

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

APPEAL NO. 1437 /2018

Aurangzeb

V/S



C&W Department

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APPELLANT

THROUGH:


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

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

Appeal No. 1437 /2018

Khyber Pakhtunkhwa
Service Tribunal

Aurangzeb, Sub Engineer,
C&W Division Mansehra.

Diary No. 1687

Dated 28/11/2018

APPELLANT

VERSUS

- 1- The Secretary, Government of Khyber Pakhtunkhwa through Secretary C&W, Civil Secretariat, Peshawar.
- 2- The Chief Engineer, 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 FOR GRANTING SENIOR SCALE BPS-16 UNDER 25% QUOTA TO THE APPELLANT FROM DUE DATE FOR HAVING 10 YEARS SERVICE AND ALSO PASSED B GRADE EXAM AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

Filed to-day

Registrar

28/11/18 . PRAYER:

.....

THAT ON ACCEPTANCE OF THIS APPEAL, THE RESPONDENT DEPTT: MAY BE DIRECTED TO GRANT SENIOR SCALE BPS-16 UNDER 25% QUOTA TO THE APPELLANT FROM DUE DATE FOR HAVING 10 YEARS SERVICE AND PASSED B GRADE EXAM WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT THAT MAY ALSO BE GRANTED IN FAVOUR OF APPELLANT.

.....

RESPECTFULLY SHEWETH:

FACTS:

- 1- That the appellant joined the C&W Deptt: on 16.12.1990 as Sub Engineer and also passed B grade departmental exam in the year 1996 and also passed A grade professional exam in 2010. Thus the appellant has more than 17 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 –G
- 2- That according to the rules 25 % of the post of senior scale sub engineers are to filled in on the basis of promotion from amongst sub engineers 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 be granted Senior Scale BPS-16. **(Copy of the rules is attached as Annexure-A)**
- 3- That the august Service 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 similarly this Honourable Service Tribunal also accepted 52 connected appeal on 02.03.2016, against which the department filed CPLA which was also dismissed by the Supreme Court of Pakistan on 13.02.2017 and on the basis of that decision the respondent granted Senior Scale (BPS-16) w.e.f 04.09.2018 to all appellant vide notification dated 30.04.2003. **(Copies of judgment dated 02.03.2016 , 13.02.2017 and notification dated 30.04.2018 are attached as Annexure-C,D&E)**
- 5- That recently the department upgraded the post of Sub Engineer from BPS-11/12 to BPS-16 for having 10 years service vide notification dated 07.03.2018. **(copy of notification dated 07.03.2018 is attached as annexure-F)**
- 6- That the appellant filed departmental appeal on 15.08.2018 for grant of Senior Scale BPS-16 from due date and waited for 90 days, but no reply has been received so far. Hence the present appeal on the following grounds amongst the others. **Copy of the appeal is attached as Annexure–G)**

GROUND:

- A- That not granting Senior Scale BPS-16 from due date under 25% quota and not taking action on the departmental appeal of the appellant within the statutory period of ninety days are against the law, rules and norms of justice.

- B- That the appellant has attained eligibility for senior scale BPS-16 much earlier but despite the appellant has deprived from his legal 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 senior scale BPS-16 from his due date, which is violation of Article-25 of the Constitution of Pakistan.
- D- That even the respondent Deptt; has granted B-16 to many officials vide order dated 04.09.2003 and dated 05.12.2009. Thus the appellant is also entitled to the same relief from his due date under the principle of Consistency and equality. **(Copies of the orders dated 04.09.2003 and dated 05.12.2009 are attached as Annexure- H&I).**
- 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 appeal No. 27/09 decided on 23.04.2009. **(Copy of judgment dated 23.04.2009 is attached as Annexure-J)**
- 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.

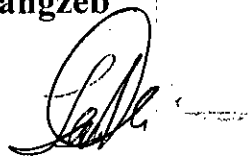
It is therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for



APPELLANT

Aurangzeb

THROUGH:



**TAIMUR ALI KHAN
ADVOCATE HIGH COURT**

&



**ASAD MAHMOOD
ADVOCATE HIGH COURT**

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Annexure-A

(4)

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. (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.

ATTACHED
[Signature]

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10/10/17

COMMUNICATION AND WORKS DEPARTMENT SCHEDULE - 1

S.No.	Nomenclature of Post	Minimum qualification for initial recruitment or by transfer	Minimum qualification for appointment and promotion	Age limit for initial recruitment	Method of recruitment
1	Chief Engineer		Degree in Engineering from a recognized University.	5	6
2	Superintending Engineer		Degree in Engineering from a recognized University.		By selection on merit from amongst four senior most officers of the Department, with at least seventeen years experience as Government servant, seniority being considered only in the case of officers of practically the same standard of merit.
	Executive engineer		Degree in Engineering from a recognized University.		By selection on merit from amongst the Executive Engineers or holder of equivalent posts in Communication and Works Department, with at least twelve years service in Grade-17 and 18, seniority being considered only in the case of officers of practically the same standard of merit.
	Assistant Engineer	Degree in Civil Electrical or Mechanical Engineering from a recognized University as may be specified by Government for the respective posts.	Degree or Diploma in Engineering from recognized University or Institutions, as specified in column.		By selection on merit with due regard to seniority from amongst Assistant Engineers of Communication and Works Department with at least six years experience as such.
	Senior Scale Sub Engineer		Diploma in Engineering from a recognized Institute.		(a) Seniority present by initial recruitment. (b) 10% by promotion, on the basis of seniority cum fitness from amongst the Sub Engineers holding a degree in Engineering, seniority to be determined from the date of acquiring degree or initial appointment which ever is later. (c) Twenty percent by selection on merit with due regard to seniority from amongst the Senior Scale Sub Engineers of the Department who hold a diploma and have passed Departmental Professional Examination.
					Twenty five percent of the total number of posts of the diploma holders Sub Engineers shall from the cadre of 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.

