

12.07.2018

Clerk to counsel for the appellant present. Mr. Aslam Khan, SO alongwith Mr. Muhammad Jan, DDA for respondents present. Arguments could not be heard due to general strike of the Bar. Adjourned. To come up for Arguments on 05.09.2018 before D.B.


(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

05.09.2018

Neither appellant nor his counsel present. Mr. Riaz Ahmad Paindakhel, Assistant AG alongwith Mr. Muhammad Saleem, Superintendent for the respondents present. Adjourned. To come up for arguments on 30.10.2018 before D.B.


(M. Amin Khan Kundi)
Member


(M. Hamid Mughal)
Member

30.10.2018

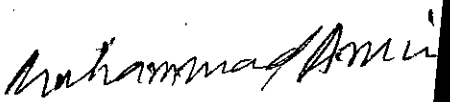
Due to retirement of Hon'ble Chairman, the Tribunal is incomplete. Therefore, the case is adjourned. To come up for the same on 17.12.2018.


Reader

17.12.2018

Appellant absent. Learned counsel for the appellant absent. Mr. Muhammad Jan learned Deputy District Attorney for the respondents present. Case called for several time but none appear on behalf of the appellant. Consequently the present service appeal is hereby dismissed in default. No order as to costs. File be consigned to the record room


(Hussain Shah)
Member



(Muhammad Amin Kundi)
Member

ANNOUNCED
17.12.2018

22.12.2017


Appellant in person and Mr. Muhammad Riaz Painsa
Khel, Asstt. AG for the respondents present. Counsel for the
appellant is not in attendance. Appellant seeks time.
Granted. To come up for arguments on 26.02.2018 before
the D.B.


Member


Chairman

26.02.2018

Counsel for the appellant and Addl. AG for the
respondents present. Counsel for the appellant seeks
adjournment. To come up for arguments on 30.4.2018 before
the D.B.


Member


Chairman

30.04.2018

Appellant in person and Mr. Kabir Ullah Khattak, learned
Additional Advocate General alongwith Mr. Mumtaz Junior Clerk
for the respondents present. The Tribunal is defunct due to
retirement of Hon'ble Chairman. Therefore the case is adjourned.
To come up for the same on 12.07.2018


READER

12.04.2017

Junior counsel for the appellant present. Mr. Sultan Shah, Assistant alongwith Mr. Muhammad Jan, Government Pleader for the respondents also present. Junior counsel for the appellant requested for adjournment on the ground that senior counsel for the appellant has gone abroad for performing ~~of~~ Umra. Adjourned. To come up for rejoinder and arguments on 28.07.2017 before D.B.


(Ahmad Hassan)
Member


(Muhammad Amin Khan Kundi)
Member

28.07.2017


Clerk to counsel for the appellant and Mr. Ziaullah, Deputy District Attorney alongwith Mr. Khan Zad Gul, SO(Lit) for respondents present. Clerk to counsel for the appellant submitted rejoinder which is placed on file. To come up for and arguments on 20.09.2017 before D.B.



(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

20.09.2017

Appellant present. Learned Assistant Advocate General alongwith Khan Zad Gul, SO Litigation for the respondents present. Appellant seeks adjournment. Adjourned. To come up for arguments on 22.12.2017 before D.B.


Member
(Executive)


Member
(Judicial)

31.05.2016

Appellant with counsel and Mr. Sulta Shah, Assistant alongwith Addl. AG for the respondents present. Requested for adjournment. To come up for written reply/comments on 15.08.2016 before S.B.


Chairman

15.08.2016

Appellant in person and Mr. Sultan Shah, Assistant alongwith Addl. AG for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing on 7.12.2016.


Member

07.12.2016

Latif Rehman, Clerk counsel for the appellant and Assistant AG for the respondents present. Rejoinder not submitted. Clerk counsel for the appellant requested for time to file rejoinder. Request accepted. To come up for rejoinder and arguments on 12.4.17 before D.B.


(ASHFAQUE TAJ)
MEMBER

02.03.2016

None present for appellant. The appeal be relisted for preliminary hearing for 22.3.2016 before S.B.

Chairman

22.03.2016

Appellant in person present. Seeks adjournment as counsel for the appellant is not in attendance. Adjourned for preliminary hearing to 30.3.2016 before S.B.

Chairman

30.03.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was initially appointed as Junior Clerk in the year 1979 in the Establishment Department and was promoted as Assistant (BPS-11) in the year 1987 and while serving he was subjected to departmental inquiry on the allegations of involvement in criminal case and therefore, removed from service vide order dated 17.2.1998 which was set-aside in departmental appeal and appellant reinstated in service with all back benefits vide order dated 1.1.2005. That the appellant was entitled to selection grade (BPS-15) after reinstatement as similarly placed employees including those juniors from appellant was granted the same in the year 2001 to 2004 while appellant ignored. That departmental appeal dated 7.12.2015 was rejected vide order dated 1.1.2016 and hence the instant service appeal on 5.1.2016.

That financial matters are involved as such time limitation would not coming in the way of appellant. That the appellant is entitled to selection grade with retrospective date including benefits of the same till date.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 31.5.2016 before S.B.

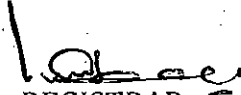



Chairman

Appellant Deposited
Security & Process Fee

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 15/2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	05.01.2016	<p>The appeal of Mr. Sher Hassan presented today by Mr. Malik Muhammad Ajmal Khan Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p>
2	06-1-16	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>28-1-16</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	28.01.2016	<p>Junior to counsel for the appellant present. Senior counsel is indisposed. Seeks adjournment. Adjourned for preliminary hearing to 24.2.2016 before S.B.</p> <p style="text-align: right;"> Chairman</p>
	24.02.2016	<p>Agent of counsel for the appellant present. Seeks adjournment. Adjourned for preliminary hearing to 2.3.2016 before S.B.</p> <p style="text-align: right;"> Member</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR.

