

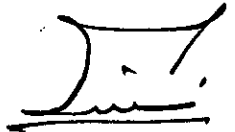
26.04.2022

Learned counsel for the appellant present. Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments. Adjourned. To come up for arguments on 22.06.2022 before the D.B.



(Rozina Rehman)
Member (J)



(Salah-ud-Din)
Member (J)

22.06.2022


Nemo for appellant.

Naseer Ud Din Shah learned Assistant Advocate General for respondents present.

Notice be issued to appellant/counsel for 01.09.2022 for arguments before D.B.



(Fareeha Paul)
Member(E)



(Rozina Rehman)
Member (J)

01.09.2022

Clerk of learned counsel for the appellant present. Mr. Muhammad Adeel Butt, learned Additional Advocate General for the respondents present.

Learned Member (Judicial) Mrs. Rozina Rehman is on leave, therefore, arguments could not be heard. Adjourned. To come up for arguments on 28.10.2022 before the D.B.



(Salah-Ud-Din)
Member(J)

Noted for
Conced
M. Khan

18.10.2021

Junior to counsel for appellant present.

Javid Ullah, learned Assistant Advocate General
alongwith Abbas Khan S.C for respondents present.

Lawyers are on general strike, therefore, case is
adjourned. To come up for arguments on 10.01.2022 before D.B.



(Atiq-Ur-Rehman Wazir)
Member (E)



(Rozina Rehman)
Member (J)

10.01.2022

Learned counsel for the appellant present. Mr. Kabirullah
Khattak, Addl. AG for respondents present.

Learned counsel for the appellant requested for adjournment on
the ground that he has not prepared the brief. Adjourned. To come up
for arguments before the D.B on 26.04.2022.



(Atiq-Ur-Rehman Wazir)
Member (E)

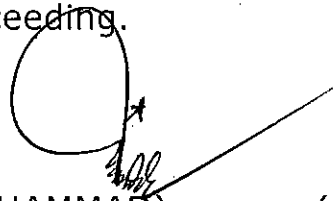


Chairman

05.01.2021

Mr. Taimur Ali Khan, Advocate, for appellant is present. Mr. Kabirullah Khattak, Additional Advocate General, for the respondents is also present.

Learned counsel for appellant submitted that the issue involved in the instant appeal is up-gradation and for that purpose Larger Bench of this Tribunal has already been constituted, therefore, requested for fixation of the instant appeal after the decision of Larger Bench. The request is appropriate. The appeal is adjourned to 29.03.2021 for further proceeding.



(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)



(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

29.03.2021

The concerned D.B is not available today, therefore, the appeal is adjourned to 29.06.2021 for the same.



Reader

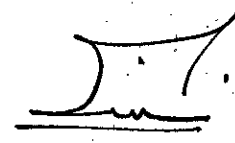
29.06.2021

Mr. Taimur Ali Khan, Advocate for the appellant present. Muhammad Rasheed, Deputy District Attorney for the respondents present.

We being Members of Larger Bench, remained busy in hearing arguments in the appeals fixed before the Larger Bench, therefore, arguments in the instant appeal could not heard. Adjourned. To come up for arguments before the D.B on 18.10.2021




(ATIQU-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

26.03.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 12.06.2020 before D.B.



Reader

12.06.2020

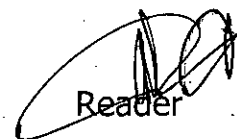
Bench is incomplete. Therefore, the case is adjourned. To come up for the same on 25.08.2020 before D.B.



Reader

25.08.2020

Due to summer vacation case to come up for the same on 29.10.2020 before D.B.




Reader

29.10.2020

Junior to counsel for the appellant and Addl. AG for the respondents present.

The Bar is observing general strike, therefore, the matter is adjourned to 05.01.2021 for hearing before the D.B.



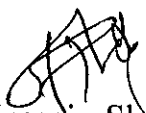
(Atiq-ur-Rehman Wazir)
Member



Chairman

24.09.2019

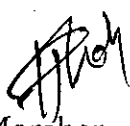
Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney for the respondents present. Learned counsel for the appellant submitted rejoinder which is placed on record. Learned counsel for the appellant also requested for adjournment for arguments. Adjourned to 09.12.2019 for arguments before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

09.12.2019

Lawyers are on strike on the call of Khyber Pakhtunkhwa Bar Council. Adjourn. To come up for further proceedings/arguments on 12.02.2020 before D.B.


