy matter, it have no linkage with the case of Senior Scale Selection Grade, the Selection Grades and Move-over Policy stands discontinued w.e.f. 01/12/2001 as per Government of Finance Department Pay Revision, Rules, 2001. The appellant tried his best to link this package of the Government with the Judgments of the Tribunal. Here to clear that the Upgrading the post of Sub Engineer is personnel (one time) and has been allowed with immediate effect means w.e.f. 07/03/2018. The Appellant as the then, he was holding the Post of Sub Engineer (prior to his promotion to the Post of Sub Divisional Officer, BPS-17) has since availed the benefit of BPS-16 as general up gradation of the Post of Sub

Engineer. He has been promoted to the Post of Sub Divisional Officer BPS-17 on 21/04/2020 (**Annexure-V**).

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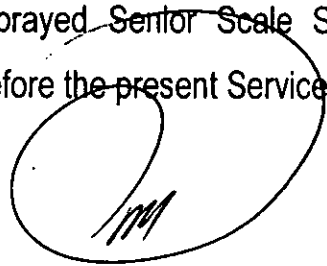
- C. Not worth consideration, in this para-C of the Appeal it is beyond to understand why reference to process of Promotion is made. Any in the past is wrongfully done due to any reasons cannot be made to justify for the repetition of same again and again, in this connection Apex Supreme Court of Pakistan Judgment orders dated 15/01/2014 are (**Annexed-VI**).
- D. No doubt the appellant has passed "B" Grade Exam in 1996 and "A" Grade in 2006 which make him eligible to the Post of Sub Divisional Officer BPS-17 and he is now enjoying the privileges of the Post which he at present prevail upon. The Appellant is not entitle to Senior Scale Selection grade BPS-16.
- E. On the discontinuation of Move-over and Selection Grades w.e.f.01/12/2001 the Appointment/Recruitment Rules, 1979 C&W Department, where a Post of Senior Scale Sub Engineers was introduced was not the requirement of the Finance Department Circular letter No.FD9SR-I)2-25/72-vol-ii dated 19/12/1975 and in this regard Finance Department clarification Memo No. FD(PRC)5-8/98, dated 13/12/1999 is (**Annexed-VII**) and the creation of new this Post of Senior Scale Sub Engineer was thus deleted through SSRC.
- F. It is correct that a cut-off date viz 31/08/2004 was fixed by the Establishment Department with regards to the cases of Move-over and Selection grades to those who were eligible or entitled, but its quotation to avail the hidden benefit by this Appellant are not warranted.
- G. Very amusing, when he has spotless services, has been deployed on the Post of Sub Divisional Officer, BPS-17 and avails all the requisites of the said Post.
- H. Not tenable, he is not coming within the ambit of Senior Scale Selection Grade BPS-16, how it is stated ^{to be} deprived of the ibid benefit, stating having mere qualifications and experience. Here once again to add that none of his juniors have been awarded or extended the benefit of Senior Scale

Selection Grade BPS-16 and as such the Appellant is not entitled to such benefit.

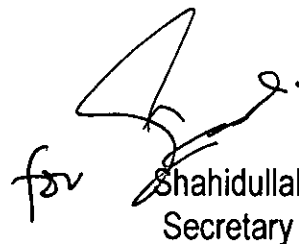
(6)

- I. Frivolous and baseless accumulation on the part of Appellant.
- J. Correct under Article-25 of the Constitution of the Islamic Republic of Pakistan all citizens are equal before law, but the appellant is not coming within the similarly placed persons. He is standing at very low stage at Serial No. 266 than the one, Mr. Aurangzeb-IV, who is standing at Serial No.256, and availed the benefit as a result of Tribunal orders dated 02/03/2016.
- K. Not need to comment. However, it is beyond to understand, what kind of disparity in his Income and Earning are infringed. He is enjoying the Pay Scale-17 along with his other perks attached to the Post of Sub Divisional Officers.
- L. The respondents seek permission to raise additional grounds at the time of arguments.


In the wake of above stated facts and grounds as explained in the relevant paras of reply, the case of Appellant is not having similarly placed person as envisages in different Judgments of the Apex Supreme Court of Pakistan even not cover the very preposition as described by the honorable Tribunal in its Judgment dated 02/03/2016. He is not entitled to the prayed Senior Scale Selection Grade BPS-16 w.e.f. 04/09/2003, therefore the present Service Appeal may please be dismissed with cost.