Service Appeal No. 15 /2016

Sher HassanAppellant

Versus

Govt. of Khyber Pakhtunkhwa through:

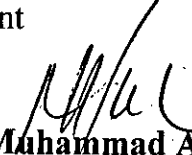
Chief Secretary at Civil Secretariat, Peshawar and others.....Respondents.

I N D E X

S.No.	Description of documents.	Annexure	Pages.
1	Memo of appeal		1-5
2	Copies of impugned orders	A	8-10
3	Copy of order.	B	11
4	Copy of the left over cases.	C	12-17
5	Wakalatnama.		18


Appellant

Through


Malik Muhammad Ajmal Khan
Advocate, Peshawar.

Dated: 05.01.2016

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL

PESHAWAR.

Service Appeal No. 15 /2016

K.W.P. Province
Service Tribunal
Diary No. 12
Dated 05-01-2016

Sher Hassan s/o Mewa Khan (late)

R/o Village and P.O. Dag Kalay, Warsak Road,

Tehsil and District Peshawar.

Presently serving as Superintendent P&D Department

Civil Secretariat, Peshawar.Appellant

Versus

Govt. of Khyber Pakhtunkhwa through:

- 1) Chief Secretary at Civil Secretariat Peshawar.
- 2) Secretary Establishment Department at Civil Secretariat, Peshawar.
- 3) Secretary P&D Department at Civil Secretariat, Peshawar.
- 4) Secretary Finance at Civil Secretariat, Peshawar.
- 5) Secretary Law, at Civil Secretariat,
Peshawar..... Respondents

APPEAL U/S 4 OF THE SERVICES TRIBUNAL ACT, 1974 ALONG WITH ALL THOSE OTHER PROVISIONS OF LAW GOVERNING THE SUBJECT MATTER AGAINST THE IMPUGNED ORDER DATED 07.07.2015 PASSED BY RESPONDENT NO.2 BUT RECEIVED ON 13.07.2015 FOLLOWED BY APPEAL, WHICH TOO WAS DISMISSED BY HIM ON 02.12.2015 INSTEAD OF RESPONDENT NO.1 AND WAS CONVEYED TO THE APPELLANT ON 07.12.2015.



~~Noted~~
~~Registered~~
05/01/2016.

Prayer-in-Appeal :

On acceptance of this appeal, the impugned order dated 07.07.2015 and 03.12.2015 passed by respondent No.2 may very graciously be set aside being illegal, unlawful, without lawful authority, void ab-initio and against the rules governing the subject matter and the appellant be allowed the selection grade BPS-15 with all back benefits being entitled and eligible in all respects.

Respectfully Sheweth;

Short facts giving rise to this appeal are as under:

- 1) That the appellant was initially appointed on 20.08.1979 as a Junior Clerk (BPS-5) now BPS-11 and was for the first time promoted to the post of Senior Clerk then BPS-7 now BPS-14 followed by his second promotion to the post of Assistant then BPS-11 now BPS-16 and lastly to the post of Superintendent BPS-16 now BPS-17.
- 2) That the appellant was removed from his service by respondent No.3 i.e Secretary P&D Department on 17.02.1998 but was reinstated on 01.01.2005 by him instead of respondent No.2, i.e. Secretary Establishment, and this intervening period was considered as leave without pay the appellant preferred an appeal before respondent No.1 which was allowed and the said period was considered as **with pay** followed by application for selection grade BPS-15 and his case was processed and department of finance was approached through request by Establishment Department for creation of a post, which was allowed and the post was created.
- 3) That the meeting of the DPC was called upon which was chaired by Secretary Establishment Department with his two members one from respondent No.4 and other from respondent No.5 who objected upon

Im Hassan

on the removal of appellant and his reinstatement by respondent No.3 being not competent authority and remitted the case back to remove the illegalities/ irregularities.

- 4) That in compliance with the case was processed again for removal of such objections by Secretary Establishment i.e. respondent No.2 and the same was done after removing the deficiencies/ illegalities and the case was sent to Secretary Finance, i.e. Respondent No.4, for the renewal of the created post being expired, which was done and the meeting of the DPC was called upon again headed by Special Secretary Establishment along with its members and the case was put up for approval of the competent authority i.e. respondent No.2 but he regretted it on 07.07.2015 with the remarks "that since the policy has been discontinued from 27.10.2001 and the said impugned order was conveyed to the appellant on 13.07.2015.
- 5) That the appellant being aggrieved preferred an appeal before respondent No.1 against the impugned order dated 07.07.2015, which was sent to respondent No.2 for his comments under the rules and report in the shape of his opinion but instead of any opinion he decided it on 03.12.2015 by himself again like his earlier order and conveyed the said order to the present appellant on 07.12.2012. Hence the instant appeal on the following amongst other grounds. (Copies of impugned orders are attached as Annexure "A").

GROUND:

- A) That the appellant has not been treated in accordance with law, thus, the impugned orders and conduct of the respondents and the subsequent arbitrary decisions are contrary to Articles 4 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973.
- B) That the impugned conduct of respondents is based on malafide in law and in facts.

Mr. Hassan

- C) That when the initial removal order of the appellant from service dated 17.02.1998 was declared as illegal by the respondents themselves being passed by incompetent authority followed by his reinstatement order dated 01.01.2005 by the said authority then what to say the intervening period and the grant or refusal of the selection grade with its all back benefits?
- D) That although as per version of the respondents the policy was discontinued from 27.10.2001 but in the year 2003 the appellants seniors and juniors were allowed the selection grade from the back date and for the perusal of this Hon'ble forum the copy of the same is attached as Annexure "B").
- E) That like above in the year 2005 as per page 12 **under the heading of left over cases** all those cases were processed and approved by respondent No.1 from 01.12.2001 to 31.12.2004 then why the appellant has been refused. Although he is entitled and eligible in all respects and the actions and inactions on the part of respondents are totally illegal, unlawful, without lawful authority, based on favoritism, nepotism and the result of malafide, hence not tenable at all and may be corrected by this competent forum having the jurisdiction . (Copy of the left over cases are attached as Annexure "C").
- F) That when the appellant preferred appeal before the respondent No.1 against the impugned decision of respondent No.2 under the rules particularly rule No.7 then under the said rule he was bound to form his opinion along with his comments in black and white and to send the same to respondent No.1 being the appellate authority for disposal of the appellant's appeal but astonishingly he did not form his opinion in the light of rule-7 nor given any comments and decided the appellant's case again like his earlier order dated 07.07.2015 vide impugned order dated 03.12.2015, which was conveyed to the appellant on 07.12.2015.