Member


Chairman

12.02.2020

Counsel for the appellant present. Addl: AG for respondents present. Learned counsel for the appellant seeks adjournment. Adjourned To come up for arguments on 26.03.2020 before D.B.


Member


Member

07.03.2019 Learned counsel for the appellant present. Written reply not submitted. Mr. Abbas S.C representative of the respondent department present and seeks time to furnish written reply/comments. Granted. To come up for written reply/comments on 16.04.2019 before S.B.



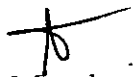
Member

16.04.2019 Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Abbas Senior Clerk present. Written reply submitted. To come up for rejoinder/arguments on 09.07.2019 before D.B.




Member

09.07.2019 Learned counsel for the appellant present Mr. Zia Ullah, learned Deputy District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 24.09.2019 before D.B.



Member



Member

17.12.2018

Learned counsel for the appellant present. Preliminary arguments heard.

The appellant (Sub Engineer) C&W Division Mansehra has preferred the present service appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 for the grant of Senior Scale (BS-16) from the due date.

Learned counsel for the appellant argued inter-alia that similar nature service appeal No.983/2018 has already been admitted for full hearing vide order dated 25.09.2018 of this Tribunal.

Points raised need consideration. The appeal is admitted for regular hearing subject to all legal objections including the issue of maintainability/jurisdiction. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 11.02.2019 before S.B

01/11/18
Appellant Deposited
Security & Process Fee


Member

11.02.2019

Learned counsel for the appellant present. Written reply not submitted. No one present on behalf of respondent department. Notice be issued to the respondent department with direction to furnish written reply/comments. Adjourn. To come up for written reply/comments on 07.03.2019 before S.B.




Member

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 1436/2018

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|-------|---------------------------|--|
| 1 | 2 | 3 |
| 1- | 28/11/2018 | <p>The appeal of Mr. Muhammad Jamil presented today by Mr. Taimur Ali Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 28/11/18</p> |
| 2- | 30/11/2018. | <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>17/12/2018</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> |

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

APPEAL NO. 1436 /2018

Muhammad Jamil

V/S

C&W Department

.....
INDEX

| S.No. | Documents | Annexure | P. No. |
|-------|--|----------|---------------|
| 1. | Memo of Appeal | ----- | 01-03 |
| 2. | Copy of Rules | A | 04-06 |
| 3. | Copy of Judgment | B | 07-10 |
| 4. | Copies of judgment dated 02.03.2016, 13.02.2017 and notification dated 30.04.2018 | C,D&E | 11-29 |
| 5. | copy of notification dated 07.03.2018 | F | 30 |
| 6. | Copy of the departmental appeal | G | 31 |
| 7. | Copy of order dated 04.09.2003 | H | 32 |
| 8. | Copy of order dated 05.12.2009 | I | 33 |
| 9. | Copy of Service Tribunal's Judgment. | J | 34-36 |
| 10. | Vakalat Nama | ----- | 37 |

APPELLANT

THROUGH:


TAIMUR ALI KHAN
ADVOCATE HIGH COURT


ASAD MAHMOOD
ADVOCATE HIGH COURT

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

Appeal No. 1436 /2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1686

Dated 28/11/2018

Muhammad Jamil, Sub Engineer,
C&W Division, Mansehra.

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 DEPARTMENTAL 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 DEPARTMENTAL 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 17.03.1988 as Sub Engineer and also passed departmental exam in the year 2016. Thus the appellant has more than 30 years service at his credit with good record throughout. All the dates are mentioned the departmental appeal of the appellant the copy of which is already attached as Annexure –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 departmental 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 30.04.2018. **(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
Muhammad Jamil

THROUGH:


TAIMUR ALI KHAN
ADVOCATE HIGH COURT


&
ASAD MAHMOOD
ADVOCATE HIGH COURT

BETTER COPY

Annexure-A

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

A

(4)

