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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR


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Muhammad Saeed VS Govt of K.P.K

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Muharrir Compilation


29/5/24
Incharge Judicial Branch

5

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

EXECUTION PETITION NO. 722 /2023

IN SERVICE APPEAL NO. 1227/2020

Diya RamAppellant

VERSUS

Chief Secretary Khyber Pakhtunkhwa & others.....**Respondents.**

AFFIDAVIT

I, Mr. Shahid Ullah, Secretary Establishment Department (BS-20), respondent, do hereby solemnly declare that contents of the Reply in the Execution Petition are correct to the best of my knowledge and record and nothing has been concealed from this Hon'ble Tribunal. It is further stated on oath that in this Execution Petition, the answering Respondent has neither been placed ex-parte nor their defense/struck up.

f

DERONENT

CNIC No. 11101-1464320-1

Contact No. 0333,9744944

①

KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262

No. 1056 /ST Dated 3 / 5 /2024

To

The Director, Local Government and Rural Development Department,
Khyber Pakhtunkhwa, Peshawar.

Subject

JUDGMENT IN SERVICE APPEAL NO. 1161/2016 TITLED
MUHAMMAD SAEED -VERSUS- THE SECRETARY,
GOVERNMENT OF KHYBER PAKHTUNKHWA, LOCAL
GOVERNMENT, ELECTIONS AND RURAL DEVELOPMENT
DEPARTMENT, CIVIL SECRETARIAT, PESHAWAR AND OTHERS

Dear Sir,

I am directed to forward herewith a certified copy of order dated. 02.04.2024, passed by this Tribunal in the above mentioned service appeal for compliance.

Encl. As above.



(PIR MUHAMMAD KHANAFRIDI)
REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL,
PESHAWAR.

(2)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1161/2016

BEFORE: MR. KALIM ARSHAD KHAN CHAIRMAN
MRS. RASHIDA BANO MEMBER (J)

Mr. Muhammad Saeed, Assistant Engineer, Local Government & Rural
Development Department, Khyber Pakhtunkhwa, Peshawar.

..... (Appellant)

VERSUS

1. The Secretary, Government of Khyber Pakhtunkhwa, Local Government, Elections & Rural Development Department, Civil Secretariat, Peshawar.
2. The Director General, Local Government, Elections & Rural Development Department, Peshawar.
3. The Secretary Finance Department, Civil Secretariat, Peshawar.

..... (Respondents)

Mr. Shehzada Irfan Zia
Advocate

... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

.... For respondents

Date of Institution.....10.11.2016

Date of Hearing.....02.04.2024

Date of Decision.....02.04.2024

JUDGEMENT

RASHIDA BANO, MEMBER (J):The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the following prayer:

“That on acceptance of this appeal, the order dated 13.10.2016 may be set aside and the respondents may be directed to consider the appellant for ante-dated promotion as Assistant Engineer (BPS-17) on regular basis w.e.f 1992 when post was available for him with all back and

[Handwritten signature]

consequential benefits. Any other remedy, which this Tribunal deems fit and proper that may also be granted in favour of the appellant."

2. Brief facts of the case are that the appellant had 37 years of service at his credit. He was qualified diploma holder and was eligible for the post of Assistant Engineer w.e.f 1992 but he was promoted on acting charge basis instead of promotion on regular basis despite the fact that post was lying vacant since 1992. He was placed in Grade 16 vide notification dated 31.05.1999. Then he was promoted to the post of Assistant Engineer (BPS-17) with immediate effect on 30.12.2015. Felling aggrieved, appellant filed representation seeking ante dated promotion with effect from 1992, which was rejected on 13.10.2016, hence the instant service appeal.

3. Respondents were put on notice who submitted their joint parawise comments on the appeal. We heard the learned counsel for the appellant as well as learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant that the impugned order is against law, facts and norms of natural justice, hence liable to be set aside; that the appellant had not been treated in accordance with law and rules; that the appellant was promoted to the post of Assistant Engineer on 30.12.2015 on acting charge basis, with immediate effect, while he has been working on that since 1992, therefore, he is entitled for promotion as Assistant Engineer since 1992. He requested that instant appeal might be accepted as prayed for.

5. Conversely, learned Deputy District Attorney argued that appellant has been treated in accordance with law and rules; that promotion was always with immediate effect under the promotion policy of the Provincial Government. He submitted that the posts of Assistants Engineers which were lying vacant under

the initial recruitment quota were already filled in amongst the holders of the post of diploma holder Sub-Engineers in the year 1992.

6. Perusal of record reveals that appellant was serving in the respondent department since 1978. Appellant was posted to the post of Assistant Engineer on acting charge basis since 1992. Appellant contended that he was senior most qualified diploma holder and post of Assistant Engineer was vacant. Therefore, appellant was entitled to be promoted from 1992. Appellant through instant appeal seek to antedate his promotion from 30.12.2015 to 1992 but during course of arguments learned counsel requested for grant of pay of higher post BPS-17 upon which appellant performed duties on acting charge basis from 1992. Appellant was promoted to BPS-16 vide notification dated 31.05.1999 and was posted against higher post of BPS-17 Assistant Engineer where he worked till his promotion to the post of Assistant Engineer vide order dated 30.12.2015.

7. Admittedly, appellant worked on acting charge basis against the post of Assistant Engineer BPS-17 from 31.05.1999 till 30.12.2015 but he had not asked even for single time for pay of higher grade/post against which he worked during performance of his duties on acting charge basis which last for fifteen and half years. Appellant's counsel, when asked about it, contended that cause of action accrued to him upon his promotion on 31.12.2015. Promotion order of the appellant was issued on 31.12.2015 and he had filed departmental appeal 12.07.2016 i.e. after lapse of period of six months and thirteen days while Section 4 of Khyber Pakhtunkhwa Service Tribunal Act 1974 gives the period for filing departmental appeal as thirty days which is given as under:

“Any civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him [or within six months of the establishment of the appropriate Tribunal, whichever is later,] prefer an appeal of the Tribunal having jurisdiction in the matter

(a) Where an appeal, review or a representation to a departmental authority as provided under the Khyber Pakhtunkhwa Civil Servants Act, 1973, or any rules against any such order, no appeal shall lie to a Tribunal unless the aggrieved civil servant has preferred an appeal or application for review or representation to such departmental authority and a period of ninety days has elapsed from the date on which such appeal, application or representation was preferred, [...]

When confronted with the question of limitation learned counsel argued that the authority had rejected departmental appeal on merit without touching question of limitation, therefore, this tribunal could not touch the question of limitation.

8. Record reveals that the authority vide letter dated 13.10.2016, conveyed to the appellant, that his departmental appeal was rejected, but there was no mention that condonation of delay occurred in filing of departmental appeal to resolve the question of limitation in the letter. We take guidance from PLD 2006 (C.S) 572 which reads as;

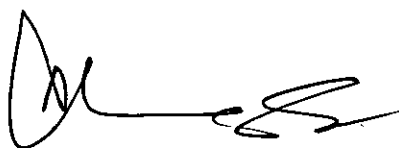
“S.4---Appeal before Service Tribunal---Implied condonation of delay---Question of limitation---Waiver---Departmental appeal was filed with a delay of 5'h years, which appeal was dismissed by competent authority---Service Tribunal without deciding question of limitation as raised by the authorities, partially allowed appeal of civil servant---Validity--- Unless competent authority had condoned the delay with conscious application of mind. Question of limitation would remain open for consideration of Service Tribunal---No waiver on question of limitation, particularly if question of

limitation in filing appeal or representation before departmental authority was raised before Service Tribunal---Service Tribunal was bound to examine such question and record its decision---Concept of implied condonation of delay did not fit in the scheme of law of limitation because application had to be made for seeking condonation, showing sufficient cause to the satisfaction of the forum concerned, who might grant or decline the same---Discretion had to be exercised in a just and legal manner and it could not be exercised arbitrarily or fancifully---Vice of accepting implied condonation of delay was that in absence of grounds and reasons for condonation of delay, it was not possible for Court of appeal to examine the question as to whether delay was rightly condoned---Service Tribunal in assuming that the delay stood condoned impliedly was clearly in error---Supreme Court converted petition for leave to appeal into appeal and set aside judgment passed by Service Tribunal---Appeal was allowed.)”

So, even if the authority has not expressly condoned the delay, it would not amount to waiver of limitation. The Service Tribunal can look into it and decide the matter pertaining to limitation accordingly.

9. For what has been discussed above, we are unison to hold that appeal in hand is hit by law of limitation and is dismissed being barred by time. Costs shall follow the event. Consign.

10. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 2nd day of April, 2024.



(KALIM ARSHAD KHAN)
Chairman



(RASHIDA BANO)
Member (J)

ORDER

02.04.2024 1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney for the respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to hold that appeal in hand is hit by law of limitation and is dismissed being barred by time. Costs shall follow the event.

Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 2nd day of April, 2024.*


(KALIM ARSHAD KHAN)
Chairman


(RASHIDA BANO)
Member (J)

*M.Khan

SCANNED
IN
PESHAWAR
DISTRICT
ATTORNEY

05.03.2024

Learned counsel for the appellant present. Mr. Masood Ali Shah, Deputy District Attorney for the respondent present.

Learned counsel for the appellant seeks time for providing information regarding Departmental Grade "B" examination, weather the year in which the appellant passed that exam. Granted. To come up for arguments on 06.03.2024 before D.B. P.P given to the parties.

(Fareeha Paul)
Member (E)

(Rashida Bano)
Member (J)

Zia ul Haq

05.03.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, learned Deputy District Attorney alongwith Mr. Izaz Ul Hasan, Assistant Director for the respondents present.

2. Learned counsel for the appellant seeks time for submission of B.Tech Degree of the appellant. Granted. To come up for arguments on 02.04.2024 before D.B. P.P given to the parties.

(Fareeha Paul)
Member (E)

(Rashida Bano)
Member (J)


SCANNED
KPST
Peshawar


Kaleem ullah

14.12.2023 1. Clerk to counsel for the appellant present. Mr. Muhammad Jan learned District Attorney for the respondent present.

2. Lawyers are on strike, therefore, the case is adjourned. To come up for arguments on 26.02.2024 before D.B. P.P given to the parties.

SCANNED
KEST
Peshawar



Muhammad Akbar Khan
Member (E)



Rashida Bano
Member (J)

26.02.2024 1. Mr. Shahzada Irfan Zia, Advocate present and submitted Wakalatnama on behalf of the appellant. Mr. Muhammad Jan, District Attorney for the respondents present.

2. Being freshly engaged, learned counsel for the appellant requested for adjournment. The appeal pertains to the year 2016 therefore, absolute last chance is given. Adjourned. To come up for arguments on 05.03.2024 before D.B. P.P given to the parties.

SCANNED
KEST
Peshawar


(Muhammad Akbar Khan)
Member (E)


(Rashida Bano)
Member (J)

18.08.2023 1. Junior to counsel for the appellant present. Mr. Fazal Shah Mohmand learned Additional Advocate General for the respondents present.

2. Due to summer vacations D.B is not available, therefore, case is adjourned. To come up for on 13.11.2023 before D.B. P.P given to parties.

(Rashida Bano)
Member (J)

*KaleemUllah

SCANNED
KPST
Peshawar

13.11.2023 1. Learned counsel for the appellant present. Mr. Asad Ali Khan learned Assistant Advocate General for the respondents present.

2. Learned counsel for the appellant requested for adjournment on the ground that he has not prepare the brief. Adjourned. To come up for arguments on 14.12.2023 before D.B. P.P given to the parties.

(Muhammad Akbar Khan)
Member (E)

(Rashida Bano)
Member (J)

*KaleemUllah

SCANNED
KPST
Peshawar

15th June, 2023

1. Clerk of learned counsel for the appellant present. Mr. Fazal Shah Mohmand, Additional Advocate General for the respondents present.

2. Lawyers are on strike. Therefore, case is adjourned to 11.07.2023 for arguments before the D.B. P.P given to the parties.

SCANNED
KPPT
Peshawar
Mutaazem Shah

(Fareeha Paut)
Member (E)

(Kalim Arshad Khan)
Chairman

11.07.2023

Junior of learned counsel for the appellant present. Mr. Izaz-ul-Hassan, Assistant Director (Litigation) alongwith Mr. Asad Ali Khan, Assistant Advocate General for the respondents present.

Junior of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy in the Hon'ble Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 18.08.2023 before the D.B. Parcha Peshi given to the parties.

SCANNED
KPPT
Peshawar

Naeem Amin

(Rashida Bano)
Member (J)

(Salah-ud-Din)
Member (J)

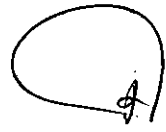
28.04.2023

Appellant present through counsel.

Muhammad Jan, learned District Attorney for respondents present.

Learned Member Executive (Mr. Muhammad Akbar Khan) is on leave, therefore, case is adjourned. To come up for arguments on 29.05.2023 before D.B. Parcha Peshi given to the parties.

SCANNED
KPST
Peshawar



(Rozina Rehman)
Member (J)

Mutazem Shah

29.05.2023

Junior of learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Junior of learned counsel for the appellant requested for adjournment on the ground that learned senior counsel for the appellant is busy in the august Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 15.06.2023 before the D.B. Parcha Peshi given to the parties.

SCANNED
KPST
PESHAWAR



(Fareeha Paul)
Member (E)

Naeem Amin



(Salah-ud-Din)
Member (J)

20.02.2023

Learned counsel for the appellant present. Naseer Ud Din Shah, Learned Asstt. Advocate General alongwith Aizaz Ul Hasan, Assistant for the respondents present.

