Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 376/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	16.05.2024	The implementation petition of Mr. Muhammad Jameel resubmitted today by Sardar Muhammad Asif Advocate. It is fixed for implementation report before touring Single Bench at A.Abad on 27.05.2024.Original file be requisitioned. AAG has noted the next date. Parcha Peshi given to the counsel for the petitioner. By the order of Chairman REGISTRAR

... execution petition in appeal no. 1436/2018 received today i.e. on ... is returned to the counsel for the petitioner with the following ... remarks.

1. Copy of application moved by the petitioner to competent authority ... the implementation of judgment is not attached with the petition. The application has already been preferred and reasonable period of ... days has been expired be placed on file. If not, the same process be completed and then after approach to this Tribunal for the ... implementation of judgment.
2. Annexure A of the petition is illegible be replaced by legible/better ... copy.

... 542 /S.T,

11-03 ... 2024.

11/3/24
REGISTRAR
KHYBER PAKHTUNKWA
SERVICE TRIBUNAL
PESHAWAR

... Gandapur Adv
... Abad

Sir

Objection Removed application is attached & attested copy is attached file

S.M. Asif
15/5/24

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA ABBOTTABAD.

1436/2018 **Execution Petition No.** 376 **/2024**

Muhammad Jameel, Sub Engineer C & W Division Mansehra.

...PETITIONER

V E R S U S

The Secretary, Government of KPK and others.

...RESPONDENTS

Execution Petition

INDEX

S.#	Description of Document	Annexure	Page No.
1.	Execution Petition alongwith & affidavit	--	1-4
2.	Copies of Appeal and judgment are attached	"A"	5-18
3.	Copy of	"B"	19-22
4.	Vakalt Nama		23

...PLAINTIFF

Through:

Dated:-09 /03/2024

(SARDAR MUHAMMAD ASIF)
&
(MUHAMMAD ASJAD PERVEZ ABBASI)
Advocates High Court, Abbottabad.

Khyber Pakhtukhwa
Service Tribunal
Diary No. 11703
Dated 11-03-2024

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA ABBOTTABAD.

Execution Petition No. 376 /2024

Muhammad Jameel, Sub Engineer C & W Division Mansehra.

...PETITIONER

V E R S U S

1. The Secretary, Government of Khyber Pakhtunkhwa through Secretary Civil Engineer C & W, Civil Secretariat, Peshawar.
2. The Chief Engineering, C & W Khyber Pakhtunkhwa, Peshawar.
3. The Secretary, Government of Khyber Pakhtunkhwa Finance Department, Civil Secretariat, Peshawar.

...RESPONDENTS

EXECUTION PETITION

EXECUTION PETITION FOR THE IMPLEMENTATION FOR THE JUDGMENT / ORDER DATED 12.12.2023 PASSED IN SERVICE APPEAL NO.1436/18 IN ITS STRICT SENSE FOR GRANT OF SENIOR SCALE SECTION GRADE BPS-16 WITH EFFECT FROM 04.09.2003 INSTEAD OF 07.03.2018 ACCORDING TO THE JUDGMENT OF THIS HONOURABLE TRIBUNAL MENTIONED ABOVE.

May it please the Court:

i. That the petitioner field a Service Appeal No.1436/18 before the Honourable Tribunal decided

on 12.12.2023. **(Copies are attached as annexed as Annexure "A")**

ii. That Service Appeal No.1330/2010 was decided on 02.03.2016 which is earlier then Appeal No.1436 of 2018 was decided on 12.12.2023 which thoroughly discussed the issue pertaining to the Senior Scale sub Engineer BPS-16 was discussed and it was observed that appellant was at liberty to approach the department for relief if any in the light of the said Judgment.

iii. That in the Judgment dated 02.03.2016 delivered in Service Appeal No. 1330/10 this Honourable Court in para 30 of the said Judgment has held that "We therefore, direct that the benefit of this Judgment be extended to those sub engineers who fulfilled the criteria of becoming Senior Scale Sub Engineers at the relevant time.

