


FORM OF ORDER SHEET

Court of _____

Review Petition No. 1065 /2024

No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	16/09/2024	<p>The Review Petition of in appeal no. 1334/2022 submitted today by Mr. Riaz Ahmad Advocate. It is fixed for hearing before Division Bench at Peshawar 27.09.2024 Original file be requisitioned. Parcha Peshi is given to the counsel for the petitioner.</p> <p>By order of the Chairman</p> <p> REGISTRAR</p>

BEFORE THE KHYBER PAKHTOOKHWA SERVICE TRIBUNAL, PESHAWAR

Review Petition No. 1065/2024
In Service Appeal No. 1334/2022

Mohammad Anwar Khan Appellant/Applicant

VERSUS

Secretary to the Government of Khyber Pakhtoonkhwa, Population Welfare
Department, civil secretariat Peshawar and others Respondents

I N D E X

S.No.	Description of document	Annex	Page
1.	Petition for Review		1-4
2.	Affidavit		5
3.	Memo of addresses		6
4.	Appeal and judgment dated 2/09/2024	A	7-33
5.	Copy of judgment communication of order	B	34-36
6.	Copies of the judgments of Punjab Service Tribunal etc on Limitation	C	37-40
7.	Judgments of the superior courts on communication of order, and condonation of delay	D	41-48
8.	Copies of judgments on recurring cause of action.	E	49- 52

Dated ___/09/2024

thenaz
Applicant/Appellant

Through

Riaz Ahmad
Riaz Ahmad
Advocate High
Cell No. 0303 8238839
Near Tube Well, Wazir Colony
Ring Road Peshawar

11

BEFORE THE KHYBER PAKHTOOKHWA SERVICE TRIBUNAL, PESHAWAR

Review Petition No. 1065/2024

In Service Appeal No. 1334/2022

Mohammad Anwar Khan R/O Village Kheema, Tehsil and P.O. Timargarah,
District Lower Dir (Assistant BPS- 16 retired from the office of District
Population Welfare Office, Lower Dir.)

..... Applicant

VERSUS

1. Secretary to the Government of Khyber Pakhtoonkhwa, Population Welfare Department, civil secretariat Peshawar.
2. Directorate General Population Welfare Department, Population Welfare Complex, Near PDA Building Hayatabad, Phase-V, Peshawar.
3. District Population Welfare Officer, Dir Lower.

.....RESPONDENTS

Petition under section 114 CPC read with section 7 (2) of the Khyber Pakhtoonkhwa Service Tribunal Act 1974 for review of judgment / order dated 02/09/2024 whereby this Hon'ble Tribunal dismissed the appeal of the petitioner/ appellant.

Prayer: On acceptance of the instant Review Petition this Hon'ble Tribunal would be pleased to review the judgment / order and grant proforma promotion to the applicant / appellant, as the bar of limitation is not applicable in the matter of appeal of the applicant / appellant in view of the provisions of different laws, rules, and judgments of the superior courts, while the law of limitation has inadvertently been invoked in considering the appeal.

Respectfully sheweth:

1. That the applicant had filed the Service Appeal No. 1334/2022 for the grant of proforma promotion, which was dismissed by this Hon'ble Tribunal vide the judgment / order dated 02/09/2024.
(Copies of the appeal, judgment / order are enclosed herewith as Annex-A)
2. That the appeal has been dismissed by inadvertently invoking the bar of limitation, while limitation in the matter of appeal of the applicant/ appellant is flouted by the provisions of the Khyber Pakhtoonkhwa Service Tribunal Act 1974, Limitation Act, judgments of the Superior Courts, and the conduct of the respondents.
3. That the applicant/ appellant, being seriously aggrieved of the subject judgment/ order of which the review is being sought, therefore, files the instant review petition on the following

GROUNDS:

- A. That the Judgment / order is not in accordance with law, rules, conduct of the respondents and judgments of the superior Courts.
- B. That the provisions of section 4 of the Khyber Pakhtoonkhwa Service Tribunal Act 1974 defy the bar of limitation in the appeal of the applicant/appellant. The provisions of section 4 envisage very tough stipulation for the application of the bar of limitation, which is conditioned with the communication of the order whether original or appellate. As for the promotion order, being original, which the applicant / appellant is aggrieved of, was never communicated to the applicant / appellant. His mere knowledge after years of the order, being retired, cannot be deemed communication of the order to him. In this matter the bar of limitation cannot be posed against his right as the law strictly provides that limitation runs after communication of the order. Superior courts judgments have defined the course.
(Copy of PLD 1990 Tr.C. (Services) 17- Punjab Service Tribunal wherein the judgments of the August Supreme Court are also referred, Annex-B)
- C. That in the first stage, representation of appeal before the departmental authority, when the order was not communicated to the appellant, he could not file appeal from no order, as in the first stage the provisions of Section 4 stipulate that an appeal must be filed within 30 days when according to the provisions of section 4 of the Act the order has been communicated to the aggrieved person. In the first stage the bar of limitation is not relevant as no order had been communicated to the applicant / appellant.
- D. That in the second stage of filing appeal before the Hon'ble Service Tribunal by the applicant, neither the original nor the appellate order had been communicated to him. The applicant / appellant filed an application dated 04/10/2021 to the departmental appellate authority on which correspondence was carried out by the respondents till 13/04/2022 but till date no appellate order has been made. Therefore, the appellate order has also not been communicated to him. The provisions of section 4 of the Act *ibid* stipulate that for the purpose of limitation either original or appellate or both orders must have been

communicated to the appellant. Neither the original, nor the appellate order has been communicated to him, the bar of limitation, therefore, is not attracted in the matter of his appeal before this Hon'ble Tribunal. There is no order from the date of which period of limitation can be counted. The period of limitation is counted from the date of communication of the order as per section 4 of Service Tribunal Act..

(Copies of the judgments: PLJ 2003 Tr.C. (services) 61 Federal Service Tribunal, correspondence, which is annexed with the appeal, is enclosed as Annex-C)

- E. The law provides that when the departmental appellate authority does not invoke the bar of limitation, it stands condoned. When the departmental appellate authority has made no order, and even when the application of the applicant had been processed by the departmental appellate authority, the court or tribunal cannot apply it. In this case neither the original nor the appellate order had been communicated to the applicant the bar of limitation is, therefore, irrelevant.

(Judgments of the superior courts are enclosed as Annex-D)

- F. That when a civil wrong is continuing, the cause of action is recurring. In this matter, since the accrual of cause of action to the applicant / appellant, he has been facing loss in pension every day, every month, which is a continuing wrong.

(Copies of judgments enclosed as Annex E)

- G. That it is settled law that in the matter of pay and pension, being recurring cause of action the law of limitation is not applicable.

- H. That the esteemed judgments /orders of the superior courts quoted in the judgment/ order of this Hon'ble Tribunal support and substantiate the stance of the appellant/ applicant and do not operate against his right.

- I. Any other and further arguments/ documents may also be allowed to be presented at the time of arguments.

It is prayed that on acceptance of the instant petition for review the appeal of the applicant/ appellant may very graciously be granted please.

themaz
(Appellant/Applicant)

Through:

Riaz Ahmad
Riaz Ahmad
(Advocate High Court)

5

BEFORE THE KHYBER PAKHTOOKHWA SERVICE TRIBUNAL, PESHAWAR

Review Petition No. _____/2024
In Service Appeal No. 1334/2022

Mohammad Anwar Khan APPLICANT/ APPELLANT

VERSUS

Secretary to the Government of Khyber Pakhtoonkhwa, Population Welfare
Department, civil secretariat Peshawar and othersRESPONDENTS

MEMO OF ADDRESSES

APPELLANT

Mohammad Anwar Khan R/O Village Kheema, Tehsil and P.O. Timargarah,
District Lower Dir.

RESPONDENTS

1. Secretary to the Government of Khyber Pakhtoonkhwa, Population Welfare
Department, civil secretariat Peshawar.
2. Directorate General Population Welfare Department, Population Welfare
Complex, Near PDA Building Hayatabad, Phase-V, Peshawar.
3. District Population Welfare Officer, Dir Lower

thema2
(Appellant) *Applicant*

Through:

Riaz Ahmad
Riaz Ahmad
(Advocate High Court)

6

BEFORE THE KHYBER PAKHTOOKHWA SERVICE TRIBUNAL, PESHAWAR

Review Petition No. _____/2024
In Service Appeal No. 1334/2022

Mohammad Anwar Khan APPLICANT /APPELLANT

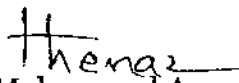
VERSUS

Secretary to the Government of Khyber Pakhtoonkhwa, Population Welfare
Department, civil secretariat Peshawar and othersRESPONDENTS

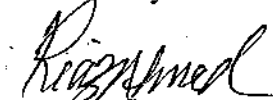
AFFIDAVIT

I, Mohammad Anwar Khan S/O Bakhtawar Kahn R/O Village Kheema, Tehsil and P.O. Timargarah, District Lower Dir Assistant BPS- 16 retired from the office of District Population Welfare Office, Lower Dir, do hereby solemnly declare and affirm on oath that the contents of the instant Review Petition are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.

DEPONENT


Mohammad Anwar Khan
NIC No. 15302-8750503-1

Identified by


Riaz Ahmad
(Advocate)

7

Annex-A

BEFORE THE KHYBER PAKHTOOKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 1334 /2022

Mohammad Anwar Khan

..... APPELLANT

VERSUS

Secretary to the Government of Khyber Pakhtoonkhwa, Population Welfare
Department, civil secretariat Peshawar and othersRESPONDENTS

INDEX

S.No.	Description of Documents	Annexure	Pages
1.	Appeal		1- 2
2.	Affidavit		3
3.	Memo of addresses		4
4.	Copy of the retirement order,	Annex -A	5
5.	Copies of the letter / bio data.	Annex -B	6-9
6.	Copies of the promotion order and application/ departmental appeal.	Annex -C	10-13
7.	Wakalatnamah		

(Appellant)

Through:

Riaz Ahmad
Riaz Ahmad

(Advocate High Court)

Cell No. 0303 8238839

and 0348 9615837

(17) (8)

BEFORE THE KHYBER PAKHTOOKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 1334 /2022

Mohammad Anwar Khan R/O Village Kheema, Tehsil and P.O. Timargarah, District Lower Dir (Assistant BPS- 16 retired from the office of District Population Welfare Office, Lower Dir.)

..... APPELLANT

VERSUS

1. Secretary to the Government of Khyber Pakhtoonkhwa, Population Welfare Department, civil secretariat Peshawar.
2. Directorate General Population Welfare Department, Population Welfare Complex, Near PDA Building Hayatabad, Phase-V, Peshawar.
3. District Population Welfare Officer, Dir Lower.


.....RESPONDENTS

Appeal Under Section 4 Of The Khyber Pakhtoonkhwa Service Tribunal Act (Act 1 Of 1974) From The Order Bearing No. 4(5)/2018 Dated 04/05/2018 Whereby Assistants Bps 16 Were Promoted To The Post Of Assistant District Population Welfare Bps-16, Where The Order Being Was Due In 2017.

Prayer: On acceptance of the instant appeal this Hon'ble Tribunal would be pleased to grant proforma promotion to the appellant as the order was due in 2017 while the appellant was in service but it was delayed inordinately and the appellant proceeded on retirement on 31/03/2018 and the appellant's right of promotion was not granted to him.

