

Form- A



FORM OF ORDER SHEET

Court of _____

Case No.-

6704

/2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	01/07/2021	<p>The appeal of Mr. Ashraf Khan resubmitted today by post through Mr. Ahmad Ali Advocate, may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench Peshawar. Notices be issued to appellant/counsel for preliminary hearing to be put up there on- <u>23/08/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

23.08.2021

Mr. Khalid Mehmood, Advocate, for the appellant present and submitted fresh Wakalatnama, which is placed on file. Preliminary arguments heard.

Learned counsel for the appellant contends that according to Government of Khyber Pakhtunkhwa Notification No. SO(E)/IRRI/23-05/2010-11 dated 25th June 2012, the criteria for promotion to the post of Sub-Divisional Officer from amongst the holder of the post of Sub-Engineer was on the basis of seniority-cum-fitness, however vide impugned Notification No. SO(E)/IRRI/23-5/73/Vol-VI dated 10th July 2020 an amendment was introduced by giving significant effect to the date of acquiring of concerned degree, which amendment would adversely affect the seniority as well as prospects of promotion of the appellant, therefore, the same is having no binding effect upon the rights of the appellant with regard to his seniority and promotion. He next contended that the amendments introduced vide the impugned notification are violative of section-8 as well as section (9) (2) (b) of the Khyber Pakhtunkhwa Civil Servants Act, 1973 and the same could not be given retrospective effect.

Points raised need consideration, therefore, the appeal is admitted to regular hearing. The appellant is directed to deposit security and process fee within 10 days, where-after notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, the office shall submit the file with a report of non-compliance. File to come up for arguments on 07.09.2021 before the D.B.

The appeal is accompanied by an application for suspension of operation of the impugned notification till the disposal of the instant appeal. Notice of the application be issued to the respondents and meanwhile, status-quo be maintained till the date fixed subject to notice.

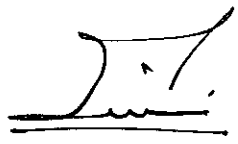

Appellant Deposited
Security & Process Fee


(SALAH-UD-DIN)
MEMBER (J)

07.09.2021

Appellant alongwith his counsel Mr. Khalid Mehmood, Advocate, present. Mr. Hamad Saleem, Superintendent and Mr. Khair-ul-Wahab, Superintendent alongwith Mr. Muhammad Rasheed, Deputy District Attorney for the respondents present and sought time for submission of reply. Adjourned. To come up for reply as well as arguments before the D.B on 23.09.2021. Meanwhile, status-quo be maintained till the date fixed.


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

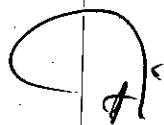

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

23.09.2021

Learned counsel for appellant present.

Muhammad Adeel Butt learned Additional Advocate General alongwith Fazal Khaliq ADEO for respondents present.

File to come up alongwith connected Service Appeal No.6703/2021 titled Mehr Ali Shah Vs. Government of KPK, on 28.09.2021 before D.B at Camp Court D.I.Khan.

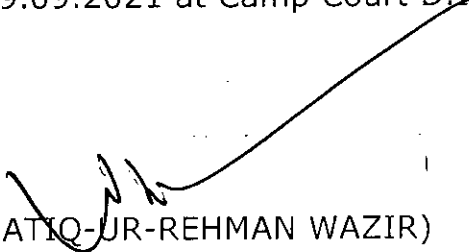

(Rozina Rehman)
Member (J)



Chairman

28.09.2021

Appellant alongwith his counsel Mr. Ahmed Ali, Advocate, present. Mr. Faiz-ul-Haq, Superintendent and Mr. Muslim Din, SDO alongwith Mr. Usman Ghani, District Attorney for the respondents present.

Arguments heard. To come up for order before the D.B on 29.09.2021 at Camp Court D.I.Khan.


(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)
CAMP COURT D.I.KHAN


(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT D.I.KHAN

ORDER

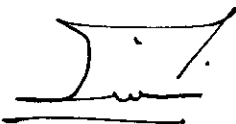
29.09.2021

Appellant alongwith his counsel Mr. Ahmad Ali, Advocate present.
Mr. Faiz-ul-Haq, Superintendent and Mr. Muslim Din, SDO alongwith Mr.
Usman Ghani, District Attorney for the respondents present. Arguments
heard and record perused.

Vide our detailed judgment of today, separately placed on file, the
instant appeal as well as connected appeal bearing No. 6703/2021 "titled
Syed Meher Ali Shah Versus Government of Khyber Pakhtunkhwa through
Chief Secretary, Khyber Pakhtunkhwa, Peshawar and four others", are
accepted. Provisions of the impugned notification dated 10-07-2020
pertaining to amendments determining seniority from the date of
acquiring prescribed qualification is declared null and void with direction to
the respondents to draw the seniority list from the dates of regular
appointment of the incumbents to the post of Sub-Engineer. Parties are
left to bear their own costs. File be consigned to record room.

ANNOUNCED

29.09.2021



(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT, D.I. KHAN

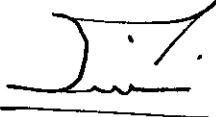


(ATIQU-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)
CAMP COURT, D.I. KHAN

the post of Sub-Engineer. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED

29.09.2021



(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT, D.I. KHAN



(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)
CAMP COURT, D.I. KHAN

2004. The other appellant namely Syed Meher Ali Shah has not yet obtained the prescribed B-Tech Degree, hence he is placed in the seniority list of Diploma holders. It is also worth to mention that separate quota for promotion is fixed for degree holders and diploma holders, but the moot question before this Tribunal is as to whether the respondents made such amendments in conformity with the Act/Rules ibid or not. Available record and arguments of learned counsel for the parties would suggest that such amendments for determination of seniority from the date of acquiring the prescribed qualification are in clear violation of law and rule and not sustainable in the eye of law. The question of jurisdiction as to whether such appeal challenging vires of rules/notification would be competent before this Tribunal, it is added that judgment of a larger bench of this Tribunal in Service Appeal No. 868/2019 announced on 14-01-2021 has categorically explained jurisdiction of this Tribunal in such cases and such judgment is based upon judgments of the superior courts reported in 1991 SCMR 1041, PLD 2004 SC 317, 2002 PLC (C.S) 94, 2012 PLC (C.S) 142, 2012 PLC (C.S) 1211, 2015 PLC (C.S) 215, 2018 PLC (C.S) 40, 2019 PLC (C.S) 995, PLD 1980 Supreme Court 153 and 1991 SCMR 1041. In almost all the aforementioned judgments it has been held that vires of any rule or law touching the terms and condition of civil servant can be decided by this tribunal, hence the issue of jurisdiction is ~~holding~~ no force.

10. In view of the foregoing discussion, the instant as well as connected appeal bearing No. 6703/2021 "titled Syed Meher Ali Shah Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar and four others", are accepted. Provisions of the impugned notification dated 10-07-2020 pertaining to amendments determining seniority from the date of acquiring prescribed qualification is declared null and void with direction to the respondents to draw the seniority list from the dates of regular appointment of the incumbents to

amended notification dated 10-07-2020 changed the criteria for determination of seniority from the date of acquiring the prescribed qualification, which is in total contravention to Section-8 of Civil Servant Act, 1973 and Section-17 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, relevant provisions of which are reproduced as under for ready reference:

Section-8(4) of Civil Servants Act, 1973: Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post. Provided that civil servants who are selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter se seniority as in the lower post.

Section-17-1(b) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989: seniority in the case of civil servants appointed otherwise, with reference to the date of their continuous regular appointment in the post; provided that civil servants selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter se seniority as in the lower post.

08. In view of the provision contained in the Act/Rules ibid and in light of the judgments of Supreme Court of Pakistan reported as 2015 PLC (CS) 1231, 2010 SCMR 1584 and 2019 SCMR 349, undoubtedly seniority reckons from the date of regular appointment to a post, service or cadre and the reckoning/fixing seniority with acquiring the prescribed qualification is illegal, hence is liable to be set at naught, as statutory provisions regarding seniority would have overriding effect on such notification. Reliance is placed on 2010 SCMR 1584. It however is worth to mention that prescribed qualifications can be made a condition for promotion, but not for fixation of seniority.

09. We have observed that the appellant namely Ashraf Khan obtained the prescribed qualification on 21-07-2020 and is placed at the bottom of seniority list being the last one obtaining the prescribed qualification, thereby ignoring his seniority accrued to him by virtue of his first entry into the post of Sub-Engineer in

06. Record reveals that the respondents brought amendments in service rules dated 17-02-2011 vide notification dated 25-06-2012, where provision for separate seniority of B-Tech Degree holders and Diploma holders have been given 8% and 15% quota respectively for their further promotion to the post of Sub-Divisional Officer and their seniority was to be reckoned from the date of their regular appointment to the post of Sub-Engineer. Record is silent as to whether such segregated seniority lists were prepared or not in the light of such amendments, but after amendments in service rules vide notification dated 10-07-2020, two seniority lists have been drawn in respect of degree holders and diploma/non diploma holders separately vide final seniority lists issued on 31-12-2020. The segregated seniority list of degree holders would suggest that such seniority has been drawn from the date of acquiring the prescribed qualification and those who had obtained such degree earlier has been placed senior to those who has obtained such degree in later dates, thereby ignoring their seniority from the date of their regular appointment to that post, hence the respondents deviated from the set principle of determination of seniority. The correct course would have been to maintain their joint seniority as per their dates of regular appointments to that post and to make the condition of prescribed qualification as eligibility criteria for such promotion, which however was not done.

07. The appellants are mainly aggrieved of the above-mentioned amendments made in the service rules, which has made the prescribed qualification a condition for determination of seniority, which on the one hand would render the appellants junior to those, who had acquired the prescribed qualification earlier and on the other hand would keep the appellants deprived of further promotion due to their low position in the seniority list. we have observed that the previous service rules amended vide notification dated 25-02-2012 had correctly prescribed determination of seniority of the sub-engineers from the date of their regular appointment to that post, but the

unwarranted; that any new policy as to the change in the service structure disadvantageous to the rights of an in-service civil servant cannot affect the rights of such civil servant rather such changes can be given prospective effect only for those civil servants who are appointed after the said amended rules; that terms and conditions of service could not be unilaterally altered by the employer to the disadvantage of the employee. Reliance was placed on 2018 PLC (C.S); that seniority could not be fixed higher than the other regular employees who had already been working in the cadre. Reliance was placed on 2013 PLC (C.S) 987.