Mrs. Rozina Rehman, Learned Member (Judicial) is on leave, therefore, case is adjourned for the same on 04.04.2023 before D.B.

SCANNED
KPSST
Peshawar



(Muhammad Akbar Khan)
Member (E)

04.04.2023

Junior to counsel for appellant present.

Asif Masood Ali Shah learned Deputy District Attorney for respondents present.

Former requested for adjournment as senior counsel for appellant is busy before the august Supreme Court of Pakistan. Adjourned. To come up for arguments on 28.04.2023 before D.B. Parcha Peshi given to the parties.

SCANNED
KPSST
Peshawar



(Muhammad Akbar Khan)
Member (E)



(Rozina Rehman)
Member (J)

28.04.2023

Junior to counsel for appellant present.

Muhammad Jan, learned District Attorney for respondents present.

Learned Member Executive (Mr. Muhammad Akbar Khan) is on leave, therefore, case is adjourned. To come up for arguments on 19.05.2023 before D.B. Parcha Peshi given to the parties.

(Rozina Rehman)
Member (J)

Mutazeh Shah

22.09.2022

*Except respondent No 2
all the respondents
were put on notice*

Learned counsel for the appellant present.

Previous date was changed on the Reader Note, therefore, notice for prosecution of restoration application be issued to the respondents for submission of reply. Adjourned. To come up for reply as well as arguments on restoration application before the D.B on 12.12.2022.

(Mian Muhammad)
Member (E)

(Salah-Ud-Din)
Member (J)

12.12.2022

Petitioner present through counsel.

Muhammad Adeel Butt, learned Additional Advocate General for respondents present.

SCANNED!
KFST
Reshawan

Arguments on the application heard. Record perused.

Application in hand was submitted seeking restoration of appeal which was dismissed in default for non-prosecution vide order dated 04.04.2022 and the instant application seeking restoration of appeal was submitted on 07.07.2022.

In this view of the matter, the reason advanced by the learned counsel seems to be genuine, hence this application for restoration of appeal is allowed. Appeal stands restored on cost of Rs.2000/-. Case is adjourned to 20.02.2022 for arguments on main appeal before D.B.

(Fareeha Paul)
Member (E)

(Rozina Rehman)
Member (J)




15

Form-A

FORM OF ORDER SHEET

Court of _____

Restoration Application No. 397 /2022

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	07.07.2022	<p>The application for restoration of appeal No. 1161/2016 submitted today by Syed Noman Ali Bukhari Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2	14-7-22 Noted 9/8/22	<p>This restoration application is entrusted to Division Bench at Peshawar to be put up there on <u>4-8-22</u>. Original file be requisitioned. Notices to the applicant and his counsel be also issued for the date fixed.</p> <p style="text-align: right;"> CHAIRMAN</p>
	4-8-2022	<p>Proper DB not available the case is adjourned to 22-9-2022</p> <p style="text-align: right;"> Reader</p>

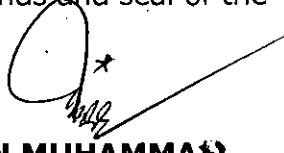
SA 1161/2016

04.04.2022

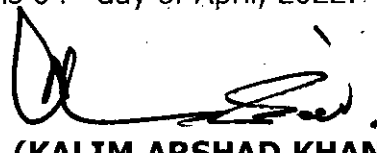
None present for the appellant. Mr. Kabirullah Khattak, Addl. AG alongwith Aitizazul Hassan, Superintendent for the respondents present.

Today the appeal was called time and again but neither appellant nor her counsel is available. In view of the above, the appeal is dismissed in default.

Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 04th day of April, 2022.



(MIAN MUHAMMAD)
Member (E)



(KALIM ARSHAD KHAN)
Chairman



09.09.2021

Clerk of counsel for the appellant present. Mr. Azaz-ul-Hassan, Assistant alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Clerk of counsel for the appellant stated that learned counsel for the appellant is unable to attend the Tribunal today due to strike of Lawyers. Adjourned To come up for arguments before the D.B. on 22.12.2021.



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



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

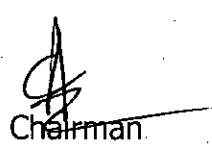
22.12.2021

Junior of learned counsel for the appellant present. Mr. Muhammad Rasheed, Deputy District Attorney for respondents present.

Former made a request for adjournment on the ground as senior counsel for the appellant is busy before Hon'ble Peshawar High Court, Peshawar. Adjourned. To come up for arguments before D.B on 04.04.2022.



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



Chairman

18

31.12.2020

Due to summer vacation, case is adjourned to 18.3.2021 for the same as before.


Reader


18.03.2021

Counsel for the applicant and Mr. Muhammad Rashid, DDA alongwith Aizazul Hassan, Assistant for the respondents present.

Instant application is with the prayer for restoration of Service Appeal No. 1161/2016 which was dismissed for non-prosecution on 22.05.2019.

The ground for restoration, as pressed into service by the applicant, is to the effect that on the relevant date the learned counsel for the appellant was engaged before the Honourable Peshawar High Court while his junior was busy before the other courts. The non-representation of appellant was, therefore, not willful.

The application in hand was submitted on 30.05.2019, within the time prescribed for the purpose. It is supported by duly sworn affidavit, which in the absence of anything contrary, is worth credence. The application is, therefore, allowed and Appeal No. 1161//2016 is restored to its original number. To come up for arguments before the D.B on 18.05.2021.


(Salah-ud-Din)
Member (J)


Chairman

18.5.21

due to COVID-19, The case is adjourned to 9.9.2021 for the same.



19.08.2020

Due to summer vacations, the case is adjourned to 29.10.2020 for the same.


Reader

29.10.2020

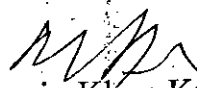
Proper D.B is on Tour, therefore, the case is adjourned for the same on 31.12.2020 before D.B.


Reader

11.02.2020

Learned counsel for the petitioner present Mr. Kabirullah Khattak learned Additional AG for the respondents present. Learned counsel for the petitioner seeks adjournment. Adjourned. to 31.03.2020 for arguments on restoration application before D.B.

(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

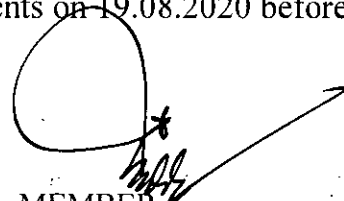
31.03.2020

Due to public holiday on account of COVID19, the case is adjourned to 10.06.2020 for the same as before.


Reader

10.06.2020

Counsel for the appellant present. Addl: AG for respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 19.08.2020 before D.B.


MEMBER


MEMBER

02.10.2019

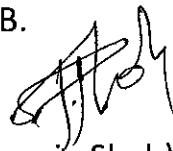
Appellant alongwith his counsel and Mr. Kabirullah Khattak, Additional AG alongwith M/S Hayatullah, Superintendent and Aizaz Shah, Assistant (Litigation) for the respondents present. Reply on restoration application on behalf of respondents not submitted. Learned Additional AG seeks adjournment. Adjourned to 01.11.2019 for reply and arguments on restoration application before D.B.


(AHMAD HASSAN)
MEMBER


(M. AMIN KHAN KUNDI)
MEMBER

01.11.2019

Counsel for the applicant and Mr. Kabirullah Khattak, Additional AG alongwith M/S Hayatullah, Superintendent and Aizaz Shah, Assistant for the respondents present. Reply on restoration application on behalf of respondents not submitted. Representatives of respondents requested for further adjournment. Adjourned to 12.12.2019 for reply and arguments on restoration application before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

12.12.2019

Due to general strike of Khyber Pakhtunkhwa Bar Council learned counsel for the appellant is not available today. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Aizaz Shah, Assistant for the respondents present and submitted reply on restoration application. The same is placed on record. Adjourned to 11.02.2020 for arguments on restoration application before D.B.


(Ahmad Hassan)
Member




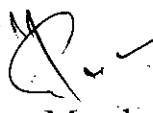

(M. Amin Khan Kundi)
Member

Form-A ²²

FORM OF ORDER SHEET

Court of _____

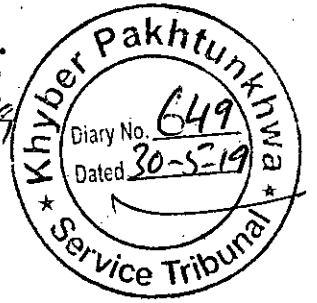
Appeal's Restoration Application No. 237/2019

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	30.05.2019	<p>The application for restoration of appeal No.1161/2016 submitted by Mr. Muhammad Asif Yousafzai Advocate, may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR 30/5/19</p>
2		<p>This restoration application is entrusted to D. Bench to be put up there on <u>28-8-19</u></p> <p style="text-align: right;"> CHAIRMAN</p>
28.08.2019		<p>Learned counsel for the applicant present. Notice of the present application be issued to the respondents for reply. Adjourn. To come up for reply/arguments on 02.10.2019 before D.B.</p> <p style="text-align: center;"> Member</p> <p style="text-align: right;"> Member</p>

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Restoration Application no 237/19

Appeal No. 1161/16



Muhammad Saeed

V/S

Govt: of KPK.

.....
**APPLICATION FOR RESTORATION OF APPLICATION WHICH WAS
DISMISSED IN DEFAULT 22.05.2019 DUE TO NON PROSECUTION.**
.....

RESPECTFULLY SHEWETH:

1. That the instant appeal was pending before this august Tribunal which was fixed for arguments on 22.05.2019.
2. That on 20.05.2019, the senior counsel for the appellant was engaged in the in the Honourable Peshawar High Court Peshawar, while junior counsel was busy in other court and could not attend the case, due to which the appeal was dismissed in default due to non prosecution.
3. That the appellant has good prime facie case, if decide on merit.

It is, therefore, most humbly prayed that on acceptance of this application, the appeal may kindly be restored which was dismissed in default due to non prosecution and decides the same on merit. Any other remedy which this august Tribunal deems fit and appropriate that may also be awarded in favour of the appellant.

Appellant

THROUGH:

M. Asif Yousafzai
(M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT
& *Taimur Ali Khan*
(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT



GOVERNMENT OF KHYBER PAKHTUNKHWA
LOCAL GOVERNMENT, ELECTIONS & RURAL
DEVELOPMENT DEPARTMENT


No. SO(LG-I)/2-336/Promotion/AEs/2016
Dated Peshawar, the 13th October, 2016

To

Mr. Muhammad Saeed.
Assistant Engineer.
Police Department, Peshawar.

SUBJECT:- REPRESENTATION AGAINST NOTIFICATION NO. SO(LG-I)
2-336/PROMOTION/AES 2015 DATED 30-12-2015.

(I am directed to refer to your application dated 12-07-2016 on the subject cited above and to inform you that under the Promotion Policy of the Provincial Government in vogue, promotion will always be notified with immediate effect and not retrospectively. As such your request on the subject cannot be acceded to.)


(BASHIR-UL-HAQ)
SECTION OFFICER (ESTAB)
Phone # 091-9213224

Endst. Even No. & Date

Copy is forwarded to the PS to Secretary LG,E&RD Department Peshawar.

SECTION OFFICER (ESTAB)

AFFIDAVIT:

It is affirmed and declared that the contents of the above Application are true and correct to the best of my knowledge and belief.

De.

DEPONENT



23 MAY 2019

22.05.2019

Nemo for the appellant. Mr. Ziaullah, DDA for the respondents present.

Despite repeated calls no one is in attendance on behalf of the appellant. The court time is about to over, therefore, the appeal is dismissed for non-prosecution. File be consigned to the record room.



Member





Chairman

Announced
22.05.2019

24.12.2018

Learned counsel for the appellant and Mr. Kabirulah Khattak learned Additional Advocate General for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned. To come for arguments on 18.02.2019 before D.B.


Member



Member

18.02.2019

Learned counsel for the appellant and Mr. Muhammad Jan learned DDA for the respondents present. The hearing of appeal in hand could not be concluded in the remaining time. Adjourned to 02.04.2019 before D.B.


Member


Chairman

02.04.2019

Counsel for the appellant and Mr. Usman Ghani, District Attorney for the respondents present.

Learned counsel for the appellant requests for adjournment due to over work before the Honourable High Court today. Adjourned to 22.05.2019 before the D.B.


Member


Chairman

19.07.2018

Learned counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney alongwith Mr. Adil Raheem Superintendent present. Learned counsel for the appellant submitted rejoinder which is placed on file and seeks adjournment. Adjourned. To come up for arguments on 11.09.2018 before D.B.



(Ahmad Hassan)
Member



(Muhammad Hamid Mughal)
Member

11.09.2018

Junior to counsel appellant and Mr. Riaz Paindakheil learned Assistant Advocate General present. Junior to counsel for the appellant seeks adjournment as senior counsel is not in attendance. Adjourned. To come up for arguments on 05.11.2018 before D.B



(Hussain Shah)
Member



(Muhammad Hamid Mughal)
Member

05.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 24.12.2018.



READER

11.01.2018

Counsel for the appellant present and Mr. Zia Ullah, DDA for the respondents present. Counsel for the appellant seeks adjournment. Granted. To come up for, rejoinder if any, arguments on 14.03.2018 before D.B.




Member




Chairman

14.03.2018

Appellant absent. Learned counsel for the appellant is also absent. However, junior to learned senior counsel for the appellant present and submitted rejoinder also seeks adjournment. Mr. Usman Ghani, District Attorney for the respondents present. Adjourned. To come up for arguments on 03.05.2018 before D.B.