Respectfully sheweth:

1. That the appellant has proceeded on retirement on 31/03/2018 as Assistant BPS-16 from the District Population Welfare Office, Population Welfare Department.
(Copy of the retirement order is enclosed herewith as Annex-A)
2. That in 2017 vacancies occurred for promotion of Assistants BPS-16 and other cadres to the post of Assistant District Population Welfare Officer BPS-16 and ACRs of the appellant were requisitioned which were sent to the office of respondent No. 2.
(Copies of the letter / biodata are enclosed herewith as Annexure-B)
3. That the promotion case was delayed till 04/05/2018 after a month a few days of the retirement of the appellant. The appellant submitted

ATTESTED

EXAMINER
Khyber Pakhtoonkhwa
Service Tribunal
Peshawar

(2) (9)

applications to the competent authority for redress of his grievance but those were not considered.
(Copies of the promotion order and application is enclosed herewith as Annex-C)

- 4. That the appellant would have been promoted if the promotion had been made within time.
- 5. That the appellant, being deprived of his due legal right to promotion, and his grievance not being redressed, therefore, files the instant appeal on the following.

GROUND

- A. That the promotion order has been illegally inordinately delayed.
- B. That the appellant's right to promotion under the law has not been upheld.
- C. That reasons for the delay are not due to any act of the appellant.
- D. That the delay affected the appellant's right and his junior was granted benefit.
- E. That any ground / document needed by the circumstances of the case may kindly also be allowed to be presented at the time of arguments, proceedings.

It is, therefore, prayed that on acceptance of the instant appeal, the appellant may very graciously be granted proforma promotion as prayed for in the heading of the appeal, please.

Theraz
Appellant

Through:

Riaz Ahmad

Riaz Ahmad
(Advocate High Court)

ATTESTED
[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 06/9/23

Number of Words 27

Copying Fee _____

Urgent _____

Total _____

Name of Copyies 2

Date of Completion 06/9/23

Date of Delivery 06/9/23

(3)

(10)

BEFORE THE KHYBER PAKHTOOKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. _____/2022

Mohammad Anwar Khan APPELLANT

VERSUS

Secretary to the Government of Khyber Pakhtoonkhwa, Population Welfare
Department, civil secretariat Peshawar and others RESPONDENTS

AFFIDAVIT

I, Mohammad Anwar Khan S/O Bakhtawar Kahn. R/O Village Kheema, Tehsil and P.O. Timargarah, District Lower Dir Assistant BPS- 16 retired from the office of District Population Welfare Office, Lower Dir, do hereby solemnly declare and affirm on oath that the contents of the instant appeal are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.

Theraz

DEPONENT

Mohammad Anwar Khan

NIC No. 15302-8750503-1

Identified by

Riaz Ahmad

Riaz Ahmad
(Advocate)

(4) (11)

BEFORE THE KHYBER PAKHTOOKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. _____/2022

Mohammad Anwar Khan APPELLANT

VERSUS

Secretary to the Government of Khyber Pakhtoonkhwa, Population Welfare
Department, civil secretariat Peshawar and othersRESPONDENTS

MEMO OF ADDRESSES

APPELLANT

Mohammad Anwar Khan R/O Village Kheema, Tehsil and P.O.
Timargarah, District Lower Dir.

RESPONDENTS

1. Secretary to the Government of Khyber Pakhtoonkhwa, Population Welfare Department, civil secretariat Peshawar.
2. Directorate General Population Welfare Department, Population Welfare Complex, Near PDA Building Hayatabad, Phase-V, Peshawar.
3. District Population Welfare Officer, Dir. Lower

(Appellant)

Through:



Riaz Ahmad
(Advocate High Court)

Government of Khyber Pakhtunkhwa,
Directorate General Population Welfare
Flat No. 18, Sector E-8, Phase-7, Hayatabad, Peshawar

Dated Peshawar the 27/01/2018.

OFFICE ORDER

F.No.4 (8)/2017/Admn: Sanction of 365-days leave encashment in lieu of LPR is hereby granted to Mr. Muhammad Anwar Khan, Assistant (BPS-16) of District Population Welfare Office, Dir (Lower).

The Official stand retired from service w.e.f. 31-03-2018 on attaining the age of superannuation. His date of birth is 01-04-1958 as per available record i.e. Secondary School Certificate.

(Director General)
Population Welfare Department

Copy forwarded to the:-

1. District Population Welfare Officer, Dir (Lower) w/r to his letter No. 2(2)/Admn/2017-18/2119-20 dated 08.02.2018.
2. District Accounts Officer, Dir (Lower).
3. PS to Director General, PWD, KP Peshawar.
4. PA to Advisor to CM for PWD, KP Peshawar.
5. HR, Assistant (Admn Section) PWD, Peshawar.
6. Official concerned C/O DPWO.
7. F.No. 4 (15)/2017-18/Admn.
8. Master File.

AA
For
M
16/3/2018

(Hidayat Khan)
Deputy Director (Admn)

1916
16/3/2018

Distt Population Welfare Officer

(15) (13) ~~_____~~

OFFICE OF THE
DISTRICT POPULATION WELFARE OFFICER
DIR LOWER

F.No.9(1)/Confidential:-2016-17

Dated, Timergara the 7/10/2017

To

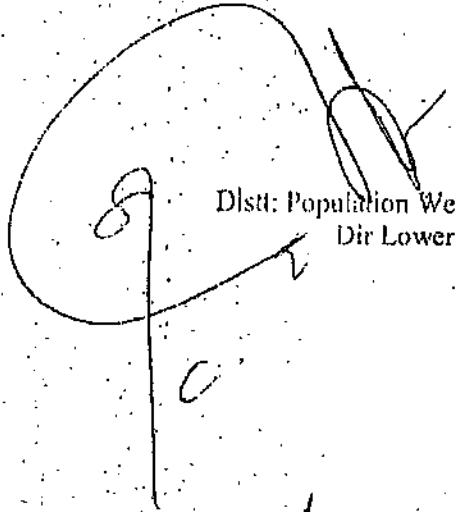
The Director General,
Population Welfare Department,
Khyber Pakhtunkhwa, Peshawar.

Subject:-

PROMOTION OF OFFICE ASSISTANT BPS-16.

Memo:-

Kindly refer to telephonic message conveyed through Mr. Sarfaraz Khan, Assistant Admn Section from Directorate General, Population Welfare Department, Khyber Pakhtunkhwa Peshawar on dated 7.10.2017 and find enclosed ACR in original for last five years w.e.f: 01.01.2012 to 31.12.2016, along with 05-sets of Synopsis, No- Disciplinary action certificate & Bio Data in respect of Mr. Muhammad Anwar Khan, Assistant (BPS-16) of this District are sent herewith for further action as desired, please.


Distt: Population Welfare Officer
Dir Lower.

Encl as above.

Attest

*M. Zahid
Advocate*

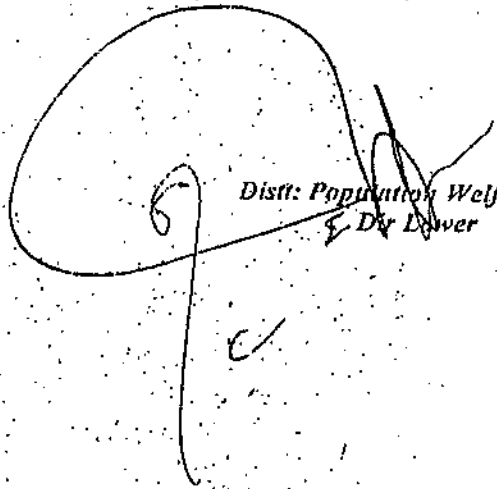


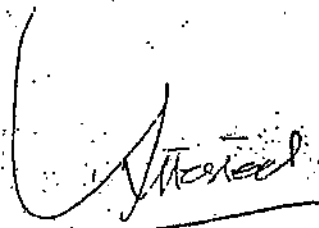
3

14
17

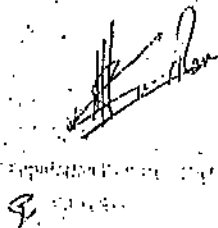
NO PENDING DISCIPLINARY ACTION CERTIFICATE.

Certified that there is no pending disciplinary action against
Mr. Muhammad Anwar, Office Assistant of District Dir Lower.


Distt: Population Welfare Officer
Dir Lower



Assistant
District
Director



15

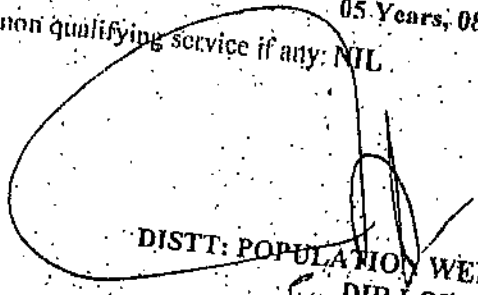
(8)

BIO-DATA

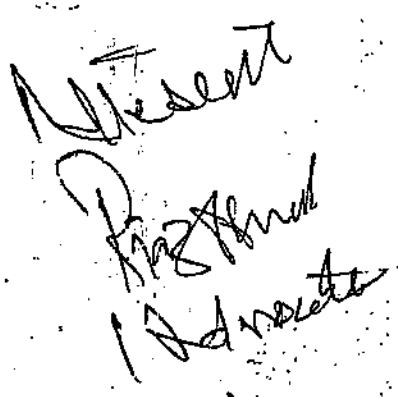
1. Name: MUHAMMAD ANWAR
2. Father's Name: BAKHTAWAR KHAN
3. Academic Qualification: B.A
4. Service/Cadre to which belongs: POPULATION WELFARE
5. Date of Birth: 01-04-1958
6. List of Books/publication published: N.A.
7. Training received:
8. Date of Passing Departmental Examination if any: NIL
9. Date of First joining the service and the grade in which joined: 25-01-1983 (Junior Clerk)
10. Record of Posting/Appointments:

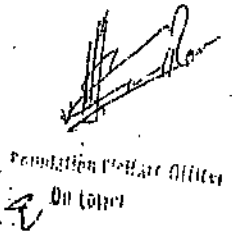
S.No.	Post Held	BPS	Whether on regular/officiating/Adhoc basis	Period	
				From	To
1.	Junior Clerk	5	Regular	25-01-1983	24-04-1995
2.	Senior Clerk	7/9	-do-	25-04-1995	10-01-2012
3.	Assistant	16	-do-	11-01-2012	Till date

11. Total Service as on 31-09-2017: 35 Years, 08 Months, 25 Days
12. Total Service in BPS-16: 05 Years, 08 Months, 19 Days
13. Detail of non qualifying service if any: NIL


 DISTT: POPULATION WELFARE OFFICER
 DIR LOWER


 Verified


 Present
 District
 Director


 Population Welfare Officer
 Dir Lower

SYNOPSIS OF CHARACTER ROLL OF MR. MUHAMMAD ANWAR, OFFICE ASSISTANT (BPS-16) FOR LAST FIVE YEARS.