04. Learned District Attorney for the respondents has contended that the appellant has passed departmental Grade A & B examinations and also acquired degree of B-Tech(Hons.) on 21-07-2020, however the subject amendments were brought in service rules vide notification dated 10-07-2020; that in the light of such amendments, ~~seniority will~~ be reckoned from the date of acquiring the prescribed qualification; that the appellant obtained the prescribed qualification on 21-07-2020, therefore his name was placed at appropriate place according to the existing service rules; that such amendments were brought through standing service rules committee, which is a proper forum to safeguard the rights of promotion of the existing degree holders; that it was for the government to place a particular post in any grade or prescribe certain term and conditions thereof, as per its policy and incumbents of a particular post could not claim as of right for settlement of prescription or provision of certain terms and conditions according to their own choice. Reliance was placed on 2009 SCMR 980; that neither promotion nor the criteria set out to aspire for promotion could be categorized as a "right" that could be justiciable. Reliance was placed on 2015 PLC (CS) 962.

05. We have heard learned counsel for the parties and have perused the record.

01-03-2010. The appellant namely Ashraf Khan also passed Departmental Grade-A exam as well as obtained B-Tech (Hons.) degree in due course and the appellant namely Syed Meher Ali Shah has not yet obtained B-Tech degree. The respondents vide notification dated 25-06-2012 brought certain amendments in service rules dated 17-02-2011 governing the method of promotion to the post of Sub-Divisional Officer from amongst the holders of the posts of sub-engineers, where inter-alia, provision for segregated seniority list of the sub-engineers having degree in B-Tech and Sub-Engineers holding diploma was to be maintained and their seniority was to be reckoned from the date of their 1st appointment as Sub-Engineer. The respondents vide another notification dated 10-07-2020 brought further amendments in the service rules, which made the seniority conditional with acquiring the prescribed qualification, against which the appellants filed departmental appeals, which were dismissed vide order dated 21-04-2021. Feeling aggrieved, the appellants filed the instant appeals with prayers that the impugned order dated 21-04-2021 may be set aside and the amendment notification dated 10-07-2020 may also be cancelled to the extent of change in seniority criteria for the purpose of promotion and seniority of the appellants may be reckoned from the date of their regular promotion to the post of Sub-Engineers.

03. Learned counsel for the appellants has contended that the impugned order dated 21-04-2021 and notification dated 10-07-2020 are the outcome of malafide, result of political victimization, without jurisdiction and having no binding effect upon rights of the appellants accrued to them by dint of their seniority; that seniority of the appellant shall be reckoned from the date of regular appointment to the post of Sub-Engineer as per Section-8 of Khyber Pakhtunkhwa, Civil Servant Act, 1973 and Rule-17 of Khyber Pakhtunkhwa (Appointment, Promotion & Transfer) Rules, 1989; that such amendments in service rules are violative of the basic law and rules; that in light of section-9(2)(b) of Civil Servant Act, 1973, the impugned notification is

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT D.I. KHAN

Service Appeal No. 6704/2021

Date of Institution ... 31.05.2021

Date of Decision ... 29.09.2021

Ashraf Khan, son of Nadir Khan, resident of Mohallah Alam Sher, Tehsil & District
D.I. Khan. Sub Divisional Officer (OPS), Gomal Zam Irrigation Division, D.I. Khan.
... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber
Pakhtunkhwa Peshawar and four others. ... (Respondents)

AHMAD ALI
Advocate

... For Appellants

USMAN GHANI,
District Attorney

... For Respondents

SALAH-UD-DIN ...
ATIQ-UR-REHMAN WAZIR ...

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- This judgment shall dispose of
the instant service appeal as well as the connected service appeal bearing No.
6703/2021 "titled Syed Meher Ali Shah Versus Government of Khyber Pakhtunkhwa
through Chief Secretary, Khyber Pakhtunkhwa, Peshawar and four others", as
common question of law and facts are involved therein.

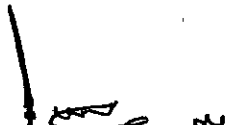
02. Brief facts of the case are that the appellants being employees of
Irrigation Department, were promoted to the post of Sub-Engineer with effect from
14-01-2004 on the basis of departmental Grade-B examination and in due course
were posted as Sub-Divisional Officer in Own Pay & Scale vide order dated

The appeal of Mr. Ashraf Khan SDO Gomal Zam Irrigation sub-Division D.I.Khan received today i.e. on 31.05.2021 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days:

- 1- Copy of posting order of appellant as SDO mentioned in para-2 of the memo of appeal is not attached with the appeal which may be placed on it. ✓
- 2 ✓ Copy of regularization order mentioned in para-1 of the memo of appeal (Annexure-E) is not attached with the appeal which may be placed on it.
- 3- Copy of rejection order of departmental appeal in respect of appellant is not attached with the appeal which may be placed on it.
- ④ Annexures-E & G of the appeal are illegible which may be replaced by legible/better one.
- ⑤ Appeal has not been flagged/marked with annexures' marks.

No. 920 /S.T,

Dt. 31/05 /2021


REGISTRAR,
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Ahmd Ali Advocate,
Supreme Court at D.I.Khan.

His observations are removed.

- ✓ ① Copy of posting order as SDO is attached on page ②1 Annex E. ✓
 - ✓ ② Regularization order as attached on page ①4 Annex A ✓
 - ✗ ③ Copy of Rejection order attached on page 43 Annex ② ✓
 - ④ Annexure E & Better copy of Annex G are attached on page ②1 & page ③0 respectively. ✓
- Objection no. has not been removed
1-7-2021
Thanks

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

Service Appeal No. _____ of 2021

Ashraf Khan Vs. Govt. of Khyber Pakhtunkhwa etc
Service Appeal

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Yours Humble Appellant



(Ashraf Khan)

Through Counsel



Ahmad Ali

Advocate Supreme Court

0305-3290000



Miss Shumaila Awan

Advocate High Court, D.I.Khan.

Dt. 31.05.2021

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

Service Appeal No. 6704 of 2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 5833

Dated 31-5-2021

Ashraf Khan, son of Nadir Khan, resident of Mohallah Alam Sher, Tehsil & District D.I.Khan. Sub Divisional Officer (OPS), Gomal Zam Irrigation Division, D.I.Khan.

APPELLANT

VERSUS

1. **Government of Khyber Pakhtunkhwa**, through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. **Secretary** to Govt of Khyber Pakhtunkhwa, Irrigation Department, Peshawar.
3. **Chief Engineer (South)**, Khyber Pakhtunkhwa Irrigation Department, Peshawar.
4. **Superintending Engineer**, D.I.Khan Irrigation Circle D.I.Khan.
5. **Executive Engineer**, Irrigation Department, D.I.Khan.

RESPONDENTS

SERVICE APPEAL UNDER SECTION 4 OF THE K.P. SERVICE TRIBUNALS ACT, 1974, AGAINST THE LETTER BEARING No. SO(E) IRR:/23-5/73/VOL-VI DATED 21.04.2021 AS TO DISMISSAL OF THE DEPARTMENTAL REPRESENTATION/REVIEW OF THE APPELLANT (RECEIVED TO THE APPELLANT ON 03.05.2021) AND ALSO AGAINST NOTIFICATION No. SO(E)/IRRI/23-5/73/VOL-VI DATED 10TH JULY, 2020 AS TO CHANGE IN THE SENIORITY CRITERIA FOR THE PURPOSE OF PROMOTION.

Filed to-day

Registrar

31/5/2021

Re-submitted to-day and filed.

Registrar

01/7/2021

PRAYER:

On acceptance of present Service Appeal and by setting aside letter bearing No. SO(E) Irr:/23-5/73/Vol-VI dated 21.04.2021 as to dismissal of the Departmental Representation/Review of the appellant and also by cancelling impugned Notification No. SO(E)/IRRI/23-5/73/Vol-VI dated 10th July, 2020 as to the change in Seniority Criteria for the purpose of promotion, the Seniority of the Appellant may please be directed to be reckoned from the date his promotion on the present post (i.e. sub-Engineer).

Note:

The impugned order received/communicated to appellant on 03.05.2021, therefore, this appeal is within time.

Respectfully Sheweth,

1. That appellant was appointed in the irrigation department on 15.11.1992 on contract basis as Work Munshi, whereafter he was regularized on the said post vide office order No.8062-63/5-E dated 25.10.1994. The appellant was then promoted to the post of sub-Engineer w.e.f. 14.01.2004 on the basis of Departmental Grade-B Exam, and accordingly posted as Sub-Engineer vide Office Order dated 11.02.2004.

Copy of the regularization order of appellant is enclosed as **Annexure A.**

Copies of the promotion order to the post of Sub-Engineer and posting order as sub-Engineer are enclosed as **Annexure B & C.**

Copy of the Departmental Grade-B Exam Result is enclosed as **Annexure D.**

2. That due to efficiency, competency and eligibility of appellant, presently he has been posted as Sub-Divisional Officer (OPS), vide office order dated 01.03.2010. Presently the appellant is posted as S.D.O. Gomal Zam Irrigation Division, D.I.Khan.

Copy of the posting order of appellant as S.D.O. is enclosed as **Annexure E.**

3. That the appellant also passed Departmental Grade-A Exam vide Office Order dated 28.05.2012. Thereafter, the appellant obtained B.Tech (Honours) Degree.