Sanjay Hassan

- G) That the members of cases were processed and approved by the respondents themselves like the case of staff of revenue department who were granted selection grade on the advise of respondent No.2 i.e. Secretary Establishment in the year 2008 although on this score alone they have refused the appellant the selection grade that the policy has been discontinued since 27.10.2001 and what to say about their malafide, favoritism and nepotism?
- H) That any other ground which has not been specifically taken may also be allowed to be argued and agitated with the kind permission of this Hon'ble Tribunal at the time of arguments.

It view of above facts, it is, therefore, humbly prayed that on acceptance of this appeal, the impugned order dated 07.07.2015 and 03.12.2015 both passed by respondent No.2 may very graciously be set aside being illegal, unlawful, without lawful authority, void ab-initio and against the rules governing the subject matter and the appellant be allowed the selection grade BPS-15 with its all back benefits being eligible and entitled in all respects.



Appellant

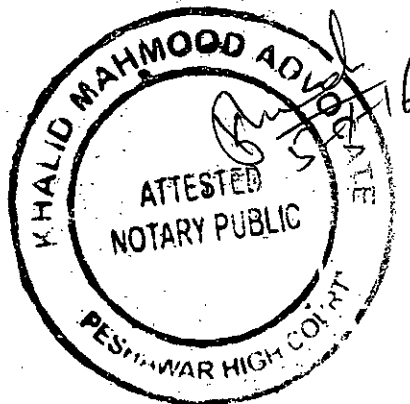
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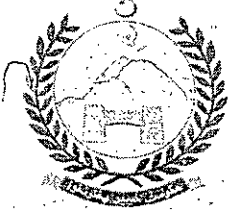
Malik Muhammad Ajmal Khan
Advocate, Peshawar.

AFFIDAVIT

I, do hereby affirm and declare on oath that the contents of the appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



Deponent



Amir A
(6)
GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(Establishment Wing)

No. SOE.IV (E&AD) 10(207)2010
Dated Peshawar, the 07.07.2015

To

Section Officer (Estt),
Planning & Development Department.

Subject:- NOTIFICATION.

I am directed to refer to your letter No. SO(E)P&D/2-146/2014/Vol-III dated 30.09.2015 on the subject and to state that the case of Selection Grade of Mr. Sher Hassan, Superintendent has been processed and regretted by competent authority.

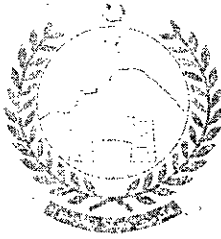
Wardah Latif
7/7/2015
(Wardah Latif)
SECTION OFFICER (E-IV)

Amir (e)

7/7/2015

Certified to be
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Mu C



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(Establishment Wing)

Annexure A

7

No.SOE-IV (E&AD) 10(207)/2010.
Dated Peshawar the 03.12.2015.

To

7.

Mr. Sher Hassan, Superintendent (BS-17),
Planning & Development Department.

Subject: APPEAL AGAINST THE ORDER OF ESTABLISHMENT
DEPARTMENT ORDER NO. SOE-IV (E&AD)10(207)/2010 DATED 7TH
JULY, 2015 FOR SELECTION GRADE.

I am directed to refer to your appeal dated 20.10.2015 on the subject
and to state that your request/ appeal has been processed and regretted by the
competent authority.

Wardah Latif
3/12/2015

(WARDAH LATIF)
SECTION OFFICER (E.IV)

Certified to be
True Copy

M/ae



GOVERNMENT OF KHYBER PAKHTUNKHWA
PLANNING & DEVELOPMENT DEPARTMENT

8

No. SO(E)P&D/2-146/2015
Dated Peshawar, July 13th, 2015.

To

Mr. Sher Hassan
(BS-17 Superintendent)
Foreign Aid Section,
P&D Department.

Subject: **NOTIFICATION**

Kindly- refer to your appeal dated 17.09.2015 on the subject noted above and to enclose a copy of letter No. SOE-IV(E&AD)10(207)2010 dated 07.07.2015, received from Establishment Department, which is self explanatory, for information.

Encls:- As above

(FAHID ULLAH KHAN)
Section Officer (Estt.)

Certified
True COPY

[Handwritten signature]

To

Received
20/10/15

(9)

The Chief Secretary
Government of Khyber Pakhtunkhwa
Civil Secretariat, Peshawar.

Subject: Appeal against the Order of Establishment Department Order No. SOE-IV (E&AD)10(207)/2010 dated 7th July, 2015 for Selection Grade

Dear Sir

Respectfully stated that I have submitted an appeal on the subject order to Honorable Chief Secretary, Khyber Pakhtunkhwa which was regretted by Establishment Department vide letter No. SOE-IV (E&AD)10(207)/2010 dated 9th October, 2015.

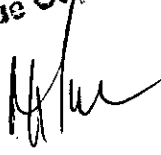
It is important to mention that in 2005, I requested for awarding Selection Grade but the case was denied afterwards in 2013. I submitted another application for Selection Grade (BPS-15) which was examined by Establishment Department and forwarded to Finance Department for creation of supernumerary post and after completions of all codal formalities the case was again processed by the Establishment Department and cleared by the Departmental Promotion Committee (DPC) which was filed by Secretary Establishment Department on grounds that "it is difficult to understand as how an official be granted Selection Grade retrospectively in the 2015 in the absence of policy, discontinued since 27th October, 2001". While in the same nature cases the Establishment Department has allowed/awarded the Selection Grade in 2003, 2005 and 2008 at F/A, F/B and F/C, respectively. It is also to mention here that the circumstances leading to all this was beyond the control of the undersigned.

