S.A No. 1113/14
Abdul Hameed VS Govt.

12.05.2016

Counsel for the appellant and Addl. AG alongwith Saleem Shah, Supdt. for the respondents present. Rejoinder submitted.

During the course of arguments learned counsel for the appellant produced copy of judgment of this Tribunal dated 02.03.2016 passed in Service Appeal No. 1330/2010 and other similar appeals. The appeal in hand is also disposed of in the terms stated in the afore-stated judgment produced to-day in the court. Parties are left to bear their own costs. File be consigned to the record room.

This order shall dispose of instant appeal No. 1113/2014, Abdul Hameed, as well as similar appeals No. 1075/2015 Syed Azmat Ali Shah, No. 1076/2015 Inamul Haq and No. 1083/2015 Imtiaz Ali Khan Versus the Secretary, Government of Khyber Pakhtunkhwa C&W Department, Peshawar etc. in the same manner.

Member

Chairman

12.05.16

ANNOUNCED

12.05.2016

8	01.10.2015	Agent of counsel for the appellant and Mr. Saleem Shah, Supdt. alongwith Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 3.12.2015 before S.B. Chairman
	03.12.2015	Counsel for the appellant, M/S Saleem Shah, Supdt. and Irshad Muhammad, SO alongwith Addl: A.G for respondents present. Written reply not submitted. Requested for further adjournment. Last opportunity granted. To come up for written reply/comments on 22.2.2016 before S.B. Chairman
	22.02.2016	Counsel for the appellant and Mr. Saleem Shah, Supdt. alongwith Assistant AG for respondents present. Para-wise comments submitted. The appeal is assigned to D.B for rejoinder and final hearing for 12.5.2016. Chairman

Appeal No. 1113/14
Mr: Abdul Hameed.

5. 08.04.2015 Counsel for the appellant and Asstt: AG for the respondents present. Notices to the respondents could not be issued due to non-deposit of security and process fee. The learned counsel for the appellant is directed to deposit security and process fee within 7 days, thereafter notices be issued to the respondents for submission of written reply/comments. To come up for further proceedings on 22.05.2015.

Member

6. 22.05.2015 None present for the appellant. Asstt: AG for the respondents present. Notices be issued to the appellant/counsel for the appellant for preliminary hearing on 29.06.2015 before S.B.

Member

7 29.06.2015 Appellant with counsel present. Record perused. According to order sheet No. 4 dated 18.2.2015 appeal has already been admitted to regular hearing. Appellant has not deposited the security. The same be deposited within a week, where-after notices be issued to the respondents for written reply for 1.10.2015 before S.B.

Appellant Deposited
Security & Process Fee

Chairman

3

Appeal No. 1113/2014
Mr. Abdul Hameed

Reader Note:

27.11.2014 Clerk of counsel for the appellant present. Since the Tribunal is incomplete, therefore, case is adjourned to 18.02.2015 for the same.

Reader

4

18.02.2015 Counsel for the appellant present. Preliminary arguments heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. The appellant filed departmental appeal for grant of BSP-16, which was rejected vide order dated 11.08.2014, hence the present appeal on 08.09.2014. He further contended that similar nature cases of Mr. Qaiser Shah in Service Appeal No. 1300/2013 and Mr. Riaz Ahmad, 1009/2013 have already been admitted and pending before the learned Bench-I for regular hearing, therefore the same may also be club with the said appeal.

Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission of written reply on 08.04.2014 before the learned Bench-I.

Member

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 1113/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	08/09/2014	The appeal of Mr. Abdul Hameed presented today by Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing. REGISTRAR
2	12-9-2014	This case is entrusted to Primary Bench for preliminary hearing to be put up there on 27-11-2014 CHAIRMAN

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 1113 /2014

Mr. Abdul Hameed V/S C&W Department

.....