iv. That on the strength of Judgment dated 02.03.2016 the Department / respondent vide notification dated 30.04.2016 grant senior scale selection grade BPS-16 to 55 numbers of Sub Engineers w.e.f 04.09.2023. It is pertinent to mention here that most of these sub Engineers are juniors to the petitioner as such the petitioner is also entitled to be granted BPS-16 w.e.f 04.09.2003 alongwith all back benefits

instead of through a general with immediate effect which is not only against the judgment of this Honourable Tribunal mention above but also against the law and fact and canon of Natural Justice.

v. That the petitioner filled Appeal No.1436/18 on the strength of above said judgment which was referred of department vide order dated 12.12.2023.

vi. That the petitioner time and again approached the respondents for implementation of the Judgments of this Honourable Tribunal mentioned above but in vain and finally filed an appeal before respondents for which no reply has received till date as such the instant execution petition.

vii. That as per Judgment of Honourable Tribunal mentioned above the petitioner is also entitled to be granted BPS-16 w.e.f 04.09.2003 alongwith all back benefits and seniority which cannot be refused by the respondents and refusal of the respondents needs to be struck down.

viii. That the respondents are bound to implement the judgment of this Honourable Tribunal and to act upon the same in latter and spirit.

ix. That other points be brought in the notice of this Honourable Court and discussed at the time of arguments.

PRAYER:

It is, therefore, humbly prayed that on acceptance of the instant Execution Petition the respondent may very kindly be directed to implement the Judgment / order dated 03.02.2016 and order dated 12.12.2023 in later and spirit and to grant BPS-16 to the petitioner from 04.09.2003 alongwith all back benefits and seniority.

...PETITIONER

Through:

Dated:- 11/3 /2024

(SARDAR MUHAMMAD ASIF)
&
(MUHAMMAD ASJAD PERVEZ ABBASI)
Advocates High Court, Abbottabad.

AFFIDAVIT

I, ***Muhammad Jameel Sub-Engineer C & W Division Mansehra,*** Petitioner, do hereby solemnly affirm and declare on Oath that the contents of instant ***Execution Petition*** are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Service Tribunal.

Dated:- 11/3 /2024

ATTESTED

...PETITIONER

Annex A

5

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

SERVICE APPEAL NO. 1330/2010

Date of institution ... 01.07.2010
Date of judgment ... 02.03.2016

Khyber Pakhtunkhwa Service Tribunal Peshawar

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

VERSUS

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

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

Mr. Muhammad Adeel Butt, Additional Advocate General — For official respondents
Nemo — For private respondents

Mr. Muhammad Azim Khan Afridi — Chairman
Mr. Pir Bakhsh Shah — Member (Judicial)
Mr. Abdul Latif — Member (Executive)

02.03.16

JUDGMENT

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

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1 (9) 6

(9) 1184/2013 titled Abdul Qayyum-vs-Govt. of KPK through Secretary C & W etc.

(10) 1185/2013 titled Sarfaraz Alam-vs-Govt. of KPK through Secretary C & W etc.

(11) 1186/2013 titled Muhammad Hamid Zia-vs-Govt.of KPK through Secretary C& W

(12) 1188/2013 titled Shad Muhammad Khan-vs-Govt.of KPK through Secretary C&W

(13) 1189/2013 titled Syed Abdullah Shah-vs-Govt. of KPK through Secretary C & W

(14) 1190/2013 titled Nawazish Ali-vs-Govt. of KPK through Secretary C & W etc.

(15) 1191/2013 titled Niaz Muhammad-vs-Govt. of KPK through Secretary C & W etc.

(16) 1139/2013 titled Zia-ud-Din -vs- Govt. of KPK through Secretary C & W etc.

(17) 1300/2013 titled Qaiser Shah -vs- Govt. of KPK through Secretary C & W etc.

(18) 1338/2013 titled Aurangzeb -vs- Govt. of KPK through Secretary C & W etc.

(19) 1431/2013 titled Habib Ullah -vs- Govt. of KPK through Secretary C & W etc.