Muhammad Idrees Khan
Secretary
Govt. of Khyber Pakhtunkhwa
C&W Department Peshawar
(Respondent No.1)



for Shahidullah
Secretary
Govt. of Khyber Pakhtunkhwa
Establishment Department Peshawar
(Respondent No.2)



Engr. Muhammad Tariq
Chief Engineer (Centre)
C&W Department Peshawar
(Respondent No.3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1434 of 2023

7

Azhar Ali (Sub Divisional Officer),
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.....**APPELLANT**

VERSUS

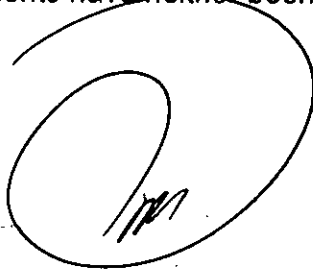
1. Government of Khyber Pakhtunkhwa through Secretary, Communication & Works Department, Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary, Establishment Department, Peshawar
3. Chief Engineer (Centre), Communication and Works Department, Peshawar

.....**RESPONDENTS**

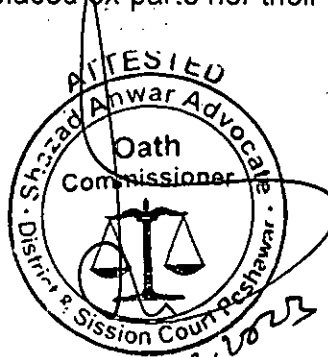
AFFIDAVIT

We, the Respondents, do hereby solemnly affirm and state on Oath that the whole contents of these comments are true and correct to the best of our knowledge and belief that nothing has been concealed from this Khyber Pakhtunkhwa Service Tribunal Peshawar.

It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense has been struck off.



Muhammad Idrees Khan
Secretary
Govt. of Khyber Pakhtunkhwa
C&W Department Peshawar
(Respondent No.1)



Deponents

Shahidullah
Secretary
Govt. of Khyber Pakhtunkhwa
Establishment Department Peshawar
(Respondent No.2)

Engr. Muhammad Tariq
Chief Engineer (Centre)
C&W Department Peshawar
(Respondent No.3)

(8)

Annex-I

No. FD(SR.I)2-25/72-Voll.II

GOVERNMENT OF N.W.F.P.
FINANCE DEPARTMENT.

Peshawar, the 19th Dec. 1975.

From

The Secretary,
Government of NWFP,
Finance Department, Peshawar.

To

1. All Administrative Secretaries to Govt. of NWFP.
2. All Heads of attached Departments,
etc. etc. etc.

Subject: CONCESSIONS TO DIPLOMA ENGINEERS (OVERSEERS).

Sir,

I am directed to say that the matter regarding the grant of various concessions to Diploma Engineers in line with the Federal Government had been under consideration of the Provincial Government. It has been decided to allow the following concessions to Diploma Engineers (Overseers) in NWFP :-


- i. The Diploma Engineers shall be given Grade-11 (275-20-375/20-475/25-600) to start with.
- ii. Certain posts in grades above 11 carrying greater responsibilities shall be ear-marked or created for Diploma Engineers and these shall be filled on the basis of seniority-cum-fitness.
- iii. 25% of the total posts of Diploma Engineers shall be placed in Grade-16. These posts shall be filled on the basis of seniority-cum-fitness and ~~basic criteria~~ subject to 10 years' service and passing of the prescribed departmental examinations.
- iv. 20% of the posts in Grade-17 shall be reserved for promotion of Diploma Engineers in grade-16 on the basis of selection for which standards and criteria shall be laid down by the departments concerned.
- v. The Diploma Engineers shall henceforth be called Sub-Engineers.

2. These orders will take effect from 1st Jan: 1976.

3. Necessary amendments in service rules wherever necessary may be made by the S&GAD in consultation with the departments concerned.

Your obedient servant,

MOHAMMAD AMIN
Joint Secretary


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

Better ⁹
copy

No. FD (SR.I) 2-25/72-Voll.II

GOVERNMENT OF N.W.F.P.

FINANCE DEPARTMENT

Peshawar, the 19th Dec. 1975

From

The Secretary,
Government of NWFP,
Finance Department, Peshawar.

To

1. All Administrative Secretaries to Govt. of NWFP.
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- iii. 25% of the total posts of Diploma Engineers shall be placed in Grade-16. These posts shall be filled on the basis of seniority-cum-fitness and subject to 10 years' service and passing of the prescribed departmental examinations.
- iv. 20% of the posts in Grade-17 shall be reserved for promotion of Diploma Engineers in grade-16 on the basis of selection for which standards criteria shall be laid down by the departments concerned.
- v. The Diploma Engineers shall henceforth be called Sub-Engineers.

These orders will take effect from 1st Jan: 1976.

Necessary amendments in service rules wherever necessary may be made by the S&GAD in consultation with the departments concerned.


Administrative Officer (Control)
Communication & Works Dept.
Khyber Pakhtunkhwa Peshawar.