In view of above, it is requested to kindly direct the Establishment Department to put up the case for the kind consideration of **the Honorable Chief Secretary, Khyber Pakhtunkhwa, being in capacity of appellate authority** in light of the decisions taken in other cases of similar nature referred above in order to avoid legal complication in future and obliged.

Yours faithfully,


Sher Hassan
Superintendent
P&D Department

Dated: 20th October, 2015


Certified True Copy



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

NO. BO-XIII/FD/1-12/2014-15
Dated Peshawar the 15-04-2015
Addl. Secretary (Estab)
Establishment & Admn. Dept.
Diary No. 1074
Dated: 20-4-15

10

SECTION OFFICER (E/M)
Diary No. 22-4-15
24

453
20-4-15

- To
- The Secretary to Govt: of Khyber Pakhtunkhwa, Planning & Development Department.
 - The Secretary to Govt of Khyber Pakhtunkhwa, Establishment Department.

3271
16-04-15

Subject: - SELECTION GRADE AS PER SENIORITY

Dear Sir,

I am directed to refer to Establishment Department letter No. SOE.IV(E&AD)10(207)/2010 dated 02-03-2015 on the subject noted above and to state that Finance Department agrees to the creation of a supernumerary post (BPS-15) in the Planning & Development Department w.e.f. 18-05-2000 to 16-04-2010 to enable Mr. Sher Hassan to draw his salary for the period mentioned above, subject to observance of all codal formalities.

2. The expenditure involved is chargeable under Grant No. NC21006 (004) function classification 01-General Public Service 015-General Services 0152-Planning Services 015201- Planning PR-4058 Planning & Development Department (Secretariat Level) and will be met out within the sanction budget grant during the current financial year 2014-15.

3. The expenditure involved as follow may be met out of the existing budget which will be adjusted in Revised Estimate 2014-15.

Basic Pay	126,920/-
H.R.Allowance	54,030/-
Compensatory Allowance	37,480/-
Special Addl: Allowance	2,510/-
Special Relief Allowance	6,290/-
Adhoc Allowance	3,780/-

Total: 231,010/-

Certified to be true copy

Yours faithfully,
(MUSHAMMAD AYAZ)
BUDGET OFFICER-XIII

Handwritten signatures and initials, including 'SBE' and '16/4'.

Endst: of even No. & Date.

Copy forwarded to the:-
1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. PS to Finance Secretary.
3. Master File.

SECTION OFFICER
BUDGET OFFICER-XIII



GOVERNMENT OF NWFP
ESTABLISHMENT DEPARTMENT
(ESTABLISHMENT WING)

Annexure B

(11)

Dated Peshawar, the 11th September, 2003

ORDER

No. SOE.IV (E&AD) 1-7/2003.-

On the recommendations of the Departmental Promotion Committee, the following Assistants (BPS-11) of Civil Secretariat, NWFP are hereby allowed antedation of their Selection Grade (BPS. 15) with effect from the dates noted against each: -

S.No	Name & Department	Department	Selection Grade already granted	Selection grade Antedated w.e.f
1.	Mr. Usman Jan	E&AD	08.09.1998	02.06.1998
2.	Mr. Naeemullah	NAB (F)	28.02.1999	08.09.1998
3.	Mr. Muhammad Shoaib	School & Literacy	01.07.1999	27.02.1999
4.	Mr. Jan Said	E&AD	01.07.1999	28.02.1999
5.	Mr. Roz Amin	E&AD	01.09.1999	01.06.1999
6.	Syed Farooq Shah	Industries	01.09.1999	01.07.1999
7.	Mr. Bostan	Finance	01.10.1999	01.07.1999
8.	Mr. Noor Ali Shah	Higher Education	31.10.1999	01.09.1999
9.	Mr. Shahzad Khan	Law	16.12.1999	01.09.1999
10.	Mr. Amir Usman	Chief Minister's Sectt. NWFP	18.05.2000	01.10.1999
11.	Mr. Dilwar Shah	Health	18.05.2000	31.10.1999
12.	Mr. Sanam Khar	E&AD	18.05.2000	16.12.1999
13.	Mr. Alamgir	Home & T.As	03.07.2000	18.05.2000
14.	Mr. Nasrullah	Chief Minister's Sectt. NWFP	25.08.2000	18.05.2000
15.	Mr. Mir Bashir Khan	Environment	29.04.2001	18.05.2000
16.	Mr. Muhammad Saeed	Finance	29.04.2001	03.07.2000
17.	Mr. Shah Muhammad	Finance	29.04.2001	25.08.2000
18.	Mr. Muhammad Saleem Shah	Finance	16.06.2001	29.04.2001

SECRETARY TO GOVT OF NWFP
ESTABLISHMENT DEPARTMENT

Endst. No. & date even

Copy forwarded to: -

1. The Accountant General, NWFP, Peshawar.
2. The Section Officer (Admn) Administration Department.
3. The Section Officer (Admn) Chief Minister's Sectt. NWFP.
4. The Section Officer (Admn) Finance Department.
5. The Section Officer (Secret) Establishment Department.
6. The Section Officer (General) Higher Education Department.
7. The Section Officer (General) School & Literacy Department.
8. The Section Officer (General) Environment Department.
9. The Section Officer (General) Health Department.
10. The Section Officer (General) Home & T.As Department.
11. The Section Officer (Admn) Industries Department.
12. The Section Officer (General) Law Department.
13. The Assistant Director (Admn) NAB (F).
14. The Officials concerned.