(Muhammad Amin Khan Kundi)
Member



(Muhammad Hamid Mughal)
Member

03.05.2018

Due to retirement of the worthy Chairman, the Tribunal is incomplete, therefore the case is adjourned. To come up for same on 19.07.2018 before D.B



Reporter

0-----14 16.08.2017

Learned counsel for the appellant present. Assistant AG for the respondent party present. Written reply not submitted. Requested for adjournment. Adjourned. Again last opportunity. To come up for written reply/comments on 18.09.2017 before S.B.



(Muhammad Hamid Mughal)
Member

18.09.2017

Counsel for the appellant and Addl: AG alongwith Mr. Hayat Ullah, Supdt for respondents present. Written reply not submitted despite last opportunities. Requested for further adjournment. Last opportunity further extended subject to payment of cost of Rs. 500/- which shall be borne by respondents from their own pockets. To come up for written reply/comments on 17.10.2017 before S.B.



(Ahmad Hassan)
Member

17/10/2017

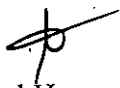
Counsel for the appellant and Mr. Kabirullah Khattak, AAG alongwith Mr. Hayatullah, Supdt. for the respondents present. Representative of the respondents submitted written reply which is placed on file. Cost of Rs. 500/ paid and receipt obtained. To come up for rejoinder and arguments on 11/1/2018 before DB.



(GUL ZEB KHAN)
MEMBER

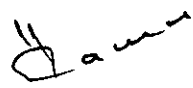
05.06.2017

Appellant in person and Addl: AG alongwith Mr. Hayatulah, Supdt for respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply/comments on 17.07.2017 before S.B.


(Ahmad Hassan)
Member

05. 17.07.2017

Counsel for the appellant and Mr. Muhmmad Adeel Butt, Additional AG for the respondent present. Written reply not submitted. Requested for adjournment. Adjourned. Last opportunity granted. To come up for written reply/ comments on 16.08.2017 before S.B.


(Muhammad Hamid Mughal)
Member

04.04.2017

Learned counsel for the appellant argued that the appellant was appointed as Sub Engineer in the year 1978 in the Local Government Department. That a vacancy of Asstt. Engineer for promotion had occurred in the year 1992 and appellant was appointed there-against on acting charge basis and subsequently promoted vide impugned order dated 30.12.2015 as Assistant Engineer where-against he preferred departmental appeal on 12.7.2016 which was rejected on 13.10.2016 and hence the instant service appeal on 10.11.2016.

That the appellant is entitled to ante-dated promotion w.c.f. the date of availability of vacancy and posting there-against.

Appellant Deposited
Security & Process Fee

Points urged need consideration. Admit. Subject to deposit of security and process fee notices be issued to the respondents. To come up for written reply/comments on 09.05.2017 before S.B.

Chairman

09.05.2017

Clerk to counsel for the appellant and Mr. Muhammad Adeel Butt, Addl: AG for the respondents present. Written reply not submitted. Requested for adjournment. Request accepted. To come up for written reply comments on 05.06.2017 before S.B.

(Muhammad Amin Khan Kundi)
Member

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06.03.2017

Clerk to counsel for the appellant present. Due to general strike of the bar learned counsel for appellant is not in attendance. To come up for preliminary hearing on 15.03.2017 before S.B.

(ASHFAQUE TAJ)
MEMBER

15.03.2017

Counsel for the appellant present. Requested for adjournment. Request accepted. To come up for preliminary hearing on 04.04.2017 before S.B.

04.04.2017

Counsel for the appellant present. Requested for adjournment. Request accepted. To come up for preliminary hearing on 04.04.2017 before S.B.

(AHMAD HASSAN)
MEMER

(ASHFAQUE TAJ)
MEMBER

04.01.2017 Clerk to counsel for the appellant present and requested for adjournment. Request accepted. To come up for preliminary hearing on 10.01.2017.

(MUHAMMAD AMIR NAZIR)
MEMBER

10.01.2017 Counsel for the appellant present. Seeks adjournment. Adjourned for preliminary hearing to 23.01.2017 before S.B.

Chairman

23.01.2017 Counsel for the appellant present. Requested for adjournment. Request accepted. To come up for preliminary hearing on 07.02.2017 before S.B.

Member

07.02.2017 Clerk to counsel for the appellant present and requested for adjournment. To come up for preliminary hearing on 06.03.2017 before S.B.

(MUHAMMAD AMIR NAZIR)
MEMBER


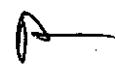
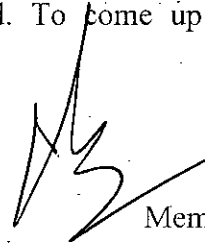
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Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 1161/2016

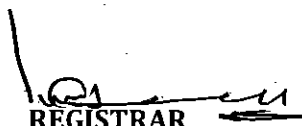
S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	18/11/2016	<p>The appeal of Mr. Muhammad Saeed resubmitted today by Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	06.12.2016	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>6-12-16</u></p> <p style="text-align: right;"> MEMBER</p> <p>Counsel for the appellant present. Counsel for the appellant requested for adjournment. Request accepted. To come up for preliminary hearing on 04.01.2017 before S.B.</p> <p style="text-align: right;"> Member</p>

The appeal of Mr. Muhammad Saeed Assistant Engineer LG&RDD received today i.e. on 10.11.2016 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellant.
- 2- Annexures of the appeal may be attested.
- 3- Annexures of the appeal may be flagged.
- 4- Five more copies/sets of the appeal along with Annexures i.e. complete in all respect may also be submitted with the appeal.

No. 1880 /S.T,


Dt. 10/11 /2016


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr.M. Asif Yousafzai Adv. Pesh.

Sir,

Objections were removed and file resubmitted.


18-11-2016

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.

Appeal No. 1161 /2016

SCANNED
KPST
Peshawar

Mr. Muhammad Saeed

V/S

Govt. of KPK & Others.

INDEX

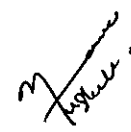
S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	01-04
2.	Copy of Seniority List	- A -	05-08
3.	Copy of Rules	- B -	09-12
4.	Copy of Notification (31.5.1999)	- C -	13
5.	Copy of Notification (30.12.15)	- D -	14-15
6.	Copy of Representation	E	16
7.	Copy of Rejection Order	F	17
8.	Vakalat Nama		18

APPELLANT

THROUGH:



(M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT,
PESHAWAR.



(S. NAUMAN BAKHARI)
ADVOCATE, PESHAWAR.



(TAIMUR ALI KHAN)
ADVOCATE, PESHAWAR.

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

Appeal No. 1161 /2016

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1167

Dated 10-11-2016

Mr. Muhammad Saeed,
Assistant Engineer,
Local Government & Rural Development Department,
Khyber Pakhtunkhwa, Peshawar.

APPELLANT

VERSUS

1. The Secretary, Government of Khyber Pakhtunkhwa, Local Government, Elections & Rural Development Department, Civil Secretariat, Peshawar.
2. The Director, Local Government & Rural Development Department, Khyber Pakhtunkhwa , Peshawar.
3. The Secretary Finance Deptt: KPK Peshawar.

RESPONDENTS

.....

APPEAL UNDER SEC- 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 FOR DIRECTING THE RESPONDENTS TO CONSIDER THE APPELLANT FOR ANTI-DATE PROMOTION AS ASSISTANT ENGINEER (BPS-17) ON REGULAR BASIS W.E.FROM 1992 WITH ALL BACK AND CONSEQUENTIAL BENEFITS AND AGAINST THE ORDER DATED 13.10.2016, WHEREBY THE DEPARTMENTAL OF THE APPELLANT WAS REJECTED FOR NO GOOD GROUND.

Filed to-day

[Signature]
Registrar

10/11/16

Re-submitted to -day
and filed.

[Signature]
Registrar

18/11/16

PRAYER:

THAT ON ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 13.10.2016 MAY BE SET-ASIDE AND THE RESPONDENTS MAY BE DIRECTED TO CONSIDER THE APPELLANT FOR ANTI-DATE PROMOTION AS ASSISTANT ENGINEER (BPS-17) ON REGULAR BASIS W.E.FROM 1992 WHEN POST WAS AVAILABLE FOR HIM WITH ALL BACKS AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND PROPER THAT MAY ALSO BE GRANTED IN FAVOUR OF THE APPELLANT.

RESPECTFULLY SHEWETH:**FACTS:**

1. That the appellant has good service record through-out in long tenure of 37 years and no complaint has been filed against the appellant so far.
2. That the appellant is qualified Diploma holder and eligible for the post of Assistant Engineer w.e.from 1992 because the appellant has already working on acting charge basis as Assistant Engineer since 1992.
3. That the post of Assistant Engineer remained vacant in the respondent department since 1992 and the appellant has been working as Assistant Engineer on acting charge w.e. from 1992, therefore, he is entitled for regular promotion against the said post.
4. That according to the Final Seniority List of 2012, the appellant's name is at Serial No.3, while at Serial No.1 & 2 have already been retired and the appellant's name comes to at Serial No.1, therefore, the appellant is fully entitled for promotion as Assistant Engineer w.e. from 1992. Copy of Seniority list is attached as Annexure-A.
5. That according to the Promotion Rules, twenty percent by promotion, on the basis of seniority cum fitness, from amongst Diploma holder Sub-Engineer having ten years service as such and have passed the prescribed

departmental examination". Copy of Rules is attached as Annexure-B.

6. That in the year 1999, the appellant was placed in Grade-16 vide Notification dated 31.5.1999. Copy of Notification is attached as Annexure-C.
7. That the appellant promoted to the post of Assistant Engineer (BPS-17) with immediate effect vide Notification dated 30.12.2015. Copy of Notification is attached as Annexure-D.
8. That against the above Notification, the appellant filed his representation on 12.07.2016 in which the appellant requested that he may be allowed promotion as Assistant Engineer BPS-17 w.e. from 1992. Copy of Representation is attached as Annexure-E.
9. That the respondent Department rejected the Representation of the appellant on 13.10.2016 for no good grounds. Copy of Rejection Order is attached as Annexure-F.
10. That now the appellant comes to this august Tribunal on the following grounds amongst the others.

GROUND:

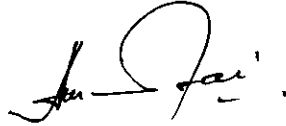
- A) That order dated 13.10.2016 is against the law, fact, norm of justice and material on record. Therefore liable to be set aside.
- B) That the appellant was promoted to post of Assistant Engineer (BPS-17) on dated 30.12.2015 on acting charge, with immediate effect, while the appellant has been working on acting charge basis as Assistant Engineer since 1992, therefore, the appellant was entitled for promotion as Assistant Engineer since 1992.
- C) That the post of Assistant Engineer remained vacant since 1992, therefore, the appellant is entitled for promotion w.e. from 1992 because the appellant has already been working on this post on acting charge basis.

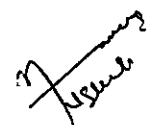
- D) That the appellant seeks permission to advance other grounds and proofs at the time hearing.


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


APPELLANT
Muhammad Saeed

THROUGH:


(M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT,
PESHAWAR.


(S. NAUMAN BAKHARI)
ADVOCATE, PESHAWAR.


(TAIMUR ALI KHAN)
ADVOCATE, PESHAWAR.

"A"

(S)

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MOST IMMEDIATE

REGISTERED

**GOVERNMENT OF KHYBER PAKHTUNKHWA,
LOCAL GOVERNMENT, ELECTIONS AND RURAL
DEVELOPMENT DEPARTMENT**

No. SO(LG-I)2-128/D/2012

Dated Peshawar, the 11th January, 2013

To

1. The Director,
FATA, LG&RDD,
Warsak Road, Peshawar
2. All Assistant Directors,
LG&RDD in FATA
3. Town Municipal Officer,
TMA-Town-IV, Peshawar

**Subject:- FINAL SENIORITY LIST OF SUB-ENGINEERS, LG&RDD AS
STOOD ON 31-12-2012**

Memo:

I am directed to forward herewith final seniority list of Sub-Engineers of Local Government and Rural Development Department with the request that the same may be circulated amongst the officials working in your respective offices for information and record and get their signature as a token of receipt.

Encl: As Above.

Endst. Even No. & Date.