(20) 1446/2013 titled Mian Jehanzeb Khattak-vs-Govt.of KPK through Secretary C& W

(21) 1561/2013 titled Yousaf Ali -vs- Govt. of KPK through Secretary C & W etc.

(22)1631/2013 titled Muhammad Shakeel Athar -vs- Secretary C & W KPK etc.

(23) 1632/2013 titled Malik Arif Saeed Diyal-vs-Govt. of KPK through Secretary C&W

(24)1633/2013 titled Muhammad Khalil Noor-vs-Govt.of KPK through Secretary C&W

(25) 95/2014 titled Muhammad Saeed-vs-Govt. of KPK through Secretary C & W etc.

(26) 96/2014 titled Zahir Gul -vs- Govt. of KPK through Secretary C & W etc.

(27) 224/2014 titled Muhammad Zubair-vs-Govt. of KPK through Secretary C & W

(28) 246/2014 titled Abdul Rahim -vs- Govt. of KPK through Secretary C & W etc.

(29) 365/2014 titled Zulfiqar Ahmad-vs-Govt. of KPK through Secretary C & W etc.

(30) 366/2014 titled Naseem Ahmed-vs-Govt. of KPK through Secretary C & W etc.

(31) 367/2014 titled Mazhar Khan -vs- Govt. of KPK through Secretary C & W etc.

(32) 393/2014 titled Muhammad Javed-vs-Govt. of KPK through Secretary C & W etc.

(33) 471/2014 titled Said-ul-Ibrar -vs- Govt. of KPK through Secretary C & W etc.

(34) 477/2014 titled Lal Badshah -vs- Govt. of KPK through Secretary C & W etc.

(35) 484/2014 titled Abdul Khalil -vs- Govt. of KPK through Secretary C & W etc.

(36) 489/2014 titled Abdul Farooq -vs- Govt. of KPK through Secretary C & W etc.

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(37) 513/2014 titled Irshad Ahmed Khan-vs-Govt. of KPK through Secretary C & W

(38) 699/2014 titled Muhammad Akram-vs-Govt. of KPK through Secretary C & W

(39) 700/2014 titled Abdul Qayum-vs-Govt. of KPK through Secretary C & W etc,

(40) 722/2014 titled Faiz Ullah Khan-vs-Govt. of KPK through Secretary C & W etc,

(41) 749/2014 titled Zamir Jang -vs- Govt. of KPK through Secretary C & W etc.

(42) 770/2014 titled Syed Tariq Mahmood-vs-Govt. of KPK through Secretary C & W

(43) 852/2014 titled Ghulam Rahim-vs-Govt. of KPK through Secretary C & W etc.

(44) 907/2014 titled Liaqat Shah -vs- Govt. of KPK through Secretary C & W etc.

(45) 915/2014 titled Noor-ul-Basar -vs- Govt. of KPK through Secretary C & W etc.

(46) 920/2014 titled Sabit Khan -vs- Govt. of KPK through Secretary C & W etc.

(47) 1035/2014 titled Manzoor Ilahi -vs- Govt. of KPK through Secretary C & W etc.

(48) 1100/2014 titled Fazal Mehmood-vs-Govt. of KPK through Secretary C & W etc.

(49)1112/2014 titled Nisar Ahmed -vs- Govt. of KPK through Secretary C & W etc.

(50) 1132/2014 titled Taj Muhammad-vs-Govt. of KPK through Secretary C & W etc.

(51) 1223/2015 titled Sardar Naeem Ahmed-vs-Govt. of KPK through Secretary C & W etc. and (52) 1284/2015 titled Muhammad Zaka Khan-vs-Govt. of KPK through Secretary C & W etc as common questions of law and facts are involved therein.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

i. Impact of Recruitment and Appointment Rules, 1979 and its life cycle vis-a-vis claims of appellants.

ii. Entitlement of appellants to Senior Scale on the rules of alike treatment and grant of the same to civil servants ignored despite seniority.

iii. Legal status of appointments against higher posts in Own Pay Scale.

iv. Impact of judgments of this Tribunal dated 11.12.2012 and 23.4.2009.