Certified
True C/Py

P/A

Annexure C
140

(12)

Government of N.-W.F.P.
Establishment Department

PUC at Page no (34) P-38

From:- DCO D. I. Khan dt:- 13-1-05

No. 158 / DCO (ESTH.) / 3 / II / 04

SO (PSB)

[Signature]
31-1-05

Spl. Secretary (Regulations)
Establishment & Admn. Deptt.
Diary No. 234

Dated: 31-1-05
1-2-05

SUBJECT:- PROCESSING OF LEFT OVER CASES OF MOVEOVER/SELECTION GRADE

On recommendation of the Secretary Establishment Department the Chief Secretary extended date for processing of left over cases of Moveover/Selection Grade of the employee (who were due for it on or before 1.12.2001) upto 31.12.2004.

Now the DCO D.I.Khan has intimated that a large number of cases of employee which were incomplete or under process before 31.12.2004 have been received. The cut off date has been expired on 31.12.2004.

This department has been requested to guide him whether these cases may be process or otherwise.

Submitted please.

[Signature]
31/1/05
SO (PSB)

SS (R)

DCO DIKhan may be asked to fix responsibility for late submission of move over / selection grade cases. Date may also be extended only in case of DCO DIK

certified to be True Copy

Chief Secy

The pending cases be processed as it has been is noty ch...
[Signature]

Ps / Secy (E) E & AD
Diary No. 260
Dated: 02/2/05

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51

10/5

251
O/A

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(13)

GOVERNMENT OF NWFP
REVENUE & ESTATE DEPARTMENT

Peshawar dated the 17/09/2008

ORDER

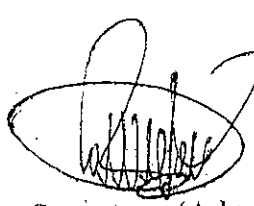
No. /Admn:II/105/SA/Jehangir. On the recommendation of the Department Promotion / Selection Committee, Mr. Jehangir Khan, Senior Clerk, of Fix-Settlement wing of the defunct Deputy Commissioner's Office Kohat is hereby granted Selection Grade, from BPS - 7 to BPS - 9 with effect from 23.05.1997.

Sd/-
Secretary
Board of Revenue NWFP

No. 22985-99/Admn:II/105/SA/Jehangir.

Copy forwarded to the:-

1. The District Coordination Officer, Kohat.
2. The Accountant General, NWFP Peshawar
3. The District Accounts Officer, Kohat
- ✓ 4. The Section Officer (P&B), Establishment Department NWFP Peshawar.
5. The Section Officer (F&R) Finance Department NWFP.
6. Official concerned.


Assistant Secretary (Admn)
Board of Revenue NWFP

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True Copy



14

Government Servants Appeal Rules

Statutory provision

Section 22 of the NWFP Civil Servants Act, 1973

Right of Appeal or Representation:- (1) Where a right to prefer an appeal or apply for review in respect of any order relating to the terms and conditions of his service is provided to a civil servant under any rules applicable to him, such appeal or application shall, except as may be otherwise prescribed, be made within thirty days of the date of such order.

(2) Where no provision for appeal or review exists under the rules in respect of any order or class of orders, a civil servant aggrieved by any such order may, within thirty days of the communication to him of such order, make a representation against it to the authority next above the authority which made the order:

Provided that no representation shall lie on matters relating to the determination of fitness of a person to hold a particular post or to be promoted to a higher post or grade.

THE NORTH WEST FRONTIER PROVINCE CIVIL SERVANTS ¹³⁰ (APPEAL) RULES, 1986.

1. **Short title, commencement and application:-** (1) These Rules may be called the North-West Frontier Province Civil Servants (Appeal) Rules, 1986.

(2) They shall come into force at once and shall apply to every person who is a member of the civil service of the Province or is the holder of a civil post in connection with the affairs of the Province and shall also apply to or in relation to a person in temporary employment in the civil service in connection with the affairs of the Province.

2. **Definitions:-** In these rules, unless there is anything repugnant in the subject or context;

- (a) "Appellate Authority" means the officer or authority next above the competent authority;
- (b) "Competent Authority" means the authority or authorised officer, as the case may be, as defined in the North-West Frontier Province Government Servants (Efficiency and Discipline) Rules, 1973, or the authority competent to appoint a civil servant under the rules applicable to him; and
- (c) "Penalty" means any of the penalties specified in rule 4 of the North-West Frontier Province Government Servants (Efficiency and Discipline) Rules, 1973.

¹³⁰ Published in the NWFP Government Gazette, Extraordinary, dated 2.6.1986 at Pages 1290-93

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(13)

3. **Right of Appeal:-**(1) A civil servant aggrieved by an order passed or penalty imposed by the competent authority relating to the terms and conditions of service may, within thirty days from the date of communication of the order to him, prefer an appeal to the appellate authority:

Provided that where the order is made by the Government, there shall be no appeal but the civil servant may submit a review petition:

¹³¹Provided further that the appellate or the reviewing authority, as the case may be, may condone the delay in preferring the appeal or the review petition, if it is satisfied that the delay was for the reasons beyond the control of the appellant or that the earlier appeal or review petition was not addressed to the correct authority.

Explanation:-For the purposes of the first proviso, the expression "appeal", where the context so requires, shall mean the "review petition" as well.

(2) Where the order of the competent authority affects more than one civil servant, every affected civil servant shall prefer the appeal separately.

(3) Where the aggrieved civil servant has died, the appeal may be filed, or if already filed by such civil servant before his death, may be pursued, by his legal heir or heirs; provided that the benefit likely to accrue on the acceptance of such appeal is admissible to such legal heir or heirs under any rules for the time being applicable to civil servants.

4. **Form of Memorandum:-**(1) Every memorandum of appeal shall-

- (a) contain full name and address, official designation and place of posting of the appellant;
- (b) state in brief the facts leading to the appeal;
- (c) be accompanied by a certified copy of the order appealed against and copies of all other documents on which the appellant wishes to rely.

Explanation:-Where an aggrieved civil servant has died, his legal heir or heirs, while filing the appeal or applying for review, as the case may be, shall also add documents in support of his or their relationship with the deceased civil servant.

(2) The appeal shall be submitted through the Head of the office in which the appellant is posted at the time of filing the appeal, or in the case of a deceased civil servant, where he was last posted before his death. The Head of the office shall forward the appeal to the competent authority, if he himself is not such authority and the competent authority shall after adding his own comments, if any, transmit the appeal to the appellate authority for necessary orders.