COMMUNICATION AND WORKS DEPARTMENT

SCHEDULE - II

1	2	3	4	5	6
S.No.	Enomenclature 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.		30 to 45 years	By initial recruitment.
		By Mechanical Engineer with 15 years experience with National or International Organization of repute in Design Installation and running of Air-conditioning and Refrigeration.			
		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.

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Appeal No. 994/NEEM/2004Date 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. SHERAFGAN KHATTAK,
Addl. Advocate General

For official respondents

MR. IJAZ ANWAR,
AdvocateFor private respondents No.
4,6,7 & 8.SYED MANZOOR ALI SHAH,
MR. NOOR ALI KHAN,MEMBER —
MEMBERJUDGMENT

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

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

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

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

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

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

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GENERAL SERVICES
Tribunal
Peshawar

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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.

6. 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. Out this judgment will also dispose of the aforementioned service appeals in the same manner.

ANNOUNCED
11.12.2012.

Sd/-
(NOOR ALI KHAN)
MEMBER

Sd/-
(SYED MANZOOR ALI SHAH)
MEMBER

Certified to be true copy

Secretary, Peshawar
Service Tribunal,
Peshawar

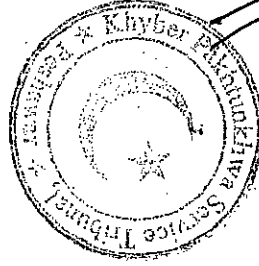
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BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

SERVICE APPEAL NO. 1330/2010

Date of institution ... 01.07.2010

Date of judgment ... 02.03.2016



Abdul Qayyum
C & W
11

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

(Appellant)

VERSUS

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

(Respondents)

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

For appellant(s)

ATTESTED
Khalid Rehman
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Mr. Muhammad Adeel Butt,
Additional Advocate General
Nemo

For official respondents
For private respondents

Mr. Muhammad Azim Khan Afridi
Mr. Pir Bakhsh Shah
Mr. Abdul Latif

Chairman
Member (Judicial)
Member (Executive)

JUDGMENT

MUHAMMAD AZIM KHAN AFRIDI CHAIRMAN: This judgment is aimed at disposal of instant service appeal No. 1330/2010 as well as service appeals No. (2) 1321/2011 titled Khalid Nacem-vs-Govt. of KPK through Secretary C & W etc. (3) 1248/2012 titled Daulat Khan-vs-Govt. of KPK through Secretary C & W etc. (4) 845/2013 titled Saeedullah-vs-Govt. of KPK through Secretary C & W etc. (5) 848/2013 titled Muddasar Saghir-vs-Govt. of KPK through Secretary C & W etc. (6) 972/2013 titled Ghulam Qadir-vs-Govt. of KPK through Secretary C & W etc. (7) 1009/2013 titled Riaz Ahmed-vs-Govt. of KPK through Secretary C & W etc. (8) 1015/2013 titled Muhammad Idress-vs-Govt. of KPK through Secretary C & W etc.

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

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

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

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

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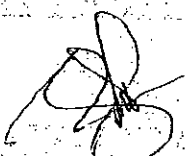
Department as Sub-Engineer on 9.12.1981 and has passed B-Grade Departmental Examination in the year 1994 and has more than 30 years service to his credit including good service record and entitling him to the grant of Senior Scale on the strength of 25% of the total number of posts of Sub-Engineers.

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

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

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

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


 Director
 Government of Punjab
 Faisalabad

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

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

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

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

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

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

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

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

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

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Secretary
Services Tribunal,
Peshawar

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

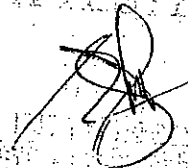
15. We have heard arguments of the learned counsel for the parties and perused the record.

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

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

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

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 Secretary
 Peshawar

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

NOTIFICATION

Peshawar the 13 January, 1980


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

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

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

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



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COMMUNICATION & WORKS DEPARTMENT
SCHEDULE-I

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

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

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

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

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

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

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

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

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

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

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c.c. Date
of Judgment
2-3-2016

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

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

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

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

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

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

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

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 Secretary
 Provincial Government

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

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

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

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

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

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

SD/- (MUHAMMAD AZIM KHAN AFRIDI), CHAIRMAN

SD/- (PIR BAKHSH SHAH), MEMBER

SD/- (ABDUL LATIF), MEMBER

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ANNOUNCED
02.03.2016

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REGISTRAR
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

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

Civil Petitions No. 223-P, 303-P to 359-P, 391-P to 394-P and 493-P of 2016
(On appeal against the Judgment of 02.03.2016 passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No. 1330 of 2010, 1321/11, 1240/12, 045/13, 040/13, 972/13, 1009/13, 1013/13, 1104/13, 1105/13, 1100/13, 1109/13, 1150/13, 1191/13, 1139/13, 1200/13, 1330/13, 1431/13, 1446/13, 1561/13, 1621/13, 1632/13, 1633/13, 05/14, 224/14, 246/14, 303/14, 356/14, 367/14, 393/14, 471/14, 477/14, 484/14, 409/14, 513/14, 609/14, 700/14, 722/14, 749/14, 770/14, 832/14, 907/14, 913/14, 920/14, 1033/14, 1100/14, 1112/14, 1152/14, 1223/14 and 1204/2015).