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S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	01-03
2.	Copy of Rules	- A -	04-06
3.	Copy of Judgment	- B -	07-10
4.	Copy of Appeal	- C -	11
5.	Rejection order.	- D -	12
6.	Copy of Order (4.9.2003)	- E -	13
7.	Copy of order 2009.	- F -	14
8.	Copy of Service Tribunal's Judgment.	- G -	15 - 17
9.	Copy of Service Tribunal's Judgment.	- H -	18 - 19
10.	Copy of judgment of S.T	I	20 - 22
11.	Vakalat nama	------	23

APPELLANT

THROUGH:

(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

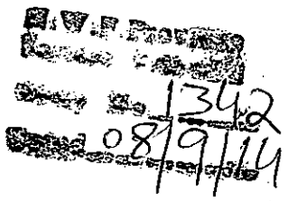
&

(TAIMUR ALI KHAN)
ADVOCATE PESHAWAR

(1)

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 1113 /2014



Mr. Abdul Hameed, Sub Engineer
C&W Division Malakand.

APPELLANT

VERSUS

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

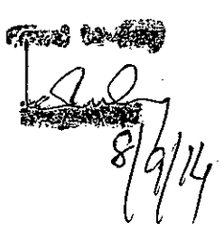
RESPONDENTS

.....

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 11.8.2014 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT FOR GRANTING B-16 ON HAVING 10 YEARS SERVICE AND ALSO PASSED PROFESSIONAL EXAM HAS BEEN REJECTED.

PRAYER:

That on acceptance of this appeal the order dated 11.8.2014 may be set aside with the direction to the respondents to grant B-16 senior scale according to the rules for having 10 years service + professional Exam with all consequential & back benefits from the date when juniors were given. Any other remedy which this august Tribunal deems fit that may also be granted in favour of appellant.



.....

RESPECTFULLY SHEWETH:

1- That the appellant joined the C & W Deptt: in the year 1980 as Sub Engineer and also passed professional exam in 2008 which is no doubt is a higher qualification than B Grade Exam. Thus the appellant has more than 34 years service at his credit with good record throughout. All the dates are mentioned the departmental appeal of the appellant the copy of which is already attached as Annexure – C

2- 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 persons who have ten years service and also passed B Grade exam. The appellant possesses the said requirement but despite of that the appellant has not been granted B-16. Copy of the rules is attached as Annexure – A.

3- That the august Tribunal has also decided such similar 15 appeals on 11.12.2012. As the appellant is the similarly placed person, therefore the appellant is also entitled to the relief under the principles of consistency and Supreme Court's judgment reported as 1996 SCMR-1185, 2009 SCMR-01. Copy of judgment is attached as Annexure - B

4- That the appellant also filed departmental appeal for grant of B-16 but the same was rejected on 11.8.2014. Hence the present appeal on the following grounds amongst the others. Copy of the appeal and rejection order are attached as Annexure – C & D.

GROUNDS:

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

B- That the appellant has attained eligibility for B-16 much earlier than those who are enjoying the benefits of B-16, therefore the appellant has been discriminated and deprived from his rights in an arbitrary manner.

C- That the appellant has not been dealt according to law and rules and has been discriminated by not extending the benefits of B-16 and while the same has been given to the junior officials.

D- That even the respondent Deptt; has granted B-16 to many officials vide order dated. 4.09.2003 & 5.12.2009. Thus the appellant is also entitled to the same relief. Copies of the orders are attached as Annexure- D & E&F

E- That the treatment of the respondent Deptt: is against the spirit of Article 4 and 25 of the constitution.

F- That the rules regarding B-16 are still in field and this august Tribunal has also granted the same relief in appeals NO.1685/08, 791/08 decided on 7.5.09, Appeals NO.531/2001,533/2001, 534/2001, 535/2001, 537/2001 and 538/2001 decided on 6.6.07, Appeal No.194/93 decided on 7.9.94 and Appeal NO. 27/09. Copies of some judgments are attached as Annexure – F,G,H&I

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
Abdul Hameed

THROUGH:

(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

&

TAIMUR ALI KHAN
ADVOCATE PESHAWAR

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1113/2014

Mr. Abdul Hamid VS C&W Deptt:

.....