Copies of the degrees of appellant in B.Tech (Hons.) and D.A.E. are enclosed as **Annexure F.**

Copy of the Departmental Grade-A Exam is enclosed as **Annexure G.**

4. That the Govt. of Khyber Pakhtunkhwa, vide Notification No.SO(E)/IRRI/ 23-5/2010-11 dated 25th June, 2012 circulated amendments in the service rules governing method of promotion on the post of Sub-divisional Officer from amongst the holders of the posts of sub-engineers. Per Clause (b) (c) of Serial No.4, in Column No.5, of the Appendix, the seniority was to be reckoned on the basis of seniority-cum-fitness. The relevant excerpt runs as under:

AMENDMENTS:

In the Appendix,

i. *Against Serial No.4, in Column No.5, for the existing entries, in Clause (b), (c) and (d), the following shall be respectively substituted, namely:*

(b) -----

(c) *Eight percent by promotion, on the basis of seniority-cum-fitness, from amongst the sub-Engineers, having Degree in B. Tech (Hons) and have passed departmental Grade B and A examination with five years' service as such; and*

Note: For the purpose of Clause (c), a joint seniority list of the sub-Engineers having Degree in B. Tech (Hons) shall be maintained and their seniority is to be reckoned from the date of their 1st appointment as Sub-Engineer.

Copy of the Notification No.SO(E)/ IRR/ 23-5/2010-11 dated 25th June, 2012, is enclosed as **Annexure H.**

5. That on 03.03.2021, the appellant submitted an application to the Chief Engineer (South), Irrigation Department, KPK, Peshawar, for inclusion his name in the Seniority List of B. Tech (Hons) Sub-

Engineers. The Superintending Engineer forwarded the said application to the Chief Engineer (South) vide letter No.736/ DIC/1-E dated 03.03.2021.

Copies of application of appellant with letter No.736/ DIC/1-E dated 03.03.2021 are jointly enclosed as **Annexure I.**

6. That, in the meanwhile, the Respondents changed the method of recruitment/promotion vide Notification No. SO(E)/IRRI/23-5/73/Vol-VI dated 10th July, 2020 whereby the seniority of sub-engineers having B.Tech degree for the purpose of promotion to the post of S.D.O. has been notified to be reckoned from the date of acquiring said degree.

Copy of the Notification No. SO(E)/IRRI/23-5/73/Vol-VI dated 10th July, 2020 is enclosed as **Annexure J.**

7. That after getting knowledge of the said Notification dated 10th July, 2020, the appellant preferred a Departmental Representation/ Review seeking cancellation of the said notification and to restore the previous notification of 2012 as to the Seniority-cum-Fitness. However, the said Representation/Review of appellant has been dismissed vide Letter No. SO(E) Irr:/23-5/73/Vol-VI dated 21.04.2021.

Copy of the Departmental Representation/ Review of appellant is enclosed as **Annexure K.**

Copy of the letter No. SO(E) Irr:/23-5/73/Vol-VI dated 21.04.2021 as to dismissal of the departmental Representation/ Review is enclosed as **Annexure L.**

8. That aggrieved of the letter No. SO(E) Irr:/23-5/73/Vol-VI dated 21.04.2021 as to dismissal of departmental Representation/

Review of the appellant and also discontented with the Notification No. SO(E)/IRRI/23-5/73/Vol-VI dated 10th July, 2020, the appellant has been left with no other remedy but to file this appeal for the cancellation of same on, inter alia, the following grounds:

GROUND:

- i. That the impugned letter No. SO(E) Irr:/23-5/73/Vol-VI dated 21.04.2021 and Notification No. SO(E)/IRRI/23-5/73/Vol-VI dated 10th July, 2020 are the outcome of malafide, result of political victimization, without jurisdiction, without lawful authority and having no binding effect upon rights of appellant accrued to him by dint of his seniority.
- ii. That the appellant has been serving on the post of sub-Engineer and as such his seniority has to be reckoned from the date of his appointment/promotion on the present post and any rule/law/policy disadvantageous to his seniority is not applicable to the appellant. The well settled procedure of promotion based on Seniority-cum-Fitness cannot be upset to reckon the seniority from the date of acquiring degree.
- iii. That under the K. P. Civil Servants Act, 1973, the Seniority has to be determinate on the basis of length of service or date of promotion in the present cadre. Section 8 of the K.P. Civil Servants Act, 1973, is reproduced hereunder:

8. Seniority:- (1) For proper administration of a service, cadre or post, the appointing authority shall cause a seniority list of the members for the time being of such service, cadre or post to be prepared, but nothing herein contained shall be construed to confer any vested right to a particular seniority in such service, cadre or post as the case may be.

(2) Subject to the provisions of sub-section (1), the seniority of a civil servant shall be reckoned in relation to other civil servants belonging to the same service or cadre whether serving the same department or office or not, as may be prescribed.

(3) Seniority on initial appointment to a service, cadre or post shall be determined as may be prescribed.

(4) Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post;

Provided that civil servants who are selected for promotion to a higher post in one batch shall, on their promotion to higher post, retain their inter-seniority as in the lower post.

(5) The Seniority lists prepared under sub-section (1), shall be revised and notified in the official Gazette at least once in a calendar year preferably in the month of January.

Thus, amendment in the K.P. Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, with regard to the Irrigation Department vide Notification dated 10th July 2020, is violative of the basic law i.e. Civil Servants Act, 1973.

iv. That similarly, Section 9(2)(b) of the Civil Servants Act, 1973, in unequivocal words states that in the case of promotion, the post is to be filled on the basis of seniority cum fitness. The Section 9 runs as under:

9. Promotion:- (1) A civil servant possessing such minimum qualifications as may be prescribed shall be eligible for promotion to a higher post for the time being reserved under the rule for departmental

promotion in the service or cadre to which he belongs.

(2) A post referred to in sub-section (1) may either be a selection post or a non-selection post to which promotion shall be made as may be prescribed-

(a) in the case of a selection post, on the basis of selection on merit; and

(b) in the case of a non-selection post, on the basis of seniority-cum-fitness.

On this score too, the impugned Notification/amendment is unwarranted.

- v. That the in fact the K.P. Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, also provide that the seniority shall be reckoned from the length of service and not otherwise. The Rule 17 of the *ibid* Rules in this regard is reproduced hereunder for ready reference, please.

17. Seniority :- (1) The seniority inter se of civil servants appointed to a service, cadre or post) shall be determined:-

(a) In the case of persons appointed by initial recruitment, in accordance with the order of merit assigned by the Commission or as the case may be, the Department Selection Committee; provided that persons selected for appointment to a post in an earlier selection shall rank senior to the persons selected in a later selection; and

(b) in the case of civil servants appointed otherwise, with reference to the date of their continuous regular appointment in the post; provided that civil servants selected for

promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter se seniority as in the lower post.

Explanation-I:- If a junior person in a lower post is promoted to a higher post temporarily in the public interest, even though continuing later permanently in the higher post, it would not adversely affect the interest of his seniors in fixation of his seniority in the higher post.

Explanation-II:- If a junior person in a lower post is promoted to a higher post by superseding a senior person and subsequently that senior person is also promoted the person promoted first shall rank senior to the person promoted subsequently; provided that junior person shall not be deemed to have superseded a senior person if the case of the senior person is deferred for the time being for want of certain information or for incompleteness of record or for any other reason not attributing to his fault or demerit.

Explanation-III:- A junior person shall be deemed to have superseded a senior person only if both the junior and the senior persons were considered for the higher post and the junior person was appointed in preference to the senior person.


(2) Seniority in various cadres of civil servants appointed by initial recruitment vis-a-viz those appointed otherwise shall be determined with reference to the dates of their regular appointment to a post in that cadre; provided that if two dates are the same, the person appointed otherwise shall rank senior to the person appointed by initial recruitment.

(3) In the event of merger / restructuring of the departments, attached departments or subordinate offices, the inter se seniority of Civil Servants affected by the merger/ restructuring as aforesaid shall be determined in accordance with the date of their regular appointment to a cadre or post

(4) The inter-se-seniority of civil servants in a certain cadre to which promotion is made from different lower posts, carrying the same pay scale shall be determined from the date of regular appointment/promotion of the civil servants in the lower post.

Provided that if the date of regular appointment of two or more civil servants in the lower post is same, the civil servants older in age, shall be treated senior.

On this score too, the amendment vide impugned Notification as well as dismissal of the departmental appeal of appellant are not sustainable in the eyes of law.

- 
- vi. That any new policy as to the change in the service structure, disadvantageous to the rights of an in-service Civil Servant, cannot affect the rights of such a civil servant rather such changes can be given prospective effect only for those civil servants who appointed after the said change. On this score too, the present appeal is worth acceptance as prayed for.
- vii. That the appellant has been coming from the cadre and therefore, any change in the policy, adversely affecting seniority, is ineffective upon the rights and seniority of the appellant.
- viii. That the counsel for appellant may be allowed to raise additional grounds at the time of arguments.

It is therefore, humbly prayed that the present service appeal may graciously be allowed as prayed for and thereby the impugned Notification as to the change in criteria for seniority, may kindly be cancelled and as result thereof the seniority of appellant may please be ordered to be reckoned from the date of his promotion in the present cadre.

Yours Humble Appellant


(Ashraf Khan)
Through Counsel

Dt. 31.05.2021

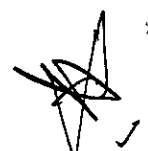

Ahmad Ali
Advocate Supreme Court


Miss Shumaila Awan
Advocate High Court, D.I.Khan.

VERIFICATION: I, the appellant, on this day of May-2021, herein mentioned above, do hereby verify that all the contents of this appeal are true & correct and also that it is the first appeal on the subject matter and no such appeal has earlier been filed.


Appellant

AFFIDAVIT: I, the appellant; do hereby solemnly affirm and declare on oath that all the Para-wise contents of above **Service Appeal** are true & correct to the best of my knowledge, belief and information; and that, nothing has been deliberately concealed from this Honourable Tribunal.


Identified by Counsel:
Ahmad Ali ASC.




Deponent

12

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

Civil Misc. Petition No. _____ of 2021

In Service Appeal No. _____ of 2021

Ashraf Khan Vs. Govt. of Khyber Pakhtunkhwa etc
Service Appeal

APPLICATION FOR SUSPENSION OF THE OPERATION OF
IMPUGNED NOTIFICATION BEARING NO. SO(E)/IRRI/23-
5/73/VOL-VI DATED 10TH JULY, 2020, TILL FINAL DECISION
OF SERVICE APPEAL AND IN THE MEANWHILE
RESPONDENTS MAY ALSO BE ABSTAINED FROM AWARDED
PROMOTIONS DETRIMENTAL TO THE RIGHTS/SENIORITY OF
APPELLANT.