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

VERSUS

Muhammad Shafiq and others.
Khalid Naeem.
Daulat Khan.
Saeedullah.
Mudassar Sahgir.
Ghulam Qadir and others.
Riaz Ahmad.
Muhammad Idrees and others.
Zia-ud-Din.
Abdul Qayyum-I.
Sarfraz Alam.
Muhammad Hamid Zia.
Shad Muhammad Khan.
Syed Abdullah Shah.
Nawazish Ali Shah.
Niaz Muhammad.
Qaisar Shah.
Aurangzeb.
Habibullah.
Mian Jehanzeb Khattak.
Yousaf Ali-III.
Muhammad-Shakeel Athar.
Malik Arif Saeed Diyal.
Muhammad Khalid Noor.
Muhammad Saeed-II.
Zahir Gul.
Muhammad Zubair.
Abdul Rahim.
Zulfiqar Ahmad.
Nossem Ahmad.
Mutahir Khan and another.
Muhammad Javed and others.
Sajid Ibrar and another.
Lal Badshah.
Abdul Khalil.
Abdul Farooq.
Irshad Ahmad Khan.
Muhammad Akram.
Abdul Qayum.
Falzulah Khan-II.
Zamir Jang.
Syed Tariq Mahmood.
Ghulam Rahim.
Liaqat Shah.
Noor ul Basar.
Sabit Khan.

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ATTESTED

Court Associate
Supreme Court of Pakistan
Islamabad

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

...Respondent(s)

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

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

Date of Hearing: 13.02.2017

ORDER

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

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

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

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

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

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[Signature]
Attorney General of Pakistan

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

"23. The department and authority responsible to restrict senior scale to the prescribed 25% limit of posts and bound to raise concerns over such irregularities and state of affairs simply granted senior scale to Sub-Engineers in excess of 25% of the total number of posts in disregard of the rules. The grant of the said senior scale has not come to an end till date for he reasons that the same is granted by ignoring the prescribed limit of 25% including the time frame ending on December 31st, 2001. The practice adopted is not only condemnable but also worth taking note of because of overburdening the public exchequer offensively.

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

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

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

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Court Associate
Supreme Court of Pakistan
Islamabad

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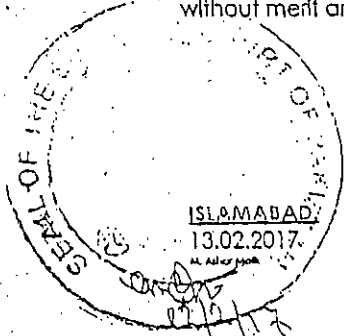
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maintaining, updating and completing the record of the officers, but ignoring their responsibilities and thus giving space to irregularities and illegalities thereby causing and inflicting losses on public exchequer."

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

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



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

Certified to be True Copy

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

2790/17

GR No: _____
Date of Receipt: 7-3-17
No. of Writs: 122
No. of Petitions: 5
Remarks: 7 lib
Court: 12. W.
Court: 1-3-17
Date: 4/3/17
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[Signature]

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GOVT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar, the April 30, 2018

29

NOTIFICATION

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

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

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

SECRETARY TO
Government of Khyber Pakhtunkhwa
Communication & Works Department

P.I.O

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End of even number and date

Copy is forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa Peshawar
2. Accountant General PR (sub office) Peshawar
3. Secretary to Govt of Khyber Pakhtunkhwa Establishment Department Peshawar.
4. Secretary to Govt of Khyber Pakhtunkhwa Finance Department Peshawar.
5. Secretary Admn, Infrastructure & Coord FATA Sectt, Warsak Road, Peshawar.
6. Chief Engineer (North/Centre/CDO) C&W Peshawar
7. Chief Engineer (East) C&W Abbottabad
8. Chief Engineer (FATA) W&S Peshawar
9. Managing Director PKHA, Peshawar
10. All Superintending Engineers concerned
11. Section Officer (FR) Finance Department, Peshawar
12. All Executive Engineers concerned.
13. Accounts Officer C&W Department, Peshawar
14. Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar.
15. District Accounts Officers concerned.
16. Agency Accounts Officers concerned.
17. Officials concerned.
18. PS to Secretary C&W Department, Peshawar.
19. PA to Additional Secretary C&W Department, Peshawar.
20. PA to Deputy Secretary (Admn), C&W Department Peshawar.
21. Office order File/Personal File.


(ABDUR RASHID KHAN)
SECTION OFFICER (Estb)

ATTESTED





GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

F 31
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No SO(FR)/FD/7-13/2017/6253
Dated Peshawar the 07 03-2016

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

Encls 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.


SECTION OFFICER (FR)

MUJIBULLAH


The Secretary
Communication and Works Department
Government of Khyber Pakhtunkhwa
Peshawar.

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Subject: - APPEAL FOR GRANTING BPS-16 ON PASSING B&A-GRADE
"PROFESSIONAL" EXAMINATION HAVING 10-YEARS SERVICE.

Respected sir,

Most respectfully it is submitted for your kind perusal that I was appointed as a Sub Engineer in Highway Division Mansehra and joined my duty with effect from 16/12/1990.

I had completed my 10-years service as a Sub Engineer on 15/12/2000.

I have passed my "B & A" Grade Professional Examination on 1996/2010.

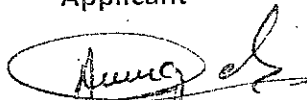
I want to draw your kind attention to your office Notification issued vide No.SOE/C&WD/4-2/2018 dated 30/04/2018, in which 5th junior Sub Engineers were awarded Senior Scale (BS-16) with effect from 04/09/2003.

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

It is therefore requested that I may also be granted BPS-16 with effect from 04/09/2003 on the basis of passing B & A-Grade Professional Examination and having 10-years service with all consequence benefits from my due date.

Dated 15/08/2018

Applicant


Aurangzeb

Sub Engineer

C&W Division Mansehra.