Copy is forwarded to:-

1. The Director General, LG&RDD, Khyber Pakhtunkhwa.
2. The PS to Secretary, LG&RDD

(Signature)
**(IZAZ ULLAH)
SECTION OFFICER (ESTAB)**

(Signature)
SECTION OFFICER (ESTAB)

(Signature)
3-30
14-1-13

ATTESTED



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FINAL SENIORITY LIST OF SUB ENGINEERS OF LG & RDD AS STOOD ON 31.12.2012

Abbreviation "C" Passed Departmental Grade "B" Examination

Sl. No.	Name of Sub-Engineer	Educational/technical Qualification	Date of Birth	Domicile	Date of 1 st Entry into Govt. Service.	Date of Passing of Departmental Grade-B Examination	Date of appointment of promotion / absorption / regularization to the present post.	Remarks
1	2	3	4	5	6	7	8	9
1	Mr. Aurangzeb <i>Retal</i>	Matric/DAE	5.3.1954	DIKhan	4.2.1975	-	4.2.1975	
2	Mr. Jehan Alam <i>Retal</i>	-do-	11.3.1955	Lakki	16.7.1975	-	16.7.1975	
3	<u>Mr. Muhammad Saeed</u>	-do-	1.5.1959	Peshawar	29.11.1978	-	29.11.1978	
4	Mr. Saeed Ahmad Bhatti	-do-	21.12.1956	Mansehra	28.9.1980	-	28.9.1980	
5	Mr. Mumtaz Khan	-do-	10.3.1959	N.W. Agency	21.7.1979 (SE IRDO)	-	5.4.1981	
6	Mr. Sher Dad Khan	-do-	17.1.1960	Mohmand Agency	10.8.1982	-	10.1982	
7	Mr. Javed Iqbal	-do-	13.11.1960	Lakki	17.12.1980 (SE in PUGB)	-	21.3.1983	
8	Mr. Akber Jan	-do-	1.4.1954	S.W. Agency	10.12.1975 (SE IRDP)	-	1.7.1984	

ATTESTED

[Signature]
SECTION OFFICER
LOCAL GOVT. ELECTIONS AND
RURAL DEVELOPMENT

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8 (7) 126

1	2	3	4	5	6	7	8	9
9	Mr. Attaullah	-do-	13.8.1961	Nowshera	25.8.1984(SE)	-	24.11.1990	
10	Mr. Nahid Khan	DAE/B.Tech) Hon. Civil	15.3.1964	Lakki	15.3.1985(SE in Pak Railway	-	24.11.1990	
11	Mr. Muhammaq Shakeel, Ahmed	DAE	5.8.1967	DIKhan	15.10.1988(Surve yor in Irrigation	-	24.11.1990	
12	Mr. Hidayatullah	F.A ("C")	10.1.1965	Mohmand Agency	8.1.1985 (Work Munshi RDD) 31.12.1988(SE in BPS-9)	26.1.1993	18.3.1993	
13	Mr. Khaliq Noor	Matric ©	21.3.1960	N.W.Agency	31.12.1977 (W/M RDD)	26.1.1993	14.9.1994	
14	Mr. Muhammad Asghar	FA ©	16.3.1961	Kurram Agency	11.12.1982(W/M RDD)	26.1.1993	5.1.1997	
15	Mr. Ejaz-ul-Haq	Matric ©	10.1.1965	Nowshera	13.6.1983 (W/M RWP 9.1.1985 W/M RDD	26.1.1993	5.1.1997	
16	Mr. Muhammad Nawaz	F.Sc "C"	8.6.1954	S.W.Agency	13.11.1975 W/M	8.1.1999	21.1.2006	
17	Mr. Mumtaz Hussain	Matric "C"	20.10.1953	Malakand	1.7.1979(W/M)	8.1.1999	21.1.2006	
18	Mr. Azmat Ali Shah	Matric "C"	04-05-1956	Peshawar	17-03-1981	8-1-1999	18-06-2011	
19	Mr. Liaqat Hussain	F.Sc "D"	01-11-1970	Orakzai Agency	18-08-1993	26-01-2000	18-06-2011	

ATTESTED

LOCAL GOVT. ELECTRICITY DEPT
PESHAWAR

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20	Mr. Muhammad Bilal	B.A "C"	05-02-1972	NW-Agency	01-11-1994	08-01-1999	18-06-2011	
21	Mr. Ehsanullah	B.Sc "C"	10-04-1971	Mohmand Agency	22-11-1994	26-01-2000	18-06-2011	

ATTESTED

[Handwritten Signature]
OFFICE OF THE
CHIEF DEVELOPMENT OFFICER

NOTIFICATION

Peshawar, dated the 14th April, 1998.

No. SO(LG-I)2-188/93-Vol-II: In exercise of the powers conferred by sub-rule (2) of rule 3 of the North-West Frontier Province Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Local Government and Rural Development Department, in consultation with the Services and General Administration Department and the Finance Department, hereby directs that in this Department Notification No. DG(RWP)7(2)/73, dated 26.1.1978, the following further amendments shall be made namely:

AMENDMENTS.

In the Appendix, -

(a) for the existing entries at serial No. 1, the following shall respectively be substituted, namely:

1.	2.	3.	4.	5.	6.
"1.	Director/ Chief Planning Officer.	-	-	-	i) Seventy five percent by promotion, on the basis of seniority-cum-fitness from amongst Assistant Directors/Planning Officers with five years service as such; and ii) twenty five per cent by transfer."

(b) for the existing entries at serial No. 2, the following shall respectively be substituted, namely:

1.	2.	3.	4.	5.	6.
"2.	Assistant Director/ Planning Officer.	Master degree or equivalent qualification from a recognised University.	-	21 to 30 years	i) Fifty percent by initial recruitment; and ii) fifty percent by promotion, on the basis of seniority-cum-fitness from amongst

*Attested
Mohd Saad*

Contd..page-2

ATTESTED

the Progress Officers with three years service as such."

(c) for the existing entries in column 6 against serial No. 6, the following shall be substituted, namely:

" By promotion, on the basis of seniority-cum-fitness, from amongst Assistants/Accountants and Senior Scale Stenographers with five years services as such."

Note.- A joint seniority list of Assistants/Accountants and Senior Scale Stenographers shall be maintained, on the basis of their regular continuous appointments to the respective posts, for the purpose of promotion; provided that if the date of regular appointments is the same, the Assistant/Accounts shall rank senior to Senior Scale Stenographers."

d) for the existing entries in columns 3, 5 and 6 against serial No. 7, the following shall respectively be substituted, namely:

3.	5.	6.
"Bachelor Degree or equivalent qualification from recognised University.	12 to 25 years	i) Seventy Five per cent by promotion, on the basis of seniority-cum fitness, from amongst the Senior Auditors and Senior Clerks with three years service as such; and ii) twenty five per cent by initial recruitment.

Note.- A joint seniority list of Senior auditors and Senior Clerks shall be maintained, on the basis of their regular continuous appointment to the respective posts, for the purpose of promotion; provided that if the date of regular appointment is the same the Senior Auditors shall rank senior to Senior Clerk."

(e) for the existing entries in columns 3, 5 and 6 against serial No. 9, the following shall respectively be substituted, namely:

Attested
Mohd Saad

3.	5.	6.
----	----	----

"Bachelor Degree in Engineering or equivalent qualification in the relevant field from recognised University.	12 to 30 years	(i) Seventy per cent by initial recruitment; (ii) ten per cent by promotion on the basis of seniority cum-fitness, from amongst Sub-Engineer who possess Bachelor Degree in Engineering or equivalent qualification from a recognised University; (iii) twenty per cent by promotion, on the basis of seniority-cum-fitness, from amongst diploma holder Sub-Engineers having ten years service as such and have passed the <u>prescribed departmental examination.</u> "; and
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(f) for the existing entries in columns 3, 5 and 6 against serial No. 10, the following shall respectively be substituted, namely:

3.	4.	5.	6.
----	----	----	----

"Bachelor Degree from recognised University	-	21 to 25 years	(i) Seventy five per cent by promotion, on the basis of seniority-cum-fitness, from amongst Village Secretaries with five year service as such; and (ii) twenty-five per cent by initial recruitment."; and
---	---	----------------	--

(g) for the existing entries in columns 6 against serial No. 11, the following shall respectively be substituted, namely:

"By promotion, on the basis of seniority-cum-fitness, from amongst Junior Clerks with two years service as such."

Secretary to Government of
North-West Frontier Province,
Local Government, Elections and Rural
Development Department.

Attested
Mohid Saad

Endst: No. SO(LG-I)2-188/89 Dated. the 14th April 1998.

Copy of the above is forwarded to:

1. All Administrative Secretaries to Government of NWFP.
2. All Divisional Commissioners in NWFP.
3. Secretary to Governor, NWFP, Peshawar.
4. Secretary, NWFP, Public Service Commission, Peshawar.
5. Director General, LG&RDD, NWFP, Peshawar.
6. All Heads of Attached Departments in NWFP.
7. Secretary Local Council Board, NWFP, Peshawar.
8. Secretary Provincial Election Authority, Peshawar.
9. All Divisional Directors, LG&RDD in NWFP.
10. All Deputy Commissioners in NWFP.
11. All District & Session Judges in NWFP.
12. Registrar, Peshawar High Court Peshawar.
13. All Assistant Directors, LG&RDD in Peshawar.
14. Section Officer (Legis.), Govt: of NWFP, Law Deptt:
15. Section Officer (Urdu Cell) Govt: of NWFP, S&GAD with reference to his letter No. SOUC(S&GAD)6-22/90/Vol-III, dated 24-2-1998.
16. Manager Govt: Printing Press, Peshawar for publication in the next Government Gazette Notification, 40 copies of the Notification may be sent to this Department.



(ARBAB WAHEED ALAM)
Section Officer-I.

Attested

Mohd Saad

HM/AQ.

ATTESTED

47

(C)

Amex: ①

(13)

(9)

DIRECTORATE GENERAL
LOCAL GOVERNMENT AND RURAL DEVELOPMENT
N.W.F.P., PESHAWAR

OFFICE ORDER

Dated Peshawar the 31st May 1999

No. DG(RWP)7(16)/73. In pursuance of Finance Department letter No. FD.(SR.I)2-25/72-Vol.II dated 19th December 1975 and on the recommendations of Departmental Committee, the following Sub Engineers (Diploma Holder) are hereby placed in Grade-16 on the basis of seniority with immediate effect:-

1. Aurangzeb, Acting AE, LGRDD, DIKhan.
2. Jehan Alam, Acting AE, LGRDD, Lakki.
3. ✓ Muhammad Saeed, Acting AE, LGRDD, Malakand.
4. Sabir Ali Shah, SE, LGRDD, Nowshera.
5. Mumtaz Khan, Acting AE, LGRDD, Kurram.
6. Sher Dad Khan, SE, LGRDD, Swat.
7. Rafi-Ud-Din, SE, LGRDD, Chitral.
8. Zahoor Ahmad, SE, LGRDD, Charsadda.
9. Javed Iqbal, Acting AE, LGRDD, Lakki.
10. Hazrat Amin, SE, LGRDD, Swabi.
11. Muhammad Ashiq, SE, LGRDD, Swat.
12. Faizul Hassan Shah, SE, LGRDD, DIKhan.
13. Akbar Jan, SE, LGRDD, SW-Agency.
14. Hazrat Mir, SE, LGRDD, Mardan.
15. Mukhtiar Alam, SE, LGRDD, Mohmand.
16. Wali Aman, SE, LGRDD, Swabi.

Note :-

1. Necessary entry to this effect should be made in their Service Books.
2. An undertaking to the effect that if any overpayment is made to them as a result of incorrect award of B-16 and detected later on, it will be made good by recovery from their pay/pension/gratuity etc, may be obtained from them and pasted in their Service Books.
3. Certificate to the effect that the official concerned is not involved in any disciplinary etc case should be recorded in his Service Book by the DDO before making fixation of pay.

ATTACHED

Director General
LGRDD, NWFP, Peshawar.

Copy to :-

1. The Section Officer (LG-I), LGRDD, NWFP, Peshawar w/r to his No. SO(LG-I)2-218/90 dated 27-3-1999.
 2. The Assistant Directors, LGRDD, DIKhan, Lakki, Malakand, Nowshera, Swat, Chitral, Charsadda, Swabi & Mardan.
 3. The District Accounts Officers, DIKhan, Lakki, Malakand, Nowshera, Swat, Chitral, Charsadda, Swabi and Mardan.
 4. The ADs, LGRDD(FATA), Kurram, SW-Agency & Mohmand.
 5. The Agency Accounts Officers, Kurram, SW-Agency & Mohmand.
 6. The officials concerned.
 7. Concerned files.
- for information and necessary action.

Shah
Assistant Director (Admin)
LGRDD, NWFP, Peshawar.

SHAKIB



48

D

14

Government of Khyber Pakhtunkhwa
Local Government, Elections and Rural Development Department

NOTIFICATION

Dated Peshawar, the 30th December, 2015

No.SO(LG-I)2-336/Promotion/AEs/2015.- On the recommendations of Departmental Promotion Committee, the Competent Authority has been pleased to promote the following diploma holder Sub-Engineers to the posts of Assistant Engineers (BS-17) in Local Government, Elections and Rural Development Department with immediate effect:-

- 1 ✓ Mr. Muhammad Saeed
- 2 Mr. Saeed Ahmad Bhatti
- 3 Mr. Mumtaz Khan
- 4 Mr. Sher Dad Khan
- 5 Mr. Javed Iqbal
- 6 Mr. Attaullah Khan
- 7 Mr. Muhammad Shakeel

2. On their promotion, the terms and conditions of their service will remain the same.

3. The officers will remain on probation for a period of one year as per provision in Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989.

4. Consequent upon their promotion, they are posted against the posts noted against each as under:-

S.No.	Name of officer	From	To
1 ✓	Mr. Muhammad Saeed	On Promotion	AE, LG&RDD, Abbottabad
2	Mr. Saeed Ahmad Bhatti	-do-	AE, LG&RDD, Mansehra
3	Mr. Mumtaz Khan	-do-	AE, LG&RDD, Orakzai Agency ✓
4	Mr. Sher Dad Khan	-do-	AE, LG&RDD, Bajour Agency ✓
5	Mr. Javed Iqbal	-do-	AE, LG&RDD, Mohmand Agency ✓
6	Mr. Muhammad Shakeel	-do-	AE, LG&RDD, SW-Agency ✓
7	Mr. Attaullah Khan	-do-	AE, LG&RDD, Swabi ✓

SECRETARY TO GOVT. OF KHYBER
PAKHTUNKHWA, LG, E&RDD

Contd:.....P/2.....

ATTESTED


49

15

Endst No.SO(LG-I)2-336/Promotion/2015 Dated Peshawar, the 30th December, 2015

Copy is forwarded to:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The AGPR Sub-Office, Peshawar.
3. The Director General, LG&RDD, Khyber Pakhtunkhwa, Peshawar.
4. The Director FATA, LG&RDD, Warsak Road, Peshawar.
5. All Assistant Directors, LG&RDD in Khyber Pakhtunkhwa.
6. All Agency Accounts Officers in FATA.
7. The District Accounts Officers, Abbottabad, Mansehra and Swabi.
8. The Officers concerned.
9. The Manager, Government Printing Press, Peshawar.
10. Personal file of the officers concerned.
11. The PS to Secretary, LG,E&RDD.
12. Office order file.