NOTIFICATION

Peshawar the 13 January, 1980

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

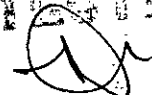
THE COMMUNICATION AND WORKS DEPARTMENT
(RECRUITMENT AND APPOINTMENTS) RULES, 1979

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



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 Superintending Engineer | | Degree in Engineering from a recognized University. | 5 | 6 |
| | Executive 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. |
| | 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 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. 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 / Superintendents in the Department. |

ATTACHED


COMMUNICATION AND WORKS DEPARTMENT

3

SCHEDULE - II

| 1 | 2 | 3 | 4 | 5 | 6 |
|-------|---|---|---|-----------------------------------|-------------------------|
| S.No. | Nomenclature of Post | Minimum qualification for initial recruitment or by transfer | Minimum qualification for appointment and promotion | Age limit for initial recruitment | Method of recruitment |
| 1. | Principal Engineer Refrigeration / Air-conditioning | H.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. | | | |
| | | H.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. |

ATTACHED



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 994/NEEM/2004

Date of Institution. 03.12.2004.
Date of Decision 11.12.2012.

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

VERSUS

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

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

MR. MUHAMMAD ASIF YOUSAFZAI,
Advocate

For appellant.

MR. SHERAFGAN KHATTAK,
Addl. Advocate General

For official respondents

MR. IJAZ ANWAR,
Advocate

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

SYED MANZOOR ALI SHAH,
MR. NOOR ALI KHAN,

MEMBER —
MEMBER

JUDGMENT

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

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."

RECEIVED
GENERAL MANAGER
NWFP SERVICE TRIBUNAL,
PESHAWAR

ATTACHED
A

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

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

The learned counsel for private respondents on the other hand argued that the private respondents No. 4 to 8 have been granted Senior Scale BPS-16 on the recommendations of the Departmental Promotion Committee vide orders dated 4.9.2003 and 19.4.2004. The appellant was not considered by the DPC due to his incomplete service record. The appellant did not challenge the seniority earlier seniority lists nor selection grade/Senior Scale at the relevant time and the present appeal is hopelessly time barred. Now the facility of Selection Grade/Move-over has already been withdrawn by the Provincial Government w.e.f. 1.12.2011, vide Finance Department letters dated 15.11.2001 and 6.4.2003 and in the prevalent circumstances, the present appeal has become infructuous. He requested that the

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, Sanaullah, (4) No. 511/2010, Syed Muhammad Tariq, (5) No. 512/2010, Malik Shakir Pervez, (6) No. 579/2010, Muhammad Zahir Shah-III, (7) No. 1014/2010, Muhammad Zahir Shah, (8) No. 1230/2010, Muhammad Atique Farooq, (9) No. 1817/2010, Tariq Yousaf, (10) No. 1818/2010, Muhammad Najeeb, (11) No. 1908/2010, Ajmal Anwar, (12) No. 3121/2010, Jamal Khan, (13) No. 1254/2011, Mashal Khan, and (14) No. 1675/2011, Nausifad Khan-II. Out of this judgment will also dispose of the aforementioned service appeals in the same manner.

ANNOUNCED
11.12.2012.

scf
(NOOR ALI KHAN)
MEMBER

sd
(SYED MANZOOR ALI SHAH)
MEMBER

Certified to be true copy

Secretary, Service Tribunal,
Peshawar

ATTESTED

ATTESTED

C 11

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO. 1330/2010

Date of institution ... 01.07.2010

Date of judgment ... 02.03.2016




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

(Appellant)

VERSUS

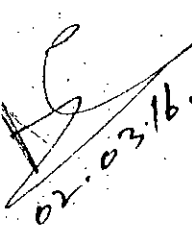
1. Government of Khyber Pakhtunkhwa Peshawar,
through Secretary C & W Peshawar.
 2. Chief Engineer Centre, C & W, KPK Peshawar.
 3. XEN, C & W, Abbottabad.
 4. Superintending Engineer, C & W, Abbottabad.
 5. Akramullah S/o Nasrullah and 8 others.
- (Respondents)