Your obedient servant,

MOHAMMAD AMIN
Joint Secretary

(10)

Annex - II

GOVERNMENT OF N. W. F. PROVINCE
COMMUNICATIONS & WORKS DEPARTMENT

No. SO(E)C&W/23-5/73 /592

Dated Peshawar, the 28 January 1979

N-O-T-I-F-I-C-A-T-I-O-N

In exercise of the powers conferred by sub-rule (2) of rule 3 of the North West Frontier Province Civil Servants (Appointment, Promotion and Transfer) Rules, 1975, and in consultation with the Services Rules Committee in the S&CAD and the Finance Department, the Communications & Works Department is pleased to make the following amendments in the Appendix to this Department's Notification of even number dated 17th June, 1978 regarding method of appointment, qualification and other conditions specified in the said Appendix, with immediate effect :-

AMENDMENTS IN THE APPENDIX

1. At Sl.No. 1 in column (b) the words "concerned in which the vacancy occurs" shall be deleted.
2. At Sl.No. 1 in column 6 (c) the words "officiating Assistant Engineer" shall be substituted by the words "Senior Scale Sub-Engineers".
3. At Sl.No. 4 in column 6 (c) after the word "diploma" the words "and have passed departmental professional examination" shall be added.
4. At Sl.No. 5, nomenclature of the post of "officiating Assistant Engineers/Sub-Divisional Officers" shall be substituted by the nomenclature of "Senior Scale Sub-Engineer".
5. At Sl.No. 5 in column 6, the word "Post" between "of" and "the" occurring in line 4 thereof shall be replaced by the word "cadre".
6. At Sl.No. 5 in column 6 of the Schedule the words "from the post of officiating Assistant Engineers/Sub Divisional Officers" shall be substituted by "from the posts of Senior Scale Sub Engineers".
7. At Sl.No. 5 in column-6 the words "concerned in which the vacancy occurs" shall be deleted.



[Signature]
Administrative Officer (Centre)
Communication & Works Deptt.
Khyber Pakhtunkhwa Peshawar.

EJAZ HUSSAIN
SECRETARY TO GOVERNMENT N.W.F.P
COMMUNICATIONS & WORKS DEPARTMENT

(Pl.P...2.....)

(11)
(....2....)

89
Endst.No.SO(E)C&W/23-5/73/593-670 Dated Peshawar, the 28th Jan 79.

Copy forwarded to :-

1. The Secretary to Government of NWFP, S&GAD, with reference to his Endst.No.SORI(S&GAD)1-12/74 dated 17.1.1979.
2. The Secretary to Government of NWFP, Finance Department with reference to S&GAD's letter No.SORI(S&GAD)1-12/74 dt: 17.1.79.
3. The Secretary to Government of NWFP, Law Department, Peshawar, with reference to S&GAD's letter No.SORI(S&GAD)1-12/74 dated 17.1.1979.
4. The Accountant General, N.W.F.Province, Peshawar with reference to this Department's Endst.of even number dated 17.6.1978.
5. The Secretary, Public Service Commission, NWFP, Peshawar with reference to this Department's Endst.of even number dated 17.6.1978.
6. The Manager, Government Printing Press, Peshawar for publication in the NWFP (Government Gazette).
7. The Chief Engineer (Development) C&W Department NWFP, Peshawar.
8. The Chief Engineer C&W Department NWFP, Peshawar.
9. All the Superintending Engineers in C&W Department NWFP.
10. The Director P&D Cell C&W Department NWFP, Peshawar.
11. The Consulting Architect C&W Department NWFP, Peshawar.
12. The Research Officer, Road Research & Material Testing Laboratory C&W Department NWFP, Peshawar.
13. All the Executive Engineers in C&W Department NWFP.
14. All Administrative Officers/Budget & Accounts Officers in the C&W Department.
15. Office Order File/Main File.

6263
21/1/79
Department

DFCI
S/S
21/1/79

M. Afzal Parvez
28/1/79

(M. AFZAL PARVEZ)
SECTION OFFICER (ESTABLISHMENT)
COMMUNICATIONS & WORKS DEPARTMENT.

ASHIQ
28.1.79

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

Dated Peshawar, the 17th June 78.

Supervised
vide notification
No. SOI(E)(B&R/AD) 1-12/74

18

NOTIFICATION-N

No. SOI(E)/B&R/23-5/73. In exercise of the powers conferred by sub-rule (2) of rule 3 of the North-West Frontier Province Civil Servants (Appointment, Promotion and Transfer) Rules, 1975, and in consultation with the Services and General Administration Department and the Finance Department, the B&R Department is pleased to lay down the method of appointment, qualifications and other conditions specified in columns 3 to 6 of the Appendix to this Notification, which shall be applicable to posts in the B&R Department specified in column 2 of the said appendix.

EJAZ HUSSAIN KHAN
SECRETARY-CUM-CHIEF ENGINEER
GOVERNMENT OF N.W.F. PROVINCE
BUILDINGS & ROADS DEPARTMENT.

Endst.No. SOI(E)/B&R/23-5/73.

Dated Peshr, the 17th June 78.