(3) No appeal shall be entertained if it contains abusive, disrespectful or improper language.

¹³¹ The second proviso of sub-rule(1) of rule 3 substituted by Notification No.SORII(S&GAD)3(4)/78/Vol.II dated 3.12.1989.

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(16)

5. **Action by the appellate authority:-** (1) The appellate authority, after making such further inquiry or calling for such information or record or giving the appellant an opportunity of being heard, as it may consider necessary, shall determine-

- (a) whether the facts on which the order appealed against was based have been established;
- (b) whether the facts established afford sufficient ground for taking action ; and
- (c) Whether the penalty is excessive, adequate or inadequate and after such determination, shall confirm, set aside or pass such order as it thinks proper; provided that no order increasing the penalty shall be passed without giving the appellant an opportunity of showing cause as to why such penalty should not be increased.

(2) The competent authority against whose order an appeal is preferred under these rules shall give effect to any order made by the appellate authority and shall cause the order so passed to be communicated to the appellant without undue delay.

6. **Withholding of appeal in certain cases:-** An appeal be withheld by the competent authority if-

- (a) It is an appeal in which no appeal lies under these rules;
or
- (b) it does not comply with the requirements of rule 4;
or
- (c) it is not preferred within the time limit specified in sub-rule(1) of Rule 3 and no reason is given for the delay;
or
- (d) it is addressed to an authority or officer to whom no appeal lies under these rules;

Provided that in every case in which an appeal is withheld, the appellant shall be informed of the fact and reasons for it.

Provided further that an appeal withheld for failure to comply with the requirements of Rule 4 or clause(d) of this sub-rule may be resubmitted within thirty days of the date on which the appellant is informed of the withholding of the appeal and, if resubmitted properly in accordance with the requirements of these rules, shall be deemed to be an appeal under Rule 3 and shall be dealt with in accordance with the provisions of these rules.

- (2) No appeal shall lie against the withholding of an appeal under this rule.

7. **Disposal of appeal:-**(1) Every appeal which is not withheld under these rules shall be forwarded to the appellate authority alongwith the comments by the competent authority from whose order the appeal is preferred.

(2) A list of appeals withheld under Rule 6, with reasons for withholding them, shall be forwarded quarterly by the withholding authority to the appellate authority.

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(3) The appellate authority may call for any appeal admissible under these rules which has been withheld by the competent authority and may pass such order thereon as it considers fit.

8. **Savings:-**Nothing in these rules shall operate to deprive any person of any right of appeal which he would have if these rules had not been made, in respect of any orders passed before they came into force.

9. **Pending appeals:-**All appeals pending immediately before the coming into force of these rules shall be deemed to be appeals under these rules.

10. **Repeal:-**The North-West Frontier Province Civil Services (Punishment and Appeal) Rules, 1943, are hereby repealed.

**Determination of the 'Appellate Authority'
in terms of the Civil Servants(Appeal) Rules, 1977.**

It has been observed that Ministries/Divisions/Departments do not generally follow the prescribed procedure regarding submission of appeals/ petitions to the Establishment Division, for obtaining orders of the Prime Minister or the President, as the case may be in terms of Civil Servants (Appeal) Rules, 1977 read with Rule 15-A of Rules of Business, 1975. In number of cases the appeals/petitions processed by the respective Ministries/Divisions etc. have been found to have not been addressed to the proper appellate authority. In such a case, to avoid delay, the receiving authority, should withhold the appeal and simultaneously inform the appellant to re-submit the same duly addressed to the proper appellate Authority to be indicated as required under Rule 7 of the said rules. The case relating to an appeal should invariably be submitted to the Establishment Division in the form of a Summary titled as "Summary for the Prime Minister" seeking orders of the President where the President is an Appellate Authority alongwith the appeal (in original) with parawise comments to be given in juxta-position in the form of a statement as indicated overleaf.

2. In this connection, it may be pointed out that an appeal from a civil servant in BPS-17 and above against imposition of any minor penalty, as prescribed in Rule 4(i)(b) of Government Servants(E&D) Rules, 1973, by an authorised Officer or a major penalty by the authority i.e. the Prime Minister under Rule 4(1)(a) shall lie to the President, in his capacity as the appellate authority, and shall be processed in accordance with Rule 15-A of the Rules of Business, 1973.

3. All Ministries/Divisions/Provincial Governments are requested to bring the said position to the notice of all concerned for their information and guidance.

(Authority: Establishment Division O.M No. 5/4/94-Rev/D.3, dated 17.3.1997
circulated by NWFP Government letter No. SORII(S&GAD)5(27)79, dated 9.5.1997)

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[Handwritten signature]

WAKALATNAMA

(Power of Attorney)

18

BEFORE THE KPK SERVICES TRIBUNAL PESHAWAR

S.A. No. _____/2016

Sher Hassan..... (Petitioner)
(Plaintiff)
(Applicant)
(Appellant)
(Complainant)
(Decree Holder)

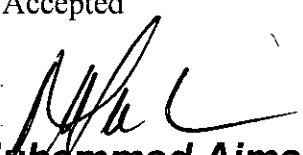
VERSUS

Govt. of KPK and others..... (Respondents)
Defendant)
(Accused)
(Judgment Debtor)

I, the undersigned (respondents) in the above noted ~~case~~ do hereby appoint and constitute **Malik Muhammad Ajmal Khan & Akhunzada Asad Iqbal** Advocates, to appear, plead, act, compromise, withdraw or refer to arbitration for me/ us as my/ our Counsels in the above noted matter, without any liability for that default and wit the authority to engage/ appoint any other Advocate/ Counsel in my/ our matter.