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

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

Mr. Muhammad Adeel Butt,
Additional Advocate General
Nemo

For official respondents
For private respondents


02.03/16.
Mr. Muhammad Azim Khan Afridi
Mr. Pir Bakhsh Shah
Mr. Abdul Latif


Chairman
Member (Judicial)
Member (Executive)

JUDGMENT

MUHAMMAD AZIM KHAN AFRIDI CHAIRMAN:

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

(8) 015/2013 titled Muhammad Idriss-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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EXAMINER
Khyber Pakhtunkhwa

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

2. In appeal No. 1330/2010, Muhammad Shafiq appellant has prayed for grant of BPS-16 being senior to private respondents No. 5 to 13 i.e Akramullah s/o Nasrullah, Sher Wali Jhang s/o Amirzada Khan, Misal Khan s/o Yousaf Khan, Hidayatullah-I s/o Anayatullah Khan, Sanaullah Tajori-III s/o Muslim Khan, Zaffarullah Khan s/o Alhebullah, 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

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SERVICES TRIBUNAL

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

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

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

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

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

In appeal No. 1223/2015, appellant Sardar Nacem 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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BANKING SERVICE TRIBUNAL

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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.

02.03.16

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

Khushal Khan
Service (Internal)

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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.

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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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Signature of the attesting officer and stamp: Khyber Pakhtunkhwa Service Tribunal, Peshawar

Signature and stamp of the presiding officer

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, 1973.
- (2) They shall come into force at once.

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

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SECRETARY
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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COMMUNICATION & WORKS DEPARTMENT
SCHEDULE-I

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

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

DECLARATION

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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.

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MEMBER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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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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.

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25. We are conscious of the fact that giving definite findings about the validity of judgments of this Tribunal entitling appellants in the slated 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

EXAMINER
KHYBER PAKHTUNKHWA
CIVIL SERVICE

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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 Perven 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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Khyber Pakhtunkhwa

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

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

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

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

(PIR BAKHSH SHAH)
MEMBER

(MUHAMMAD AZIM KHAN AFRIDI)
CHAIRMAN

(ABDUL LATIF)
MEMBER

ANNOUNCED
02.03.2016

Certified true copy

Karachi
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
(In appeal against the Judgment dt. 02.03.2016 passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No. 1330 of 2010, 1321/13, 1240/12, 045/13, 040/13, 972/13, 1009/13, 1013/13, 1104/13, 1103/13, 1100/13, 1109/13, 1150/13, 1191/13, 1139/13, 1300/13, 1330/13, 1431/13, 1446/13, 1501/13, 1631/13, 1632/13, 1633/13, 95/14, 96/14, 224/14, 246/14, 352/14, 366/14, 367/14, 393/14, 421/14, 427/14, 404/14, 409/14, 513/14, 009/14, 700/14, 722/14, 749/14, 770/14, 832/14, 907/14, 913/14, 920/14, 1035/14, 1100/14, 1112/14, 1132/14, 1223/14 and 1204/2013).

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.
- Mudassir 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.
- Nawazsh Ali Shah.
- Niaz Muhammad.
- Qaisar Shah.
- Aurangzeb.
- Habibullah.
- Mian Jehanzeb Khattak.
- Yousaf Ali-III.
- Muhammed-Shakeel Athar.
- Malik Arif Saeed Diyal.
- Muhammad Khalid Noor.
- Muhammad Saeed-II.
- Zahir Gul.
- Muhammad Zubair.
- Abdur Rahim.
- Zulfiqar Ahmad.
- Naseem Ahmad.
- Mutahir Khan and another.
- Muhammad Javed and others.
- Saidul Ibrar and another.
- Lal Badshah.
- Abdul Khalil.
- Abdul Farooq.
- Irshad Ahmad Khan.
- Muhammad Akram.
- Abdul Qayum.
- Falzuliah Khan-II.
- Zamir Jang.
- Syed Tariq Mahmood.
- Ghulam Rahim.
- Liaqat Shah.
- Noor ul Basar.
- Sabit Khan.

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Court Associate
Supreme Court of Pakistan
Islamabad

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Manzoor Elahi,
Fazal Mehmood,
Nisar Ahmad,
Taj Muhammad,
Sardar Naeem Ahmad,
Muhammad Zaka Khan,
Abdul Hameed,
Syed Azmat Ali Shah,
Inamul Haq,
Injiyaz 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 31, 2001. The practice adopted is not only condemnable but also worth taking note of because of overburdening the public exchequer offensively.