Year	Nature of report	Remarks of reporting officer	Remarks of countersigning officer	Adverse Remarks	Remarks
1-1-2012 to 31-12-2012	Good	The official under report is dutyfull and performed his duty in a well manner during the period.	Agreed with reporting officer.		
1-1-2013 to 31-12-2013	Good	The official under report performed his duties in good way assigned to him during the period.	The official under report is experience one. He need training in computer & IT.		
1-1-2014 to 31-12-2014	Good	The official concerned was found punctual and dutiful during the period.	I agree with R.O.		
1-1-2015 to 31-12-2015	Good	The official concerned was found punctual and dutiful during the period.	I agree with R.O.		
1-1-2016 to 31-12-2016	Good	The official concerned was found punctual and dutiful during the period.	I agree with R.O.		

(16)

Muhammad Anwar

Attested

[Signature]

Population Welfare Officer

[Signature]

Distt: Population Welfare Officer
Dir-Lower

403

[Handwritten signature]

GOVERNMENT OF KHYBER PAKHTUNKHWA
DIRECTORATE GENERAL POPULATION WELFARE
Plot No. 14, Sector E-8, Phase-7, Hayatabad, Peshawar

Dated Peshawar the 04/5/2018.

OFFICE ORDER

F.No. 4(5)/2018/Admn:- On recommendation of the Departmental Promotion Committee meeting, held on 24.04.2018 the following Senior Scale Stenographers (BPS-16), Statistical Assistants (BPS-12) and Assistants (BPS-16) are promoted to the post of Assistant District Population Welfare Officers / Admn Officers (BPS-16) on regular basis with immediate effect:-

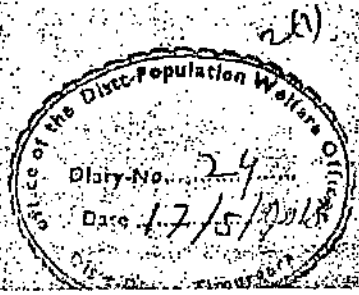
S.No	Name	Promoted to the post of
1	Mr. Hussain Khan	Assistant District Population Welfare Officers / Admn Officers (BPS-16)
2	Mr. Rashid Ahmad	-do-
3	Mr. Hamid Ail	-do-
4	Mr. Akhtar Hussain	-do-
5	Mr. Muhammad Hussain	-do-
6	Mr. Muhammad Aqeel Babar	-do-
7	Mr. Mir Balz Khan	-do-
8	Mr. Mohammad Javed	-do-
9	Mr. Kiramat Khan	-do-

The officers will remain on probation for a period of one year in terms of Rule-15 of Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 extendable for another one year.

Consequent upon their promotion, the above mentioned Assistant District Population Welfare Officers / Admn Officers (BPS-16) are hereby posted as under:-

S.No	Name	From	To	Remarks
1	Mr. Hussain Khan	DPW-Office, Dlr (Lower)	DPW-Office, Dlr (Lower)	Against the post of DDPWO (N/T) BPS-17 in his own pay & Scale, already working against the said post.
2	Mr. Rashid Ahmad	Directorate General, PW, Peshawar	Directorate General, PW, Peshawar	Against the post of M&E, Officer (BPS-16) for the purpose of salary, already working against the said post.
3	Mr. Hamid Ail	DPW-Office, Battagram	RTI, Abbottabad	Against the vacant post of Admn Officer (BPS-16). Vice S.No.10
4	Mr. Akhtar Hussain	Directorate General, PW, Peshawar	Directorate General, PW, Peshawar	Against the vacant post of Statistical Investigator (BPS-16) for the purpose of salary.
5	Mr. Muhammad Hussain	Directorate General, PW, Peshawar	Directorate General, PW, Peshawar	Against the vacant post of Accountant (BPS-16) for the purpose of salary.
6	Mr. Muhammad Aqeel Babar	DPW-Office, Bannu	DPW-Office, Bannu	Against the vacant post of ADPWO (BPS-16)
7	Mr. Mir Balz Khan	Directorate General, PW, Peshawar	DPW-Office, Abbottabad	Against the vacant post of ADPWO (BPS-16)
8	Mr. Mohammad Javed	DPW-Office, Kohat	DPW-Office, Kohat	Against the vacant post of ADPWO (BPS-16) Vice S.No.11
9	Mr. Kiramat Khan	Directorate General, PW, Peshawar	Directorate General, PW, Peshawar	Against the vacant post of Superintendent (BPS-17) in his own pay & scale.
10	Mrs. Walayat Aftab, FTO (BPS-16) working against the post of Admn Officer (BPS-16)	RTI, Abbottabad	RTI, Abbottabad	Against the vacant post of Accountant (BPS-16) for the purpose of salary, to vacate post for original incumbent Vice S.No.3

[Handwritten notes: P. Alvi, Section, For record please, 14/5/2018]



CX


Scanned with CamScanner

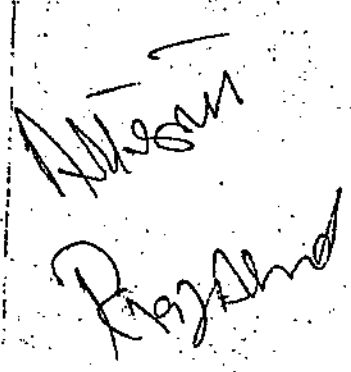
11	Mr. Waqar Hussain Khattak Account Assistant (BPS-17) working against the post of ADPWO (BPS-16)	DRW Office, Kohat	DRW Office, Kohat	Against the vacant post of Assistant (BPS-16) in his own pay & scale. To vacate post for original Incumbent Vire S.No.8 Against the vacant post of Statistical Assistant (BPS-17) Vire S.No.4
12	Hafiz Nasir Khan, Statistical Assistant (BPS-17) Adjusted against the post of Photographer (BPS-15)	Directorate General, PW, Peshawar	Directorate General, PW, Peshawar	

(Director General)
Population Welfare Department

Copy forwarded to:

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. All Directors, PWD, KP Peshawar.
3. Principal RTIs, Peshawar, Abbottabad & Malakand.
4. SMO, I/C, RHSC-As, KTH, HMC & LRIH, Peshawar.
5. Section Officer (List); PWD, KP, Peshawar.
6. All District Population Welfare Officers, in Khyber Pakhtunkhwa.
7. All District Accounts Officers, in Khyber Pakhtunkhwa.
8. PA to Advisor to CM for PWD, in Khyber Pakhtunkhwa Peshawar.
9. PS to Secretary, PWD, Khyber Pakhtunkhwa Peshawar.
10. PS to Director General PWD, Khyber Pakhtunkhwa Peshawar.
11. HR Assistant (Admn Section) PWD, Peshawar.
12. Officers concerned.
13. Personal file of the officers concerned.
14. Master File.
15. F.No. 4 (15)/2017/Admn.


Deputy Director (Admn)



Atle Star
Dharm
Dharm

4-10
2021
BPS 16, 3-3, 3-3
19/10/2021

- 1. ...
- 2. ...
- 3. ...
- 4. ...
- 5. ...
- 6. ...
- 7. ...
- 8. ...
- 9. ...
- 10. ...

... 19/10/2021 ...

43

20

OFFICE OF THE DISTRICT POPULATION WELFARE OFFICER DIR LOWER

M pdwdirlower@gmail.com



dpwodirlower



:DpwoDirLower

Phone#: 0945-920033



F.No.2(2)/Admn:-2022/978-79

Dated, Timeragora the 13/ 04/ 2022

To

The Assistant Director(HR),
Population Welfare Department,
Khyber Pakhtunkhwa, Peshawar.

Subject:-

SERVICE DETAIL IN RESPECT OF Mr. MUHAMMAD ANWAR KHAN
EX OFFICE ASSISTANT (BPS-16) DIR LOWER.

R/Sir,

Kindly refer to your telephonic message today on 13/04/2022.

In this regard the following dtails are submitted for your office record as desired, please.

1)	Appointment	25/01/1983	Junior Clerk (BPS-05)
2)	promotion (1 st)	25/04/1995	Senior Clerk (BPS-07)
3)	1 st Transfer	29/05/1995	From Dir Lower to Kohat
4)	2 nd Transfer	31/07/1995	From Kohat to Dir Lower
5)	3 rd Transfer	07/08/2003	From Dir Lower to Dir Upper
6)	4 th Transfer	08/01/2004	From Dir Upper to Dir Lower
7)	Promotion (2 nd)	11/12/2012	Office Assistant (BPS-16) and adjusted against the vacant post of FTO till retirement (31/03/2018)

District Officer
Population Welfare Department
Dir Lower

Copy to:-

1. ✓ Mr. Muhammad Anwar Khan, EX Office Assistant of this office for information.

A. Khan
M. Anwar
C. A. W. S. S.

District Officer
Population Welfare Department
Dir Lower

Service Appeal No.1334/2022 titled "Muhammad Anwar Khan Vs. Secretary to the Government of Khyber Pakhtunkhwa Population Welfare Department, Civil Secretariat, Peshawar and others", decided on 02.09.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mrs. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, Swat.



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR
AT CAMP COURT, SWAT

BEFORE: **KALIM ARSHAD KHAN ...CHAIRMAN**
RASHIDA BANO ...MEMBER (Judicial)

Service Appeal No.1334/2022

Date of presentation of appeal.....30.08.2022
Dates of Hearing.....02.09.2024
Date of Decision.....02.09.2024

Mohammad Anwar Khan, R/O Village Kheema, Tehsil and P.O Timargarah, District Dir Lower (Assistant BPS-16 retired from the office of District Population Welfare Office, Lower Dir).

.....*Appellant*

Versus

1. **Secretary to the Government of Khyber Pakhtunkhwa Population Welfare Department, Civil Secretariat, Khyber Pakhtunkhwa Peshawar.**
2. **Director General Population Welfare Department, Population Welfare Complex, Near PDA Building Hayatabad, Phase-V, Peshawar.**
3. **District Population Welfare Officer, Dir Lower.....(Respondents)**

Present:

Mr. Riaz Ahmad, Advocate.....For the appellant
Mr. Muhammad Jan, District AttorneyFor respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL (ACT 1 OF 1974) FROM THE ORDER BEARING NO.4(5)/2018 DATED 04.05.2018 WHEREBY ASSISTANTS BPS 16 WERE PROMOTED TO THE POST OF ASSISTANT DISTRICT POPULATION WELFARE BPS-16, WHERE THE ORDER BEING WAS DUE IN 2017.

ATTESTED

[Signature]
EXAMINER
Khyber Pakhtunkhwa Service Tribunal
Peshawar
66/9/24

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Brief facts of the case, as per averments of appeal, are that appellant was serving as Assistant

[Signature]

Service Appeal No.1334/2022 titled "Muhammad Anwar Khan Vs. Secretary to the Government of Khyber Pakhtunkhwa Population Welfare Department, Civil Secretariat, Peshawar and others", decided on 02.09.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mrs. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, Swat.

and was retired from service on 31.03.2018; that in the year 2017, vacancies for promotion from Assistant to the post of Assistant Director, Population Welfare were available; that ACRs of the appellant alongwith other colleagues were requisitioned; that the case of promotion was allegedly delayed till 04.05.2018 and on the said date, promotions of other Assistants were made, however, the appellant was not given any such promotion; that feeling aggrieved, he filed departmental appeal on 04.10.2021, but the same was not responded, hence, the instant service appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and submitted reply.

3. We have heard learned counsel for the appellant, learned counsel for private respondent and learned District Attorney for the respondents.

4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned District Attorney, for respondents, controverted the same by supporting the impugned order.