JOINT REJOINDER ON BEHALF OF APPELLANT

.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

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

FACTS:

1 No comments.

2 Admitted correct by the respondent's department that according to the rules 25% of the post of Sub Engineer is to be filled on the basis of promotion from amongst person who have 10 years service plus B-Grade exam. The appellant possessed the same requirements and therefore eligible for Senior Scale Sub Engineer (BPS-16).

3 Incorrect. the right of promotion to BS-16 to the appellant as well as others official was given by Govt: on notification dated 13.01.1980 and the august Tribunal decided the cases on basis of this notification and given promotion to these official and the appellant is similarly placed person and also entitled to relief under the principles of consistency and Supreme Court's judgment.

4 Incorrect. The appellant filed departmental appeal for grant of BS-16 for his claim but was rejected without showing any reason and not on merits.

GROUNDS:

A) Incorrect. The Govt: fixed 25% quota for senior scale sub engineer for promotion who possess the said requirements i.e ten years service plus B-Grade exam and the appellant was entitled for promotion on the basis of seniority- cum-fitness. Therefore to deprive the appellant from promotion is against the law, rules and norms of natural justice.

B) Incorrect. While Para-B of the appeal is correct.

C) Incorrect. the appellant is also legible for grant of selection grade (BS-16) as he possessed the requirements of selection grade (BS-16).

D) Incorrect. While Para-D of the appeal is correct.

E) Incorrect. While Para-E of the appeal is correct.

F) Incorrect. The appellant also possessed the same requirements on which selection grade were given to other sub engineers, therefore the appellant is also entitled for the same benefits.

G) Incorrect. While Para-G of the appeal is correct.

H) Legal.

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

APPELLANT
Abdul Hameed

Through:

(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

AFFIDAVIT

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

DEPONENT

A 4

BETTER COPY

Annexure-A

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

NOTIFICATION

Peshawar the 13 January, 1980

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

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

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

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

ATTESTED

(5)

ATTESTED

COMMUNICATION AND WORKS DEPARTMENT
SCHEDULE – 1

S.No.	Nomenclature of Post	Minimum qualification for initial recruitment or by transfer	Minimum qualification for appointment and promotion	Age limit for initial recruitment	Method of recruitment
1	2	3	4	5	6
1.	Chief Engineer				
	Superintending Engineer		Degree n Engineering from a recognized University.		By selection on merit from amongst four senior most officers of the Department, with at least seventeen yeas experience as Government servant, seniority being considered only in the case of officers of practically the same standard of merit.
	Executive engineer				By selection on merit from amongst the Executive Engineers or holder of equivalent posts in Communication and Works Department, with at least twelve yeas 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 yeas experience as such.
	Assistant Engineer	Degree in Civil Electrical or Mechanical Engineering from a recognized University as may be specified by Government for the respective posts.	Degree or Diploma in Engineering from recognized University or Institutions, as specified in column.		(a) Seniority present by initial recruitment . (b) 10% by promotion, on the basis of seniority cum fitness from amongst the Sub Engineers holding a degree is 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.
	Senior Scale Sub Engineer		Diploma in Engineering from a recognized Institute.		Twenty five percent of the total number of posts of the diploma holders Sub Engineers shall from the cadre of Senior Scale Sub Engineers and shall be filled by selection on merit with due regard to seniority from amongst Sub Engineers of the Department, who have passed the Departmental Examination and have at least ten years service as such.
					By selection on merit with due regard to seniority from amongst the holders of the posts of Senior Superintendent / Superintendants in the Department.

ATTESTED

COMMUNICATION AND WORKS DEPARTMENT

SCHEDULE – II

S.No.	Nomenclature of Post	Minimum qualification for initial recruitment or by transfer	Minimum qualification for appointment and promotion	Age limit for initial recruitment	Method of recruitment
1	2	3	4	5	6
1.	Principal Engineer Refrigeration / Air-conditioning	M.Sc in Refrigeration / Air conditioning from a recognized University with 10 years experience.		30 to 45 years	By initial recruitment.
		By Mechanical Engineer with 15 years experience with National or Intentional Organization of repute in Design Installation and running of Air-conditioning and Refrigeration.			
		M.Sc in Highways Engineering from a recognized University with at least ten years professional experience in a National or Inter national Organization.		30 to 45 years	By initial recruitment.
		Masters Degree in Civil Engineering from a recognized University with at lest ten years professional experience in a National or International Organization.		30 to 45 years	By initial recruitment.