ATTESTED


BETTER COPY

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

Annexure I

33

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.

ATTESTED



BETTER COPY

GOVERNMENT OF NWFP
COMMUNICATION & WORKS DEPARTMENT

Annexure

34

Dated Peshawar, the Dec 05, 2009

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

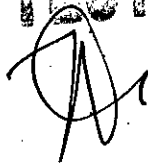
Sd/-
SECRETARY TO GOVT. OF NWFP
COMMUNICATION AND
WORKS DEPARTMENT

Endst of even Number and date.

Copy is forwarded to the:

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

ATTESTED



BEFORE THE NWFP SERVICE TRIBUNAL PESHAWAR

Appeal No. 27/09

Date of institution - 27.09.2008

Date of decision - 23.04.2009

Syed Sardar Shah, Sub Engineer, Works and Services KohatAppellant.

VERSUS

1. The Chief Secretary NWFP Peshawar.
2. The Secretary Works and Services Deptt: NWFP Peshawar.
3. The Chief Engineer Works and Services Deptt:
4. The Secretary Finance Deptt: NWFP Peshawar..... Respondents.

Appeal U/S 4 of the NWF Service Tribunals Act 1974 for granting B 16 as per rules and against not taking action on the Departmental appeal of the appellant.

Mr. M. Asif Yousaf Zai, Advocate..... For Appellant.

Mr. Ghulam Mustafa, A.G.P..... For Respondents.

MR. ABDUL JALILMEMBER.

MR. SULTAN MEHMOOD KHATTAK.....MEMBER.

JUDGMENT

ABDUL JALIL, MEMBER: - This appeal has been filed by the appellant for grant of B- 16 as per rules and against not taking action on the departmental appeal of the appellant. He has prayed that the Respondents may be directed to grant BPS-16 to him on acquiring Diploma and B-grade examination as per Rules from his due date.

2. Brief facts of the case as narrated in the memo of appeal are that the appellant was appointed as Road Inspector in the Respondent Department vide order dated 17.4.1982. The appellant was promoted as Sub Engineer (B-11) vide order dated 28.3.1990. The appellant has also passed B-grade departmental examination on 17.11.1991 and has more than 10 years service at his credit. Some junior Sub Engineers were granted B-16 on 4.9.2003 and 19.4.2004. The appellant filed a departmental appeal against those order on 1.5.2004 which was not responded, therefore the appellant filed a service appeal bearing No. 607/2005 in this Tribunal. The said appeal was finally disposed of on 15.12.2006 in terms that the appellant be considered for BPS-16 if he otherwise eligible and qualified

ATTESTED

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

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

4. Arguments heard and record perused.

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

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

ATTESTED

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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 years service and passing of B. Grade examination. The appellant was not considered by the DPC due to his incomplete record. The facility of selection grade has already been discontinued by the Provincial Government w.e.f 01.12.2001 vide Finance Department's letter No.FD (PRC) 1-1/01 dated 15.11.2001 and dated 6.4.2001 and in the prevalent circumstances the plea taken by the appellant has been infructuous. The Services Tribunal NWFP has directed in his decision dated 5.12.2006 that the appeal is disposed of with the direction to Respondents No.1 to 3 that the appellant be consider for BPS-16 if he has otherwise qualified and entitled for same under the relevant rules which was examined in the department and the appellant was not entitled to the grant of selection grade BPS-16 on the ground that according to the seniority position at the time, the appellant was at serial No.244. As per service record to the Respondent Sub Engineers who have already granted selection grade are senior to him. Moreover, the Government has discontinued the grant of selection grade to all the Government servants' grade. He prayed that the appeal may be dismissed.

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

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

ANNOUNCED.
23.04.2009.

Mr. Abdul Jalil
Member
Adl. Sultan Mahmood Khan
Member

UNLAWFULLY ATTACHED
A

WAKALAT NAMA

In the court of: Service Tribunal - Peshawar

Ausangzeb Petitioner/ Complainant
Appellant

VERSUS

CXW Deptt Respondent

I Ausangzeb in the above noted
do hereby appoint Mr. Taimur Ali Khan ^{Asad Mahmood Advocate} **Advocate High Court** as
my/our counsel in the above proceedings and authorize him to appear,
plead, defend, act, compromise, withdraw, negotiate or refer to
arbitration for me/ us as my / our advocate/ legal attorney in the
above mentioned matter, without any liability for his default and with
the authority to engage/ appoint any other Advocate/ Counsel on
my/our behalf and to file amended petition/any miscellaneous
application or any other documentation which is legally required on
my /our behalf for the above proceedings.

Attested & Accepted

Taimur Ali Khan

Ausangzeb

(CLIENT)

High Court, Peshawar
Cell:

Asad Mahmood

(C/W)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1437 OF 2018

Aurangzeb,
Sub Engineer

(Appellant)....

V/S

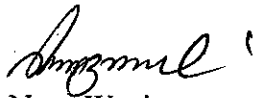
Secretary Communication & Works Department
Peshawar & others

(Respondents)....