5. After hearing the learned counsel for the parties and going through the record of the case with their assistance and after perusing the precedent cases cited before us, it appears to us that appellant was serving as Assistant (BPS-16) in the Population Welfare Department. For promotion to the next higher grade i.e. Assistant District Population Welfare Officer, vacancies were available and his case was processed to some

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Service Appeal No.1334/2022 titled "Muhammad Anwar Khan Vs. Secretary to the Government of Khyber Pakhtunkhwa Population Welfare Department, Civil Secretariat, Peshawar and others", decided on 02.09.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mrs. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, Swat.

extent but promotion was not given and in the meanwhile, he stood retired from service on 31.03.2018. In order to get promoted, he filed departmental appeal on 04.10.2021. When no response was made by the respondents, he approached this Tribunal on 30.08.2022.

6. The decision of the Departmental Promotion Committee was made on 04.05.2018, while the appellant filed departmental appeal 04.10.2021 (when more than three years had passed) and then he has filed the instant service appeal on 30.08.2022 i.e. after passing of more than ten months.

7. This case has to face the issue of limitation at two stages. One at the time of filing departmental appeal and second on filing of the instant appeal before this Tribunal.

8. Firstly, the appeal in hand is not competent in view of the judgment of the Supreme Court of Pakistan in 2007 SCMR 513 titled "Muhammad Aslam Vs. WAPDA and others", wherein, the Apex Court has held that:

"If departmental appeal was not filed within the statutory period, appeal before Service Tribunal would not be competent. Civil Servant was non-suited for non-filing of appeal within time, therefore, Supreme Court declined to interfere with the judgment passed by Service Tribunal. Leave to appeal was refused."



ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar
02/09/24

Service Appeal No.1334/2022 titled "Muhammad Anwar Khan Vs. Secretary to the Government of Khyber Pakhtunkhwa Population Welfare Department, Civil Secretariat, Peshawar and others", decided on 02.09.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mrs. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, Svat.

9. Secondly, the present service appeal has been filed beyond the provided period of limitation as the appellant has made representation on 04.10.2021, while the instant appeal has been filed on 30.08.2022. Section-4 of the Service Tribunal Act, 1974 gives the period for filing departmental appeal as thirty days. The same is reproduced below:

"4. Appeal to Tribunals.-- 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."

10. Besides, we in this respect rely on a recent judgment of Supreme Court of Pakistan reported as 2023 SCMR 291 titled "Chief Engineer, Gujranwala Electric Power Company (GEPCO), Gujranwala versus Khalid Mehmood and others" the relevant para is reproduced below:

"12. The law of limitation reduces an effect of extinguishment of a right of a party when significant lapses occur and when no sufficient cause for such lapses, delay or time barred action is shown by the defaulting party, the opposite party is entitled to a right accrued by such lapses. There is no relaxation in law affordable to approach the court of law after deep slumber or inordinate delay under the garb of labeling the order or action void with the articulation

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

06/11/24

Service Appeal No.1334/2022 titled "Muhammad Anwar Khan Vs. Secretary to the Government of Khyber Pakhtunkhwa Population Welfare Department, Civil Secretariat, Peshawar and others", decided on 02.09.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mrs. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, Swat.

that no limitation runs against the void order. If such tendency is not deprecated and a party is allowed to approach the Court of law on his sweet will without taking care of the vital question of limitation, then the doctrine of finality cannot be achieved and everyone will move the Court at any point in time with the plea of void order. Even if the order is considered void, the aggrieved person should approach more cautiously rather than waiting for lapse of limitation and then coming up with the plea of a void order which does not provide any premium of extending limitation period as a vested right or an inflexible rule. The intention of the provisions of the law of limitation is not to give a right where there is none, but to impose a bar after the specified period, authorizing a litigant to enforce his existing right within the period of limitation. The Court is obliged to independently advert to the question of limitation and determine the same and to take cognizance of delay without limitation having been set up as a defence by any party. The omission and negligence of not filing the proceedings within the prescribed limitation period creates a right in favour of the opposite party. In the case of Messrs. Blue Star Spinning Mills LTD -Vs. Collector of Sales Tax and others (2013 SCMR 587), this Court held that the concept that no limitation runs against a void order is not an inflexible rule; that a party cannot sleep over their right to challenge such an order and that it is bound to do so within the stipulated/prescribed period of limitation from the date of knowledge before the proper forum in appropriate proceedings. In the case of Muhammad Iftikhar Abbasi Vs. Mst. Naheed Begum and others (2022 SCMR 1074), it was held by this Court that the intelligence and perspicacity of the law of Limitation does not impart or divulge a right, but it commands an impediment for enforcing an existing right claimed and entreated after lapse of prescribed period of limitation when the claims are dissuaded by efflux of time. The litmus test is to get the drift of whether the party has vigilantly set the law in motion for the redress or remained indolent. While in the case of Khudadad Vs. Syed Ghazanfar Ali Shah @ S. Inaam Hussain and others (2022 SCMR 933), it was held that the objective and astuteness of the law of Limitation is not to confer a right, but it ordains and perpetrates an impediment after a certain period to a suit to enforce an existing right. In fact this law has been premeditated to dissuade the claims which have

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


Service Appeal No.1334/2022 titled "Muhammad Anwar Khan Vs. Secretary to the Government of Khyber Pakhtunkhwa Population Welfare Department, Civil Secretariat, Peshawar and others", decided on 02.09.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mrs. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar or Camp Court, Swat.

become stale by efflux of time. The litmus test therefore always is whether the party has vigilantly set the law in motion for redress. The Court under Section 3 of the Limitation Act is obligated independently rather as a primary duty to advert the question of limitation and make a decision, whether this question is raised by other party or not. The bar of limitation in an adversarial lawsuit brings forth valuable rights in favour of the other party. In the case of Dr. Muhammad Javaid Shafi Vs. Syed Rashid Arshad and others (PLD 2015 SC 212), this Court held that the law of limitation requires that a person must approach the Court and take recourse to legal remedies with due diligence, without dilatoriness and negligence and within the time provided by the law, as against choosing his own time for the purpose of bringing forth a legal action at his own whim and desire. Because if that is so permitted to happen, it shall not only result in the misuse of the judicial process of the State, but shall also cause exploitation of the legal system and the society as a whole. This is not permissible in a State which is governed by law and Constitution. It may be relevant to mention here that the law providing for limitation for various causes/reliefs is not a matter of mere technicality but foundationally of the "Law" itself."

11. In view of the above situation, instant service appeal, being barred by time, is dismissed with costs. Consign.

12. Pronounced in open Court at Swat and given under our hands and the seal of the Tribunal on this 2nd day of September, 2024.


KALIM ARSHAD KHAN
Chairman
Camp Court, Swat


RASHIDA BANO
Member (Judicial)
Camp Court, Swat

ATTESTED

Mutazem Shah

Date of Presentation of Appeal 06/09/24
Number of Words 67
Copying Fee 20/-
Urgent 25/-
Total 75/-
Name of Copyist 06/09/24
Date of Completion of Copy 06/09/24
Date of Delivery of Copy 06/09/24

01st July, 2024

Appellant alongwith his counsel present. Mr. Umair Azam,
Additional Advocate General for the respondents present.

On previous date i.e 04.06.2024, last chance was given for
arguments. Today, learned counsel for the appellant is again seeking
further time for preparation of brief. Absolute last chance is given for
arguments. To come up for arguments on 02.09.2024 before the D.B
at Camp Court, Swat. Parcha Peshi given to the parties.

(Muhammad Akbar Khan)
Member (Executive)
Camp Court, Swat

(Aurangzeb Khattak)
Member (Judicial)
Camp Court, Swat

Nazeem Amin

S.A #.1334/2022

ORDER2nd Sep. 2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney alongwith Mr. Ahmadyar Khan, Assistant Director for the respondents present. Heard.
2. Vide our detailed judgment of today placed on file, instant service appeal, being barred by time, is dismissed with costs. Consign.
3. *Pronounced in open Court at Swat and given under our hands and the seal of the Tribunal on this 2nd day of September, 2024.*

(Rashida Bano)
Member (J)
Camp Court, Swat

(Kalim Arshad Khan)
Chairman
Camp Court, Swat

Mutazem Shah

06th March, 2024

1. Learned counsel for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General alongwith Mr. Ahmad Yar, Assistant Director (Litigation) for the respondents present.
2. Written reply on behalf of respondents has already been received. Let it be admitted to full hearing subject to all just and legal objections. The appellant is directed to deposit security fee within 10 days. To come up for arguments on 04.06.2024 before the D.B at Camp Court Swat. Parcha Peshi given to the parties.

(Kalim Arshad Khan)
Chairman
Camp Court Swat

*Naem Amir

04.06.2024

1. Appellant present in person. Mr. Muhammad Jan learned District Attorney for the respondents present.

2. Former requested for adjournment on the ground that his learned counsel is busy before the Worthy Peshawar High Court, Peshawar. Last chance is given. To come up for arguments on 01.07.2024 before D.B at Camp Court, Swat. Parcha Peshi given to the parties.

(Muhammad Akbar Khan)
Member (E)
Camp Court, Swat

(Rashida Bano)
Member (J)
Camp Court, Swat

SCANNED
KPST
Peshawar

SCANNED
KPST
Peshawar

BEFORE THE KHYBER PAKHTOOKHWA SERVICE TRIBUNAL,
PESHAWAR

Application No. _____/23 in

Service Appeal No. 1334 /2022

Mohammad Anwar Khan Appellant/Applicant

VERSUS

Secretary to the Government of Khyber Pakhtoonkhwa, Population Welfare
Department, civil secretariat Peshawar and others Respondents

INDEX

S.No.	Description of document	Annex	Page
1.	Application		1
2.	Seniority list	A	2-4

Applicant

Through

Riaz Ahmad
Riaz Ahmad
Advocate

BEFORE THE KHYBER PAKHTOOKHWA SERVICE TRIBUNAL,
PESHAWAR

Application No. _____/23 in

Service Appeal No. 1334/2022

Mohammad Anwar Khan Appellant/Applicant

VERSUS

Secretary to the Government of Khyber Pakhtoonkhwa, Population Welfare
Department, civil secretariat Peshawar and others Respondents

Application for filing seniority list of the appellant

Respectfully Sheweth:

1. That appeal of the appellant/applicant is pending hearing before this Hon'ble Tribunal camp court Swat in which next date fixed is 03/01/2024.
2. That in adjudication of the appeal the appellant's seniority list is necessary for the purpose of determining his seniority viz a viz his contention and prayer in the appeal.
3. That the said seniority list of the applicant / appellant is filed herewith for assistance of this Hon'ble Tribunal and in support of the appellant's prayer as Annex-A.

It is, therefore, requested that on acceptance of this application the seniority list of the applicant may kindly placed on file, please.