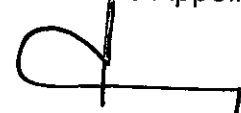
Respectfully Sheweth.

1. That a Service Appeal is being filed before this august court and the grounds of same may please be considered as an integral part of this Petition.
2. That the petitioner/appellant has got a good prima case on law as well as on facts and there is every likelihood of the success of Service Appeal; hence, balance of convenience tilts in favour of the appellant.
3. That due to the impugned Notification, seniority of appellant is being affected adversely, and there is every likelihood that the juniors to appellant will be awarded promotion in preference to the

appellant and therefore, in case of non-suspension of impugned Notification, the petitioner/appellant will suffer an irreparable loss.

It is, therefore, humbly prayed that on acceptance of the present Civil Misc. Petition, the operation of impugned Notification may please be suspended till decision of Service Appeal, and in the meanwhile, status quo may graciously be ordered to be maintained.

Yours Humble Appellant



(Ashraf Khan)

Through Counsel



Ahmad Ali

Advocate Supreme Court

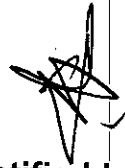


Miss Shumaila Awan

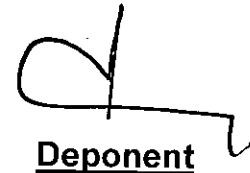
Advocate High Court, D.I.Khan.

Dt. 31.05.2021

AFFIDAVIT I, the appellant; do hereby solemnly affirm and declare on oath that all the Para-wise contents of above **Misc. Application** are true & correct to the best of my knowledge, belief and information; and that, nothing has been deliberately concealed from this Honourable Tribunal.



Identified by Counsel:
Ahmad Ali ASC



Deponent



Ann. A

14

No. 5771 / 5-E

Dated DIKhan the 24/7/94

OFFICE ORDER

On the recommendation of Selection Committee constituted for the very purpose, services of Mohammad Ashraf s/o Nadir Khan Mohallah Alam Shar DIKhan already appointed/working as work munshi in this Division on contract basis are hereby converted into regular as work munshi in RFR No.5 (1400-66-2390) with immediate effect as admissible under the rules subject to the following terms and conditions:-

1. He will produce medical fitness certificate from the Medical Superintendent Distt; Headquarter Hospital, DIKhan.
2. His services are purely temporary and can be terminated on one month notice from any side, one month salary payment in advance in lieu of one month notice.
3. He will be on probation period of one year. In case of misconduct on his part his service could be terminated at any time without notice.

1. Signature of Chairman Selection Committee.

SD/-Mohammad Jan Khan
Executive Engineer,
Project Irr; Division, DIKhan.

2. Signature of Member of Selection Committee.

SD/-Mr. Hasrat Khan Orakzai
Section Officer (Estt)
office of the Secretary
Irrigation NWFP, Peshawar.

3. Signature of the Member of Selection Committee.

SD/-Hidayatullah Khan
Sub Divisional Officer,
P.I. SD Fe.2, DIKhan.

No. 8062-63 / 5-E

Dated DIKhan the 25/7/94

Copy of above is forwarded to:-

- 1/ Private Secretary to Honourable Minister for Irrigation N.W.F.P., Peshawar.
- 2/ Secretary Irrigation Department, NWFP, Peshawar.
- 3/ Chief Engineer, Irrigation Deptt; NWFP, Peshawar.
- 4/ Project Director, CEBC Irr Deptt Irr; Project, DIKhan;
- 5/ All other concerned.

SECRETARY IRRIGATION
PROJECT IRRIGATION DIVISION, DIKHAN.

25/8/94

Attended

Ann: ~~A~~ B

15

~~OFFICE OF THE CHIEF ENGINEER
IRRIGATION DEPARTMENT, PESHAWAR~~

~~NO. 2227~~ IB. 13-ET/DA
Dated Peshawar, the 11/2/2004.

OFFICE ORDER.

In pursuance of the approved summary received vide secretary Irrigation & Power Department letter No. SO(E)IRR:5-2.70, dated:11/2/2004, the following postings / transfers amongst the Sub-Engineers of Irrigation Department are hereby ordered with immediate effect.

SL: NO	NAME	FROM	TO	REMARKS
1	Mr. Surat Khan	Kohat Irrigation Division Kohat	Marwat Canal Division Bannu	Vice No.2
2	Mr. Maqsood Ali	Marwat Canal Division Bannu	Kohat Irrigation Division Kohat	Vice No.1
3	Mr. Mohammad Rafiq	On deputation from Pak PWD	Small Dams Organization Peshawar	Against the vacant post
4	Mr. Mohammad Salim Jan Ayub	Tubewells Irrigation Division Peshawar	Hydrology Irrigation Division Peshawar	Against the leave vacancy of Mr. Rizwanullah Sub Engineer
5	Mr. Mohammad Ashraf	On promotion as Sub Engineer	Paharpur Irrigation Division DIKhan	Against vacant post.
6	Syed Meher Ali Shah	-do-	Paharpur Irrigation Division DIKhan (Tubewell Sub Division DIKhan)	Against vacant post
7	Mr. Ikramullah	-do-	Mardan Irrigation Division Mardan	Vice No.8
8	Mr. Roolhulath	Mardan Irrigation Division Mardan	Hydrology Irrigation Division Peshawar	Against vacant post
9	Mr. Javedur Rehman	On promotion as Sub Engineer	Tubewells Irrigation Division Peshawar	Vice No.4

Note: No TA / Di. is allowed to Sl: No. 1 and 4.

Sd-
CHIEF ENGINEER

Attested
[Signature]

16

No. 2807-50 III A S-E (11) Dated Peshawar the 11/2/2004

Copy forwarded to the :-

1. Secretary to Government of NWFP Irrigation and Power Department with reference to his letter No SO (E) IRR; / 5-2 / 70, dated 11-2-2004, for information.
2. Private Secretary to Minister for Irrigation and Power Department for information.
3. Accountant General NWFP Peshawar,
4. Director General Small Dams Organization Peshawar.
5. Superintending Engineer, Southern Irrigation Circle Bannu
6. Superintending Engineer, Northern Irrigation Circle Mardan,
7. Superintending Engineer, Central Irrigation Circle Peshawar
8. All Executive Engineers in Irrigation Department (concerned)
9. All District Accounts Officers, (concerned)
10. Officials concerned.

XEN
Peshawar

Amir
CHIEF ENGINEER 11/2/04

Attested
[Signature]

Ann. C

③

17

531



GOVERNMENT OF NWFP
IRRIGATION DEPARTMENT

Dated Peshawar the 1st March, 2010.

ORDER

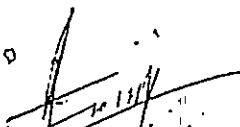
NO.SO(E)IRR:14-10/77: 5220 The competent authority is pleased to transfer Mr. Muhammad Ashraf Khan, Diploma Holder Sub-Engineer (BS-11), Paharpur Irrigation Division D.I.Khan and post him as Sub-Divisional Officer, Rod Kohi Irrigation Sub-Division, Paharpur Irrigation D.I.Khan in his own pay and scale, against the vacant post, with immediate effect, as a special case.

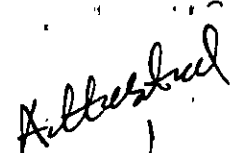

Secretary to Govt of NWFP
Irrigation Department

04/16/3
Endst: No. & Date as above.

Copy of the above is forwarded to:-

1. The Accountant General, NWFP Peshawar.
2. The Chief Engineer (O&M), Irrigation Peshawar.
3. The Chief Engineer (Dev), Irrigation Peshawar.
4. The Superintending Engineer, Southern Irrigation Circle Bannu.
5. The Executive Engineers, Paharpur Irrigation Division D.I.Khan
6. The Executive Engineer, Flood & Drainage Division D.I.Khan.
7. The Executive Engineer, CRBC Irrigation Division D.I.Khan.
8. The District Accounts Officer, D.I.Khan.
9. PS to Minister for Irrigation NWFP Peshawar.
10. PS to Secretary, Irrigation Department, Peshawar.
11. Official concerned.
12. Personal File.


(ANWARUL HAQ)
Section Officer (Establishment)

Ann. D 18

Mem P.H.P. D.K

OFFICE OF THE CHIEF ENGINEER,
IRRIGATION N.W.F.P. PESHAWAR.

No. 12266-74 /IB/A/33-G.

OFFICE ORDER.

Dated Peshawar the 06/6/2000.