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 ... MEMBER
MR. NOOR ALI KHAN ... MEMBER

JUDGMENT

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

ATTESTED

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

2. Brief facts of the case are that the appellant joined the respondent department as Sub Engineer on 28.5.1980 and in the year 1991 qualified C ade-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 th 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 Tribunalfor decision afresh, after providing equal opportunity of hearing to both the sides, expeditiously, as far as possible within a period of three months, after receipt whereof."

ATTESTED

ATTESTED

(9) (15)

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 sufferred for the lapses and fault of the respondent department. Junior to the appellant had been promoted while he has been deprived of his legal right for no fault on his behalf. The learned counsel for the appellant further argued that the benefits of Senior Scale BPS-16 have been granted to similarly placed person and the appellant is also entitled to the same treatment under the principles of consistency. The learned counsel for the appellant relied on 2006-SCMR-1082, 2007-PLC(C.S) 683, 1996-SCMR-1185 and 2007 PLC(C.S) 152 and judgment dated 7.5.2009 of this Tribunal in similar appeal No. 791/2008 decided in favour of appellant. The learned counsel for the appellant further argued that in the matter of promotion and pay, question of limitation does not arise. He relied on 2007-PLC(C.S) 1267, 2002-PLC (CS) 1388 and 2003-PLC (CS) 178. In a reported judgment of the august Supreme Court of Pakistan as reported in PLD 2003-Supreme Court 724, decision of the cases on merits always to be encouraged instead of non-suiting the litigants for technical reasons including limitation. He requested that the appeal may be accepted as prayed for.

6. The learned counsel for private respondents on the other hand argued that the private respondents No. 4 to 8 have been granted Senior Scale BPS-16 on the recommendations of the Departmental Promotion Committee vide orders dated 4.9.2003 and 19.1.2004. 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

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,

ATTESTED

(10)

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, Naushad Khan-II. Our this judgment will also dispose of the aforementioned service appeals in the same manner.

ANNOUNCED
11.12.2012.

Sd/- Syed Manzoor Ali Shah
Member

Sd/- Noor Alam Khan
Member

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 22-7-2013
Number of Words 1600
Copying Fee 10
Urgent 2
Total 12
Name of Copyist
Date of Completion of Copy 22-7-2013
Date of Delivery of Copy 22-7-2013

ATTESTED

C

(11)

To,

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

Through: Proper Chanel

Subect: **Appeal for Granting BPS-16 on the basis of Seniority/ Professional Exam.**

Sir,

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

I was appointed as sub-Engineer on 05-06-1980and passed Professional Exam: in 2008

Where as the following who are junior to me holds:-

(I) Misal khan :- Appointed as Sub-Engineer on 22-03-1988 and he passed Professional Exame: in 2006.

(II) Sanaullah :- Appointed as Sub-Engineer on 10-06-1980 and he passed Professional Exame: in 2008.

(III) Malik Shakir Parveez:- ppointed as Sub-Engineer on 08-06-1980and he passed Professional Exame: in 1993.

(IV) Naushad khan-I:-Appointed as Sub-Engineer on 14-06-1980 and he passed Professional Exame: in 1997.

(V) Naushad khan-II:-Appointed as Sub-Engineer on 13-07-1980 and he passed Professional Exame: in 2008.

(VI) Gul Malook:-Appointed as Sub-Engineer on 16-12-1981 and he passed Professional Exame: in 1996.

(VII) Karimullah:-Appointed as Sub-Engineer on 16-12-1981 and he passed Professional Exame: in 1996.

(VIII) Muhammad Najeeb:-Appointed as Sub-Engineer on 25-01-1983 and he passed Professional Exame: in 1996.

(IX) Tariq Yousaf:-Appointed as Sub-Engineer on 01-02-1983 and he passed Professional Exame: in 2006.