Dated ____/____/22

H. Anwar

Applicant

Through

Riaz Ahmad
Riaz Ahmad
Advocate

02

OFFICE ORDER

F.No.415/2017/Admn. A gharu etc of Section-8 of Khyber Pakhtunkhwa Civil Servants Act 1973 read with the rules of Khyber Pakhtunkhwa Civil Servants Act 1973. The following officers are appointed to the posts of the Government of Khyber Pakhtunkhwa as follows:-
 Date: 01/05/2018
 Director General, Population Welfare
 Government of Khyber Pakhtunkhwa,
 Peshawar

SNo	Name	Date of birth	Domile	Qualification	Directly Promotee	Date of joining Govt. Service	Lower Grade	Present Grade	Date of Requisition	Present Post	Remarks
1	Mir Abbas	15/09/1978	Peshawar	B.A.	Direct	07/05/2009	-	07/05/2009	24/07/2017	Asst. Dir. of P. & W.	Active member of the Government of Khyber Pakhtunkhwa Civil Servants Act 1973.
2	Muhammad H. Khan	05/05/1993	Peshawar	M.A.	Direct	11/05/2009	-	11/05/2009	24/07/2017	Asst. Dir. of P. & W.	Active member of the Government of Khyber Pakhtunkhwa Civil Servants Act 1973.
3	Muhammad Asghar Babar	04/02/1982	Peshawar	B.A.	Direct	06/05/2009	-	06/05/2009	24/07/2017	Asst. Dir. of P. & W.	Active member of the Government of Khyber Pakhtunkhwa Civil Servants Act 1973.
4	Mir Saif Iqbal	10/03/1992	Chitral	BBA(Hons)	Direct	08/05/2009	-	08/05/2009	24/07/2017	Asst. Dir. of P. & W.	Active member of the Government of Khyber Pakhtunkhwa Civil Servants Act 1973.
5	Muhammad Anwar	01/04/1951	Dr. Lower	B.A.	Promotee	25/01/1983	25/04/1995	11/01/2012	-	DPW Ofc. Peshawar	
6	Muhammad Javed Khan	28/11/1976	Kohat	F.A.	Promotee	26/01/1983	25/04/1995	11/01/2012	-	DPW Ofc. Peshawar	
7	Muhammad Nisam	10/05/1976	Peshawar	B.A.	Promotee	07/04/1983	23/08/1995	11/01/2017	-	DPW Ofc. Peshawar	
8	Zameer Ali	01/05/1981	Peshawar	B.A.	Promotee	07/04/1983	23/08/1995	11/01/2017	-	DPW Ofc. Peshawar	

11/11/2018

85

Officer	Rate of Pay	Grade	Grade	Grade	Grade	Grade	Grade
1. [Name]	[Rate]	[Grade]	[Grade]	[Grade]	[Grade]	[Grade]	[Grade]
2. [Name]	[Rate]	[Grade]	[Grade]	[Grade]	[Grade]	[Grade]	[Grade]
3. [Name]	[Rate]	[Grade]	[Grade]	[Grade]	[Grade]	[Grade]	[Grade]

1. [Text]

- 1. [Text]
- 2. [Text]
- 3. [Text]
- 4. [Text]
- 5. [Text]
- 6. [Text]
- 7. [Text]
- 8. [Text]

Director General
 National Weather Department
 Metro Manila

[Signature]
 Director General
 National Weather Department
 Metro Manila

4 33

24

Government of Khyber Pakhtunkhwa,
Directorate General Population Welfare
Plot No. 18, Sector E-8 Phase 7, Hayatabad, Peshawar

E.No.4115/2016/Admn
Dated Peshawar the 24/11/2018

To

- | | | |
|-----|---------------------------|-----------------------------------|
| 1. | Arif Abbas | Directorate General, PW, Peshawar |
| 2. | Muhammad Hussain | Directorate General, PW, Peshawar |
| 3. | Muhammad Aqeel Babar | DPW Office, Peshawar |
| 4. | Mir Baiz Khan | Directorate General, PW, Peshawar |
| 5. | Muhammad Anwar | DPW Office, Dir (Lower) |
| 6. | Muhammad Javid | DPW Office, Kohat |
| 7. | Kiramal Khan | Directorate General, PW, Peshawar |
| 8. | Zafar Ali | DPW Office, Peshawar |
| 9. | Muhammad Daud Khan Afridi | Directorate General, PW, Peshawar |
| 10. | Sarfraz Khan | Directorate General, PW, Peshawar |
| 11. | Ashiq Nabi | Directorate General, PW, Peshawar |
| 12. | Abid Akbar | Directorate General, PW, Peshawar |

Subject:- FINAL SENIORITY LIST OF ASSISTANT (BPS-16) POPULATION WELFARE DEPARTMENT AS STOOD ON 27-11-2017

I am directed to refer to the subject noted above and to enclose herewith final seniority list of Assistant (BPS-16) as stood on 27.11.2017.

(Hidayat Khan)
Deputy Director (Admn)
gc

Copy forwarded to the:-

1. All Directors, DPWOs, Principal RTIs & CMO, PWD, KP.
2. PA to Advisor to CM for PWD, KP Peshawar.
3. PS to Director General, PWD, KP, Peshawar.

Deputy Director (Admn)
gc

Handwritten note: File No. 75-89
24/11/18

PLD 1990 Tr.C, (Services) 17

[Punjab Service Tribunal, Lahore]

Present: MUHAMMAD MEIIMOOD ASLAM PIRZADA, CHAIRMAN

Malik MUHAMMAD RIAZ-

Appellant versus

SENIOR MOST STAFF OFFICER, IRRIGATION, MULTAN REGION and 3
others--Res pendants

Appeal No. 36 A 910 of IVNJ. accepted on

7.11.1989.

Seniority--

—Government servant—Seniority of—Determination of—Procedure for— According to PWD Irrigation Zilladar Service Rules, 1954, seniority of members of service is determined from date of their confirmation as Zilladars—In this case, date of confirmation of appellant is much earlier than that of respondents 3 and 4—In case of conflict between old and new rules (of 1963), rules whereby appellant and contesting respondents were originally selected/inducted into service, shall prevail—Appeal before this Tribunal is in **limb**—**Held:** Respondents Nos. 3 and 4 are not justified to claim seniority over appellant who was confirmed as member of service much earlier than them—Appeal accepted. [Pp.19&20]A,B,C,D&E

1985 SCMR 904, 1977 SCMR 509, 1973 PLC (CS) 213, 1974 PLC (Cs) 11, 1987 SCMR 110, 1989 PLC (CS) 262. 1987 PLC (CS) 776 and 1988 PLC (CS) 846 *rel*

Mr. Masud Ahmad Riaz, Advocate for Appellant. *Ch.*

Manzoor Hussain, District Attorney for Respondent 1 & 2.

Qazi Muhammad Saleem, Advocate for Respondent No. 3.

Date of hearing: 7-11-1989.

JUDGMENT

Malik Mohammad Riaz Deputy Collector has filed this appeal U/S 4 of the Punjab Service Tribunals Act, 1974, against the impugned orders dated 23-8-1983 19-1-1984/14-4-1986, passed by the Respondents. The appellant has impleaded the Senior Most Staff Officer, Irrigation, Multan Region, Multan, Chief Engineer Irrigation, Multan Region, Multan and Raja Bashir Ahmad Deputy Collector, Balloki Division, LBDC Renala Khurd District Okara, as Respondents. During the pendency of appeal, on the application of Yusuf Ali he was allowed to be impleaded as Respondent No. 4 by this Tribunal vide order dated 19-12-1987. The appellant has prayed that the impugned orders be set aside and he be declared senior to the Respondents.

2. Brief facts of the case are that the appellant was selected for training as a candidate Zilladar in Soil Reclamation Board vide order dated 23-12-1959 and was imparted training by the Irrigation Department under the Zilladar Service Rules, 1954. Subsequently the appellant was appointed as Zilladar in the Irrigation Department on 1-11-1963. As the appellant had already obtained training by the Irrigation Department under the Zilladar Service Rules, 1954, his selection in 1959, as Zilladar candidate and training were duly adopted by the Irrigation Department as such he was not subjected to fresh selection as Zilladar candidate and training in 1963. The appellant was confirmed as such on 13-1-1970, while the contesting Respondent No. 3 was selected as Zilladar candidate on 13-10-1961 and was appointed Zilladar on 1-2-1964. He was confirmed on 10-11-1974. Similarly Respondent No. 4 was selected as Zilladar on 21-12-1962 and was confirmed on 11-2-1970. In the seniority Lists of Zilladars prepared from time to time the appellant had throughout been shown senior to the contesting respondent No. 3 who is senior to Respondent No. 4. However, by letter dated 23-

Annexa - B

Paragraph 5

35

8-1983, the appellant was declared junior to the Respondent by Superintending Engineer (Hqr), Office of Chief Engineer Irrigation, Multan, by applying Zilladar Service Rules, 1963. The appellant submitted representation on 6-10-1983 to the next higher authority which was rejected by Respondent No. 2 vide order dated 19-1-1984 and the same was communicated to the appellant on 14-4-1986, hence this appeal.

3. I have heard the learned counsel for the appellant and Respondent No.3 as well as Respondent No.4 who appeared in person and learned District Attorney on behalf of Respondents No. 1 and 2. I have also gone through the record so produced with due care with the assistance of the Departmental representative.

4. The main contention of the learned counsel for the appellant is that the appellant is senior to Respondents on the basis of the date of confirmation. Learned Counsel for the appellant has submitted that the appellant as well as Respondents were selected and appointed under the Provisions of PWD Irrigation Zilladar Service Rules, 1954, which were in force at the relevant time. The appellant had already been selected on 23-12-1959 and after training he was appointed on 1-11-1963 whereas the Respondents No. 3 and 4 were also selected under the old Rules. Therefore, having been inducted into service under the old Rules of 1954 these will regulate their seniority. The appellant, has relied on the ruling of the highest court of the realm reported as 1985 SCiVIR 904 as well as other authoritative pronouncements in support of this contention. Learned Counsel for the appellant further contended that Zilladar Service Rules, 1963, are not applicable in the present case as these were enforced on 2-12-1963. He has argued that even if Rules of 1963 are made applicable in that case as well, the appellant was selected earlier than the selection of the contesting respondents No.

36

5 and 4 and as such he is senior to both the Respondents under these Rules.

5. Learned District Attorney on the other hand fully supported the stand taken by Respondents No. 1 and 2 in the written objections and stated that the impugned orders passed by the Respondents in the light of Zilladar Service Rules 1965 are in accordance with the Rules and be allowed to stand. Learned Counsel appearing on behalf of contesting Respondent No. 3 submitted that the appeal filed on behalf of the appellant is beyond prescribed period of limitation as it was filed after 2 years and 4 months and as such liable to be dismissed solely on this ground. Yusuf Ali, Respondent No. 4 also supported the same contention.

6. I have given my anxious consideration to the submissions made by the learned counsel for the parties and find that according to the provisions of PWD Irrigation Zilladar Service Rules, 1954, seniority of members of service is determined from the date of their confirmation as Zilladars. In the present case the date of confirmation of the appellant as Zilladar is much earlier than the dates of confirmation of the contesting Respondents. Even for the sake of argument, the Rules of 1963 are applicable even in that case also if the appellant is much earlier than that of both the contesting Respondents. As already pointed out the appellant was selected on 23-12-1959 and that selection was duly adopted by the Irrigation Department at the time of its implementation. Therefore, the appellant was assigned seniority properly by the Respondents No. 3 and 4. Hence, the contention of Respondent No. 3.

The argument of the learned counsel for the appellant that there is a conflict between the old and new rules, the rules whereby the appellant and contesting respondents were originally selected/inducted into service shall prevail. The point raised by the learned counsel for the appellant lends support and strength from the various judgments of the superior courts whereby this matter has been thrashed at length. Reliance is placed on 1985 SCMR 904, 1977 SCMR 509, 1973 PLC(CS)213 and 1974 PLC(CS) 11.