(IZAZ ULLAH)
SECTION OFFICER (ESTAB)
Phone #091-9213224

(16)

E

50

To

GOVERNMENT OF
Diary No. 5960
Date: 13/07/2016

The Secretary,
LG, Election & RDD,
Khyber Pakhtunkhwa.

SUBJECT: REPRESENTATION AGAINST NOTIFICATION NO. SO (LG-1) 2-336/PROMOTION / AES 2015 DATED 30.12.2015.

Respected Sir,

it is submitted that i have been promoted as an Assistant Engineer though subject quoted notification on immediate basis against which i offer my objection as under:-

1. That I was eligible for promotion since 1992 and have been working as acting Assistant Engineer from the above date till my regular promotion in the department on various stations including FATA area as well.
2. The promotion quota posts were remain vacant in the department (FATA) since 1992 over which 5 to 6 Sub- Engineer including the undersigned were working on acting charge basis as Assistant Engineer.
3. That in Seniority list my position was under considerable for promotion as per the quota available for promotion of Sub-engineers, but has been ignored for un-know reason.

In view of the above it is therefore, requested that i may be allowed promotion as Assistant Engineer BPS-17 w.e.f 1992 as i am deserving the same benefit according to rules.

your early kind action will be highly appreciable.

(All the record is lying with Establishment Section of the department.)

Dated: 12.7.2016.

yours sincerely

12/7
(MUHAMMAD SAEED)
Assistant Engineer
LG&RDD Khyber Pakhtunkhwa.

SM Saad
13-7-16
19/7/16
AS (LG)

[Handwritten signature]

SOE
[Handwritten signature]
18/7

ATTESTED

VAKALAT NAMA

SCANNED
KPST
Peshawar

NO. _____/20

IN THE COURT OF

KoPolc Service Tribunal, Peshawar

Muhammad Saeed

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Court of KoPolc & other

(Respondent)
(Defendant)

I/We

Muhammad Saeed

Do hereby appoint and constitute **M.Asif Yousafzai, Advocate, Peshawar**, 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 _____/20

(CLIENT)

ACCEPTED

M. ASIF YOUSAFZAI
Advocate

S. Noman Ali Beldar

M. ASIF YOUSAFZAI
Advocate High Court,
Peshawar.

OFFICE:

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

Receipt

52

I have received Rs. 500/- of cost in appeal No. 1161/2016 title Muhammad Saeed vs Local Government fixed for hearing today on 17/10/2017.

(Nadeem Mushi)
17-10-17

17/10

BEFORE THE KHYBER
TRIBUNAL, PESHAWAR

53
PAKHTUNKHWA

SERVICE APPEAL NO. 1161 OF 2016

Muhammad Saeed,
Assistant Engineer, LG&RDD

....

PL
SCANNED
KPST
Peshawar
Petitioner

V E R S U S

- 1 Secretary, LG, E&RDD
- 2 Director General, LG&RDD
- 3 Secretary Finance, KP

....

Respondents

Para-wise reply/comments of Respondent

Respectfully Sheweth:-

Preliminary Objections:-

- (i) That the appellant got no cause of action and locus-standi to institute the instant vice appeal.
- (ii) That the appellant not come to the Hon'ble Service Tribunal, with clean hands.
- (iii) That the appeal is not maintainable and not covered by the relevant rules.
- (iv) That the appellant concealed material facts of the case.
- (v) That the appeal is bad for non-rejoinder and mis-joinder of necessary parties.
- (vi) The appeal is time barred.

ON FACTS:-

- Para-1 Good service record of the appellant is denied.
- Para-2 The posts of Assistant Engineer which were lying vacant under initial recruitment in 1992 were already filled-in amongst holders of the post of diploma holder Sub-Engineers during 1992.
- Para-3 As replied in Para-2 above.
- Para-4 Incorrect. The seniority list of Sub-Engineers circulated by the Competent Authority was challenged by the appellant in Khyber Pakhtunkhwa Service Tribunal, Peshawar through Service Appeal No.1252, which was dismissed by the learned Tribunal vide judgement dated 1-11-2004 (Annex-A). Aggrieved of the judgement, the appellant filed Civil Petition No.108-P/2006 in the Supreme Court of Pakistan (Annex-B). The Supreme Court of Pakistan dismissed petition of the appellant vide Judgement dated 4-3-2003 and 09-10-2003 (Annex:C & D). When Civil Petitions of the appellant were dismissed by the Apex court, then final / undisputed seniority list of Sub-Engineers was prepared and

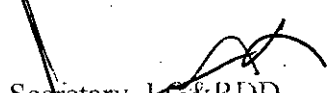
circulated amongst all concerned on 11-01-2013 (Annexure-E).
On the basis of final seniority list, the diploma holder Sub-Engineers were considered and promoted to the post of Assistant Engineers (BS-17) lying vacant under promotion quota on 30-12-2015 (Annexure-F).

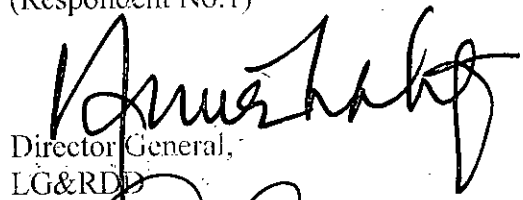
- Para-5 As replied in para-4 above.
- Para-6 Incorrect. Not only the appellánt was placed in BPS-16 but other 15 diploma holder Sub-Engineers were also placed in BPS-16 by the Competent forum with approval of Competent Authority.
- Para-7 Correct. Seven Sub-Engineers including the appellant were promoted to the post of Assistant Engineers (BPS-17) lying vacant under promotion quota.
- Para-8 Appeal of the appellant was considered and filed as the same was not covered under the rules / promotion policy of the Provincial Government in vogue.
- Para-9 As replied in Para-8 above.
- Para-10 Reply to the grounds of appeal of the appellant is as under;

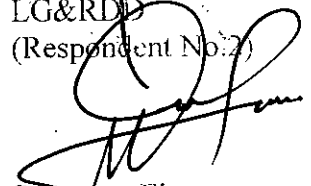
ON GROUNDS:-

- A. Incorrect. The promotion order dated 13-10-2016 is in accordance with law and service rules regulating services of the appellant.
- B. Incorrect. As replied in Para-4 above.
- C. Incorrect. As replied in Para 2 above
- D. Additional grounds, if produced by the appellant will be replied at the time of arguments.

For the submission stated above, appeal of the appellant may graciously be dismissed with cost.


Secretary, LG&RDD,
(Respondent No.1)


Director General,
LG&RDD
(Respondent No.2)


Secretary Finance
(Respondent No.3)

55

Service Appeal No. 1252/1998.

MOHAMMAD SAEED
(SUB ENGINEER) ACTING ASSISTANT
ENGINEER, ASSISTANT DIRECTOR
OFFICE, LG&RDD MALAKAND AT BATEHELA. (APPELLANT)

VERSUS

1. Government of N.W.F.P.
Through Secretary, Local Govt: Elections
and Rural Development Department Peshawar.
2. Director General
Local Govt: & Rural Development Department
NWFP, Peshawar.
3. Mr. Aurang Zeb Khan
(Sub-Engineer) Acting Assistant Engineer
LG&RDD Office, Asstt: Director, D.I.Khan.
4. Mr. Qismat Khan (Sub-Engineer)
Acting Assistant Engineer, LG&RDD
Assistant Director office, Charsadda.
5. Mr. Pir Dad Khan (Sub-Engineer)
Acting Assistant Engineer, A.D. office
North Waziristan Agency.
6. Mr. Mohammad Ramzan (Sub-Engineer)
Acting Assistant Engineer, LGRDD, A.D.
office, D.I.Khan.
7. Mr. Jehanalm (Sub-Engineer)
Acting Assistant Engineer, LGRDD, A.D.
Office, Lakki Marwat.
8. Mr. Qibla Khan (Sub-Engineer)
Acting Asstt: Engineer, LGRDD, A.D. Office
Swabi.
9. Mr. Samiur Rehman,
Sub-Engineer, A.D, LGRDD Office
District Swabi. (Respondents)

Subject: APPEAL UNDER SECTION -4 OF SERVICE TRIBUNAL
ACT 1974 AGAINST THE FINAL SENIORITY LIST OF
SUB ENGINEERS OF RURAL DEVELOPMENT DEPARTMENT
CIRCULATED BY RESPONDENT NO.2 ON 14-7-1998.

Respectfully shewith

That facts giving raised to the present appeal
against the final Seniority list are as under:-

1. That the appellant is working as Sub-Engineer (Civil)

in Local Govt: & Rural Development Department and at present is posted as Assistant Engineer.

2. That a revised finally seniority list of Sub-Engineer was circulated in 1992 by Respondent Department against which an appeal No.16/93 was filed in the Honourable Services Tribunal after observing the legal formalities.
3. That the Learned Service Tribunal (Member Bench) passed an order that the impugne revised final seniority list is not in fact a final seniority list in character and treated it as tentative seniority list. The appeal was accepted and remanded back to the Department for finalization of dispute with the consultation of S&GAD and also circulate the final seniority list.
4. That a lot of time was consumed but no action was taken by the department, therefore, the appellant once again approached to the Service Tribunal for seeking directions for the department to implement the order of this Tribunal. On the notice to the department, the department issued final seniority list of Sub-Engineers on 23-2-1998.
5. The the aforesaid seniority list was also against the interest of the appellant, therefore, he filed a departmental appeal before the Authority and pointed out the names of three(3) Junior Sub-Engineers who have been shown senior to the appellant in the said list.
6. That what is astonishing the respondents instead of rectifying the omissions, allowed seniority to certain officials who were serving on adhoc basis from retransfacto effect despite the fact that the concept of retransfacto seniority to adhoc employees is not available in the relevant rules, in the fresh seniority list issued on 14-7-98(Annex-"A")

7.

That the appellant feeling aggrieved once again filed his appeal against the fresh seniority list on 5.8.98, but no action has been taken by the Authority (Annex-"a"). hence present appeal is being filed on the following grounds before the honourable Tribunal.

G R O U N D S

- A. That Respondents No. 4, 5, 8 & 9 were appointed in Rural Development Department ~~Programme~~ ^{WORKS} and were paid out of contingency by the Deputy Commissioner/Project Director, R.W.P.

Later on they were transferred against the regular posts of Rural Development Department without the regularization of their contingent paid service/appointment, therefore being contingent paid employees their posting against the regular post in Rural Development Department and their placement in the seniority list ahead the appellant is quite illegal and against the law. (Their posting orders are at Annex: C, D, & E)

- B. That respondents 3, 5, 6 & 7 are electrical/mechanical diploma holder and their appointments against the posts of civil nature is unlawful therefore their placement in the said seniority list of civil Sub-Engineers ahead the appellant is quite illegal.

- C. That the respondent No. 9 being Draftsman can not claim seniority in the cadre of Sub-Engineer in fact he do not have the requisite qualification for the post of Sub-Engineers. Therefore his placement in the seniority list of qualified Sub-Engineers ahead the appellant is quite illegal.

- D. That persons at No. 2, 3, 6, 7 & 8 were appointed on adhoc basis as Sub-Engineer with the condition that " their retention in the department is subject to the clearance of their appointment from Departmental Selection Committee as and when constituted for the purpose in 1975/76 and their service are still not regularised and they have been given seniority from their date of adhoc appointment in the said seniority list which is illegal, unjustified and against the law. (orders at Annex F)

That the appellant is a qualified Sub-Engineer ~~having~~ the requisite qualification and is a regular employee of Rural Development Department.

In view of the above, it is respectfully prayed that on the acceptance of this appeal the following relief may

may please be granted.

P R A Y E R S.

1. An order may please be passed to declared the appellant senior to the respondents No.3 to 9 directing the respondent department to please place the appellant at S.No.1 in the final seniority list dated 14-7-98.
2. An other relief considered appropriate in the circumstances of the case may also be granted.

A P P E L L E N T

Mohd Saeed

(MOHAMMAD SAEED)

Dated _____/98.

A F F I D A V I T

I Mohammad Saeed do hereby solemnly affirm and declared that the contents of my above appeal is correct to the best of my knowledge and belief.

D E P O N E N T

Mohd Saeed

(MOHAMMAD SAEED)

59

Service appeal No. 556/1999

Mohammad Saeed
(Sub-Engineer)
Acting Asstt:Engineer
LG & RDD Malakand Agency..... Appellant.

....Vs.....

1. Government of N.W.F.P
Secretary Local Govt; and
Rural Dev; Deptt; Civil
Secretariat Peshawar.
2. The Director General
Local Govt; & Rural Dev; Deptt;
N.W.F.P Peshawar.
3. Qismat Khan Asstt:Engineer,
Local Govt; & Rural Dev; Deptt;
~~Chapradra~~. *A.D office Khyber Agency in P.A Khyber Office
near Sayam stadium. B*
4. Said Bahader Asstt:Engineer,
Local Govt; & Rural Dev; Deptt;
Kohistan at Dasu.
5. Mohammad Salim Asstt:Engineer,
~~Local Govt; & Rural Dev; Deptt;~~ *on deputation B*
~~Haripur~~. *To Central Police Office*..... Respondent.
Peshawar.

APPEAL UNDER SECTION 4 OF SERVICE TRIBUNAL ACT, 1974
AGAINST THE IMPUNG NOTIFICATIONS NO.90(LG-I)28/D
DATED 4.1.1999 AND 4.2.1999 THROUGH RESPONDENT NO.3
TO 5 ARE PROMOTED ILLEGALLY. *Some*

Respectfully Sheweth.