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

25. We are conscious of the fact that giving definite findings about the validity of judgments of this Tribunal entitling appellants in the stated appeals to senior scale are not warranted at this stage as the said matter is not agitated before us in the 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

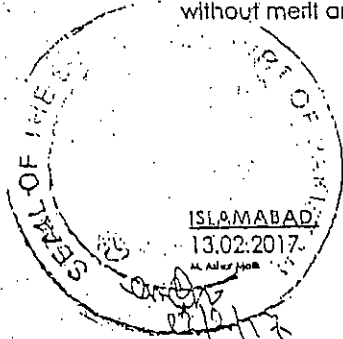
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maintaining, updating and completing the record of the officers, but ignoring their responsibilities and thus giving space to irregularities and illegalities thereby causing and inflicting losses on public exchequer."

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

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2790/17

GR No: _____
Date of Filing: 1-3-17
No of Pages: 12
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Court: _____
Date: 1-3-17
Date: 1/3/17
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GOVT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

E 28

Dated Peshawar, the April 30, 2018

NOTIFICATION

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

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

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

ATTACHED

SECRETARY TO
Government of Khyber Pakhtunkhwa
Communication & Works Department

P.L.O

29

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.

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(ABDUR RASHID KHAN)
SECTION OFFICER (Estb)



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

No SO(FR)/FD/7-13/2017/6253
Dated Peshawar the 07-03-2018

NOTIFICATION

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

SECRETARY TO GOVT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

Endst No. & Date even.

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

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


SECTION OFFICER (FR)

(Better Copy)

G (31)

The Secretary
Communication and Works Department
Government of Khyber Pakhtunkhwa
Peshawar

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 inw Building Division Mansehra and joined my duty with effect from 17/03/1988.

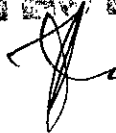
I had complained my 10-years service as a Sub Engineer on 16/03/1988.

I have passed my "B & A" Grade Professional Examination on 1996/2016. I want to draw your kind attention your office Notification issue vide No. SOE/C&WD/4-2/2018 dated 30/04/2018. In which 54 Junior Sub Engineers were awarded Senior Scale (BPS-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 am 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: 15/03/2018

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Applicant

Muhammad Jamil
Sub Engineer.
C & W Division Mansehra.

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

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.

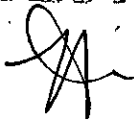
Sd/-
SECRETARY TO GOVT.
OF NWFP
WORKS & SERVICES
DEPARTMENT.

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.

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Annexure

GOVERNMENT OF NWFP
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar, the Dec 05, 2009

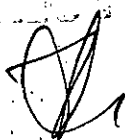
No.SOE-1(C&W) 4.2/91
Consequent upon the recommendations of the Departmental Promotion committee during its meeting held on 16.11.2009, the competent authority has been pleased to grant Senior Scale BPS-16 in respect of Syed Sardar Shah, Sub Engineer of the C&W Department from the date from which his 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.



BEFORE THE NWFP SERVICE TRIBUNAL PESHAWAR

Appeal No. 27/09

Date of institution - 27.09.2008
Date of decision - 23.04.2009

J
34

Syed Sardar Shah, Sub-Engineer, Works and Services Kohat Appellant.

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

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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

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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

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36

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
sd/- Sultan Mahmood Khattak
Member

(S) [Signature]
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[Signature]

محمد علی بنام محمد علی احمد
محمد علی بنام محمد علی احمد

مورخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام لکھنؤ میں کیلئے محمود علی خان اور اسد محمد راہوگیس
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرا میں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے
اور اس کا ساختہ پرداخت منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے
سبب سے ہوگا۔ کوئی تارتخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں
گے۔ کہ پیروی مذکور کریں۔ لہذا کالت نامہ لکھ دیا کہ سندر ہے۔

Attested
Accepted
[Signature]

20 ماہ المرقوم

العبد د گواہ العبد
مقام کے لئے منظور ہے۔

[Signature]