8. I am hardly impressed by the argument of the learned counsel for the contesting Respondents that the appellant was negligent and has been sleeping over his rights and the appeal filed on his behalf is barred by limitation. On careful examination of the facts of the case I find that the order was passed by the Respondent No. 2 on 19-1-1984 and the same was communicated to the appellant through proper channel on 14-4-1986. Immediately on the communication of the aforesaid order the appellant filed the instant appeal before this Tribunal, therefore, the appeal is in time and the stand taken on behalf of Respondents No. 3 and 4 is repelled. This point has been fully sorted out in various judgments of superior courts that time will start running from the date of communication of the order and not the passing of the order. Some of these judgments are 1987 SCMR 110, 1989 PLC(CS)262, 1987 PLC(CS)776 and 1988 PLC(CS)846.

9. On merits as well I am of the firm view that the facts and circumstances of the case fully go in favour of the appellant and Respondents No. 3 and 4 are not justified to claim seniority over the appellant who was confirmed as member of service much earlier than the aforesaid respondents. This fact is fully borne from the seniority lists as stood on 30-5-1973 and 22-1-1978 as well and the contesting respondents accepted the same without any rhyme & reason.

10. In the light of the above discussion the impugned orders dated 23-8-1983 and 19-1-1984/14-4-1986 are set aside and the appellant is declared senior to Respondents No. 3 and 4. The appeal succeeds in the terms indicated above. There is no order as to costs.

Judgment signed, copies be released to the parties as per procedure of the Tribunal.

(MBC)

Appeal accepted.

Amended

PLJ 2003 Tr.C. (Services) 61 [Federal Service Tribunal, Islamabad]
Present: NAZAR MUHAMMAD SHAIKH AND ABDUL RASHID
BALOCH MEMBERS

MUHAMMAD RAMZAN-Appellant versus

INSPECTOR GENERAL, PAKISTAN, RAILWAYS POLICE and another-Respondents

Appeal No. 33 (k) (CE) of 2000, decided on 3.12.2002. (i) Limitation--

—No limitation runs against pay and pension matters.

[P. 64] A

(ii) Fundamental Rules-

—F.R. No. 49(b)-Employee claiming additional pay for holding charge of head clerk for specified period-There was no proper transfer notification order in favour of appellant to look after additional charge of Head Clerk-Order issued by Superintendent, Pakistan Railways Police, being without competence as in terms of delegation order dated 9.2.1992, appellant cannot be allowed claimed benefits-Appeal was thus, not maintainable.

[P. 64] B

1986 PLC (C.S) 66; 1995 PLC (C.S) 1026; 1996 PLC (C.S) 832; 2002 PLC (C.S) 386; 1994 PLC (C.S) 411; 1983 PLC (C.S) 103; 1985 PLC (C.S) 1000; 1986 PLC (C.S) 296; 1990 PLC (C.S) 136 and 1977 SCMR 509 ref.

Mr. Sanaullah Noor Ghouri, Advocate for Appellant. Ch. Rashid Ahmed, Advocate for Respondents. Date of hearing: 3.12.2002.

JUDGMENT

Nazar Muhammad Shaikh, Member.-The appellant has filed this appeal under Section 4 of the Service Tribunals Act of 1973 requesting for additional pay for holding charge of Head Clerk from 20.3.1999 for a period of eleven months. His departmental appeal, for allowing additional pay for holding the post of Head Clerk in addition to his own duties, has not received any response from the department. The learned counsel for the appellant stated that in terms of FR-49 (b), he was entitled to additional pay for holding the post of Head Clerk in addition to his own duties. In this regard, the learned counsel relied on the following rulings:

1986 PLC (CS) 66, 1995 PLC (CS) 1026, 1996 PLC (CS) 832 and 2002 PLC (CS) 1386.

2. He further stated that according to Rule (18(2) of the Pakistan Railways Police Rules and Rule 3(1)(5) of Police Personnel Manual, he was entitled to this benefit. He further stated that according to the written objections of the respondents, the issue of limitation has been raised. He stated that no limitation runs against pay and pension matters and quoted the following rulings, in support of his contentions:-

1994 PLC (CS) 411; 1983 PLC (CS) 103, 1985 PLC (CS) 1000, 1986 PLC (CS) 296; 1990 PLC (CS) 136 and 1977 SCMR 509.

He also responded to the written objections in respect of the competent authority, who has passed the order, whereby the appellant was made to hold after the post of Head Clerk in addition to his own duties. In support, he produced the respondent's order dated 9.2.1992 detailing powers whereby Superintendent Railway Police was competent for the employees in Grades-1 to 14.

3. The learned counsel for the respondents opposed the appeal and reiterated his written objection in respect of limitation. He further pointed out, that no formal order was issued for the appellant to hold additional charge of the post of Head Clerk. He further stated that the Superintendent Police's order dated 22.3.1999 was an internal order, issued by the Superintendent Police, which was an informal arrangement. He further stated that the Superintendent Police, Pakistan Railway was not competent to issue such order in respect of Head Clerk.

4. We have heard the arguments from both sides and also perused the rulings as well as the record. It would be relevant here to reproduce the order of Superintendent, Pakistan Railways Police, Karachi, whereby the appellant has been ordered to look after the charge of Head Clerk in addition to his own duties:-

"From: The Superintendent,
Pakistan Railways Police, Karachi.

To: The Inspector General,
Pakistan Railways Police,
C.P.O.--Lahore. No. 940-E/5-PRP. /Karachi, dated the:-22.3.1999.

Sub: POSTING OF O.S. IN SRP OFFICE KARACHI

It is intimated that Mr. Alam Sher Rao OS of this office retired from service w.e. from 20.3.1999. Mr. Mohammad Ramzan Head Clerk has been ordered to look-after his work in addition to his duties till proper OS is posted.

Kindly post proper OS in this office at the earliest.

Sd/-
Superintendent,
Pakistan Railways Police,
Karachi."

A reading of this order, as rightly pointed out by the learned counsel for the respondent, shows that it was not a formal transfer/notification, which is mandatory to entitle the appellant to additional pay in terms of FR-49(b) and other rules, quoted by the appellant. The delegation of powers, quoted by the appellant is for Grades-1 to 14 except Head Clerk. The relevant extract of the delegation order of 9.2.1992 is reproduced as under:-

"Revised Schedule of Powers.
Grade to which appointment
is made.

Officers to whom
the power to make
+ appointment is delegated.

- 1. Grade 9 to 15 in
Headquarters Office.
- 2. Grade 1 to 8 in
Headquarters Office.

- Deputy Inspector
General.
- Assistant Inspector
General Admn:

3. Grade 1 to 14 in the Divisions (except Head Clerks (BS-11) Superintendents, Pakistan Railways, Police."

As regards limitation, the objection of the respondents is not tenable as no limitation runs against matters of pay and pension.

5. The fact that there was no proper transfer notification/order in favour of the appellant to look after the additional charge of Head Clerk and the order, issued by the Superintendent, Pakistan Railways Police, Karachi II was without competence as in terms of delegation order dated 9.2.1992 and, as such, the appellant cannot be allowed the claimed benefit. In view of the above facts, the appeal is dismissed, as it is not maintainable.

No orders as to cost. Parties be informed accordingly.

(A.A)

Appeal dismissed.

1995SCMR950

[Supreme Court of Pakistan]

Present: Ajmal Mian, Zia Mahmood Mirza and Muhammad Munir Khan, JJ

ANWAR MUHAMMAD —Appellant

versus

GENERAL MANAGER, PAKISTAN RAILWAYS, LAHORE and another—Respondents

Civil Appeal No. 415 of 1992, decided on 30th November, 1994.

(On appeal from the judgment dated 1-9-1991 of the Federal Service Tribunal, Islamabad, passed in Appeal No. 96(L)/1991).

(a) Constitution of Pakistan (1973)—

---Art. 212(3)---Adverse remarks---Departmental appeal against adverse remarks although was not dismissed on point of limitation, yet appeal before Service Tribunal was dismissed on point of limitation---Validity---Leave to appeal was granted to consider whether Service Tribunal was justified to dismiss appeal on ground of limitation when Competent Authority did not dismiss the same on said ground but dismissed the same on merits.

A Guide to Performance Evaluation, para. 3.39 ref.

(b) Civil service-

--- Constitution of Pakistan (1973), Art. 212---Departmental Authority had not dismissed departmental appeal on ground of limitation but on merits---No objection having been raised before Departmental Authority relating to limitation, Authority would be deemed to have condoned the delay---Service Tribunal should, thus, have decided the same on merits and not on limitation---Case was remanded to Service Tribunal for decision afresh on merits.

S.M. Masood, Advocate Supreme Court and Sh. Masood Akhtar, Advocate-on-Record for Appellant.

Ch. Fazle Hussain, Advocate Supreme Court and Ch. Muhammad Aslam, Advocate-on-Record for Respondents.

Date of hearing: 30th November, 1994.

JUDGMENT

AJMAL MIAN, J.---This is an appeal with the leave of this Court against the judgment dated 1-9-1991 passed by the Federal Service Tribunal, Islamabad, hereinafter referred to as the Tribunal, in Appeal No. 96(L) of 1991, filed by the appellant against the order dated 9-4-1991 of respondent No.2, dismissing his representation treated as an appeal against the adverse remarks recorded in his A.C.R. for the period ending on 31-12-1983 under column (2)(F) 'Ability to work under stress and strain', "Below average", dismissing the same on the ground that the appellant's above representation/appeal was hopelessly time-barred. Leave to appeal was granted to consider the question, whether the Tribunal was justified to dismiss the above appeal on the ground of limitation when the competent authority did not dismiss the same on the above ground but dismissed it on merits.

2. The brief facts are that the appellant received intimation about the above adverse remarks through the department's letter dated 15-5-1984. The appellant filed a representation/appeal before the Divisional Superintendent instead of filing the same before the General Manager, Pakistan Railways. In response to the above representation, the appellant received Divisional Office, Rawalpindi's Letter dated 2-9-1984 for Divisional Superintendent, P.R. Rawalpindi, intimating to him that the appeal against the adverse remarks had been rejected by the competent Authority. It appears that after the lapse of several years, the appellant made a representation dated 8-1-1991 to the General Manager. The appellant received a letter dated 9-4-1991 for General Manager intimating him that his representation dated 8-1-1991 against the adverse remarks recorded in his A.C.R. for the period from 31-5-1983 to 31-12-1983 had been considered and rejected by the competent Authority. Against the above order, the appellant filed the aforesaid service appeal, which was declined for the above reason. Thereupon, the appellant filed a petition for leave to appeal, which was

1984 P L C (C. 8.) 386

[Federal Service Tribunal]

Before Justice Shah Abdur Rashid, Chairman and Muhammad Irshad Khan,

Member Kh. ZAHEER AHMAD

Versus

DISTRICT ACCOUNTS OFFICER, RAWALPINDI AND 3 OTHERS

Appeal No. 188 (R) of 1982, decided on 4th December, 1983.

(a) Service Tribunals Act (LXX of 1973)-

--S.4-Limitation-Matter pertaining to pay- A continuing cause of grievance-Departmental representation against order of fixation of pay made after four years-Such representation decided on merits without considering question of limitation-Delay in making representation, in circumstances, held, deemed to have been condoned-Appeal before Tribunal filed within one month of rejection of departmental appeal, in circumstances, held, within time.