The facts of the case is submitted as under :-

1. That the appellant is serving in Rural Development Department as qualified Sub-Engineer (Civil) since 1978.
2. That the respondent No.1 has allocated 10% quota for promotion of Degree holder Sub-Engineers to the post of Assistant Engineer (B-17) through Notification No:90(LG-I)2-188/93 Vol-II dated 14.4.1998 which is accordingly challenged in honourable Service Tribunal by Diploma holder Sub-Engineers of the same Department through appeal No:570 and 571 of 1998 which are still pending for decision. (Rules Annexure-I).
3. That the Department prepare promotion case for respondent No.3 *To 5* and ignored the subjudice status of the relevant rules No.3 and recommended promotion for respondents No.3 *To 5*.
4. That the attention of respondent No.1 and 2 were invited to the subjudice status of relevant rules through notices by Council which are available on the relevant file with Section Officer -I but these were totally ignored.
5. After speedy process of promotion case, respondent No.1 issued promotion Notification for the respondent No.3 *To 5* (copy annexure -II & III)

6. The appellant filed Departmental appeal against the promotion order of respondent to respondent I which is still in process. (copy Annexure -IV)
7. After the completion of prescribed period this appeal is filed on the following grounds before this honourable, Tribunal.

G R O U N D S.

1. That the Deptt: bifurcate the seniority list and prepare a new seniority list for respondents on the bases of qualification to provide them un-due favour of promotion and also did not circulate it amongs all the incumbants of the list which is illegale and based on malafied.
2. That the Deptt: operated the relevent rules with retranspective effect as evident from Para-2 of the comments of Department in response of my appeal (copy Annexure -V). In result of which Diploma holder, Sub-Engineers have lost their 5 posts already reserved for promotion in 1995 while direct recritment quota was already implemented in 1995 through Public Service Commission. The record is lying with the Deptt:
3. That the Department has concealed the facts from the Provincial Selection Board that the status of seniority of the respondent are already challenged, before this honourable tribunal through appeal No. ~~68/98~~ and letter on 1252/98. 16/93
4. The due to retranspective operation of the rules the Department provide un-due favour to respondents 4 to 5 and promoted them exees to their promotion quota on the cust of Diploma holder Sub-Engineers.
5. That the Department totally ignored the direction of Service Tribunal through its judgement dated 9.2.1995 that the seniority list may finalized with the consultation of S & LAD in accordance with the law/Rules and then issue a final seniority list given appropriate position to the official according to their right accrued to them under the law/rules but the Department before the settlement of objections promoted the respondent illegally which is based on malafied (order of the Tribunal at annexure-VI)

In view of aforesaid facts and on the acceptance of this appeal the following relief may kindly be granted to the appellant.

P R A Y E R.

1. On the acceptance of above appeal the orders of promotion of respondent may be declared illegale and bearing no legal effect in the eyes of law.
2. The respondent 1 and 2 may be directed to ^{Restore} the promotion quota posts already reserved under the law/Rules for Diploma holder Sub-Engineer in 1995.
3. The deptt: may be directed to consider the applt. for promotion against promotion quota posts already laying vacant in the deptt. since 1995.

Appellant
Mohd Saeed
(Mohammad Saeed)

A F F I D A V I T E.

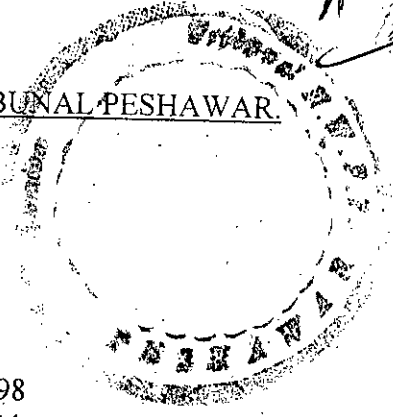
I Mohammad Saeed solemnly affirm that the contents of my above appeal is correct to the best of my knowledge & belief and nothing has been kept secrets from this honourable, Tribunal.

Mohd Saeed
(Mohammad Saeed) 10/5/99

(61)

Annex-A

BEFORE THE NWFP SERVICE TRIBUNAL PESHAWAR.



Appeal No. 1252/1998

Date of institution - 27.11.1998
Date of decision - 20.11.2004

Muhammad Saeed, Sub Engineer,
Acting Assistant Engineer, Assistant
Director Office, LG&RDD, Malakand
At Batkhela.....(APPELLANT)

VERSUS

1. Government of NWFP through the Secretary Local Government and Rural Development Department, Peshawar.
2. Director General, Local Government and Rural Development Department, NWFP Peshawar.
3. Mr. Aurang Zeb Khan, Sub Engineer, Acting Assistant Engineer, LG&RDD Office, Assistant Director D.I.Khan and 6 others.....(RESPONDENTS)

Shahzada Shahpur Jan Advocate.....For appellant.
Mr. Zulfiqar Ali Government Pleader.....For respondents No. 1 & 2.
Mr. Abdul Aziz Kundi Advocate.....For respondents No. 3 to 8.

MIAN SAHIB JAN.....MEMBER.
MR. MUHAMMAD SHAUKAT.....MEMBER.

JUDGMENT.

MIAN SAHIB JAN, MEMBER:- This appeal has been filed by the appellant against the final seniority list of Sub Engineers circulated on 14.7.1998 with the prayer that he may be declared senior to respondents No. 3 to 9 placing him at S.No.1 in the final seniority list dated 14.07.1998.

2. The brief facts of the case as averred in the memo of appeal are that the appellant is working as Sub Engineer (Civil) in Local Government and Rural Development

ATTESTED
 EX. DIR. NWFP SERVICE TRIBUNAL PESHAWAR.

[Handwritten signature]

Department at present posted as Assistant Engineer. A revised final seniority list of Sub Engineer was circulated in 1992 by respondent department against which an Appeal No. 16/1993 was filed in the Service Tribunal which passed an order to the effect that the impugned seniority list was not in fact a final seniority list. The appeal was accepted and remanded back to the department for finalization of dispute with consultation of S&GAD and to circulate the final seniority list. The department issued a final seniority of Sub Engineers on 23.2.1998 but the same was also against the interest of the appellant, therefore, he filed a departmental appeal before the authority and pointed out the names of 3 junior Sub Engineers junior to him who have been shown senior to the appellant in the said list. The respondent department allowed seniority to certain officials who were serving on adhoc basis. The appellant filed his appeal against the fresh seniority list on 5.8.1998 but no action has been taken by the authority.

3. The appellant has assailed the impugned seniority list on the grounds that respondents No. 4, 5, 8 and 9 were appointed in Rural Works Programme and were paid out of contingency by the Project Director R.W.P. therefore, their placement in the seniority list ahead ^{of} the appellant is quite illegal and against the law. Respondents No. 3, 5, 6 and 7 are electrical/mechanical diploma holders and their appointments against the posts of civil nature is unlawful and their placement in the said seniority list ahead ^{of} the appellant is quite illegal. Respondent No. 9 being draftsmen cannot claim seniority in the cadre of Sub Engineer, therefore, his placement in the seniority list of qualified Sub Engineers ahead the appellant is also quite illegal. Respondents No. 3, 5, 6, 7 and 8 were appointed on adhoc basis as Sub Engineers with the condition that "their retaining in the department is subject to the clearance of their appointment by the DSC but their services are still not regularized and they have been given seniority from their date of adhoc appointment in the said seniority list which is illegal.

4. The respondents have filed their written reply, contested the appeal and denied the claim of the appellant. Arguments of the learned counsel for the appellant, Government

APPEAL
 SERVICE TRIBUNAL
 RAIPUR
 15/08/1998
 RECEIVED

Pleader for the respondent department and private respondents have been heard and record perused.

5. The learned counsel for the appellant argued that the appellant is a Diploma holder Sub Engineer and is working as Sub Engineer with Local Government and Rural Development and is senior to respondents No. 3 to 9 but has been shown junior to them in the seniority list issued by the respondent department vide letter dated 10.4.1998. The learned counsel for the appellant contended that respondents no. 4,5, 8 and 9 were the employees of the Rural Works Programme and were paid out of the contingency. They were transferred from the R.W.P. and posted against the regular posts of Sub Engineers in the RDD. That their transfer against the regular posts and their placement in seniority list over the appellant is quite illegal and against the law. The learned counsel for the appellant further contended that respondents No.3,5, 6 and 7 are Electrical/Mechanical Diploma holders and their appointment against the posts of civil nature is unlawful and their placement in the seniority list of civil Engineers ahead of the appellant is quite illegal. The learned counsel for the appellant also claimed that respondents No. 3,5, 6, 7 and 8 were appointed on adhoc basis as Sub Engineers with the condition that their retention in the department is subject to the clearance by the DSC as and when constituted for the purpose in 1975-76 and that their services are still not regularized and they have been given seniority from the date of their adhoc appointment in the seniority list which is illegal, unjustified and against the law. The learned counsel for the appellant urged that the appeal of the appellant may be accepted and the appellant be placed senior to respondents No. 3-9 in the seniority list to meet the ends of justice.

6. The learned counsel for respondents No. 3,5, to 8 and ^{the} learned Government Pleader submitted that the seniority list of Sub Engineers has been issued by the respondent department on 14.7.1998 in accordance with law, instructions and decision of the Provincial Government in the interest of the Sub Engineers and is correct. That the contention of the appellant that the respondents are adhoc employees is not correct. The

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 EXAMINED
 NWFP Service Tribunal
 Peshawar.

answering respondents were initially appointed in Peoples Works Programme but later on they were transferred and posted in the newly created Rural Development Department vide orders dated 31.3.1975 and 29.12.1976. Since then they are working in the Rural Development Department and their previous service in the Peoples Works Programme has not been counted towards their seniority. The learned counsel for respondents No. 3, 5, to 8 contended that the appointment of the appellant was made on temporary basis and his services have ^{not} been regularised by the competent authority ^{so far} and as such he cannot claim seniority over the answering respondents who were appointed/transferred earlier than the appellant in the RDD.

7. The Tribunal observes that the appellant was appointed as Sub Engineer in BPS-9 in the office of Assistant Director RDD Chitral on purely temporary basis vide office order dated 29.11.1978. Later on the passing of Diploma course in Civil Technology he was allowed NPS-11 w.e.f. 1.9.1980 vide office order dated 19.2.1981. In the previous seniority list of Sub Engineers issued by the respondent department on 5.12.1991 respondents No. 3 to 9 were placed between S. Nos. 1 to 18 while the appellant was placed at S.No. 26 which shows respondents were senior to the appellant. The aforesaid seniority list remained under dispute and the seniority list was finalized and final seniority list was issued by the respondent department on 14.7.1998. The respondents No. 3 to 9 were also placed senior to the appellant at S. No. 1 to 8 while the appellant has been placed at S.N.10 in the said seniority list. The Tribunal observes that the claim of the appellant for the grant of seniority to the appellant over respondents No. 3 to 9 is untenable as the appellant had joined the RDD as Sub Engineer on 29.11.1978 while respondents No. 4, 5, 6, 7, and 8 joined as Sub Engineers either by initial appointment or by transfer from other offices in the RDD on 4.2.1975, 31.3.1975, 31.3.1975, 2.6.1975, 16.7.1975, 16.8.1975 and 1.12.1975, much earlier than the appellant and had continuously been working in the department till the issue of final seniority list on 10.4.1998. As all the respondents had joined as Sub Engineers in the respondent

ATTESTED
 EXAMINER
 NWFP Service Tribunal
 Peshawar.

department earlier than the appellant they were senior to the appellant and there is no reason to give seniority to the appellant ahead of them in the seniority list.

8. The Tribunal further observes that respondents No. 3,5,6,7 and 8 were diploma holders Sub Engineers while respondent No.4 was degree holder Sub Engineer and they had passed the Diploma/Degrees earlier than the appellant as stated by the respondents in reply to the query of the Tribunal in the presence of the appellant and the same was not rebutted by the appellant as such respondents were entitled for regularization as Sub Engineers and seniority earlier than the appellant. The Tribunal also observes that the claim of appellant that respondents No. 3,5, 6 and 7 are Electrical/Mechanical Diploma holders and their appointment/regularization as Sub Engineers was unlawful is not correct as according to the Service rules notified on 26.1.1978 qualification for direct recruitment for the post of Sub Engineer had been prescribed as "Diploma in Engineering from a Recognized Institute" and not Diploma of Civil Engineering and they were entitled for regularization under the said rules.

9. In view of the above reasons, there is no merit in the appeal of appellant. The appeal is hereby dismissed by the Tribunal. No order as to costs. File be consigned to record.

ANNOUNCED.
20.11.2004.

Muhammad Shaukat
(MUHAMMAD SHAUKAT)
MEMBER.

Mian Sahib Jan
(MIAN SAHIB JAN)
MEMBER.

[Signature]
Certified to be true copy.
MEMBER,
Service Tribunal,
Peshawar.

66

Annex-B

176

Tel: 051-9220581/409
Fax: 051-9220406
URL: "www.supremecourt.gov.pk"

IN THE SUPREME COURT OF PAKISTAN, ISLAMABAD.

(Appellate Jurisdiction)

Regd.A.D.

Civil Petition No.108-P/2006

Muhammad Saeed Vs. Secretary, Local Govt of K.P.K.