Recently the Khyber Pakhtunkhwa Service Tribunal has also granted the benefits to some other officials of this department. Thus I am also entitled to the same benefits under principals of consistency.

It is therefore requisted that I may kindly be granted BPS-16 from my due date by extending the benefits of judgment of service Tribunal.

Thanks

Your's Obediently

Abdul Hamid
Sub-Engineer
C&W DIVISION
MALAKAND.

ATTESTED

Copy of the above in advance is submitted to:-
The Secretary to Govt: of Khyber Pakhtunkhwa C&W Deptt: for appropriate action pleas.

Abdul Hamid

D

(12)

GOVT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

No. SOE/C&WD/13-21/2014
Dated Peshawar, the August 11, 2014

To

Mr. Abdul Hameed
Sub Engineer O/O
XEN C&W Division Malakand

Subject: Appal for the Grant of Selection Grade (BS-16)

Kindly refer to your appeal/representation on the subject noted above and to state that your appeal/representation has been examined by the Department and regretted, as you have not passed B-Grade Exam which is mandatory for Selection Grade, Furthermore, the policy of Selection Grade has been discontinued by the Government.

(USMAN JAN)
SECTION OFFICER (Estb)

Endst even No. & date

Copy forwarded to the:

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

SECTION OFFICER (Estb)

ATTESTED

(13) 129

BETTER COPY

Annexure-E

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.

ATTESTED

BETTER COPY

Annexure-F

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 form the date from which his juniors were awarded BP-16, in order to implement the decision of the NWFP Service Tribunal in Service Appeal No.27/2000.

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

Endst of even Number and date.

Copy is forwarded to the:

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

ATTESTED

BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 791 of 2008

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

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

VERSUS

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

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

MUHAMMAD ASIF YOUSAFZAI, Advocate. ... For appellant

MR. ZAHID KARIM, Addl. Government Pleader. ... For official respondents.

MR. WAQAR AHMAD SETH, Advocate. ... For respondents No.3, 5 to 7.

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

JUDGMENT

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

ATTESTED

16

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

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

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

4. We heard the arguments and perused the record.

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

ATTESTED

17 18

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

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

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

ANNOUNCED
07.5.2009

Sd/- Justice Qalandar Ali Khan
Chairman
Sd/- Abdul Jalil Khan
Member

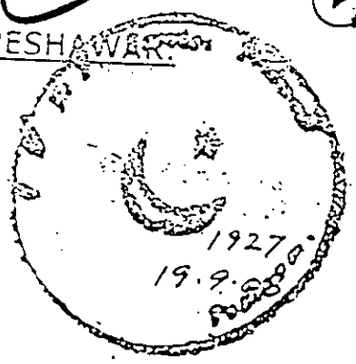
ATTESTED

2

(18) (19)

BEFORE THE NWFP SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 1625 /08.



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

VERSUS

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

.....Respondents.

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

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

ATTESTED
EXAMINER
NWFP Service Tribunal
Peshawar.

ATTESTED

(20) (79)

Date of Order of Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
2	3
07.5.2009	Counsel for the appellant and A.G.P (Zahid Karim) alongwith Anwarul Haq, S.O for official respondents and counsel for private respondents present. Arguments heard and record perused. Vide our detailed judgment of to-day in connected Service Appeal No. 791 of 2008, titled "Ikramullah Versus Secretary to Government of NWFP, Works & Services Department Peshawar etc.", we also accept the present appeal as per para-6 of the judgment, with costs. ANNOUNCED. 07.5.2009. MEMBER CHAIRMAN

11-3-10

ATTESTED

Chairman

I 20

BEFORE THE NWFP SERVICE TRIBUNAL PESHAWAR

Appeal No. 27/09

Date of institution - 27.09.2008
Date of decision -23.04.2009

Syed Sardar Shah, Sub Engineer, Works and Services 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.

ATTESTED

JUDGMENT

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

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

ATTESTED

(21)

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 though their representatives, submitted written reply, contested the appeal and denied the claim of the appellant.