The following Officials have passed "Grade B" Sub Engineers Departmental qualifying examination held on 2, 3 & 4/5/2000 :-

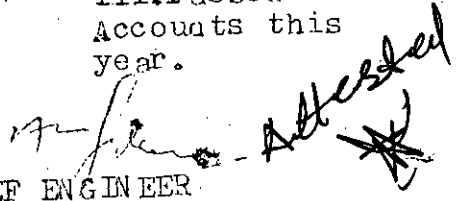
<u>Sl. No.</u>	<u>Name & designation.</u>	<u>Name of Office to which attached.</u>	<u>Remarks.</u>
1.	Mr. Qudratullah Sub Engineer.	Banau Canal Divn: Banau.	Passed in all subject (i.e Passed Survey in 1993 & 3 subjects this year).
2.	Mr. Naqibur Rehman Sub Engineer.	-do-	Passed in all subject this year.
3.	Mr. Ismail Khan Sub Engineer.	-do-	Passed in all subject (i.e Passed 3 subjects in 1998 & one subject this year).
4.	Mr. Khalid Nawaz Sub Engineer.	Small Dams Divn: FATA D.C. Peshawar.	Passed in all subjects this year.
5.	Mr. Rookhullah Sub Engineer.	Hydrology Irr: Divn: Peshawar.	Passed in all subjects this year.
6.	Mr. Mohammad Idress Sub Engineer.	-do-	Passed in all subjects (i.e passed one subject in 1995 & 3 subjects this year).
7.	Mr. Mehmood Sultan Sub Engineer.	Kohat Irr: Divn: Kohat.	Passed in all subjects (i.e passed two subject in 1995 one subject in 1998 & one this year).
8.	Mr. Surat Khan Sub Engineer.	Kohat Irr: Divn: Kohat.	Passed in all subjects this year.
9.	Mr. Mohammad Javed Sub Engineer.	Warsak Canal Divn: Peshr:	-do-
10.	Mr. Sher Akbar Sub Engineer.	Peshr: Canal Divn: Peshr:	-do-
11.	Mr. Shafiq Ahmad Sub Engineer.	Malakand Irr: Divn: Malakand.	Passed in all subjects (i.e passed one subject in 1994 & passed three subjects this year).
12.	Mr. Mohammad Dawood Sub Engineer.	Mardan Irr: Divn: Mardan.	Passed in all subjects this year).
13.	Mr. Mohammad Ashraf Work Munshi.	C.R.B.C. Irr: Divn: DIK,	Passed in all subjects this year.
14.	Syed Meher Ali Shah Work Munshi.	-do-	-do-

Attested

The following Officials have failed in the above examination :-

1805 / 321-E
22-6-2000

Name & designation	Name of office to which attached.	Subject in which failed.	Marks.	Remarks.
1. Mr. Sajjad Ali Shah Sub Engineer.	Hazara Irr: Div: Abbottabad.	Professional	41	i. Lost 1st chance. ii. Passed Accounts Survey & Practical this year.
2. Mr. Naveed Khan Sub Engineer.	-do-	Professional	57	-do-
3. Mr. Javed Ahmad Sub Engineer.	-do-	Accounts	53	i. Lost 2nd chance. ii. Passed Professional & Practical in 1998 iii. Passed Survey, this year.
4. Mr. Iqbal Khan Sub Engineer.	Small Dams Divn: FATA D.C. Bazar.	i. Professional ii. Accounts.	44 50	i. Lost 1st chance ii. Passed Survey & Practical this year.
5. Mr. Abdul Latif Sub Engineer.	DIPHE Swabi Scarp Mardan.	i. Professional ii. Accounts	46 51	i. Lost 1st chance. ii. Passed Survey & Practical this year.
6. Mr. Dost Mohammad Sub Engineer.	-do-	i. Professional ii. Accounts	56 49	-do-
7. Mr. Azad Khan Sub Engineer.	Maintenance Cum Divn: FATA D.C. Bazar.	i. Professional ii. Accounts.	31 46	i. lost 2nd chance. ii. Passed Survey & Practical this year.
8. Mr. Abdul Waheed Work Mushi.	CRDO Divn, DI. Khan	Professional	46	i. lost 1st chance. ii. Passed Accounts, Survey & Practical this year.
9. Mr. Insafulah	Swabi Irr: Divn: Swabi.	Professional	55	i. lost 1st & 2nd chance. ii. Passed Survey & Practical 1991. iii. Passed Accounts this year.


 CHIEF ENGINEER
 Ph: 9212116.

No. 12266-74 /IB/A/33-G,

Copy forwarded to the :-

- 1/ Chief Engineer Dev:Irr:Deptt: Peshawar.
- 2/ All Superintending Engineers in Irrigation Deptt:NWFP.
- 3/ All Executive Engineers in Irrigation Deptt:NWFP.
- 4/ Project Director DIPHE Swabi Scarp Directorate at Mardan.
- 5/ Personal files of the officials,
- 6/ Chairman FATA D.C. Peshawar/ Project Director DIPHE Mardan, for information and necessary action.

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CHIEF ENGINEER,
Ph: 9212116.

M.Riaz/-

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3/19/6

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22/6

Mag
File
HC
22/6

321-E
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Synopsis

Anep E21

Sl:#	Name	Date of Birth with Domicile	Date of Ist entry in to Govt: Service	Date of acquiring degree	Regular appointment to the Present post			Promotion to Grade/Cadre		Present Place of posting	Remarks
					Date	BPS	Method of recruitment	BPS	Date		
27	Mr.Zeeshan B.Tech: (Hons) from Cecos University Peshawar, Passed Grade B on 15-10-2020	30-4-97 Nowshera	20-7-2018	18-11-2017	20-7-2018	12	By initial recruitment	12	20-7-2018	Small Dams (P&C) Peshawar	Working as Sub Engineer
28	Mr.Bakht Munir B.Tech: (Hons) from preston University Peshawar	2-4-1991 Mohmand Agency	20-07-2018	15-3-2013	20-7-2018	12	-do-	12	20-7-2018	Swat Irr: Divn: Swat	Working as Sub Engineer
29	Mr.Noor Faraz B.Tech: (Hons) Cecos University Peshawar and Grade B examination on 15-10-2020	15-4-1993 NW aziristan	20-7-2018	13-1-2017	20-7-2018	12	-do-	12	20-7-2018	Irr: and Hydrl Divn: South Waziristan	Working as SDO (OPS)
30	Mr.Ashraf Khan DAE.Civil From Govt. Poly. Tech: Institute DIKhan, Passed Grade Exmn: on 12-6-2004 and Grade Examination on 28-5-2012	1-12-1968 DIKhan	15-11-1992	21-7-2020	14-1-2004	12	By promotion	16	14-1-2004	Rod Kohl Sub Divn: DIKhan	Working as SDO (OPS)

CHIEF ENGINEER

CC

No. 2057/IB/A/3-E, Dated Peshawar the 29/04/2021

- Secretary to Government of Khyber Pakhtunkhwa Irrigation Department with reference to his letter No.SO(13)IRR/2-1/2006/ Vol: VIII, dated 19-3-2021.
- Chief Engineers (North)/Merged Area Irrigation Department.
- Director General Small Dams Directorate Irrigation Department
- All Project Directors in Irrigation Department.
- All Superintending Engineers in Irrigation Department.
- All Executive Engineers in Irrigation Department.

CHIEF ENGINEER

8 →

13/5/21

23

Sl. No.	Name	Date of Birth with Domicile	Date of entry in Govt. Service	Date of acquiring degree	Regular appointment to the Present post			Promotion to Present Grade/Cadre		Present Place of posting	Remarks
					Date	DPS	Method of recruitment	BPS	Date		
13	Mr. M. M. Khan B.Tech (Hons) from Sarhad University Peshawar. Passed Grade B on 16-8-2018 and Grade A on 15-10-2020	0-2-1990 Malakand	16-9-2013	8-11-2015	16-9-2013	11	By initial recruitment	12	16-9-2013	Swat Irrigation Division	Working as SDO (OPS)
14	Mr. Muzmullah B.Tech (Hons) from Sarhad University Peshawar. Passed Grade B Exmn: on 16-8-2018 and Grade A on 15-10-2020	2-7-1991 Dir Upper	16-9-2013	1-12-2015	16-9-2013	11	-do-	12	16-9-2013	Chitral Irrigation Divn Chitral	Working as SDO (OPS)
15	Mr. Sardar Gul B.Tech (Hons) from UET Peshawar	15-5-1980 Mohmand Agency	16-9-2013	10-2-2016	16-9-2013	11	-do-	12	16-9-2013	Charsadda Irrigation Division	Working as Sub Engineer
16	Mr. Navced Khan B.Tech (Hons) from Sarhad University Peshawar. Grade B on 5/2002 and A on 5/2009	12-4-1969 Abbotabad	19-3-1992	15-10-2016	19-3-1992	11	-do-	16	19-3-1992	Hazara Irrigation Division A/Abad	Working as Sub Engineer
17	Mr. Sadam Khan B.Tech (Hons) from Sarhad University Peshawar. Passed Grade B on 16-8-2018 and Grade A on 15-10-2020	29-2-1991 Haripur	19-11-2011	15-10-2016	19-11-2011	11	-do-	12	19-11-2011	Hazara Irrigation Divn: A/Abad	Working as SDO (OPS). Proceeded on 720 days leave
18	Mr. Ahmad Jamil B.Tech (Hons) from Sarhad University Peshawar. Passed Grade B exam: on 16-8-2020	22-6-1989 Swat	16-9-2013	15-10-2016	16-9-2013	11	-do-	12	16-9-2013	Swat Irrigation Division	Working as Sub Engineer
19	Mr. Asad Ali B.Tech (Hons) from Sarhad University Peshawar. Passed Grade B on 16-8-2020 and Grade A on 15-10-2020	23-11-1991 Peshawar	16-9-2013	31-12-2016	16-9-2013	12	-do-	12	16-9-2013	Warsak Canal Division Peshawar	Working as Sub Engineer

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24

Sl. No.	Name	Date of Birth with Domicile	Date of Ist entry in to Govt. Service	Date of acquiring degree	Regular appointment to the Present post			Promotion to Present Grade/Cadre		Present Place of posting	Remarks
					Date	BPS	Method of recruitment	BPS	Date		
	Mr. Rizwan Khan B.Tech. (Hons) from UET Peshawar, Passed Grade B examination on 16-8-2018 and Grade A on 15-10-2020	15-4-1994 Charsadda	18-9-2017	8-3-2015	18-9-2017	12	By initial recruitment	12	18-9-2017	Swat Irrigation Divn: Swat	Working as Sub Engineer
21	Muhammad Tayeb B.Tech. (Hons) from UET Peshawar,	14-3-1992 Khyber	18-9-2017	19-2-2016	18-9-2017	12	-do-	12	18-9-2017	Kohat Irrigation Division	Working as Sub Engineer
22	Mr. Suddar Naz B.Tech. (Hons) from College of Science and Technology Peshawar, passed Grade B on 23-7-2016, Grade A on 16-8-2018 & Professional on 4-3-2017	15-5-1980 DIKhan	28-10-2008 As Work Munshi	15-11-2017	17-2-2017	12	By promotion	12	17-2-2017	PHP Irrigation Division DIKhan	Working as SDO (OPS)
23	Mr. Adil Khan B.Tech. (Hons) Preston University Kohat Passed Grade B Examination 16-8-2018 and Grade A on 15-10-2020	4-7-1989 Swabi	29-4-2011	15-1-2013	09/03/2017	12	By absorption	12	9-3-2017	Tubewell Divn. Peshawar	Working as Sub Engineer
24	Mohammad Manan B.Tech. (Hons) from UET Peshawar Passed Grade B Examination on 16-8-2018 and Grade A on 15-10-2020	10-9-1994 Charsadda	18-9-2017	8-3-2018	18-9-2017	12	By initial recruitment	12	18-9-2017	Charsadda Irrigation Division Charsadda	Working as Sub Engineer
25	Muhammad Zahir Shah B.Tech. (Hons) Abascoo University Peshawar, Passed Grad B Examination on 15-10-2020	1-8-1990 Dir Lowewr	20-7-2018	14-10-2016	20-7-2018	12	By initial recruitment	12	20-7-2018	Swat Irr. Divn: Swat	Working as Sub Engineer
26	Muhammad Awais B.Tech. (Hons) from Abascoo University Peshawar	20-7-1990 Malakand	20-7-2018	14-10-2016	20-7-2018	12	-do-	12	20-7-2018	Malakand Division	Working as Sub Engineer