I N D E X

S.NO.	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGE
1	Parawise Comments on behalf of Respondent No.1 to 3	-	1-2
2	Affidavit	-	3
4	C&W Department Appointment / Recruitment Rules 1979	I	4-6
5	Finance Department letter No.FD(PRC)1-1/2003 dated 06-04-2003	II	7-13
6	Establishment Department letter No.SO (PSB)ED/1-23/2002 dated 03-07-2004	III	14-15
7	W&S Department order No.SOE-I/W&S/4-2/2003/S.S dated 04-09-2003 & No.SOE-I/W&S/4-2/2004/S.S dated 19-04-2004	IV	16-17
3	Seniority list as stood on 12-12-2000	V	18-19

Deponent


Noor Wazir,
Section Officer (Lit)
C&W Department Peshawar

①

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR
APPEAL NO. 1437 OF 2018

Aurangzeb, Sub Engineer --- Appellant
O/O XEN C&W Division Mansehra

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

Facts

1. Pertains to record. Hence no comments.
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 holder of the post shall be filled by selection on merit with due regard to seniority from amongst Sub Engineers of the Department, who have passed the Departmental B-Grade Examination and have at-least ten (10) years service as such (**Annex-I**).
3. Correct to the extent that the Hon'able Tribunal allowed senior scale to the senior Sub Engineers vide judgment dated 11.12.2012 and 02.03.2016. However, 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-II**). 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-III**). Consequently the Respondent Department granted selection grade (BS-16) to 10 Sub Engineers in the year 2003 and 2004 (**Annex-IV**). In 2004 Naushad Khan & 14 others filed Service Appeals in the Service Tribunal for the grant of Senior Scale BS-16 with the plea that their juniors were granted Senior Scale BS-16. The Tribunal decided the case in their favour.. Although the name of the appellant was at Sl.No. 261 of the seniority list of Sub Engineers dated 12.12.2000 (**Annex-V**), the appellant was not considered by the Departmental Promotion Committee, as the appellant was most junior in his cadre at that time, therefore, in the prevailing circumstances, the plea of the appellant is incorrect.

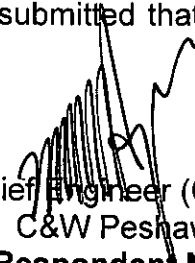
The appellant's right has not been effected due to the reason that the grant of Senior Scale BS-16 in 2003, 2004, 2009, 2012 and 2018 as the seniority of the appellant was at very low position and was in no way entitled for the grant of senior scale BS-16 as per Govt policy of 25% posts in senior scale BS-16 of the total number of posts of Sub Engineers prior to 2001. Furthermore, the appellant has based senior Scale BS-16 granted to M/S Misal Khan and Syed Sardar Shah Sub Engineers, in fact, both the officials were senior from the appellant. Hence the stance taken by the appellant is baseless.


- 4. Incorrect, as explained in para-3 above.
- 5. Correct to the extent, that since the Provincial Government upgraded the post of Sub Engineer from BS-11/12 to BS-16 on 07.03.2018, therefore, the plea of the appellant is infructuous.
- 6. Departmental appeal was received, which was processed and the competent authority filed the same.

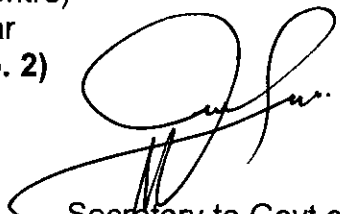
Grounds

- A. Incorrect, as explained in para-3 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, 2009, 2012 and 2018, 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 paras.
- F. Incorrect. The facility for awarding senior scale (BS-16) to the Sub Engineers, having diploma of Associate Engineering (DAE) and have passed Grade-B Exam with at least 10 years service as such, has been discontinued w.e.f. 01.12.2001.
- G. Incorrect, selection grade cases are considered by the Departmental Promotion Committee as per service rules and on the completion of codal formalities.
- 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.


 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)

3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1437 OF 2018

Aurangzeb,
Sub Engineer

(Appellant)....

V/S

Secretary Communication & Works Department
Peshawar & others

(Respondents)....

AFFIDAVIT

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

Deponent



Noor Wazir,
Section Officer (Lit)
C&W Department Peshawar

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

NOTIFICATION

Peshawar the 13 January, 1980.

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

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

1. (1) These rules may be called the Communication and Works Department (Recruitment and Appointment) Rules, 1979.
- (2) They shall come into force at once.
2. The Method of recruitment, minimum qualifications, age limit and other matters related 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.

COMMUNICATION AND WORKS DEPARTMENT

SCHEDULE - 1

Sl. No.	Nomenclature of Post	Minimum qualification for appointment by initial recruitment or by transfer	Minimum qualification for appointment by promotion	Age Limit for initial recruitment	Method of recruitment
1	2	3	4	5	6
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, seniority being considered only in the case of officers of practically the same standard of merit.
2.	Superintending Engineer.		Degree in Engineering from a recognised University.		By selection on merit from amongst the Executive Engineers or holder of equivalent posts in the 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.
3.	Executive Engineer				By selection on merit with due regard to seniority from amongst Assistant Engineers of the Communication and Works Department with at least six years service as such.
4.	Assistant Engineer.	Degree in Civil, Electrical or Mechanical Engineering from a recognised University as may be specified by Government for the respective post.	Degree or Diploma in Engineering from a recognised University or Institution, as specified in column.	21 to 30 years	(a) Seventy percent 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 senior scale Sub-Engineers of the Department who hold a diploma and have passed Departmental Professional Examination.

* Amendment made vide C&W Department Notification No. SO (E)/C&W/4-5/78, dated 18.10.1986.

6

1	2	3	4	5	6
5.	Senior Scale Sub-Engineer.		Diploma in Engineering from a recognised Institute.		Twenty five percent of the total number of posts of the diploma holders Sub-Engineers shall from the cadre of Senior Scale Sub-Engineers and shall be filled by selection on merit with due regard to seniority from amongst Sub-Engineers of the Department, who have passed the Departmental Examination and have at least ten years service as such.
6.	Administrative Officer/ Budget & Accounts Officer.				By selection on merit with due regard to seniority from amongst holders of the posts of Senior Superintendents/ Superintendents in the Department.

Annex-II

(7)

(BETTER COPY)

GOVERNMENT OF NWFP
FINANCE DEPARTMENT

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

From Secretary to Govt. of NWFP
Finance Department

To

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

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

Dear Sir,

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

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

Yours faithfully,

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

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.)