Copy forwarded to the :-

1. Chief Engineer (Dev) B&R Department NWFP, Peshawar.
2. Superintending Engineer (HQ) B&R Deptt: NWFP, Peshawar.
3. All Superintending Engineers B&R Department.
4. All Executive Engineers B&R Department.
5. All Administrative Officers (B&R Department).
6. All Budget & Accounts Officer (B&R Department).
7. Accountant General, N.W.F. Province, Peshawar.
8. Secretary Public Service Commission NWFP, Peshawar.
9. Manager Government Press Peshawar for publication in the NWFP, Government Gazette. Please supply two hundred (200) printed copies of the Notification immediately.

(M. Afzal Farvez)
Section Officer (Estabtt:)
Government of N-W.F. Province
Buildings & Roads Department.

PH; No. 75273.

Ashiq

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

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A P P E N D I X

METHOD OF APPOINTMENT, QUALIFICATIONS AND OTHER CONDITIONS APPLICABLE TO THE POSTS IN THE B&R DEPARTMENT

1. Nomenclature of post.	2. Qualification for initial recruitment.	3. Qualification for promotion.	4. Age limit for initial recruitment.	5. Method of appointment.	6.
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1. Chief Engineer.	-	-	-	-	By selection on merit from amongst four senior most officers of the Department, with at-least seventeen years experience as Government servant. <u>Seniority being considered only in the case of officers of practically the same standard of merit.</u>
2. Superintending Engineer.	-	Degree in Engineering from a recognized University.	-	-	By selection on merit from amongst the Executive Engineers or holders of equivalent posts in the B&R Department with at-least 12 years service in Grade-17 & 18. Seniority being considered only in the case of officers of practically the same standard of merit.
3. Executive Engineer.	-	-	-	-	By selection on merit with due regard to seniority from amongst Assistant Engineers of the B&R Department, with at-least six years service as such.

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

(....2.....)

4. Assistant Engineer.

Degree in Civil, Electrical or Mechanical Engineering from a recognised University, as may be specified by Govt. for the respective post.

Degree or Diploma in Engineering from a recognised University or Institute, not as specified in Column-6. Not less than 21 years and more than 30 years.

- (a) Seventy percent by initial recruitment;
- (b) Ten percent by selection on merit with due regard to seniority from amongst Sub-Engineers ~~of the Deptt.~~ ^{Stat.} concerned in which the vacancy occurs, who hold a degree; and

- (c) twenty percent by selection on merit with due regard to seniority from amongst ~~officiating Assistant Engineer~~ ^{Sr. Scale Sub Engineers} of the Department concerned in which the vacancy occurs, who hold a Diploma. ^{4 have passed diploma professional Examin. Not dt 25/1/79.}


Twenty-five percent of the total number of posts of the diploma holder Sub-Engineers shall form ~~the post of Officiating Assistant Engineers/Sub-Divisional Officers~~ ^{Sr. Scale Sub Engineers} and shall be filled by selection on merit with due regard to seniority from amongst Sub-Engineers of the Department concerned in which the vacancy occurs, who have passed the Departmental Examination and have atleast ten years service as such.

By selection on merit with due regard to seniority from amongst holders of the posts of senior Superintendents/Superintendents, in the Department, ~~in which the vacancy occurs.~~ ^{deleted Not dt 25/1/79}

5. ~~Officiating Assistant Engineers/Sub-Divisional Officers~~
Sr. Scale Sub Engineer

Diploma in Engineering from a recognised Institute.

6. Administrative Officer/
Budget & Accounts Officer.


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

(15)

Annex-III

GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS &
HUMAN RIGHTS DEPARTMENT

Secretary C&W Deptt
Khyber Pakhtun Khawa
Peshawar
Diary No 19271
Date: 30/11/10
To: - To

No. OP. 05(64)LD/2010/19101
Peshawar dated the, 30/11/2010

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

Subject:- REQUEST FOR CORRECTION IN SENIORITY OF
SUB ENGINEERS.

Dear Sir,

I am directed to refer to your letter No. SOE/C&WD/11-268/2010, dated: 24-05-2010 on the subject noted above and to state that the matter has been examined in Law Department and its views are as under:-

The Communication and Works Department, Government of Khyber Pakhtunkhwa, in their letter No. & date mentioned above raised a very pertinent question regarding determination of seniority of Sub-Engineers. The crux of the reference is that 25% of the total posts of the Sub-Engineers (BPS-11 are placed in selection grade in BPS-16, having 10 years service as Sub-Engineers in BPS-11 and passing departmental examination. Some times the Junior Sub-Engineers in BPS-11 were placed in selection grade in BPS-16 because their service record was complete and they have also rendered the requisite length of service and qualified the pre-requisite departmental examination and thus they have superseded their Senior Sub-Engineers. This caused grievance to the Senior Sub-engineers who were denied selection grade on account of non completion of their service record and their juniors who were placed in selection grade BPS-16 were claiming that they were senior from those who were superseded. One of the Sub-Engineers, who were superseded on account of non-completion of service record, took the matter before the Service Tribunal and was succeeded in getting relief in respect of seniority as well as selection grade.