Attested & Accepted

CLIENTS


Malik Muhammad Ajmal Khan

Advocate High Court
Off: 10/C, Haroon Mansion
Khyber Bazar Peshawar.
Cell: 0301-8866939



&


Akhunzada Asad Iqbal

Advocate High Court
Cell: 0345-9499710



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 15/2016

Mr. Sher Hassan S/O Mewa Khan (late) R/O Village and
P.O Dag Kalay, Warsak Road, Tehsil & District
Peshawar.
Presently serving as Superintendent P&D Department
Civil Secretariat,
Peshawar.....

Appellant


VERSUS

1. Chief Secretary Khyber Pakhtunkhwa
 2. Secretary to Govt. of Khyber Pakhtunkhwa,
Establishment Department, Civil Secretariat
Peshawar.
 3. Secretary to Govt. of Khyber Pakhtunkhwa, P&D
Department, Civil Secretariat Peshawar.....
 4. Secretary to Govt. of Khyber Pakhtunkhwa, Finance
Department, Civil Secretariat Peshawar.....
 5. Secretary to Govt. of Khyber Pakhtunkhwa, Law
Department, Civil Secretariat Peshawar.....
- Respondents

Parawise comments for/on behalf of the Respondents No. 1 to 5.

Respectfully Sheweth,

1. The appellant has got no cause of action and appeal is also time barred.
2. The appellant is estopped by his own conduct.
3. The appeal is bad for mis-joinder and non-joinder of necessary parties.
4. The appellant has not come to this Hon'ble Tribunal with clean hands.
5. The appellant has suppressed and twisted the facts with malafide intention for his own benefit.
6. The appeal is badly time barred.


Section Officer (Lit)
Planning & Dev. Deptt:
K.P.K.

ON FACTS

1. **Correct** to ^{the} extent that the appellant was appointed as Junior Clerk on 20.08.1979, then gradually promoted to the post of Senior Clerk, Assistant and lastly to Superintendent (BS-17)
2. Pertains to record.
3. **Incorrect** no representative of respondent 5 (Law Department) had attended the meeting.
4. **Correct:** to the extent that DPC meeting was held on 06.03.2014 to determine suitability for grant of Selection Grade to the appellant. It was noticed that removal and reinstatement orders of the appellant had not been issued by the competent authority, therefore, the illegality was removed and the orders dated 11.12.1999 and 01.01.2005 were superceded and his absence period was regularized w.e.f 17.02.1998 to 01.01.2005 (the period between removal and reinstatement). The

(93)

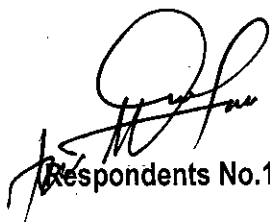
matter of grant of Selection Grade was again placed before the DPC. Minutes of the said meeting was submitted for approval of the competent authority, which was regretted by the competent authority with the remarks "that it is difficult to understand as how can an official be granted Selection Grade retrospectively in 2015 in the absence of policy, discontinued since 27.10.2001.

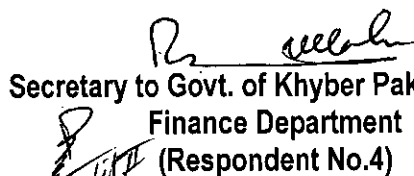
5. Incorrect the appeal of the appellant was treated according to rules.

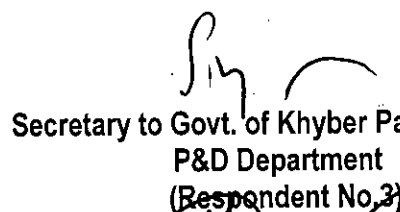
GROUNDS

- a. **Incorrect:** The case of the appellant was processed as per law and no violation has been made therein.
- b. **Incorrect:** The appellant was treated as per law without any malifide intention.
- c. **Incorrect:** Though the intervening period was treated as period spent on duty, in light of FR-54(a), but the grant of Selection Grade was refused by the competent authority as how it could be granted in 2015 retrospectively, when it was discontinued in 2001.
- d. **Incorrect:** Senior and Junior of the appellant were granted Selection Grade on due time.
- e. **Incorrect:** The appellant was required to submit his case in 2005, soon after his reinstatement in service, when the Govt. had issued instructions to clear all leftover cases of Selection Grade within 02 months which was not done (Annex-I).
- f. **Incorrect** Appeal of the appellant was treated as per rule.
- g. **Incorrect:** The appellant was required to have submitted his case at that time in 2005 when the Govt. issued instructions to clear all leftover cases within 02 months.

It is, therefore, respectfully prayed that the appeal of the appellant may be dismissed with costs based on presumption and being illegal and malafide and also badly time barred.


Respondents No.1&2)


Secretary to Govt. of Khyber Pakhtunkhwa
Finance Department
(Respondent No.4)


Secretary to Govt. of Khyber Pakhtunkhwa
P&D Department
(Respondent No.3)


Secretary to Govt. of Khyber Pakhtunkhwa
Law Department
(Respondent No.5)

IMMEDIATE

Annex-I

GOVERNMENT OF N.W.F.P.,
ESTABLISHMENT DEPARTMENT

NO.SO (PSB) ED/1-23/2002
Dated Peshawar, the 11.3.2005

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.
6. The Director Information, NWFP.

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 29.9.2004 on the subject noted above and to say that most of the Administrative Department have cleared pending cases of Selection Grade/Moveover of the officers/officials who were due for it on or before 1.12.2001. However some of the cases are still pending for obvious reasons.

2. The competent authority has therefore been pleased to direct that the left over cases of Selection Grade/Moveover of Officers/Officials who were due for it on or before 1.12.2001 may be processed and placed before the Provincial Selection Board/Departmental Promotion Committee (as the case may be) within a period of two months positively.

Yours faithfully


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

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

Dated Peshawar, the 11.3.2005

A copy is forwarded to:-

1. The PS to Secretary Establishment Department Peshawar.
2. The PS to Secretary Administration Department Peshawar.
3. The PS to Secretary Finance Department Peshawar.
4. The PS to Special Secretary (Regulation) Establishment Department Peshawar.
5. PAs to all Additional Secretaries/Deputy Secretaries in the Establishment and Administration Peshawar.
6. The Deputy Secretary (Regulation) Finance Department, NWFP.
7. All Section Officers in the Establishment and Administration Department Peshawar.