Take notice that the above noted case came up for hearing before the Court on 10-09-2012 and the Court has been pleased to pass the following order:-

"Nemo for the respondents. Let notice be issued to learned Advocate General, KPK to appear and assist after seeking instructions for a date in the next week"

Take further notice that the above noted case is fixed for hearing before the Court on 18-09-2012 at 9.00 a.m. or soon thereafter as may be convenient to the Court in the Court House at **Islamabad.**

Take further notice that you are required to bring your **Original Identity Card** for purpose of verification of your identity for entrance in the premises of the Supreme Court Building.

Islamabad, 12-09-2012



SUPERINTENDNET
(FIXTURE)

To,

1. Syed Safdar Hussain, AOR.
2. Advocate General K.P.K.Peshawar C/O DR(P).
3. Muhammad Saeed
R/O House No. 19, St. 2/B, Asad Anwar Colony, Gul Bahar
Peshawar 0333-9197792,091-2570308 C/O DR(P).
4. Advocate General K.P.k. Peshawar C/O DR(P).
5. Syed Safdar Hussain,AOR.
6. Govt of K.P.K. thr. Secretary Local Govt & Rural Development
Department Civil Secretariat, Peshawar C/O DR(P).
7. Director General LG& RDD, K.P.K. Peshawar C/O DR(P).
8. Qismat Khan, Assistant Engineer, P & D Department D.C.O. Office
District Karak.
9. Said Bahadur Assistant Engineer, LG & RDD, Kohitan At Dasu.
10. Muhammad Salim,Assistant Engineer, on Deputation to
Assistant Director Office Khyber agency, Peshawar C/O DR(P).

So (Litigation)

Please attend on
Court behalf.


17/9/12

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present

Mr. Justice Jawwad S. Khawaja
Mr. Justice Khilji Arif Hussain

Civil Petition No. 108-P of 2006

(Against the judgment dated 20.12.2005 of

the NWFP Service Tribunal, Peshawar

passed in Appeal No. 56 of 1999)

Muhammad Saeed

Versus

Respondent(s)

Govt. of NWFP, etc.

For the Petitioner(s):

Nemo

For Respondents No. 1-2:

Nemo

For Respondents 3-4:

Syed Arshad Hussain Shah, Addl. A.C.

For Respondent No. 5:

In person

Date of Hearing:

04.03.2013

ORDER

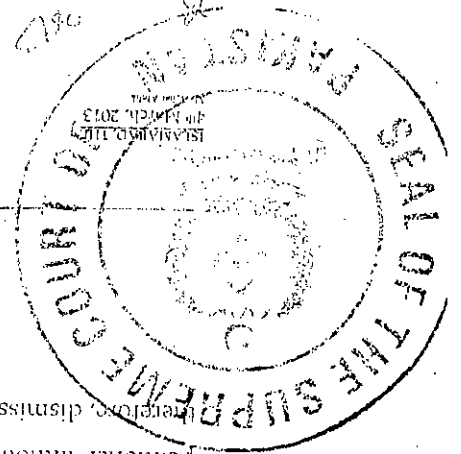
Jawwad S. Khawaja, J. The case has been called. None has appeared for the petitioner although he has been personally served for today's hearing. This petition is, therefore, dismissed for non-prosecution.

Sd/-Jawwad S. Khawaja, J.

Sd/-Khilji Arif Hussain, J.

Certified to be True Copy

Supreme Court of Pakistan
ISLAMABAD



6269/13
15-5-13
310
3
No. of orders
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Court for
Date of
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Date of
Copy
M. Khawaja

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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
MR. JUSTICE NASIR-UL-MULK
MR. JUSTICE TARIQ PARVEZ
MR. JUSTICE AMIR HANI MUSLIM

CIVIL APPEALS NO. 414 AND 415 OF 2009
for appeal from the judgment of the NWRP (now RPK)
Service Tribunal, Peshawar dated 20.11.2004 passed in
Appeal No. 1252 of 1998 and 63 of 1999)

Mohammad Saeed
(in both cases)

...Appellants.

VERSUS

The Government of NWFP (now RPK) through
Secretary, Local Government Election and
Rural Development and others
...Respondents.

For the Appellant: In-person.

For the State: Syed Arshad Hussain Shah, Addl. AG, KPK
Mr. Shahid Khan, S.O.

Other Respondents: Ex-parte.

Date of Hearing: 09.10.2012.

JUDGMENT

NASIR-UL-MULK, J. — The appellant, Mohammad Saeed,

was appointed as Sub-Engineer (Civil) Local Government & Rural
Development and later posted as Assistant Engineer, through Civil
Appeal No. 414 of 2012, assailed the final seniority list of Sub-
Engineers dated 23.02.1998, in service appeal filed before the NWRP
(now RPK) Service Tribunal on 27.11.1998. He claimed that he be
placed on top of the seniority list before Respondents Nos. 3 to 9. He
averred that Respondents 4, 5, 8 and 9 were appointed in the Rural
Works Programme and were paid out of contingency, whereas
Respondents 3, 5, 6 and 7 were holders of electrical/mechanical
diploma, whereas the appellant was Sub-Engineer (Civil), which was the
relevant discipline for the post. Further that Respondent No. 9 was a

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Supreme Court of Pakistan
ISLAMABAD

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Dratman and therefore could not claim seniority in the cadre of Sub-Engineer. His appeal was dismissed by the impugned judgment against which leave to appeal was granted on 16.04.2009, relevant part of the order reads:

"The petitioners submitted, inter alia, that notwithstanding the regularization of service, the private respondents could not be assigned seniority from the date of their office appointment over and above the petitioners. They relied on the cases of Manzoor Hussain Bhatta versus Government of Punjab and others (MLR 1986 Service 41) (S.C.), Dr. Sabir Zainger Siddiqui versus Mian Abdul Malik and 4 others (PLD 1991 SC 226) and Prof. Dr. Badshah Gul versus Prof. Dr. Shafiq Ahmad (1995 SCMR 1859)."

2. We heard the appellant in person and have gone through the record. It transpires that the appellant was appointed as Sub-Engineer (BPS-9) in the office of Assistant Director Rural Development Department, Chitral on purely temporary basis on 29.11.1978, whereas Respondents No.4 to 8 joined the Department as Sub-Engineer either by way of initial appointment or through transfer on different dates in the year 1975. True that the appointment of the said respondents was on ad hoc basis and their services were regularized on 11.07.1998 with retrospective effect from the date of their initial appointment. Leave to appeal was also granted to determine whether the appellants seniority would be affected on account of retrospective regularization of services of the said Respondents.

3. This question has already been dealt with in the connected Civil Appeals No. 412 and 413 of 2009 and the contention raised on this question on behalf of the appellant in the said-cases was rejected on the ground that the said Respondents had served the Department on ad hoc basis for the last 23 years and they were otherwise treated as

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Supreme Court of Pakistan
Islamabad

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regular appointees but due to negligence of the Department no formal order was passed in their favour. The same holds good for the present cases. The case law referred to in the leave granting order was distinguished as the retrospective regularization of services of the Respondents was only to rectify the error made by the Department for no fault of the Respondents. Although leave to appeal was granted only on this limited question, the claim of the appellant of seniority over and above the other Respondents have rightly been rejected by the Tribunal, holding that the said Respondents were appointed as Sub-Engineer earlier than the appellant and the qualification for Sub-Engineer according to the rules was diploma in engineering from a recognized institute, making no distinction between civil, electrical or mechanical engineering. For the same reason, Respondent No.9, though a Draftsman, was already included in the cadre of Sub-Engineer on account of his qualification and experience. No exception can be taken to such inclusion.

4. As far as Civil Appeal No.415 of 2009 is concerned, leave to appeal was granted in the same terms as in the leave granting order dated 16.04.2009, out of which Civil Appeal No. 414 of 2009 arises. However, the issues involved in the two cases are different. In the present case, the appellant had claimed selection grade against 25% quota in BPS-16 with effect from 1988 on the ground that he had served for 20 years as Sub-Engineer and had the requisite three years diploma in engineering. During the course of hearing of the appellant's service appeal before the Service Tribunal, the Department granted him selection grade by order dated 31.05.1999 with immediate effect. This, however, did not satisfy the appellant, who demanded the grant of selection grade with effect from 1988. The Service Tribunal rejected this claim on two grounds. Firstly, that the Government of N.W.F.P. through

ATTESTED

Superintendent
Supreme Court of Pakistan
ISLAMABAD

Amir E

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MOST IMMEDIATE

REGISTERED

GOVERNMENT OF KHYBER PAKHTUNKHWA,
LOCAL GOVERNMENT, ELECTIONS AND RURAL
DEVELOPMENT DEPARTMENT

No. LG-I/2-128/D/2012

Date: Peshawar, the 11th January, 2013

To

1. The Director,
FATA, LG&RDD,
Warsak Road, Peshawar
2. All Assistant Directors,
LG&RDD in FATA
3. Town Municipal Officer,
TMA-Town-IV, Peshawar

Subject:- FINAL SENIORITY LIST OF SUB-ENGINEERS, LG&RDD AS
STOOD ON 31-12-2012

Memo:

I am directed to forward with final seniority list of Sub-Engineers of Local Government and Rural Development Department with the request that the same may be circulated amongst the officials working in your respective offices for information and record and get their signature as a token of receipt.

Encl: As Above.

Endst. Even No. & Date.

- Copy is forwarded to:-
1. The Director General, LG&RDD, Khyber Pakhtunkhwa.
 2. The PS to Secretary, LG&RDD

(IZAZ ULLAH)
SECTION OFFICER (ESTAB)

SECTION OFFICER (ESTAB)

3-30
14-1-13

6

FINAL SENIORITY LIST OF SUB ENGINEERS OF LG & RDD AS STOOD ON 31.12.2012

Abbreviation "C" Passed Departmental Grade "B" Examination

Sl. No.	Name of Sub-Engineer	Educational/technical Qualification	Date of Birth	Domicile	Date of 1 st Entry into Govt. Service.	Date of Passing of Departmental Grade-B Examination	Date of appointment of promotion / absorption / regularization to the present post.	Remarks
1	2	3	4	5	6	7	8	9
1	Mr. Aurangzeb <i>Retd.</i>	Matric/DAE	5.3.1954	DIKhan	4.2.1975	-	4.2.1975	
2	Mr. Jehan Alam <i>Retd.</i>	-do-	11.3.1955	Lakki	16.7.1975	-	16.7.1975	
3	Mr. Muhammad Saeed	-do-	1.5.1959	Peshawar	29.11.1978	-	29.11.1978	
4	Mr. Saeed Ahmad Bhatti	-do-	21.12.1956	Mansehra	28.9.1980	-	28.9.1980	
5	Mr. Mumtaz Khan	-do-	10.3.1959	N.W. Agency	21.7.1979 (SE IRDO)	-	5.4.1981	
6	Mr. Sher Dad Khan	-do-	17.1.1960	Mohmand Agency	10.8.1982	-	10.1982	
7	Mr. Javed Iqbal	-do-	13.11.1960	Lakki	17.12.1980 (SE in PUGB)	-	21.3.1983	
8	Mr. Akber Jan	-do-	1.4.1954	S.W. Agency	10.12.1975 (SE IRDP)	-	1.7.1984	

[Signature]
SECTION OFFICER
LOCAL GOVT. ELECTIONS UNIT

1	2	3	4	5	6	7	8	9
9	Mr. Attaullah	-do-	13.8.1961	Nowshera	25.8.1984(SE)	-	24.11.1990	
10	Mr. Nahid Khan	DAE/B.Tech) Hon. Civil	15.3.1964	Lakki	15.3.1985(SE in Pak Railway	-	24.11.1990	
11	Mr. Muhammaq Shakeel Ahmed	DAE	5.8.1967	DIKhan	15.10.1983(Surve yor in Irrigation	-	24.11.1990	
12	Mr. Hidayatullah	F.A ("C")	10.1.1965	Mohmand Agency	8.1.1985 (Work Munshi RDD) 31.12.1988(SE in BPS-9)	26.1.1993	18.3.1993	
13	Mr. Khaliq Noor	Matric ©	21.3.1960	N.W.Agency	31.12.1977 (W/M RDD)	26.1.1993	14.9.1994	
14	Mr. Muhammad Asghar	FA ©	16.3.1961	Kurram Agency	11.12.1982(W/M RDD)	26.1.1993	5.1.1997	
15	Mr. Ejaz-ul-Haq	Matric ©	10.1.1965	Nowshera	13.6.1983 (W/M RWP 9.1.1985 W/M RDD	26.1.1993	5.1.1997	
16	Mr. Muhammad Nawaz	F.Sc "C"	8.6.1954	S.W.Agency	13.11.1975 W/M	8.1.1999	21.1.2006	
17	Mr. Mumtaz Hussain	Matric "C"	20.10.1953	Malakand	1.7.1979(W/M)	8.1.1999	21.1.2006	
18	Mr. Azmat Ali Shah	Matric "C"	04-05-1956	Peshawar	17-03-1981	8-1-1999	18-06-2011	
19	Mr. Liaqat Hussain	F.Sc "D"	01-11-1970	Orakzai Agency	18-08-1993	26-01-2000	18-06-2011	

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 18/06/2011

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20	Mr.Muhammad Bilal	B.A "C"	05-02-1972	NW-Agency	01-11-1994	08-01-1999	18-06-2011	
21	Mr.Ehsanullah	B.Sc "C"	10-04-1971	Mohmand Agency	22-11-1994	26-01-2000	18-06-2011	

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



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Appeal No. 1161 /2016

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1167

Dated 10-11-2016

Mr. Muhammad Saeed,
Assistant Engineer,
Local Government & Rural Development Department,
Khyber Pakhtunkhwa, Peshawar.