It is well settled that the selection grade is not a promotion in strict sense of the word though it has overtones of promotion in view of the financial benefit involved. The expression selection grade is confined to revision of Basic Pay Scales and does not find mention in Section 8 of the NWFP Civil Servant Act, 1973 as well as in NWFP Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 under which seniority list of civil servants is required to be prepared with a

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

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reference to a service, cadre or post and not grade. Guidance is also provided by F.R. 30 (16) which reads as under:-

"a question was raised whether for the purpose of F.R. 30 appointment to the selection grade of a cadre involves the assumption of duties and responsibilities of greater importance than those attaching to posts in the ordinary grade of that cadre. Ordinary grade and the selection grade are two grades of one and the same post. Promotion of a person from the ordinary to the selection grade of a grade does not mean a change of posts and consequently does not involve assumption of duties and responsibilities of greater importance for the purpose of F.R. 30."

Once in a similar case the seniority of stenographers who were placed in selection grade BPS-16 from bps-15 and some senior stenographers who were superseded by Junior Stenographers due to some technical reasons and later on placed in selection grade BPS-16, the question of their seniority was examined by the Establishment Division, Islamabad as mentioned in the judgment of the Supreme Court (2001 SCMR 252) and which was worded as under:-

"The matter has been considered in the Establishment Division. It may be stated that in terms of section 8 (1) of the Civil Servants Act, 1973 and Civil Servants (Seniority) rules, 1993, seniority is to reckon in a post and not grade. Further, in terms of F.R. 30 (16), normal scale and selection scale of a civil servant does not change his duties and designation.

In view of the above rule position, the placement in selection scale of the Junior Stenographer earlier than their seniors, cannot infringe the actual seniority position of stenographers in the F.I.A. the action of F.I.A. in maintaining seniority list of stenographers on the basis of date of placement in selection scale is not, therefore, in accordance with the law.

The request of Messrs Ejazul Haq and Abdul Sattar for showing them senior to Messrs Muhammad Siddique and Muhammad Hanif on the basis of their dates of regular appointment as S/Graphers (BPS-15), is therefore, in order."

In view of the above position, the seniority position of Sub-Engineers would not change in case a Junior Sub-Engineers supersede the Senior Sub-Engineers by placing them in selection grade and they will always retain their inter-se seniority on the basis of their regular appointments as Sub-Engineer in (BPS-11). The selection grade is extension of original scale as it does not involve change of responsibility and name of the post. Thus the Sub-Engineers would continue to retain their inter-se seniority on the basis of their regular appointments and those who were placed in selection grade (BPS-16) would not disturb the seniority as already determined amongst Sub-Engineers (BPS-11).


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

Yours faithfully,


(Azma Ullah Khan)
Section Officer (OP)

GOVERNMENT OF KHYBER PAKHTUNKHWA

FINANCE DEPARTMENT

(REGULATION WING)

Annex-IV

17

No. FD/FR/17-13/2017/6263
Dated Peshawar, 14/12/2018

NOTIFICATION

NO. FD/ISO(FR)17-13/2017/6263, In pursuance of recommendations of the upgradation committee and approval granted by Competent Authority, sanction is hereby accorded to the upgradation of the post of Sub-Engineers from BPS-11/12 to BPS-16 (one time) as per usual to the incumbents having 10 years or more service at their credit in the same scale in all the Government departments of Khyber Pakhtunkhwa, with immediate effect.

SECRETARY TO GOVT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

Dist No. & Date given.

Copy of the above is forwarded for information and necessary action to the:-

- PS to Additional Chief Secretary, FATA
- All Administrative Secretaries Government of Khyber Pakhtunkhwa
- Senior Member, Board of Revenue, Khyber Pakhtunkhwa Peshawar
- Accountant General, Khyber Pakhtunkhwa, Peshawar
- Secretary to Governor, Khyber Pakhtunkhwa, Peshawar
- Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
- Secretary Provincial Assembly, Khyber Pakhtunkhwa.
- All Heads of Attached Departments in Khyber Pakhtunkhwa.
- Registrar, Peshawar High Court, Peshawar.
- Registrar, Service Tribunal Khyber Pakhtunkhwa.
- The Treasury Officer, Peshawar.
- All District/Agency Accounts Officers in Khyber Pakhtunkhwa / FATA.
- Director Local Fund Audit, Khyber Pakhtunkhwa Peshawar
- PS to Finance Secretary.
- All Section Officers/Budget Officers in Finance Department.

SECTION OFFICER (FR)



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

BETTER COPY

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No. FD/SO(FR)7-13/2017/6263

Dated Peshawar the 07/03/2018

NOTIFICATION

NO.FD/SO(FR)7-13/2017/6253. In pursuance of recommendations of the upgradation committee and approval granted by Competent Authority, sanction is hereby accorded to the upgradation of the post of Sub-Engineers from BPS-11/12 to BPS-16 (one time) as personal to the incumbents having 10 years or more service at their credit in the same scale in all the Government Departments of Khyber Pakhtunkhwa, with immediate effect.

SECRETARY TO GOVT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

Endst No. & Date even.