(8)

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

NO.FD(PRC)1-1/2001

Dated Peshawar the, Nov. 15 , 2001.

From :- The Secretary to Govt. of NWFP,
Finance Department.

To

1. All Administrative Secretaries to Government of NWFP.
2. The Senior Member, Board of Revenue, NWFP.
3. The Secretary to Governor NWFP, Peshawar.
4. The Secretary, Provincial Assembly, NWFP.
5. All Heads of Attached Departments NWFP.
6. All District Coordination Officers/Political Agents/
District and Sessions 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 SCALES AND FRINGE BENEFITS OF CIVIL
EMPLOYEES (BPS 1-22) OF THE N.W.F.P GOVERNMENT (2001)

Sir,

I am directed to refer to this Department's circular of even number dated October 27, 2001 and to reproduce ad seriatim in the above circular the points raised by AGPR on various items of Pay Revision Scheme, 2001 and clarifications made thereto by the Finance Division Government of Pakistan for information and necessary action :-

POINTS RAISED BY AGPR

CLARIFICATION OF FINANCE DIVISION

PARA 5 OF FINANCE DEPT. LETTER NO.PD
(PRC)1-1/2001 DATED OCT. 27, 2001

- i) Regarding the initial fixation of pay, the contention of AGPR is that pay of the employees in service on 30-11-2001 shall be fixed after allowing increment falling on 1-12-2001, if due, in old scale.

The view point of AGPR is confirmed.

- ii) Similarly, in case a Government servant had reached the maximum of his pay scale on 1-12-2000 he shall remain eligible for move over w.e.f 1-12-2001 and thereafter his pay be fixed in the revised basic scale.

Move over has been discontinued w.e.f 27-10-2001. Therefore, only the employees who had reached the maximum of their scales on or before 1-12-1999 would remain eligible for Move Over. Employees reaching maximum of their respective pay scales on 1-12-2000 shall not be eligible to move over.

PARA 7

- i. & ii. The Scheme of Selection Grade and move over has been discontinued w.e.f 27-10-2001 whereas the revised pay scales are applicable w.e.f 1-12-2001. This office is of the view that the Selection Grade and move over should also be discontinued from 1-12-2001.

Selection Grade has been discontinued w.e.f 27-10-2001. It can not be allowed to anybody on or after 27-10-2001. The position with regard to move over has been clarified in preceding para.

(Signature)

PARA B

While fixing the pay of employees moved over from one BPS to another BPS, it has been observed that it creates anomalies when their fixation is made by bringing them to their original scale of the post from where they had moved over viz-a-viz those who hold these scales on regular appointment. Few examples are given below :-

There is no anomaly and needs no clarification. Pay will be fixed according to para 8 (eight) of Finance Department's letter NO.FD(PRC)1-1/2001 dated October 27, 2001.

- i. Government servant BPS-19, moved over BPS-20 and in receipt of pay of Rs.13,595/- will be fixed in BPS-19 in the revised pay scale 2001 at Rs.22,240/- thus creating a difference of Rs. 2000/- in the initial fixation (i.e less than that what would have been fixed had he not been brought to his original scale from where he had moved over).
- ii. Government servant BPS-18, moved over BPS-19 and in receipt of pay of Rs.11,600/- will be fixed in BPS-18 at Rs. 18,665/- in the revised pay scale. In case pay is fixed on point to point basis in BPS-19 in the revised pay scale it would be Rs. 18,550/-. The officers holding regular appointment in BPS-19 draw less than the officers BPS-18 moved over to BPS-19.
- iii. Pay of Government servant BPS-16 drawing pay Rs. 4,702/- will be fixed in the revised pay scale at Rs. 7,050/- whereas the pay of Govt. servant in BPS-15 by virtue of move over from BPS-11 and drawing pay Rs. 4,668/- will be fixed in BPS-11 at Rs. 7,140/- which will be higher than the pay of Govt.servant in BPS-16 irrespective of the fact that Govt. servant in BPS-16 was drawing more pay than that servant who had moved over from BPS-11 to BPS-15 prior to the revision of pay scales.

The example II of Finance Deptt's letter provides method of fixation in cases where the pay in moved over scale is not within the maximum stages of the revised basic pay scale from where one has moved over. Apart from extending the scales beyond prescribed stages (i.e 30 upto scale 16), future increments upto a maximum of 3 years have also been allowed in such cases as personal to such employees. A question arises whether future increments (maximum 3 years) will also be admissible in cases where pay in revised BPS is fixed at the maximum or one or two stages below maximum on 1-12-2001. If not, it will

cause a discrimination.

PARA 10

- i. It has been stated that special pay/allowances sanctioned to offices as percentage of pay shall be discontinued w.e.f 1-12-2001 and at the same time it is stated that such pay/allowances would be adjusted in future increments. It is assumed that special pay/allowances for offices would be frozen as drawn on 30-11-2001 and would be treated as personal pays/allowances and adjustable in future increments.
- ii. There will, however be cases where the employees would reach maximum of pay scale without full adjustment and hence would continue to draw that special pays/allowances. It will create anomalous situation likewise the existing "personal allowance."

The words "and adjusted in future increments" occurring after 1-12-2001 in third line of para 10 may be considered as deleted.

PARA 12

The contention of this office is that the rates prescribed for various categories of Government servants alongwith the conditions written in revised column from S.No. I to IV under para 12 are correct. However, it may be clarified whether the condition for maintenance of Motor Car is to be observed for revised rates of Rs. 620/- P.M.