SECTION OFFICER (PSB)

b (4)

(16)

SO. (Lit) Estab DOPH

(1) / (3)

SO. (Lit)

BEFORE THE SERVICE TRIBUNAL PESHAWAR

Re-Joinder

in

Service Appeal No 15/2016

Sher HassanAppellant

Versus

Chief Secretary & others.....Respondents

**RE-JOINDER TO THE PARAWISE
COMMENTS FOR AND ON THE BEHALF
OF RESPONDENTS NO. 1 TO 5**

PRELIMINARY OBJECTIONS:

1. Incorrect that the appellant his good cause of action arise within the territorial limit of this Hon, able court and is well within time.
2. Incorrect that the appellant is not been estopped by his own conduct or stance.
3. Incorrect that the Appeal of appellant is not bad for misjoinder or non-joinder of the necessary parties.
4. Incorrect that the appellant has come to this Hon'ble court with quite clean hands. In fact, the Appellant come to this august tribunal to get justice and his lawful rights which is allowed to the appellant by the Constitution of the Islamic Republic of Pakistan, 1973.
5. Incorrect the appellant had not suppressed or twisted the facts with malafide intention for his own benefit in

this regard the petitioner has already given an affidavit before this Hon'ble tribunal.

- 6. Incorrect that the present appeal is not barred by any law of the country so in this scenario the appeal is within time. Moreover, there is no time limit for a void order like the present one and to be challenged anytime.

ON FACTS:

- 1. That as mentioned in memo of appeal.
- 2. That infact, this is the para which should have been replied within detail and when it has not been replied it should be considered as correct on behalf of the respondents.
- 3. Incorrect the representative of law (respondent No 5) has attended the DPC meeting which is further supported in para-4 of the parawise comments and specifically when para-1 & para-4 have been consider as correct then what is left except to allowed the appeal of the present appellant.
- 4. As admitted correct therefore needs no rejoinder.
- 5. Incorrect and hence denied, the appeal of the appellant was not treated according to the rules governing the subject matter moreover, the reply to the said para is evasive in nature and in contradiction with para-1 and para-4 of the parawise comments.

GROUND:

- A. Incorrect, hence denied the appellant has been **dealt** with in accordance with law nor equal protection of law has been extended to him. The order/subsequent decision as well as the conduct of the respondents doesn't fall within the

umbrella of Articles 4 & 25 of the constitution of the Islamic republic of Pakistan 1973.

- B. Incorrect hence denied, the appellant has not been treated in according with law/ Rules & facts and violated all Codal formalities by the respondents with malafide intention, which is reflecting from the surface of the whole record.
- C. The once the respondents admitted that the intervening period of appellant was consider spent on duty with all back benefits and declared illegal by the respondents themselves being passed by incompetent authority. Then why the appellant was not promoted when the post was created twice time by the finance department and the appeal was regretted time and again that the policy has been discontinued since 2001. Moreover after the discontinuation of the policy dozens of employees were granted the selection grade retrospectively.
- D. Incorrect the seniors and juniors of the appellant were granted selection grade in 2003, 2005, and 2008 and categorically refused when the appellant is fit and eligible for selection grade,
- E. Incorrect hence denied. The appellant left no stone unturn from his 1st grievance and thereafter, which is admitted by the respondents in para-1 and para-4 of their parawize comments further supported by an appeal along with covering letter. *(Copies are attached as Annexure "A").
- F. Incorrect hence denied, the appeal of the appellant is not been treated in accordance with law nor he has been treated equally like those who were given the same after discontinuation of the policy.

④


G. Incorrect hence denied, the detail has already been given in the relevant paras of the appeal, which is not been properly replied with by the respondents.

It is therefore most humbly prayed that on acceptance of the instant Re-Joinder to the Para wise comments filed for an on behalf of respondents No. 1 to 5 the titled appeal may very graciously be allowed and be accepted as per prayer along with any other relief which has not specifically been asked for and deems fit in the circumstances of the case may be awarded to the petitioner against the respondents.

Dated: 28/07/2017

Appellant

Through


Malik Muhammad Ajmal Khan

Advocate, Peshawar

A
Annexure (5)

GOVERNMENT OF N.W.F.P.,
PLANNING & DEVELOPMENT DEPARTMENT.

NO. SO(E)/P&D/087/2-146/2005/Vol-II,
DATED PESHAWAR, THE 25-03-2005.

To

The Secretary to Govt:of NWFP,
Establishment Department,
P E S H A W A R.

SUBJECT:- RESTORATION OF SENIORITY/SELECTION GRADE.

Dear Sir, I am directed to invite your kind attention to the subject cited above and to enclose herewith an application of Mr. Sher Hassan, Assistant Planning & Development Department which is self explanatory for favourable consideration, please.

Encl:As above.


SECTION OFFICER (ESTT.)
P&D DEPARTMENT, PESHAWAR:
25/3/05

etc
N/A

6

To

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

THROUGH PROPER CHANNEL

SUBJECT: RESTORATION OF SENIORITY/SELECTION GRADE.

It is stated that I have submitted an application on 17-01-2005 on the subject noted above for which the Establishment Department has very kindly accepted my appeal and restored my seniority, placing my name at Sr. No. 95 after the name of Mr. Nasrullah Assistant vide Establishment Department letter No. SOE(IV)(E&AD)2-137/87, dated 18.03.05.

Furthermore, the Establishment Department had allowed the Selection Grade (BPS-15) to my senior and junior vide Establishment Department order No. SOE(IV)(E&AD)1-7/2003, dated 11-09-03 w.e. from 13.05.2000.

It is therefore, requested to kindly allow me also Selection Grade (BPS-15) as per my seniority/entitlement.

Thanks.

Yours faithfully,

Sher Hassan
(Sher Hassan) 17/03/05
Assistant,
P&D Department.

17/3/05
SR
18/3/05

etc
14/4