Copy of the above is forwarded for information and necessary action to the:-

1. PS to Additional Chief Secretary, FATA.
2. All Administrative Secretaries Government of Khyber Pakhtunkhwa.
3. Senior Member, Board of Revenue, Khyber Pakhtunkhwa Peshawar.
4. Accountant General, Khyber Pakhtunkhwa, Peshawar.
5. Secretary to Governor, Khyber Pakhtunkhwa, Peshawar.
6. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
7. Secretary Provincial Assembly, Khyber Pakhtunkhwa.
8. All Heads of Attached Departments in Khyber Pakhtunkhwa.
9. Registrar, Peshawar High Court, Peshawar.
10. Registrar, Service Tribunal Khyber Pakhtunkhwa.
11. The Treasury Officer, Peshawar.
12. All District/Agency Accounts Officers in Khyber Pakhtunkhwa / FATA.
13. Director Local Fund Audit, Khyber Pakhtunkhwa, Peshawar.
14. PS to Finance Secretary.
15. All Section Officers/Budget Officers in Finance Department.

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

SECTION OFFICER (FR)

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Annex - V



GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar, the April 21, 2020

NOTIFICATION:

No. SOE/C&W/4-2/2020 (SDOs): On the recommendation of Departmental Promotion Committee (DPC), the Competent Authority has been pleased to promote the following B-Tech (Hons) Sub Engineers to the post of Assistant Engineers/SDOs (BS-17) of C&W Department on regular basis, with immediate effect:

1. Mr. Nasrullah Khan --- On Regular basis
2. Mr. Azhar Ali --- On Regular basis

2. The above officers shall remain on probation for a period of one year extendable for a further one year in terms of Rule-15 of (Appointment, Promotion & Transfer) Rules, 1989.

3. Consequent upon their promotion as Assistant Engineers/SDOs (BS-17) on regular basis, the Competent Authority is further pleased to order the transfer/posting of the following officers of C&W Department, with immediate effect, in the public interest:

Sl. No.	Name of Officers	Existing posting	Proposed for actualization/ Adjustment	Remarks
1	Mr. Nasrullah Khan (BS-17)	SDO (OPS) Highway Sub Division Mardan	SDO Highway Sub Division Mardan	---
2	Mr. Azhar Ali (BS-17)	SDO (OPS) Building Sub Division Mardan	SDO Building Sub Division Mardan	---

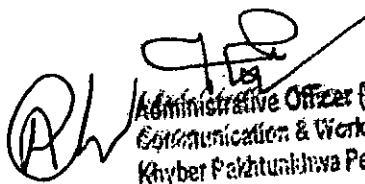
SECRETARY TO
Govt of Khyber Pakhtunkhwa
Communication & Works Department

Endst of even number and date

Copy is forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa Peshawar
2. Chief Engineer (Centre/North) C&W Peshawar
3. Superintending Engineer C&W Circle Mardan
4. Executive Engineer Building/Highway Division Mardan
5. District Accounts Officer Mardan
6. PS to Secretary C&W Peshawar
7. PA to Additional Secretary C&W Department Peshawar
8. PA to Deputy Secretary (Admn/Tech) C&W Department Peshawar
9. Officers concerned
10. Office order File/Personal File

(ABDUR RASHID KHAN)
SECTION OFFICER (Estb)


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



Annex - VI

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE ANWAR ZAHEER JAMALI.
MR. JUSTICE EJAZ AFZAL KHAN.

C. Ps. No. 2026 and 2029 of 2013.

(On appeal against the judgment
dt. 2.10.2013 passed by the
Peshawar High Court, Peshawar in
W. Ps. No. 271-P and 663-P of 2013).

Mushfaq Ahmed and another.
Muhammad Nasir Ali and others.

(in CP. 2026/13)
(in CP. 2029/13)
...Petitioners

Versus

Government of KPK through Chief Secretary,
Peshawar and others.

(in both cases)
...Respondents

For the petitioners: Mr. Ghulam Nabi Khan, ASC.
Syed Safdar Hussain, AOR.

For the respondents: Sikandar Khan, Chief Engineer, PHEK, KPK.
(on court notice)

Date of hearing: 15.01.2014.

ORDER

ANWAR ZAHEER JAMALI, J. - After hearing the arguments

of the learned ASC for the petitioners and careful perusal of the case
record particularly the reasons assigned in the impugned judgment,
we are satisfied that no case for grant of leave to appeal is made out,

including the plea of discrimination raised by the petitioners, as one
wrong or any number of wrongs, cannot be made basis to justify an
illegal action under the garb of Article 25 of the Constitution. Both
these petitions are, therefore, dismissed. Leave is refused.

2. So far as some other illegalities in the appointments
brought to our notice is concerned, in response to our earlier order
dated 09.01.2014, Mr. Sikandar Khan, Chief Engineer, Public Health

Engineering, Department, KPK is present in Court, he states that,

ATTESTED


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



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although many other illegal appointees in his department have been removed from service, but against many others such action is in process at various stages and they are still in service.