The entries in Revised Column of the table under paragraph 12(Twelve) of the Finance Department's letter NO.FD(PRC)1-1/2001 dated October 27, 2001 may be read as follows :-

- | | |
|--|------------------|
| i) Govt.servant in BPS-16 (Gazatted) & above maintaining motor car not registered for commercial purposes. | Rs.620/-
P.M. |
| ii) Govt.servant in BPS-11 & above other than those at (i) above. | Rs.340/-
P.M. |
| iii) Govt.servants in BPS-1 to BPS-10 maintaining Motorcycle/Scooter. | Rs.230/-
P.M. |
| iv) Govt.servants in BPS-1 to BPS-10 not maintaining Motorcycle/ Scooter. | Rs.170/-
P.M. |

PARA 17

- i. It may be confirmed whether the Special Pays/Allowances admissible on certain posts (including the departments) as percentage of pay is admissible on the existing rates with reference to the pay in the revised basic pay scales (2001) subject to the limits mentioned in the letter.

Only the special pay/allowances admissible on certain posts have been revised as percentage of pay subject to the maximum limits prescribed in para 17. Special pay/allowances sanctioned to offices/Departments have been discontinued under para 10.

Contd: on P.4....

PARA 18

- a) At Annex-II of the letter only revised rates of commutation have been given by replacing the existing commutation table but in the new table both the words existing and revised pay scale have been indicated which creates confusion. The position may be clarified.
- d (1) The increases in pensions @ 20% and 25% allowed w.e.f 1-7-1999 shall be discontinued w.e.f 1-12-2001. The contention of this office is that this clause regarding the discontinuation of above increase is only applicable to the Govt. servants who opt the revised basic pay scales with revised package of pension commutation and not the existing pensioners. The above presumptions may be confirmed.
- ii) Similarly the 5% increase allowed w.e.f 1-12-2001 will also be admissible to these pensioners.
- e) The benefit of restoration has been withdrawn. It is assumed that the benefit will not be admissible to those who opt the revised scales and pension package and restoration of surrendered portion of pension will remain admissible to the pensioners retired after 1-12-2001 under the pre-revised basic scales (2001).
- g) The increase allowed w.e.f 1-12-2001 is on net pension inclusive of dearness increases allowed in the past. It is assumed that all increases allowed in the past are to be included in net pension.

PARA 19

- b) The contention of this office is that in case a Govt. servant does not opt for new pay scales and pension/commutation, his pension commutation will be calculated according to the existing rate and on completion of year of pension purchased, his commutation will be restored after 1-12-2001. The position may be confirmed.

PARA 20

The provision of this para is not clear. It may be clarified whether the 5% will be discounted from the revised pay or from the revised gross pension or just the 5% increase admissible w.e.f 1-12-2001 is not be allowed to those who opt for revised basic pay scales and pension.

The revised commutation table is applicable to new pay scales, 2001 only. The sub heading "Existing and Revised Pay Scales" in Annex-II to Finance Department's letter NO. FD(PRC) 1-1/2001 dated October 27, 2001 may be considered as deleted.

The view point of AGPR is confirmed. Para 18(d) applies only to those employees who retire on or after 1-7-2001 and opt for the new pay scales in terms of para 19 of Finance Department's letter No. FD (PRC) 1-1/2001 dated October 27, 2001. This provision shall not apply to those who choose to opt in 1994 pay scales.

Increase of 5% in pension is available to retirees in 1994 pay scales.

The benefit of restoration of commuted value of pension has been withdrawn w.e.f 1-12-2001 irrespective of an employee's date of retirement.

The view point of AGPR is confirmed.

As explained against para 18(e) above. However, if a person chooses to remain in 1994 pay scales his pension and commutation will be calculated according to the existing rate and the commutation table.

Para 20 of the letter under reference is very clear and does not lend itself to any mis-interpretation. The retiring employees who opt for 2001 pay scales are not entitled to 5% increase in pension as per para 18(g) (iii). Besides their gross pension will be reduced by 5%.

FAMILY PENSION.

Para 19 of AGPR letter.

a) In case of family pension (death during service) under the existing rules legal heirs are entitled to net pension equal to 50% of pension and gratuity equal to 25% of gross pension. Under revised scheme of pension/commutation whether the family pension will be ;

1) Equal to 50% of gross pension or 60% of the gross pension.

ii) The gratuity will be admissible equal to 20% or 25% of the gross pension.

Under the existing/the benefits of family Pension are equal to 75% of total pension of the Govt. servant.

b) It may be clarified whether or not the increase in pension allowed by the Govt. w.e.f 1-12-2001 @ 5% 10% and 15% is also admissible during re-employment of the pensioner.

It has no relevance with the revised pension and commutation scheme. The family pension (in case of death during service) will be 50% of gross pension.

The Gratuity will be admissible equal to 25% of gross pension.

Under the existing rules/policy no increase in pension is admissible during re-employment.

ADDITIONAL CLARIFICATION.

Whether Special Additional Allowance will be admissible to the civil employees recruited after 1-12-2001.

They will not get any special additional allowance.

Yours obediently

(HAFIZ MATIULLAH)
ADDITIONAL FINANCE SECY. (REG./ADMN.)

Dated Peshawar the, November 15, 2001.

ENDST.NO. FD(PRC) 1-1 / 2001

A copy is forwarded for information to :-

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

(ABDUL LATIF)
SECTION OFFICER (SR.1)


Contd: on P.6...

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P.6....

ENDST.NO PD(PRC) 1-1/2001 Dated Peshawar the, November 15, 2001.

A copy is forwarded for information to :-

1. The Accountant General, NWFP, Peshawar.
2. All District/Agency Accounts Officers in NWFP.
3. The Treasury Officer, Peshawar.
4. The Private Secretary to Finance Minister, NWFP.
5. The P.S to Secretary, PAs to Additional Secretaries/Deputy Secretaries in Finance Department.
6. All Section / Budget Officers in Finance Department, NWFP.
7. The Director, Local Fund Audit, NWFP, Peshawar.