16/01/21

Ann. F

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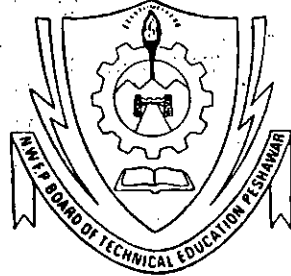
UNIVERSITY OF PESHAWAR
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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

S. No. 005494

Roll No. 13320

P. W. T. P. Board of Technical Education PESHAWAR



SESSION 19 88

(XXXXXX/ SUPPLEMENTARY)

This is to certify that

~~Miss~~/ Mr. ASHRAF KHAN

daughter/son of Mr. NADIR KHAN

Registered No. GPI/DIK/86-12789

of GOVT: POLYTECHNIC INSTITUTE D.I.KHAN

has passed the Diploma of Associate Engineer Examination in CIVIL Technology, conducted by the P. W. T. P. Board of Technical Education Peshawar in the month of SEPTEMBER, 1990 and secured 1939/3150 marks and was placed in "B" Grade.

In recognition thereof this **Diploma of Associate Engineer** is awarded to her/him at Peshawar

on the 20th day of JULY, 19 91.

Peshawar 20.7. 19 91.

[Signature]
SECRETARY

[Signature]
CHAIRMAN

[Handwritten signature]

Serial No 022026

Registration No. 8027-GUP-90

Roll No. 1042

Session

GOMAL UNIVERSITY
DERA ISMAIL KHAN.
N. W. F. P.
P A K I S T A N.



Provisional Certificate

This is to certify that Mr. / ~~Mrs~~ / ~~Mrs~~ ASHRAF KHAN

Son / ~~Daughter~~ / ~~Wife~~ of NADIR KHAN

of the ~~Department~~ / ~~Institute~~ of PRIVATE CANDIDATE OF DISTT: D. I. KHAN

has passed B.A. SUPPLY, 1993. Examination held in JULY, 1995.

in the subject of


He / ~~She~~ was placed in SECOND

division, Securing 309 marks out of 600

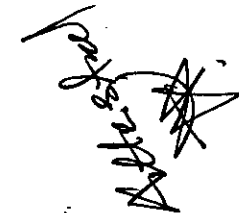
The examination was taken as a whole / in parts.

Dera Ismail Khan.

Dated 30-11-1995.


CONTROLLER OF EXAMINATIONS

27



Serial No 022026

Registration No. 8027-GUP-90

Roll No. 1042

Session

GOMAL UNIVERSITY
DERA ISMAIL KHAN.
N. W. F. P.
PAKISTAN.



Provisional Certificate

This is to certify that Mr. / ~~Miss~~ / ~~Mrs~~ ASHRAF KHAN

Son / ~~Daughter~~ / ~~Wife~~ of NADIR KHAN

of the ~~Department~~ / ~~Institute~~ of PRIVATE CANDIDATE OF DISTT: D. I. KHAN

has passed B.A. SUPPLY, 1993. Examination held in JULY, 1995.

in the subject of

He / ~~She~~ was placed in SECOND

division, Securing 309 marks out of 600

The examination was taken as a whole / in parts.

Dera Ismail Khan.

Dated 30-11-1995.

[Handwritten signature]
CONTROLLER OF EXAMINATIONS
4/3/96
4/3/96
Gomal University

28

[Handwritten signature]

Registration No. SUIT-16-02-079-0459

Degree No. 031224

Sarhad University of Science & Information Technology, Peshawar



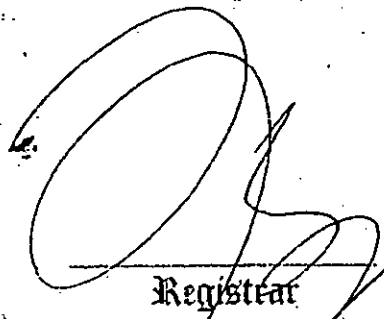
This is to certify that Ashraf Khan
son / daughter of Nadir Khan

Having passed the requisite examination, is hereby awarded the degree of
Bachelor of Technology (Honours) in Civil - 4 Years

with all the rights and privileges appertaining thereto.

Given at Peshawar (Pakistan) on the Twenty First Day of July Two Thousand Twenty.

Attested
EXECUTIVE ENGINEER
Peshawar Irrigation D.
D.I. Khan


Registrar


Vice Chancellor


President



29

TRUE COPY ✓

Ann (9) 30

**OFFICE OF THE CHIEF ENGINEER (SOUTH) WING
IRRIGATION DEPARTMENT KHYBER
PAKHTUNKHWA**

Phone No.091-9212116 Fax No.091-9212652

No.7019-30/IB/A/33-G,

Dated Peshawar the 28/5/2012

OFFICE ORDER

The following candidates of Irrigation Department Khyber Pakhtunkhwa has passed the Departmental Grade-A examination held on 20, 21 & 22/11/2011

Sr.No.	Name & Designation	Office to which attached
1	Mahmood Khan	S.W Agency
2	Mohammad Hayat	Swat Irr: Divn: Swat
3	M.Ashraf-Khan	Gomal Zam Irr: Divn:
4	Abdul Jabbar	Paharpur Irrigation Divn: DIKhan
5	Khurshid Aslam	Kurram Agency

The following officials have failed in the above examination

Sr. No.	Name	Office to which attached	Paper (Grade-A)					Total (450)	Remarks
			Professional (100)	Accounting and Office procedure (100)	Survey Civil (100)	Practical (100)	Oral Viva (50)		
1	Muhammad Shoib	Small Dams Peshawar	62	45.50	84	22	35	248.5	Failed in accounts and office procedure and practical
2	Inam-ul-Haq Ladhi	Hazara Irr: Divn:	Passed in 2004	35	63	Passed in 2009		101	Failed in accounts and office procedure
3	Haroon-ur-Rashid	Swabi Irr: Divn No.1	45	A	A	A		45	Fail in all Subjects
4	Fazl Qayyum	Swabi Irr: Divn No.1	42	A	A	15		57	Fail in all Subjects
5	Azhar Qayyum	CRBC	75	40	66	Passed in 2009		181	Failed accounts and office procedure
6	Muhammad Dawood	CRBC	60	34	74	28	35	231	Failed in accounts and office procedure and practical
7	Bakht Wali	Khyber Agency	39	24	55	20		138	Fail in all Subjects
8	Fida Muhammad	Malakand Irr: Divn:	60	32.50	58	17		167.50	Failed in Civil Survey, accounts and office procedure and practical
9	Khalid Nawaz	N.W.Agency	52	37	A	15		104	Fail in all Subjects
10	Javed-ur-	Swabi Irr:	32	A	Passed	Passed in		32	Failed in

31

	Rehman	Divn:				in 2009	2009			Professional and accounts and office procedure
11	Muhammad Bashir	Mohmand Agency	51		28	Passed in 1994	Passed in 1994		79	Failed in Professional and accounts and office procedure
12	Muhammad Arif	Chitral Irr: Divn: Chitral	66		32.5	65	21	35	219.5	Failed in accounts and office procedure
13	Malik Abdul Waheed	Paharpur Irr: Divn: DIKhan	56		43.50	51	40	39	229.5	Fail in all Subjects
14	Abdur Rehman	Kohat Irr: Divn: Kohat	44		Passed in 2006	Passed in 2006	Passed in 2009		44	Failed in professional
15	Nizam-ul-Haq	Malakand Irr: Divn:	60		Passed in 2006	55	Passed in 2009		115	Failed in Civil Survey
16	Khurshid Ahmad	Chitral Irr: Divn: Chitral	64		Passed in 2004	62	17	41.50	184.5	Failed in Practical

Grade-A Sub Engineers (E&M) Results

Sr. No.	Name	Office to which attached	Paper (Grade-A)			Total (350)	Remarks
			Professional (100)	Accounting and Office procedure (100)	Practical/Viva Electrical & Mechanical (150)		
1	Noor Muhammad Khan	Marwat Canal Divn: Bannu	41	61.50	52	152	Failed in Professional and Electrical & Mechanical
2	Sultan Ali Shah	Marwat Canal Divn: Bannu	30	49	73	152	Failed in all subjects
3	Anwar Hayat	Gomal Zam Dam Project	42	18	61	121	Failed in all subjects
4	Noor Rehman	T/Well Divn:	Passed in 2006	41.50	Passed in 2009	41.50	Failed in accounts and office procedure
5	Saulat Hussain	Flood Divn: DIKhan	50	60	Passed in 2009	110	Failed in professional

Sd/-
CHIEF ENGINEER

- 1) Secretary to Government Secretariat FATA Peshawar.
- 2) Chief Engineer (North) Irrigation Department Peshawar.
- 3) Director General Small Dams Irrigation Deptt. Peshawar.
- 4) Project Director Bazai Irr: Project Mardan.
- 5) All Superintending Engineers Irrigation Deptt:
- 6) All Executive Engineer Irrigation Deptt:

Sd/-
CHIEF ENGINEER

OFFICE OF THE CHIEF ENGINEER (SOUTH) WING
IRRIGATION DEPARTMENT KHYBER
PAKHTUNKHWA PESHAWAR

Phone No. 091-9212116 Fax No. 091-9212652

Dated Peshawar the 28/05/2012

OFFICE ORDER

The following candidates of Irrigation Department Khyber Pakhtunkhwa have passed the Departmental Grade-A examination held on 20/21 and 22/11/2011.