(b) Central (Gazetted) Civil Services (Revision of Pay) Roles, 1951-

And Ministry of Finance O. M. No. 1 (36) GAZ-/MP/1/73, dated 18th August, 1973, Schd. sub-pare. (G) (Regarding introduction of National Pay Scales) - Fixation of pay on promotion from Grade-17 to Grade-18-Condition of length of service of 7 years in NPS 17 for admissibility of increment in NPS; 18- Held - Not applicable for those promoted after 18th August, 1973-Such condition, further, held, inconsistent with S. 17 of Civil Servants Act, 1973-Civil servant entitled to pay of post as raised from time to time on accrual of increment-Such right cannot be restricted by any rule- Words "in accordance with rules" used in, S. 17 of Civil Servants Act, 1973-Refer to Pay Scale and-not to any restriction-F. R. 35 empowering Government to fix pay of an officiating Government servant at an amount less than that admissible under F. R. 31, held, inconsistent with S. 17 of Civil Servants Act, 1973 hence not effective-Civil Servants Act (LXXI of 1973), S. 17 and Fundamental Rules, rr. 9 (31) (a), 31 & 35.

Mian Ahmad Saved v. Secretary Ministry of Railways Appeal No. 96 (L) of 1980 and Abdul Majid v. Secretary, Ministry of Communications and others Appeal No. 160 (R) of 1980 (unreported) rel.

Appellant in person.

Syed Muhammad Shahudul Huque for the State.

Manzoor Hussain Malik for Respondent No. 1.

Date of hearing: 24th November, 1983.

JUDGMENT

JUSTICE SHAH ABDUR RASHID (CHAIRMAN).-The appellant, Kh. Zaheer Ahmed, joined the defunct Civil Service of Pakistan on 1st November, 1971. After the introduction of National Scales of Pay (NPS), under office Memorandum No. 1(36)GAZ-IMP/173, dated the 18th August, 1973, he was placed in N. P. S. 17. He was Promoted to N. P. S. 18 with from 1st November 1976, and on his promotion, his pay was fixed at the minimum of N. P. S. 18. He was, however, not allowed yearly increments in spite of his representations being made in this behalf; and finally he has come to this Tribunal by way of appeal under section 4 of the service Tribunal Act (LXX of 1973) on the 6th November, 1982.

2. The respondents have taken a preliminary objection with regard to limitation. It was urged that initially the appellant was refused increments in 1978, and, thereafter he slept over his claim and came to Tribunal by the end of 1982, much after the or of the period of limitation.

3. We have heard the learned counsel for the respondents as well as the appellant, who argued his own case, on the question of limitation. No doubt, the appellants case was rejected initially in 1978, but it appears that thereafter he

45

(1)	(2)	(3)	(4)
16. 400-35-750/50-1,000		Posts the maximum of the	NIL
17. 500-50-1,000/50-1,250 (Junior Class I).		Exceeds Rs. 925 but does not exceed Rs. 1,150.	NIL
18. 1000-75-1,750		Exceeds Rs. 1,150 but does not exceed Rs. 1,699.	NIL
19. 1,800-80-2,200.		Exceeds Rs. 1,699 but does not exceed Rs. 2,150.	13 years.
20. 2,300-100-2,600		Exceeds Rs. 2,150 but does not exceed Rs. 2,600.	15
21. 2,750 (Fixed)		Exceeds Rs. 2,600 but does not exceed Rs. 2,750.	20 "
22. 3,000 (Fixed).		Exceeds Rs. 2,750.	22 "

5. Note (ii) refers to length of service restriction for drawing pay in different scales, as shown in the Schedule. -The length of service is mentioned against N. P. S. 19 to 22, but for N. P. S. 18, the entry is "NIL". It is clear that on promotion from NPS 18, irrespective of the length of service, the incumbent shall be entitled to the fixation of the pay at the minimum scale. Note (iii), however, refers to the increments as well as to the admissibility of drawing full pay. This note also refers to modifications made in the Schedule. It is not denied that for NPS 18 previously under the 1951 Rules, as modified from time to time, the increment was admissible in the 7th year of service in Class I. The appellant's case is that this restriction has been done away because in the 4th Column of Schedule, 7th year is not mentioned and instead, the entry "NIL" is made, which denotes that the increment was allowable immediately when it accrued and was not subject to the completion of years of service. The Ministry of Finance however, do not accept this interpretation and argue that length of service has been used differently from the term "year of service", the former relating to the fixation of pay in the grade and the latter to the increments. According to the Schedule has no reference with respect to the year of service formula, which is relatable to the increment and therefore, the old Rules of 1951 would continue to be applicable for drawal of increment which would be due only in the 7th year of service.

6. In our opinion, sub-para. (G) does not cover the cases in which promotion takes place after the 18th August, 1973, on which the Office Memorandum was issued, because the very heading of this sub-para. is "Initial Fixation of Pays". It is sub-para. (I) which, from 18th August, 1973 onward, is applicable to fixation of pay on promotion and sub-para. (1) provides for uniform date of increment. Sub-para. (I), which is the relevant one, refers to the increments, but does not place any restriction on drawal of increment in any year of service. The increment under this sub-para. (I) can be withheld only subject to the rules regard withholding of increments and crossing of efficiency bars. It also provides for a uniform date of increment and further lays down that the increments would be allowed only on the first day of December, if on that date, six months length of service is completed.

7. The interpretation put forward by the Ministry of Finance too is not without substance; but when the three paras. referred to above, are read as a whole, the position can be reconciled only in this manner that whatever the method of drafting may be, sub-para. (G) could not be taken into account for determining admissibility of increments in case of those persons who were promoted after 18th August, 1973.

8. Even if we accept the interpretation of the Ministry of Finance that increments in NPS 18 can be allowed only when the incumbent enters the 7th year of service, that interpretation would be violative of section 17 of the Civil Servants Act (LXXI of 1973). The legal position that any provision of rules or orders inconsistent with the provision of the Civil Servants Act (LXXI of 1973) shall have no effect, is not denied. Section 17 ibid specifically provides that a civil servant appointed to a post or grade shall be entitled, in accordance with the rules, to the pay sanctioned for such post or grade. The words "time-scale pay" has been defined in F. R. 9 (31) (a), which includes the periodical increments. Under section 17 ibid, therefore, a civil servant is entitled to the pay of the post as raised from time to time on accrual of the increment and that right of drawing the pay cannot

restricted by any rule. On behalf of the respondent departments it was argued that section 17 *ibid* provides that the pay is to be fixed "in accordance with the rules", and that those words justify the restriction made under the rules for drawing the increments in a prescribed year of service. We are unable to agree with this contention. The words "in accordance with the rules" refer to the pay scale and not to any restriction. It would be advantageous to refer to the rules on the subject, which existed prior to the coming into force of the Civil Servants Act (LXXI of 1973). F. R. 31 is analogous to section 17 and it provides that an incumbent of a post will draw the pay of the post. However, this rule was subject to F. R. 35, which empowered the Government to fix the pay of an officiating Government servant at an amount less than that admissible under F. R. 31. It is curious to note that whereas F. R. 31 was made subject to F. R. 35, section 17 of the Civil Servants Act (LXXI of 1973), is not subject to any other provision of the Act analogous to F. R. 35. This clearly shows that, with the enforcement of the Civil Servants Act (LXXI of 1973) F. R. 35 became inconsistent with section 17 of the Act, and, therefore, the Government has no power to restrict the pay of a civil servant at less than what he would be entitled in the time-scale. Though previously the view taken by the Tribunal was that the pay of a civil servant could be restricted in the time-scale, yet when the precise question came up for thorough examination in the case of *Mion Ahmad Saeed v. Secretary, Ministry of Railways Appeal No. 96 (L)/1980* and *Abdul Majid v. Secretary, Ministry of Communications and others Appeal No. 160 (R)/1980*, two different Benches of the Tribunal held that the pay of a civil servant in a grade cannot be restricted and further that the increments too cannot be withheld by providing any restriction.

9. In view of the aforesaid discussions, we are of the opinion that in the present case, the withholding of the increments of the appellant is violative of the provisions of section 17 of the Civil Servants Act (LXXI of 1973), and is also not in accordance with the validly made or protected rules. We, therefore, accept this appeal and direct that the appellant should be allowed periodic increments without taking into consideration his length of service with effect from the date of his promotion.

A. E. Appeal accepted.

1986 P L C (C.S.) 952

[Service Tribunal Punjab]

Present: S. Abdul Jabbar Khan, Chairman and
Abdul Hamid Chaudhry, Member M.R. KHALID

Versus

GOVERNMENT OF THE PUNJAB through
Chief Secretary, Punjab Secretariat, Lahore

Case No. 580/903 of 1984, decided on 30th July, 1985.

(a) Punjab Service Tribunals Act (IX of 1974)----

--S. 4--Limitation Act (IX of 1908)--S.5--Appeal before Tribunal--Limitation--Provincial Selection Board having reconsidered case of civil servant on merit had in fact condoned limitation--Delay in filing appeal, if any, held, stands condoned by Provincial Selection Board to which Service Tribunal did not take any exception.

1981 P L C (C.S.) 109 ref.

(b) Punjab Service Tribunals Act (IX of 1974)--

--R. 4--Appeal before Tribunal--Financial benefits--Surrendering of by civil servant--No evidence produced by Authority in support of such surrender in spite of repeated demands by Tribunal--Civil servant, held, was entitled to financial benefits from the date of pro forma promotion.

Syed Jamshed Ali for Appellant.

A.G. Humayun, District Attorney for Respondent.

JUDGMENT.

S. ABDUL JABBAR KHAN (CHAIRMAN).--M. R. Khalid has filed this appeal under section 4 of the Punjab Service Tribunal Act, 1974, in which he has impleaded the Government of the Punjab through the Chief Secretary; Punjab Secretariat, Lahore, as respondent.

2. By virtue of this appeal he has prayed that the order dated 11-6-1980, in so far it deprives the appellant of financial benefits and the final order, dated 24-6-1984, be set aside with financial benefits be extended to the appellant.

3. Brief facts of the case are that the appellant joined the former P.C. S. (E. B.) cadre in 1955 through a Competitive Examination. He was granted selection grade w.e.f. 1-1-1970, vide notification, dated 20-2-1974. On 26-1-1977, the appellant was promoted in Grade-18 as AC/ADC w.e.f. 1-3-1972. The appellant was due for promotion in Grade-18 as D.C./D.S. w.e.f. 26-6-1972, the grade to which Mr. Shaukat Ali Chaudhry, an officer next junior to the appellant was promoted. However, his promotion was deferred on the complaint of Mr. Riaz Hussain Shah. A full enquiry was made into the complaint and ultimately it was filed. Meanwhile the appellant was promoted in Grade-18 as D.C./D.S. by notification, dated 25-5-1974. Aggrieved against the said notification he made representation to the Chief Secretary, Government of the Punjab, as according to him this notification was not passed by the Governor but was issued on his behalf. This representation was rejected on 24-6-1984. Hence this appeal.

4. We have heard the learned counsel for the appellant as well as learned District Attorney assisted by the representative of the Department and have perused the record of this case carefully with their assistance.