(ABDUL LATIF)
SECTION OFFICER (SR. I)

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

(14)

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

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

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DSA
HAROON-UR-RASHID
SECTION OFFICER (PSB)
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15
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)

Dated Peshawar the 04/09/2003

ORDER

NO. SOE-1/W&S/4-2/2003/S.S. Consequent upon recommendations of the Department Promotion Committee of the Works & Services Department during its meeting on 12.08.2003 the competent authority has been pleased to grant of Senior Scale (BS-11) 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-1/W&S/4-2/2003/S.S.

Dated Peshawar the 04.09.2003

Copy forwarded to the:-

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

17

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.

Endst: 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)

Annex-1

(18)

OFFICE OF THE CHIEF ENGINEER (NORTH)
C&W DEPARTMENT N.W.F.P. PESHAWAR.
No. 756/4 - E(T) 4574 / 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 APPOINTMENT	TO CLASS	YEAR OF PASSING.		REMAI
							Grade-B Exam:	Proffi: Exam:	
1	Fazli Raziq -1 S/O	B.A.	Swat	5.4.43.	1.7.61	-	11/91	-	-
2	Gul Zaman S/O	Matric DAE (Civ.)	Maiakand 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	-	-

10/16

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SI No	NAME	EDUL/TECH: QUALIFICATION	HOME DISTRICT	DATE OF BIRTH	DATE OF APPOINTMENT	TO CLASS	YEAR OF PASSING	REMARKS
254	Hayatulla Khan S/O Muhammad Khan	Matric/DAE(C)	Bannu	24.7.65	12.12.90	-	-	-
255	Roedar Alam S/O Rahim Gul	-do- DAE (Elec:)	Malakand	6.1.68	16.12.90	-	-	-
256	Aurangzeb -IV S/O Jaffar Hussain	F.A./DAE (Civ:)	Peshawar	21.5.64	2012.90	-	6/96 12/97	-
257	Nasrullah Khan S/O Sultan Jan	Matric DAE (Civ:)	Dir	5.1.66	22.12.90	-	6/96	-
258	Jehanzeb -IV S/O Muhammad Salim	-do-	Bannu.	15.4.62	2012.90	-	6/96	-
259	Yaqoob Jan S/O S.Muslim	B.A./DAE (Civ:)	Orakzai Agency	15.2.63	20.12.90	-	-	-
260	Muhammad Rashid Butt S/O Mukhtiar Butt:	Matric DAE (Civ:)	D.Ikhan	2.10.64	6.12.90	-	6/96	-
261	Aurangzeb-VII S/O Mohabat Khan.	FSC/DAE (Civ:)	Manshra	9.4.65	16.12.90	-	6/96	-
262	Farhat Ali S/O Farzand Ali	Matric DAE (Civ:)	Peshawar	2.4.65	12.12.90	-	-	-

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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	- - -

45

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

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
37/51

1/5/12

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1437/2018

Aurangzeb

VS

C& W Deptt: etc

.....

REJOINDER ON BEHALF OF APPELLANT

.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

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

FACTS:

- 1 Admitted correct as the service record of the appellant is present in the department.
- 2 Admitted correct by the respondents as the appellant has passed the departmental exam i.e B Grade and have at least 10 years and is entitle for selection grade B-16 with effect from 04.09.2003.
- 3 Pertains to record but the appellant being similarly placed person is also entitled to be 16 like his colleagues who have been granted B-16 on on B grade exam and have 10 years services.
- 4 Incorrect. As replied in para 3 above.
- 5 First portion of para-5 admitted correct. Hence no comments. While the rest of the para is incorrect. As appellant have been discriminated by not granting B-16 w.e.f 04.09.2003 which has already been granted to his colleague vide notification dated 30.04.2018.
- 6 Incorrect. The departmental appeal of the appellant has not been filed by the competent authority.

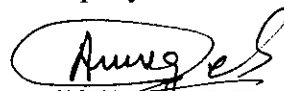
GROUND:

- A. Incorrect. The appellant has been discriminated as many

04.09.2003 for having 10 years service and B grade exam, but the appellant, possess the same requirement, has been deprived from Selection Grade BPS-16 in arbitrary manner.

- B. Incorrect. The appellant has filed proper departmental appeal for selection grade BPS-16 from 04.09.2003 and has been discriminated as many colleague of the appellant has been granted BPS-16 from 04.09.2003 having B grade exam and 10 years service, but the appellant, possess the same requirement, has been deprived from Selection Grade BPS-16. Further more, the appellant is entitled for selection grade BPS -16 w.e.f 04.09.2003 and the respondents should fulfill his grievance by itself without compelling him for the instant litigation according to superior Courts judgment.
- C. Incorrect. As explained in para B above.
- D. Incorrect as explained in Para-B above.
- E. Incorrect as explained in above Para.
- F. Correct to the extent that the selection grade has been discontinued w.e.from 01.12.2001, but many colleagues of the appellant has been recently granted of selection grade BPS-16 in the Year 2018 w.e.f 04.09.2003 in the compliance of this august Service Tribunal Judgment.
- 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

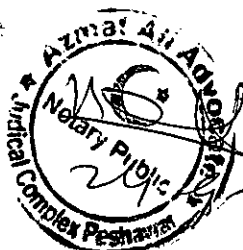
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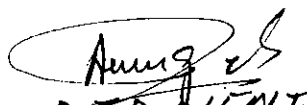

(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT

AFFIDAVIT

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

ATTESTED




DEPONENT.