APPELLANT

VERSUS

1. The Secretary, Government of Khyber Pakhtunkhwa, Local Government, Elections & Rural Development Department, Civil Secretariat, Peshawar.
2. The Director, Local Government & Rural Development Department, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Finance Deptt: KPK Peshawar.

RESPONDENTS

.....

**APPEAL UNDER SEC- 4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974
FOR DIRECTING THE RESPONDENTS TO
CONSIDER THE APPELLANT FOR ANTI-DATE
PROMOTION AS ASSISTANT ENGINEER (BPS-
17) ON REGULAR BASIS W.E.FROM 1992 WITH
ALL BACK AND CONSEQUENTIAL BENEFITS
AND AGAINST THE ORDER DATED 13.10.2016,
WHEREBY THE DEPARTMENTAL OF THE
APPELLANT WAS REJECTED FOR NO GOOD
GROUND.**

Filed to-day
10/11/16

Re-submitted to -day
and filed.

18/11/16
Registrar

Certified to be true copy

18/11/16
Registrar
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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SA 1161/2016


04.04.2022

None present for the appellant. Mr. Kabirullah Khattak, Addl. AG alongwith Altizazul Hassan, Superintendent for the respondents present.



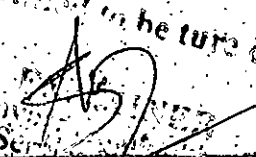
Today the appeal was called time and again but neither appellant nor her counsel is available. In view of the above, the appeal is dismissed in default.

Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 04th day of April, 2022.


(MIAN MUHAMMAD)
Member (E)


(KALIM ARSHAD KHAN)
Chairman



Original in the file

Service Tribunal
Peshawar

of Presentation of Application 28/04/22
 Number of Words 800
 Copying Fee 10/-
 Urgent —
 Total 10/-
 Name of Copyist —
 Date of Completion of Copy 20/5/22
 Date of Delivery of Copy 07/07/22

(21)

BEFORE THE KP, SERVICE TRIBUNAL, PESHAWAR.

Restoration Appli. 397/2022

Service Appeal No. 1161/2016

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 681

Dated 07/7/2022

Muhammad Saeed

V/S

Govt of KPK & Others

SCANNED
KPS
Peshawar

**APPLICATION FOR RESTORATION OF SERVICE APPEAL
NO.1161/2016 WHICH WAS DISMISSED ON DEFAULT VIDE
ORDER DATED 04.04.2022.**

RESPECTFULLY SHEWETH:

1. That the instant appeal was pending before this august Tribunal which was fixed for arguments on 04.04.2022.
2. That on 04.04.2019, the senior counsel for the appellant was engaged in the Honorable Peshawar High Court Peshawar, while junior counsel was busy in other Court and could not attend the case, due to which the appeal was dismissed in default due to non prosecution.
3. That the appellant has good prime facie case, if decide on merit.

It is therefore, most humbly prayed that on acceptance of this application, the appeal may kindly be restored which was dismissed in default due to non prosecution and decides the same on merit. Any other remedy which this august Tribunal deems fit and appropriate that may also be awarded in favour of the appellant.

APPELLANT

Muhammad Saeed

THROUGH:-

M. Asif Yousafzai

**(M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT,
OF PAKISTAN.**

S. Noman Ali Bukhari

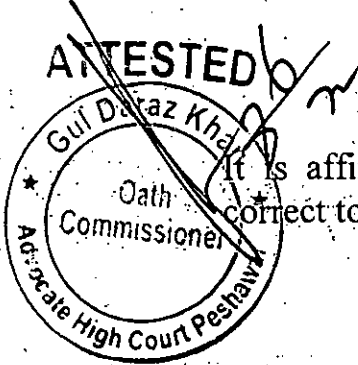
**(S. NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT,
OF PESHAWAR.**

AFFIDAVIT

It is affirmed and declared that the contents of application are true and correct to the best of my knowledge and belief.

DEPONENT

M. Saeed



85
BEFORE THE FEDERAL SERVICE TRIBUNAL PESHAWAR

APPEAL NO:1161/2016



Muhammad Saeed

V/S

Local Govt Deptt:

APPLICATION FOR CONDONATION
OF DELAY IN THE INSTANT RESTORATION PETITION IN ABOVE MENTIONED
APPEAL


RESPECTFULLY SHEWETH:

1. That the instant restoration application is pending before this Honourable Tribunal in which no date has been fixed.
2. That the appeal of the appellant was dismissed in default on 04/04/2022 but the appellant and counsel was not aware about the date because previous date was change due to note reader and the senior counsel was busy before the Peshawar High Court Peshawar.
3. That the august Supreme Court of Pakistan has held that decision on merit should be encouraged rather than knocking-out the litigants on technicalities including limitation. Therefore, appeal needs to be decided on merit (2003, PLD (SC) 724.

It is therefore most humbly prayed that the instant application of the restoration may be restored by condoning the delay to meet the ends of justice.

APPELLANT
Muhammad Saeed

THROUGH:


(M.ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

RESTORATION APPLICATION NO.237/2019

93

Muhammad Saeed,
Ex-Assistant Engineer, LG&RDD Petitioner

VERSUS

Government Of Khyber Pakhtunkhwa Respondents

Application for restoration of application which was dismissed in default 22-05-2019 due to non prosecution

Respectfully Sheweth:

Preliminary Objections:

- (i) That the instant service appeal was rightly dismissed due to non-prosecution;
- (ii) That the appellant has no locus-standi to restore his original service appeal;
- (iii) That the appellant has concealed facts from this Hon'ble Tribunal;
- (iv) That the instant restoration application is badly time barred, hence may be dismissed.

Para-1 Relates to record, needs no comments.


Para-2 Incorrect. The appeal has rightly been dismissed due to non-prosecution.

Para-3 Incorrect. The respondent has a good prima-fascia case.

Prayer:-

It is therefore mostly humbly prayed that the instant restoration application may kindly be dismissed.


Secretary, LG&RDD,
(Respondent No.1)


Director General,
LG&RDD
(Respondent No.2)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

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RESTORATION APPLICATION NO.237/2019

Muhammad Saeed,
Ex-Assistant Engineer, LG&RDD Petitioner

V E R S U S

Government Of Khyber Pakhtunkhwa Respondents

Application for restoration of application which was dismissed in
default 22-05-2019 due to non prosecution

Respectfully Sheweth:

Preliminary Objections:

- (i) That the instant service appeal was rightly dismissed due to non-prosecution;
- (ii) That the appellant has no locus-standi to restore his original service appeal;
- (iii) That the appellant has concealed facts from this Hon'ble Tribunal;
- (iv) That the instant restoration application is badly time barred, hence may be dismissed.

Para-1 Relates to record, needs no comments.

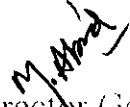
Para-2 Incorrect. The appeal has rightly been dismissed due to non-prosecution.

Para-3 Incorrect. The respondent has a good prima-fascia case.

Prayer:-

It is therefore mostly humbly prayed that the instant restoration application may kindly be dismissed.


Secretary, LG&RDD,
(Respondent No.1)


Director General,
LG&RDD
(Respondent No.2)



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Amir F

Government of Khyber Pakhtunkhwa
Local Government, Elections and Rural Development Department

NOTIFICATION

Dated Peshawar, the 30th December, 2015

No.SO(LG-1)2-336/Promotion/AEs/2015:- On the recommendations of Departmental Promotion Committee, the Competent Authority has been pleased to promote the following diploma holder Sub-Engineers to the posts of Assistant Engineers (BS-17) in Local Government, Elections and Rural Development Department with immediate effect:-

- 1 ✓ Mr.Muhammad Saeed
- 2 Mr.Saeed Ahmad Bhatti
- 3 Mr.Mumtaz Khan
- 4 Mr.Sher Dad Khan
- 5 Mr.Javed Iqbal
- 6 Mt.Attallah Khan
- 7 Mr.Muhammad Shakeel

2. On their promotion, the terms and conditions of their service will remain the same.

3. The officers will remain on probation for a period of one year as per provision in Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989.

4. Consquent upoa their promotion, they are posted against the posts noted against each as under:-

S.No.	Name of officer	From	To
1 ✓	Mr.Muhammad Saeed	On Promotion	AE, LG&RDD, Abbottabad
2	Mr.Saeed Ahmad Bhatti	-do-	AE, LG&RDD, Mansehra
3	Mr.Mumtaz Khan	-do-	AE, LG&RDD, Orakzai Agency ✓
4	Mr.Sher Dad Khan	-do-	AE, LG&RDD, Bajour Agency ✓
5	Mr.Javed Iqbal	-do-	AE, LG&RDD, Mohmand Agency ✓
6	Mr.Muhammad Shakeel	-do-	AE, LG&RDD, SW-Agency ✓
7	Mr.Attallah Khan	-do-	AE, LG&RDD, Swabi ✓

SECRETARY TO GOVT.OF KHYBER
PAKHTUNKHWA, LG,E&RDD


Contd:.....P/2.....

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Endst No.SO(LG-I)2-336/Promotion/2015 Dated Peshawar, the 30th December, 20015

Copy is forwarded to:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The AGPR Sub-Office, Peshawar.
3. The Director General, LG&RDD, Khyber Pakhtunkhwa, Peshawar.
4. The Director FATA, LG&RDD, Warsak Road, Peshawar.
5. All Assistant Directors, LG&RDD in Khyber Pakhtunkhwa.
6. All Agency Accounts Officers in FATA.
7. The District Accounts Officers, Abbottabad, Mansehra and Swabi.
8. The Officers concerned.
9. The Manager, Government Printing Press, Peshawar.
10. Personal file of the officers concerned.
11. The PS to Secretary, LG,E&RDD.
12. Office order file.


(IZAZ ULLAH)
SECTION OFFICER (ESTAB)
Phone #091-9213224

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1161/2016

Muhammad Saeed

VS

LG &RDD Deptt:

.....

REJOINDER ON BEHALF OF APPELLANT

.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

(I to VI) 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 Incorrect. The appellant has good service record throughout in service has no complaint against the appellant during the performance his duty.
- 2 Incorrect. The appellant has already working on acting charge basis against the post of Assistant Engineer w.e.from 1992 which means that the post of Assistant Engineer is lying vacant in 1992 and the appellant entitle for the post of Assistant Engineer since 1992. Moreover promotion quota should be observed first then initial recruitment quota as per superior court judgments.
- 3 Incorrect as explained in Para-2 above.
- 4 Incorrect. While Para-4 of the appeal is correct.
- 5 Incorrect. While Para-5 of the appeal is correct.
- 6 It is correct that other 15 sub engineer were placed in grade 16 vide notification dated 31.05.1999 the appellant was at the top of seniority list of BPS-16.

- 7 It is correct that civil sub engineer including the appellant were promoted to the post of Assistant Engineer (BPS-16) under promotion quota vide notification dated 30.12.2015 but the appellant has already been working as Assistant Engineer (BPS-17) since 1992 on acting charge base meaning by the post of Assistant Engineering was lying vacant since 1992 and the appellant was entitled to the post of Assistant Engineer since 1992.
- 8 Incorrect the departmental appeal of the appellant was rejected by the respondent department without any solid reason.
- 9 Incorrect. As replied in Para-8 above.
- 10 No comments.

GROUNDS:

- A) Incorrect. The promotion order dated 13.10.2016 is against the law fact, norms of justice and material on record therefore not tenable and liable to be set aside.
- B) Incorrect. While Para-B of the appeal is correct.
- C) Incorrect. While Para-C of the appeal is correct.
- D) Legal.

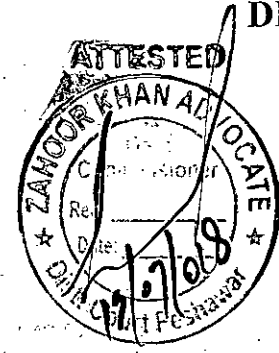
It is, therefore, most humbly prayed that the appeal of appellant may kindly be accepted as prayed for.

APPELLANT
 Through: 
 (M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT
 &

 (TAIMUR ALI KHAN)
ADVPCATE HIGH COURT

AFFIDAVIT

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


DEPONENT



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

Service Appeal No. 1161/2016

SCANNED
KPST
Peshawar

Muhammad Saeed

VS

Govt of KPK:

.....

REJOINDER ON BEHALF OF APPELLANT

.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

(i-vi) 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 Misleading and conceived. While para-1 of the appeal is correct as mentioned in the main appeal of the appellant.
- 2 Incorrect. While para-2 of the appeal is correct as mentioned in the main appeal of the appellant.
- 3 Incorrect. While para-3 of the appeal is correct as mentioned in the main appeal of the appellant.
- 4 Incorrect. While para-4 of the appeal is correct as mentioned in the main appeal of the appellant.
- 5 Incorrect. While para-5 of the appeal is correct as mentioned in the main appeal of the appellant.
- 6 Incorrect. While para-6 of the appeal is correct as mentioned in the main appeal of the appellant.
- 7 Incorrect. While para-7 of the appeal is correct as mentioned in the main appeal of the appellant.
- 8 Incorrect. While para-8 of the appeal is correct as mentioned in the main appeal of the appellant.
- 9 Incorrect. While para-9 of the appeal is correct as mentioned in the main appeal of the appellant.

10 Needs no comments

GROUND:

- A) Incorrect. While para-A of the appeal is correct as mentioned in the main appeal of the appellant.
- B) Incorrect. While para-B of the appeal is correct as mentioned in the main appeal of the appellant.
- C) Incorrect and misleading. While para-C of the appeal is correct as mentioned in the main appeal of the appellant.
- D) Legal.

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

APPELLANT

Through:



**M. ASIF YOUSAFZAI
ADVOCATE, PESHAWAR.**

AFFIDAVIT

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



DEPONENT