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

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Khyber Pakhtunkhwa Service Tribunal Peshawar

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

NOTIFICATION

Peshawar the 13 January, 1980

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

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

02.03.16

1. (1) These rules may be called the Communication and Works Department (Recruitment and Appointment) Rules, 1973.

(2) They shall come into force at once.

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

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COMMUNICATION & WORKS DEPARTMENT
SCHEDULE-I

S.NO.	Nomenclature of post	Minimum Qualifications for Appointments		Age for initial Recruitment		Method of Recruitment
		Initial Recruitment by Transfer	Promotion	Minimum	Maximum	
1	2	3	4	5	6	7
1 to 4	*Irrelevant*	-	-	-	-	-
5	Senior Scale Sub-Engineer		**Diploma in Engineering from a recognized Institute**			Twenty five percent of the total number of posts of the diploma holders, Sub-Engineers shall from the cadre of Senior Scale Sub-Engineers and shall be filled by selection on merit with due regard to seniority from amongst Sub Engineers of the Department, who have passed the Departmental Examination and have at least ten years service as such.
6 and onwards	*Irrelevant*	-	-	-	-	-

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

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

02.03.06

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

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

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

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

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

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

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

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

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

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

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ATTESTED

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

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

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

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

02.03.16

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

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

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

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

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

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

Announced
02.03.2016

Sd/- M. Azim Khan Afridi, Chairman
Sd/- Pir Bakhsh Shah, Member
Sd/- Abdul Latif, Member

Cert...

ATTESTED
Assistant Registrar
Service Tribunal
Peshawar

Date of Presentation of Application 16-5-24
Number of ... 14-p
... - 70/-
... - 5/-
... 75/-
Name ...
Date of ... 16-5-24
Date of Delivery of Copy 16-5-24

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Annx "B"

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Khyber Pakhtunkhwa Service Tribunal Peshawar

Appeal No. 1436 **/2018**

Khyber Pakhtukhwa Service Tribunal
Diary No. 1686
Dated 28/11/2018

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

APPELLANT

VERSUS

1- The Secretary, Government of Khyber Pakhtunkhwa through Secretary C&W, Civil Secretariat, Peshawar.

2- The Chief Engineer, C&W Khyber Pakhtunkhwa, Peshawar.

3- The Secretary, Government of Khyber Pakhtunkhwa, Finance Department, Civil Secretariat, Peshawar.

RESPONDENTS

.....

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 FOR GRANTING SENIOR SCALE BPS-16 UNDER 25% QUOTA TO THE APPELLANT FROM DUE DATE FOR HAVING 10 YEARS SERVICE AND ALSO PASSED DEPARTMENTAL EXAM AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

Filedto-day
Registrar
28/11/18

ATTESTED
Khyber Pakhtunkhwa Service Tribunal Peshawar

PRAYER:

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

.....

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RESPECTFULLY SHEWETH:

FACTS:

1- That the appellant joined the C&W Deptt: on 17.03.1988 as Sub Engineer and also passed departmental exam in the year 2016. Thus the appellant has more than 30 years service at his credit with good record throughout. All the dates are mentioned the departmental appeal of the appellant the copy of which is already attached as Annexure –G

2- That according to the rules 25 % of the post of senior scale sub engineers are to filled in on the basis of promotion from amongst sub engineers who have ten years service and also passed departmental exam. The appellant possesses the said requirement, but despite of that the appellant has not be granted Senior Scale BPS-16. **(Copy of the rules is attached as Annexure-A)**

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

4- That similarly this Honourable Service Tribunal also accepted 52 connected appeal on 02.03.2016, against which the department filed CPLA which was also dismissed by the Supreme Court of Pakistan on 13.02.2017 and on the basis of that decision the respondent granted Senior Scale (BPS-16) w.e.f 04.09.2018 to all appellant vide notification dated 30.04.2018. **(Copies of judgment dated 02.03.2016 , 13.02.2017 and notification dated 30.04.2018 are attached as Annexure-C,D&E)**

5- That recently the department upgraded the post of Sub Engineer from BPS-11/12 to BPS-16 for having 10 years service vide notification dated 07.03.2018. **(copy of notification dated 07.03.2018 is attached as annexure-F)**