3. In view of the above statement, he is directed to finalize the action against such illegal appointees within one month from today and submit his report through Registrar of this Court. In case, he faces any difficulty in this regard, those difficulties may also be brought to our notice so that appropriate orders may be passed.

Sd/ Anwar Zaheer Jawali
Sd/ Ejaz Afzal Khan

Certified to be True Copy



[Signature] 16-1-14
Superintendent
Supreme Court of Pakistan
Islamabad

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

(99)

REGISTERED
Nos. C.P. 2026 & 2029 of 2013 - SCJ
SUPREME COURT OF PAKISTAN.

Islamabad, dated 16/11/2014.

The Registrar,
Supreme Court of Pakistan,
Islamabad.

To: The Registrar,
Peshawar High Court,
Peshawar.

Subject: **CIVIL PETITION NOS. 2026 & 2029 OF 2013.**
Mushtaq Ahmed & another ...in C.P. 2026/2013
Muhammad Nasir Ali & others ...in C.P. 2029/2013
VERSUS
Government of Khyber Pakhtunkhwa through Chief Secretary,
Peshawar & others ...in both cases

**On appeal from the Judgment/Order of the
Peshawar High Court, Peshawar dated
02.10.2013 in W.P. 271-P & 663-P/2013**

Dear Sir: I am directed to enclose herewith a certified copy of the Order of
this Court dated 15.01.2014 **dismissing** the above cited civil petitions with
directions for information and further necessary action.

i am also to invite your attention to the directions of this Court
contained in the enclosed Order.

Please acknowledge receipt of this letter along with its enclosure
immediately.

Encl: Order


Yours faithfully,



(NAZAR ABBAS)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

Copy with a certified copy of the Order of this Court dated 15.01.2014 is
forwarded to Mr. Sikandar Khan, Chief Engineer, Public Health Engineering
Department, Khyber Pakhtunkhwa, Peshawar for immediate necessary action
and report compliance.

Encl: Order



ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR



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

(23)

GOVERNMENT OF N.W.F.P.
FINANCE, EXCISE & TAXATION DEPT.

Annex-VII

NO. FD (PRC) 5-8/98
Dated Peshawar the, Dec. 13, 1999.

To

The Secretary to Govt. of NWFP,
Communication & Works Dept.,
PESHAWAR

SUBJECT:- SELECTION GRADE TO DIPLOMA ENGINEERS.

Sir,

I am directed to refer to C&W Department's letter No. SOG/C&W/13-21/99 dated Sept. 4, 1999 on the subject noted above and to say that Grade (BPS) 16 allowed to 25% of the total posts in the cadre strength of Sub Engineers vide Serial No. 132 under the heading "Building and Roads Dept." of Schedule to NWFP Civil Services Pay Revision Rules 1978 was in fact by way of Selection Grade and may be treated as such ab-initio.

2. I am further directed to say that the creation of new tier of Senior Scale Sub Engineers for which the Services / Recruitment Rules have also been introduced was not the requirement of the notification referred to above. The aforementioned post/new tier can not be recognized and as such would not be reflected in the Schedule of Pay Revision Rules.

3. The only remedy is that the matter may be taken up with the Service Rules Committee for making suitable amendments in the Service/Recruitment Rules of Sub Engineers.

Your obedient servant


(RASHID KHAN)
SECTION OFFICER (SR.I)

ENDST.NO & DATE EVEN.

Copy for information to :-

1. The Accountant General, NWFP, Peshawar.
2. All DAOs / AAOs in NWFP.
3. The Director, Local Fund Audit, Peshawar.
4. Treasury Officer, Peshawar.
5. The Budget Officer-I, Finance, E&T, Department.

N.A. KHALIL.


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


SECTION OFFICER (SR.I)

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GOVERNMENT OF NWFP
COMMUNICATION & WORKS DEPARTMENT

NO. SOG/C&W/13-21/99.
Dated Peshawar, the ~~August 24~~, 1999.

Sept-4

To

The Secretary to Govt. of NWFP,
Finance Department, Peshawar.

Subject:- CONCESSION TO DIPLOMA ENGINEERING (OVERSEER/SUB ENGINEER)
- SELECTION GRADE FOR DIPLOMA ENGINEERS(B-16).

Sir,

I am directed to refer to your memo No. FD(SR-1)2-25/72-Vol-II dated 19-12-1975 (copy attached), where the Provincial Government in Finance Department of NWFP extended certain concessions to diploma Engineers with one of B-16 to diploma holders Sub Engineers with requisite conditions laid down in the letter cited above @ 25% of the total posts of diploma holders.

2. The C&W Department accordingly made amendment in the service Recruitment Rules and a sub-cadre of Senior Scale Sub engineer incorporated/reflected therein, after the approval of the S.S.R.C, representing by Finance/S&GA Department and Law's representatives.