4. Arguments heard and record perused.

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

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

ATTESTED

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Committee at that time. The Government allowed selection grade (B-16) to 25% of the Sub Engineer (B-11) and the basic condition for the grant of selection grade was 10 years service and passing of B. Grade examination. The appellant was not considered by the DPC due to his incomplete record. The facility of selection grade has already been discontinued by the Provincial Government w.e.f 01.12.2001 vide Finance Department's letter No.FD (PRC) 1-1/01 dated [illegible] and dated 6.4.2001 and in the prevalent circumstances the plea taken by the appellant has been infractuous. 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 instructionon 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 maiutain 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.

Sd/- Abdul Jalil
Member

Sd/- Sultan Mahmood Khattak
Member

ATTESTED

VAKALAT NAMA

23

NO._____/20

IN THE COURT OF Service Tribunal Peshawar.

Abdul Hameed (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

C & W Deptt. (Respondent)
(Defendant)

I/We Abdul Hameed (Appellant)

Do hereby appoint and constitute ***M.Asif Yousafzai, Advocate, Peshawar,*** & Taimur Ali Khan (Adv) to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/ Counsel on my/our costs.

I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated 8-9 /2014

Hamid
(CLIENT)

ACCEPTED

M. ASIF YOUSAFZAI
Advocate

T. Ali
TAIMUR ALI KHAN
Advocate

M. ASIF YOUSAFZAI
Advocate High Court,
Peshawar.

OFFICE:
Room No.1, Upper Floor,
Islamia Club Building,
Khyber Bazar Peshawar.
Ph.091-2211391-
0333-9103240

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1113/2014

Mr. Abdul Hamid VS C&W Deptt:

.....

JOINT REJOINDER ON BEHALF OF APPELLANT

.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

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

FACTS:

1 No comments.

2 Admitted correct by the respondent's department that according to the rules 25% of the post of Sub Engineer is to be filled on the basis of promotion from amongst person who have 10 years service plus B-Grade exam. The appellant possessed the same requirements and therefore eligible for Senior Scale Sub Engineer (BPS-16).

3 Incorrect. the right of promotion to BS-16 to the appellant as well as others official was given by Govt: on notification dated 13.01.1980 and the august Tribunal decided the cases on basis of this notification and given promotion to these official and the appellant is similarly placed person and also entitled to relief under the principles of consistency and Supreme Court's judgment.

4 Incorrect. The appellant filed departmental appeal for grant of BS-16 for his claim but was rejected without showing any reason and not on merits.

GROUNDS:

A) Incorrect. The Govt: fixed 25% quota for senior scale sub engineer for promotion who possess the said requirements i.e ten years service plus B-Grade exam and the appellant was entitled for promotion on the basis of seniority- cum-fitness. Therefore to deprive the appellant from promotion is against the law, rules and norms of natural justice.

B) Incorrect. While Para-B of the appeal is correct.

C) Incorrect. the appellant is also legible for grant of selection grade (BS-16) as he possessed the requirements of selection grade (BS-16).

D) Incorrect. While Para-D of the appeal is correct.

E) Incorrect. While Para-E of the appeal is correct.

F) Incorrect. The appellant also possessed the same requirements on which selection grade were given to other sub engineers, therefore the appellant is also entitled for the same benefits.

G) Incorrect. While Para-G of the appeal is correct.

H) Legal.

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

APPELLANT
Abdul Hameed

Through:

(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

AFFIDAVIT

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

DEPONENT

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1113/2014

Mr. Abdul Hamid VS C&W Deptt:

.....

JOINT REJOINDER ON BEHALF OF APPELLANT

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B) Incorrect. While Para-B of the appeal is correct.

C) Incorrect. the appellant is also legible for grant of selection grade (BS-16) as he possessed the requirements of selection grade (BS-16).

D) Incorrect. While Para-D of the appeal is correct.

E) Incorrect. While Para-E of the appeal is correct.

F) Incorrect. The appellant also possessed the same requirements on which selection grade were given to other sub engineers, therefore the appellant is also entitled for the same benefits.

G) Incorrect. While Para-G of the appeal is correct.

H) Legal.

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

APPELLANT
Abdul Hameed

Through:

(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

AFFIDAVIT

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

DEPONENT