6- That the appellant filed departmental appeal on 15.08.2018 for grant of Senior Scale BPS-16 from due date and waited for 90 days but no reply has been received so far. Hence the present appeal on the following grounds amongst the others. **(Copy of the appeal is attached as Annexure–G)**

ATTESTED
EXAMINER
Khyber Pakhtukhwa
Service Tribunal
Peshawar

GROUNDS:

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

Khyber Pakhtunkhwa Service Tribunal Peshawar

ORDER
12.12.2023

1. Learned counsel for the appellants present. Mr. Abid Ali, Computer Operator alongwith Mr. Habib Anwar, Additional Advocate General for the respondents present.

2. The appellants have invoked the jurisdiction of this Tribunal with the prayer copied as below:-

> *"That on acceptance of this appeal, the respondent department may be directed to grant senior scale BPS-16 under 25% quota to the appellant from due date for having 10 years service and passed departmental exam with all back and consequential benefits. Any other remedy which this august Tribunal deems fit that may also be granted in favour of appellant."*

3. At the very outset, respective learned counsel for the appellants stated at the bar that they would be satisfied if directions are given to the respondents to consider the grievance of the appellants in light of the judgment dated 02.03.2016 passed by this Tribunal, to which learned Additional Advocate General for the respondents did not object.

4. In view of the above, respondents shall consider the grievance of the appellants in light of the consolidated judgment dated 02.03.2016 passed by this Tribunal in Service Appeal No. 1330/2010, which has been upheld vide judgment dated 13.02.2017 passed by Supreme Court of Pakistan. It is expected that the required exercise shall be taken by the respondents expeditiously within a reasonable time. The instant as well as connected Service Appeal No. 1437/2018 are disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
12.12.2023

(Fareeha Paul)
Member (Executive)
Camp Court Abbottabad

Certified to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(Salah-Ud-Din)
Member (Judicial)
Camp Court Abbottabad

Naeem Amin

22-A

بخدمت جناب سیکٹری صاحب C&W خیبر پختونخوا پشاور

درخواست عمل درآمد در فیصلہ اپیل نمبر 1436/2018 بعنوان محمد جمیل بنام سی اینڈ ڈبلیو

جناب عالی: سائل حسب ذیل عرض رساں ہے۔

1. کہ سائل نے مقدمہ عنوان "محمد جمیل بنام سی اینڈ ڈبلیو" بعدالت سروس ٹریبونل خیبر پختونخوا میں دائر کیا۔ جس کا فیصلہ مورخہ 12.12.2023 کو کیمپ کورٹ ایبٹ آباد میں سائل کے حق میں ہوا۔ (نقل منسلکہ ہذا ہے)

2. یہ کہ سائل بذریعہ استدعا کرتا ہے کہ عدالت کے حکم پر عمل درآمد کرتے ہوئے سائل کو بیک بینیفیٹ کے ساتھ بحال کرنے کا حکم دیا ہے لہذا آپ صاحبان مہربانی فرما کر عدالتی حکم پر عمل درآمد فرمایا جاوے۔

Diary No 1417
Date 11-3-2024
Secretary C&W Deptt:

مورخہ 11.03.2024

العبد

محمد جمیل ولد امان اللہ خان سب انجینئر C&W مانسہرہ

موبائل نمبر 03420595034

Attested
13/5/24

بعدالت سروس ٹریبونل پشاور

22

مورخہ 11/3/24

مقدمہ محمد جمیل

بنام

دعویٰ

جرم

(569) BC 12-3863

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام ~~پشاور~~ کیلئے سید محمد آصف محمد کاظم ایڈووکیٹ

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارعرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرایں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برامدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکور با اختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ ہوں گے سبب سے وہ ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھدیا کہ سند رہے۔

الرقوم 11/3/24 ء2024

العبد گواہ العبد

مقام پشاور کے لئے منظور ہے۔

2ء24 منجانب اپیلانٹ

بنام

Mobile: 0346-9225049

Mail: mahamoodaejaolach@gmail.com