3. Since then the cases of Sub Engineers(B-11) who were holding three years diploma qualification with 10-years service and passing the prescribed departmental examination on the basis of seniority-cum-fitness were processed and B-16 awarded, but at the time of their pay fixation, the incumbents were allowed next stage with one premature increments as usual and the audit as well as the pay fixation parties did not observed any thing and the procedure remain as such.

4. In the year 1994 when a Departmental Promotion Committee meeting was held on 18-08-1994 in connection with the allowing B-16 to Sub Engineer, the Additional Secretary(Regulation) S&GA Department was not agreed to consider it as Selection Grade and he was of the view that this comes under Promotion criterion and will take immediate effect and not a retrospective effect(Minutes attached).

Contd: P/2.


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

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-: 2 :-

As there was no other alternative, except to issue orders promotion from B-11 to B-16. When they were fixed with their by allowing one premature increment, the audit/pay fixation y did not agreed to it and recorded observations as:-

"Returned that B-16 to Sub Engineer is Senior Scale and not Selection Grade, therefore, premature increment is not allowed".

The issue is still there, until the Finance Department issue necessary amendments against the existing sub-para(iii) letter of dated 19-12-1975 and in the Pay Revision Rules, 1978 1st item-132 under Public Works Department, A-Building Roads ment ab-initio.

So far the necessities of amendments is now felt, ally the Finance Department in their Notification No.FD(SR-3/73 dated 19-02-1980(copy attached) also extended the same fit to Drawing Categories with the same qualifications and r terms and conditions as were laid down for Sub Engineers @ of total posts, giving them the effect 01-02-1980.

But in their another circular memo No.FD(SR-I)1-95/84 II dated 15-02-1986(copy attached) the Finance Department trarily declared the B-16 as Selection Grade to Drawing gories and the word "of diploma holders" were deleted, so far W, Irrigation and PE Department(s) relate for such an action the part of Finance Department is above of our calculation use for other departments the diploma holders still appear, h can very easily be confirmed from the aforesaid circular alf. Further to quote a reference of the Finance Department vide No.FD(SR-I)5-11/89 dated 04-12-1993(copy attached) will prove when the Finance Department deems fit, they make amendments ng the effect from ab-initio while in the case of Sub Engineer have different method/attitude.

Any how, the Drawing Categories are dealt under Selection le and the incumbents of such cadre avail facilities of next e with one pre-mature increment since 15-02-1986 the date of sion of the Finance Department.

Now the disparity between Sub Engineer's cadre and ing Cadre is above and beyond our knowledge in one and same rtment, it not only created but have boost-up agony amongst diploma Engineer i.e. Sub Engineers.

Contd: P/3.


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

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11. In order to remove the disparity and anomalous situation, it is requested to please treat the case on equitable basis and may issue necessary amendments as solicited in Para-6 of the memo with regard to rectification by inserting the word "Selection Grade" so that the long outstanding issue is resolved and finalized once for all and also to bring the matter at par with other service personnel i.e. Drawing Cadre of one Department (refer F.D memo No. FD(RRC)5-8/85 dated 21-2-1996 (copy attached for reference and record)).

12. The amendment as considered, may be given an ab-initio effect so as to protect all such cases.

ENDST: OF EVEN NO. & DATE.

[Signature]
SECTION OFFICER (GENERAL)
COMMUNICATION & WORKS DEPARTMENT

Copy to the Chief Engineer (Centre) C&W Department, NWFP, Peshawar for information.

[Signature]
SECTION OFFICER (GENERAL)
COMMUNICATION & WORKS DEPARTMENT

[Handwritten initials]

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



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OFFICE OF THE CHIEF ENGINEER (CENTRE)
COMMUNICATION & WORKS DEPARTMENT
KHYBER PAKHTUNKHWA, PESHAWAR

No. CEC/C&WD/S.A No.1434/2023/108

Dated Peshawar the 14/12/2023

AUTHORITY LETTER

Mr. Zahid Habib, Administrative Officer (Centre) (BPS-17), C&W Department, Peshawar is hereby authorized to file the para-wise comments and attend the Honorable Service Tribunal Peshawar on behalf of Respondent No.3 in connection with Service Appeal No. 1434 of 2023 titled- "Azhar Ali (Sub Divisional Officer) vs Govt. of KPK" on each date as and when fixed by the Honorable Service Tribunal.

h. Dine
CHIEF ENGINEER (CENTRE)

Engx. Muhammad Tariq

COPY FORWARDED TO THE:

1. Section Officer (Lit.), C&W Department, Peshawar w/r to his office No. SO(Lit)C&W/3-499/2023, dated 06/12/2023 above for information.
2. Mr. Zahid Habib, Administrative Officer (Centre) (BPS-17), C&W Department, Peshawar for information and necessary action.
3. PS to Secretary, C&W Department, Peshawar for information.
4. P.A. to Deputy Secretary, C&W Department, Peshawar for information.

CHIEF ENGINEER (CENTRE)