5. Learned counsel for the appellant has submitted that the representation so filed by the appellant before the Chief Secretary, Government of the Punjab, was a bona fide mistake on his part, as the order, according to his information was not passed by the Governor but only on his behalf by the learned Chief Secretary. It has been further submitted that this representation was duly entertained by the Government, therefore, the case of the appellant would, by no

means, be hit by law of limit. With regard to the justification of his claim it has been submitted that he nowhere has foregone his financial claim as averred by the respondent in this behalf as there is nothing on the record to show the same. It has been further submitted that once it has been proved that the appellant did not himself agree to forego his financial benefits so accrued to him from his promotion, his claim for the same, would be justified. While concluding his arguments, learned counsel for the appellant has submitted that his case for condonation of delay also rests on the verdict of this Tribunal as given in 1981 PLC (C.S.) 109 in which Ghulam Qadir Dahirs appeal was considered to be in time ignoring the technicalities of law, which according to this Tribunal, would not be strictly applied when the right of a person was so affected.

6. On the other hand learned District Attorney has submitted that in the meeting of the Provincial Selection Board held on 10-5-1980, the appellant was recommended to be given seniority w.e.f. 25-5-1972 in Grade-18 without financial benefits meaning thereby that no arrears of pay would be paid to him. It has been further submitted that this matter was put up before the Governor/M.L.A. Punjab, who approved the decision on 16-5-1980, therefore, in consequence of such decision a notification was issued on 11-6-1980, by order of the Governor of the Punjab, in which it was specifically mentioned that the officer will not draw any financial benefits on account of arrears of pay accruing due to the fixation of seniority. In this way learned District Attorney has argued that the period of limitation for filing appeal before this Tribunal would start from 11-6-1980, the day notification was published and was conveyed to the appellant. It has been further argued that in view of the settled law that no representation would be against the order of the Governor, the appellant was under legal obligation to come forward with his claim immediately, when the said notification was passed and there was no justification to condone the delay in his case. With regard to the case of Ghulam Qadir Dahir, it has been submitted that the facts of the said case are absolutely different with the case of the appellant as in the said case the legal position was still confused and only when Supreme Court of Pakistan came out with a decision in favour of the appellant (Ghulam Qadir Dahir) he came before this Tribunal.

7. Learned counsel for the appellant has strongly controverted the stand of the learned District Attorney that the case of the appellant was hit by law of limitation, on the ground that in fact, his second representation was duly considered by the Provincial Selection Board and the only reason by which the appellant case was ignored, was that he himself had voluntarily foregone the financial benefits, which had so accrued to him. In this manner it has been pleaded that in fact the case of the appellant would be considered from the date of second rejection by the Provincial Selection Board and the plea so advanced by it.

8. We have given our anxious thought to the arguments advanced by the parties and first of all would deal with the point of limitation so vehemently raised by the learned District Attorney in this case. The fact of the matter is that the second representation so filed by the appellant was duly considered by the Provincial Selection Board and the only reason for which the case of the appellant was declined was that he himself had voluntarily foregone the financial benefits which so accrued to him. In this situation the law of limitation would not come in his way as the Provincial Selection Board, in a way, condoned the same by considering his case once again on merits and declined his request on the ground that he himself had voluntarily given up the financial benefits to which he was so entitled. In this manner we are fully satisfied that if there is any delay on his part, it stands condoned by the Provincial Selection Board to which we do not take any exception.

9. With regard to the merits of the case, the only reason advanced by the Provincial Selection Board in its meeting held for this purpose was that the appellant would not be entitled to the financial benefits because he himself has surrendered the same in favour of the Government. To satisfy ourselves on this point we called for the proceedings of the Provincial Selection Board as well as gave ample chance to the learned District Attorney to show us any undertaking given by the appellant in this behalf, which stood as impediment in his way being treated as waiver in favour of the Government. Despite a number of chances allowed to the learned District Attorney he was not in a position to produce anything on record to show that this observation of the Provincial Selection Board was supported by any documentary evidence or otherwise justified by it in any manner whatsoever. This being the correct position on record we have no alternative but to accept the appeal of the appellant by holding that he would be entitled to the financial benefits, to which he stands entitled by promotion to Grade-18. We are further strengthened in our finding on the strength B of seniority list which has been produced on record, which itself concedes that the appellant was given pro forma promotion w.e.f. 26-6-1972. The seniority list has been placed on record as Annexure 'H' and this fact is fully mentioned at serial No. 114 of the said list, wherein it has been recorded that the appellant was promoted from 3-6-1974 whereas the pro forma promotion was awarded from 26-6-1972. This would be an un-controverted documentary evidence in his favour on which the Tribunal places full reliance.

10. Resultantly the appeal is accepted with the direction that the appellant be given the financial benefits from the date he has been awarded pro forma promotion. There will be no order as to costs.

A.A.

Appeal accepted.

48

PLJ 2003 Tr.C. (Services) 61 [Federal Service Tribunal, Islamabad]
Present: NAZAR MUHAMMAD SHAIKH AND ABDUL RASHID
BALOCH MEMBERS

Amir

MUHAMMAD RAMZAN-Appellant versus

INSPECTOR GENERAL, PAKISTAN, RAILWAYS POLICE and another-Respondents

Appeal No. 33 (k) (CE) of 2000, decided on 3.12.2002. (i) Limitation--

—No limitation runs against pay and pension matters. [P. 64] A

(ii) Fundamental Rules-

—F.R. No. 49(b)-Employee claiming additional pay for holding charge of head clerk for specified period-There was no proper transfer notification order in favour of appellant to look after additional charge of Head Clerk-Order issued by Superintendent, Pakistan Railways Police, being without competence as in terms of delegation order dated 9.2.1992, appellant cannot be allowed claimed benefits-Appeal was thus, not maintainable.

[P. 64]B

50

1986 PLC (C.S) 66; 1995 PLC (C.S) 1026; 1996 PLC (C.S) 832; 2002 PLC (C.S) 386; 1994 PLC (C.S) 411; 1983 PLC (C.S) 103; 1985 PLC (C.S) 1000; 1986 PLC (C.S) 296; 1990 PLC (C.S) 136 and 1977 SCMR 509 ref.

Mr. Sanaullah Noor Ghouri, Advocate for Appellant. *Ch. Rashid Ahmed*, Advocate for Respondents. Date of hearing: 3.12.2002.

JUDGMENT

Nazar Muhammad Shaikh, Member.-The appellant has filed this appeal under Section 4 of the Service Tribunals Act of 1973 requesting for additional pay for holding charge of Head Clerk from 20.3.1999 for a period of eleven months. His departmental appeal, for allowing additional pay for holding the post of Head Clerk in addition to his own duties, has not received any response from the department. The learned counsel for the appellant stated that in terms of FR-49 (b), he was entitled to additional pay for holding the post of Head Clerk in addition to his own duties. In this regard, the learned counsel relied on the following rulings:

1986 PLC (CS) 66, 1995 PLC (CS) 1026, 1996 PLC (CS) 832 and 2002 PLC (CS) 1386.

2. He further stated that according to Rule (18(2) of the Pakistan Railways Police Rules and Rule 3(1)(5) of Police Personnel Manual, he was entitled to this benefit. He further stated that according to the written objections of the respondents, the issue of limitation has been raised. He stated that no limitation runs against pay and pension matters and quoted the following rulings, in support of his contentions:-

1994 PLC (CS) 411; 1983 PLC (CS) 103, 1985 PLC (CS) 1000, 1986 PLC (CS) 296; 1990 PLC (CS) 136 and 1977 SCMR 509.

He also responded to the written objections in respect of the competent authority, who has passed the order, whereby the appellant was made to hold after the post of Head Clerk in addition to his own duties. In support, he produced the respondent's order dated 9.2.1992 detailing powers whereby Superintendent Railway Police was competent for the employees in Grades-1 to 14.

3. The learned counsel for the respondents opposed the appeal and reiterated his written objection in respect of limitation. He further pointed out, that no formal order was issued for the appellant to hold additional charge of the post of Head Clerk. He further stated that the Superintendent Police's order dated 22.3.1999 was an internal order, issued by the Superintendent Police, which was an informal arrangement. He further stated that the Superintendent Police, Pakistan Railway was not competent to issue such order in respect of Head Clerk.

57

4. We have heard the arguments from both sides and also perused the rulings as well as the record. It would be relevant here to reproduce the order of Superintendent, Pakistan Railways Police, Karachi, whereby the appellant has been ordered to look after the charge of Head Clerk in addition to his own duties:-

"From: The Superintendent,
Pakistan Railways Police, Karachi.

To: The Inspector General,
Pakistan Railways Police,
C.P.O.--Lahore. No. 940-E/5-PRP. /Karachi, dated the:-22.3.1999.

Sub: POSTING OF O.S.-IN SRP OFFICE KARACHI

It is intimated that Mr. Alam Sher Rao OS of this office retired from service w.e. from 20.3.1999. Mr. Mohammad Ramzan Head Clerk has been ordered to look-after his work in addition to his duties till proper OS is posted.

Kindly post proper OS in this office at the earliest.

Sd/-
Superintendent,
Pakistan Railways Police,
Karachi."

A reading of this order, as rightly pointed out by the learned counsel for the respondent, shows that it was not a formal transfer/notification, which is mandatory to entitle the appellant to additional pay in terms of FR-49(b) and other rules, quoted by the appellant. The delegation of powers, quoted by the appellant is for Grades-1 to 14 except Head Clerk. The relevant extract of the delegation order of 9.2.1992 is reproduced as under:-

"Revised Schedule of Powers.
Grade to which appointment
is made.

Officers to whom
the power to make
appointment is delegated.

1. Grade 9 to 15 in
Headquarters Office.
2. Grade 1 to 8 in
Headquarters Office.

Deputy Inspector
General.
Assistant Inspector
General Admn:

- 52
3. Grade 1 to 14 in the Divisions (except Head Clerks (BS-11) Superintendents, Pakistan Railways, Police."

As regards limitation, the objection of the respondents is not tenable as no limitation runs against matters of pay and pension.

5. The fact that there was no proper transfer notification/order in favour of the appellant to look after the additional charge of Head Clerk and the order, issued by the Superintendent, Pakistan Railways Police, Karachi II was without competence as in terms of delegation order dated 9.2.1992 and, as such, the appellant cannot be allowed the claimed benefit. In view of the above facts, the appeal is dismissed, as it is not maintainable.

No orders as to cost. Parties be informed accordingly.

(AA)

Appeal dismissed.

تہذیب
50 روپے

48506

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

ایڈووکیٹ: Rizalmed

بار کونسل ایسوسی ایشن نمبر: 11-1440

رابطہ نمبر: 0303 8228839



بعدالت جناب: Before The Senior Tribunal KPK

مخاتب: <u>Applicant</u>	دعوی: <u>Application for</u>
<u>Mohammad Anwar Khan</u>	علت نمبر: <u>Review</u>
بنام	موضوع:
<u>Secretary, Peshawar</u>	جرم:
<u>Bar Association</u>	تھانہ:

باعث تحریر آگہ

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

آن مقام Judgment کے Rizalmed Advocate کو دیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کمال اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقریر ثالث ذیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری کی طرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل ٹیکنائی و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کارروائی کے واسطے آڈیو ویل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پر راختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جائز التوائے مقدمہ کے سبب سے ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں لہذا وکالت نامہ لکھ دیا تاکہ سندر ہے

الرقوم: 1/20

مقام Peshawar Swat

Mohammad Anwar Khan

Rizalmed Advocate

Mohammad Anwar Khan

Therawal Nic No, 15303-8228839