Sl. No.	Name and Designation	Office to which attached
1	Mahmood Khan	S.W Agency
2	Mohammad Hayat	Swat Irr. Divn: Swat
3	M. Ashraf Khan	Gomal Zam Irr. Divn
4	Abdul Jabbar	Paharpur Irrigation Divn: D.I. Khan
5	Khurshid Aslam	Kurram Agency

The following officials have failed in the above examination.

Sl. No.	Name	Office to which attached	Paper (Grade-A)					Total	Remarks
			Professional (100)	Accounting and Office Procedure (100)	Survey Civil (100)	Practical (100)	Oral Viva (50)		
1	Muhammad Shoit	Small Dams Peshawar	62	45.50	84	22	35	248.5	Failed in accounts and office procedure and practical.
2	Inam-ul-Haq Lahr	Hazara Irr. Divn	Passed in 2004	35	63	Passed in 2009		101	Failed accounts and office procedure
3	Haron-ur-Rashid	Swabi Irr. Divn No. 1	65	A	A	A		450	Failed in all subject
4	Fazil Qayyum	Swabi Irr. Divn No. 1	62	A	A	15		189	Failed subject
5	Azhar Qayyum	CRP	75	40	66	Passed in 2009			Failed accounts and office procedure
6	Muhammad Dawood	CRP	60	34	74	20	35		Failed accounts and office procedure and practical
7	Bakht Wail	Khyber Agency	39	24	55	20		138	Failed in all subject
8	Fida Muhammad	Malakand Irr. Divn	66	32.50	58	17		163.5	Failed in civil survey, accounts and office procedure and practical
9	Khalid Nawaz	N.W Agency	52	37	A	15		104	Failed in all subject
10	Javod-ur-Rehman	Swabi Irr. Divn	32	A	Passed in 2009	Passed in 2009		32	Failed in Professional and accounts and office procedure

Attested

11	Muhammad Bashir	Chitral Irr. Divn. Chitral	51	20	Passed in 1994	Passed in 1994	79	Failed in Professional and Accounts and Office Procedure	
12	Muhammad Arif	Chitral Irr. Divn. Chitral	65	32.50	65	21	35	79.5	Failed in Accounts and office procedure and practical
13	Malik Abdul Wahed	Pallarpur Irr. Divn. Dikhan	56	43.50	51	40	39	70.5	Failed in all subject
14	Abdur Rehman	Kohat Irr. Divn. Kohat	40	Passed in 2006	Passed in 2006	Passed in 2009		46	Failed in professional
15	Nizam-ul-Haq	Malakand Irr. Divn.	60	Passed in 2009	55	Passed in 2009		15	Failed in civil survey
16	Khurshid Ahmad	Chitral Irr. Divn. Chitral	64	Passed in 2004	62	17	41.50	84.5	Failed in practical

Grade-A Sub Engineers (E&M) Results

St.No.	Name	Office to which attached	Paper (Grade-A)			Total	Remarks
			Professional (100)	Accounting and Office Procedure (100)	Practical/Viva Electrical & Mechanical (150)		
1	Noor Muhammad Khan	Marwat Canal Divn. Bannu	41	61.50	52	152	Failed in Professional and Electrical & Mechanical
2	Sultan Ali Shah	Marwat Canal Divn. Bannu	30	49	73	152	Failed in all subject
3	Anwar Hayat	General Small Dams Project	42	18	61	121	Failed in all subject
4	Noor Rehman	Welli Divn.	Passed in 2005	41.50	Passed in 2009	41.50	Failed in Accounts and Office Procedure
5	Soulat Hussain	Pallar Divn. Dikhan	59	60	Passed in 2009	110	Failed in professional

CHIEF ENGINEER

- 1) Secretary to Government Secretariat FATA Peshawar.
- 2) Chief Engineer (North) Irrigation Deptt: Peshawar.
- 3) Director General Small Dams Irrigation Deptt: Peshawar.
- 4) Project Director Bazar Irr. Project Mardan.
- 5) All Superintending Engineers Irrigation Deptt.
- 6) All Executive Engineer Irrigation Deptt.

CHIEF ENGINEER

Attested
★



GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

Ann: H 32

To be restored

Dated Peshawar the 25th June, 2012

NOTIFICATION

No. SO(E)/IRRI/23-5/2010-11: In pursuance of the provisions contained in sub rule (2) of Rule-3 of the Khyber Pakhtunkhwa, Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Irrigation Department in consultation with the Establishment Department and the Finance Department, hereby directs that in this Department's Notification No. SO(E)IRR:/23-5/73 dated 17-02-2011, the following amendments shall be made namely:-

AMENDMENTS

In the Appendix,

i. Against Serial No. 4, in column No. 5, for the existing entries, in clause (b), (c) and (d), the following shall be respectively substituted, namely:

(b) Twelve percent by promotion, on the basis of seniority-cum-fitness, from amongst the Sub Engineers, having degree in Civil Engineering or Mechanical Engineering from a recognized university and have passed departmental grade B&A examination with five years service as such.

Note: For the purpose of Clause (b), a joint seniority list of the Sub Engineers having Degree in Civil Engineering or Mechanical Engineering shall be maintained and their seniority is to be reckoned from the date of their 1st appointment as Sub Engineer.

✓ (c) Eight percent by promotion, on the basis of seniority-cum-fitness, from amongst the Sub Engineers, having Degree in B. Tech (Hons) and have passed departmental Grade B and A examination with five years service as such; and

Note: For the purpose of clause (c), a seniority list of Sub Engineers having Degree in B. Tech (Hons) shall be maintained and their seniority is to be reckoned from the date of their 1st appointment as Sub Engineer.

(d) Fifteen percent by promotion, on the basis of seniority-cum-fitness, from amongst the Sub Engineers, who hold a Diploma of Associate Engineer in Civil, Mechanical, Electrical or Auto Technology and have passed departmental Grade B and A examination, with five years service as such.

Note: For the purpose of clause (d), a seniority list of Sub Engineers having Diploma of Associate Engineering in Civil, Mechanical, Electrical or Auto Technology shall be maintained and their seniority is to be reckoned from the date of their 1st appointment as sub Engineer.

Authentic

**1213 KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY,
25TH JUNE, 2012**

Note: The quota of clause (b), (c) and (d), above respectively shall be filled in by initial recruitment, if no suitable Sub Engineer is available for promotion:

- ii. Against serial No. 5, in column No. 5, for the existing entries in clause (b), the following shall be substituted, namely:
 - (b) Fifteen percent by promotion, on the basis of seniority-cum-fitness, from amongst the Canal Inspectors, Work Takers, Gauge Readers, Surveyors, having Diploma of Associate Engineering in Civil, Mechanical, Electrical or Auto Technology from a recognized Board of Technical Education, having passed the departmental Grade-B and Grade-A examination, with at-least seven years service as such; and
 - (c) Five percent by promotion, on the basis of seniority-cum-fitness, from amongst the Canal Inspectors, Work Takers, Work Munshi, Surveyors, and Work Superintendent, having passed the departmental Grade-B examination with at-least ten years service as such;
- iii. Against serial No. 7, in column No. 5, for the words "three years" the words "one year" shall be substituted;
- iv. Against serial No. 9, in column No. 3, for the existing entry the following shall be substituted, namely:
 - a. Bachelor Degree or equivalent qualification form a recognized University; and
 - b. A speed of 80 words per minute in short hand in English and 40 words per minute n English typing; and
- v. Against serial No. 13, in column No. 5, in clause (b), the words and figures "and are under 45 years of age" shall be deleted.

**Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department**

Attest


Ann. J

34

The Chief Engineer (South),
Irrigation Department Khyber Pakhtunkhwa
Peshawar

THROUGH: PROPER CHANNEL

SUBJECT: REQUEST FOR INCLUSION OF NAME IN THE SENIORITY LIST OF
B.TECH (HONS) SUB ENGINEERS

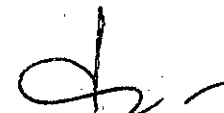
Respected Sir,

Respectfully it is stated that I am working as Sub Divisional Officer (OPS) in Rod Kohi Irrigation Sub Division DIKhan (Gomal Zam Irrigation Division DIKhan) and have acquired B.Tech (Hons) Degree from Sarhad University Peshawar after fulfillment of all codal formalities as per attached attested/verified copy of Degree.

It is therefore requested that my name may kindly be included in the Seniority list of B.Tech (Hons) Sub Engineers please.

Encl:/As above.

Yours Obediently,



MR. ASHRAF KHAN
Sub Divisional Officer (OPS)

Attested


35



OFFICE OF THE SUPERINTENDING ENGINEER
DIKHAN IRRIGATION CIRCLE DIKHAN
Ph # 0966-9280238

No. 736 /DIC/ I-E
Dated DIKhan the 03 /03/2021

To,

The Chief Engineer (South)
Irrigation Department Khyber Pakhtunkhwa,
Peshawar.

SUBJECT: REQUEST FOR INCLUSION OF NAME IN THE SENIORITY LIST OF
B.TECH (HONS) SUB ENGINEERS

Enclosed please find herewith a request of Mr. Ashraf Khan Sub Divisional Officer (OPS) which is self explanatory for further action.

Encl:/As above.


SUPERINTENDING ENGINEER.

Copy to the Executive Engineer, Gomal Zam Irrigation Division DIKhan with reference to his letter No. 322/1-E, dated 02/03/2021 for information.


SUPERINTENDING ENGINEER.



GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

Ann: J 36

Dated Peshawar the 10th July, 2020

NOTIFICATION

No. SO(E)/IRRI/23-5/73/Vol-VI: In pursuance of the provisions contained in sub rule (2) of Rule-3 of the Khyber Pakhtunkhwa, Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Irrigation Department in consultation with the Establishment Department and Finance Department, hereby notifies that in this Department's Notifications No. SO(E)IRR/23-5/73 dated 17.02.2011 amended vide Notification No. SO(E)Irr/23-5/2010-11 dated 25.06.2012, the following further amendments shall be made namely:-

AMENDMENTS

In the Appendix:-

- (i) Against Sr. No. 04, in Column No. 5, in the Note, in clauses (b), and (c), after the words "as Sub Engineer", the words "or from the date of acquiring degree whichever is later" shall be inserted.

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

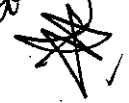
Ends: No and date even

Copy of the above is forwarded:-

1. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. The Secretary to Governor, Khyber Pakhtunkhwa.
3. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
4. The Accountant General, Khyber Pakhtunkhwa.
5. The Additional Accountant General (PR, Sub Office), Peshawar.
6. All the Commissioners in Khyber Pakhtunkhwa.
7. The Chief Engineers (North)/South & NMAs) Irrigation Department, Khyber Pakhtunkhwa.
8. The Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
9. The Secretary, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
10. PS to Chief Secretary, Khyber Pakhtunkhwa.
11. PS to Secretary Irrigation Department, Peshawar.
12. The Manager Govt. Printing Press, Khyber Pakhtunkhwa, Peshawar.
He is requested to supply 200 copies of the printed gazette, for further distribution.
13. PA to Additional Secretary, Irrigation Department, Peshawar
14. Master File.

may be withdrawn


(ABDUL RAUF)
Section Officer (Estt)

Addressed


Ann: K

37

To: The Worthy Chief Secretary,
Govt. of Khyber Pakhtunkhwa,
Peshawar.

Through Proper Channel

Subject: REPRESENTATION/REVIEW TO PLEASE CANCEL THE
NOTIFICATION NO. SO(E)/IRRI/23-5/73/VOL-VI DATED 10TH
JULY, 2020 AND TO PLEASE RESTORE EARLIER NOTIFICATION
NO.SO(E)/IRRI/ 23-5/2010-11 DATED 25TH JUNE, 2012

Most Respected Sir,

1. That petitioner has been serving as Sub-Engineer BPS-16 in the Irrigation Department, D.I.Khan, and presently posted as Sub-Divisional Officer (OPS), Gomal Zam D.I.Khan.
2. That the petitioner is having Diploma of Associate Engineering along with B. Tech (Honours) Degree. Copies of both the degrees are enclosed as Flag A & B.
3. That the Govt. of Khyber Pakhtunkhwa, vide Notification No.SO(E)/IRRI/ 23-5/2010-11 dated 25th June, 2012 circulated amendments in the service rules governing method of promotion on the post of Sub-divisional Officer from amongst the holders of the posts of sub-engineers. Per Clause (b) (c) of Serial No.4, in Column No.5, of the Appendix, the seniority was to be reckoned on the basis of seniority-cum-fitness. Copy of the Notification No.SO(E)/IRRI/ 23-5/2010-11 dated 25th June, 2012, is enclosed as Flag C.
4. That the applicant on 03.03.2021 submitted an application to the Chief Engineer (South), Irrigation Department, KPK, Peshawar, for inclusion his name in the Seniority List of B. Tech (Hons) Sub-Engineers. The Superintending Engineer forwarded the said application to the Chief Engineer (South) vide letter No.736/ DIC/1-

Attached
*

E dated 03.03.2021, and thereafter, it transpired to the applicant that the method of recruitment/promotion has been changed vide Notification No. SO(E)/IRRI/23-5/73/Vol-VI dated 10th July, 2020 whereby the seniority of sub-engineers having B.Tech degree for the purpose of promotion to the post of S.D.O. shall be reckoned from the date of acquiring said degree.

Copy of the application of applicant with letter No.736/ DIC/1-E dated 03.03.2021 is enclosed as **Flag D.**

Copy of the Notification No. SO(E)/IRRI/23-5/73/Vol-VI dated 10th July, 2020 is enclosed as **Flag E.**

5. That the applicant has been serving on the post of sub-Engineer and as such his seniority has to be reckoned from the date of his period on the present post and any rule/law/policy disadvantageous to his seniority is not applicable to the case of applicant. Thus, the well settled procedure of promotion based on Seniority-cum-Fitness cannot be upset to reckon the seniority from the date of acquiring degree.
6. That under the K. P. Civil Servants Act, 1973, the Seniority has to be determinate on the basis of length of service or date of promotion in the present cadre. Section 8 of the K.P. Civil Servants Act, 1973, is reproduced hereunder:

8. Seniority:- (1) For proper administration of a service, cadre or post, the appointing authority shall cause a seniority list of the members for the time being of such service, cadre or post to be prepared, but nothing herein contained shall be construed to confer any vested right to a particular seniority in such service, cadre or post as the case may be.

(2) Subject to the provisions of sub-section (1), the seniority of a civil servant shall be reckoned in relation to other civil servants belonging to the same service or 5[cadre] whether serving the same department or office or not, as may be prescribed.

(3) Seniority on initial appointment to a service, cadre or post shall be determined as may be prescribed.

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*

- (4) Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post;

Provided that civil servants who are selected for promotion to a higher post in one batch shall, on their promotion to higher post, retain their inter se-seniority as in the lower post.

- (5) The Seniority lists prepared under sub-section (1), shall be revised and notified in the official Gazette at least once in a calendar year preferably in the month of January.

Thus, amendment in the K.P. Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, with regard to the Irrigation Department vide Notification dated 10th July 2020, is violative of the basic law i.e. Civil Servants Act, 1973.

7. That similarly, Section 9(2)(b) of the Civil Servants Act, 1973, in unequivocal words states that in case of promotion, the post is to be filled on the basis of seniority cum fitness. The Section 9 runs as under:

9. Promotion:- (1) A civil servant possessing such minimum qualifications as may be prescribed shall be eligible for promotion to a higher post for the time being reserved under the rule for departmental promotion in the service or cadre to which he belongs.


(2) A post referred to in sub-section (1) may either be a selection post or a non-selection post to which promotion shall be made as may be prescribed-

(a) in the case of a selection post, on the basis of selection on merit; and

(b) in the case of a non-selection post, on the basis of seniority-cum-fitness.

On this score too, the impugned amendment is unwarranted.

8. That in fact the K.P. Civil Servants (A.P.T.) Rules, 1989, also provide that the seniority shall be reckoned from the length of

Attested


service and not otherwise. The Rule 17 of the ibid Rules in this regard is reproduced hereunder for ready reference, please.

17. Seniority :- (1) The seniority inter se of civil servants appointed to a service, cadre or post) shall be determined:-

- (a) in the case of persons appointed by initial recruitment, in accordance with the order of merit assigned by the Commission or as the case may be, the Department Selection Committee; provided that persons selected for appointment to a post in an earlier selection shall rank senior to the persons selected in a later selection; and
- (b) in the case of civil servants appointed otherwise, with reference to the date of their continuous regular appointment in the post; provided that civil servants selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter se seniority as in the lower post.

Explanation-I:- If a junior person in a lower post is promoted to a higher post temporarily in the public interest, even though continuing later permanently in the higher post, it would not adversely effect the interest of his seniors in fixation of his seniority in the higher post.

Explanation-II:- If a junior person in a lower post is promoted to a higher post by superseding a senior person and subsequently that senior person is also promoted the person promoted first shall rank senior to the person promoted subsequently; provided that junior person shall not be deemed to have superseded a senior person if the case of the senior person is deferred for the time being for want of certain information or for incompleteness of record or for any other reason not attributing to his fault or demerit.

Explanation-III:- A junior person shall be deemed to have superseded a senior person only if both the junior and the senior persons were considered for the higher post and the junior person was appointed in preference to the senior person.

(2) Seniority in various cadres of civil servants appointed by initial recruitment vis-a-viz those appointed otherwise shall be determined with reference to the dates of their regular appointment to a post in that cadre; provided that if two dates are the same, the person appointed otherwise shall rank senior to the person appointed by initial recruitment.

(3) In the event of merger / restructuring of the departments, attached departments or subordinate offices, the inter se seniority of Civil Servants affected by the merger

Attested


/ restructuring as aforesaid shall be determined in accordance with the date of their regular appointment to a cadre or post

(4) The inter-se-seniority of civil servants in a certain cadre to which promotion is made from different lower posts, carrying the same pay scale shall be determined from the date of regular appointment/promotion of the civil servants in the lower post.

Provided that if the date of regular appointment of two or more civil servants in the lower post is same, the civil servants older in age, shall be treated senior.

It is, therefore, most respectfully prayer that the Notification No. SO(E)/IRRI/23-5/73/Vol-VI dated 10th July, 2020, by violative of the legal rights of applicant in view of the K.P. Civil Servants Act, 1973, and K.P. Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 may please be declared cancelled and thereby the directions may please be issued to reckon the seniority of applicant from the length of his service in the present cadre.

Yours most Obedient Servant

Dt. 05/10/2021


(ASHRAF KHAN)
Sub Divisional Officer (OPS)
Gomal Zam Irrigation Divn.
D.I.Khan.

Copy to the worthy Secretary, Govt. of Khyber Pakhtunkhwa (Irrigation Department), Peshawar, with the same request.

Attested


Mr. Ashraf Khan,
Sub Divisional Officer (OPS),
Gomal Zam Irrigation Division, D.I. Khan.

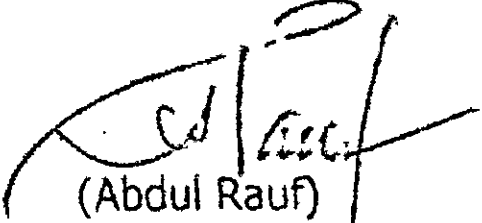
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P-43

Subject:

REPRESENTATION/REVIEW TO PLEASE CANCEL THE
NOTIFICATION NO. SO(E)/IRR/23-5/73/VOL-VI DATED 10TH
JULY, 2020 AND TO PLEASE RESTORE EARLIER NOTIFICATION
NO. SO(E)IRRI/23-5/2010-11 DATED 25TH JUNE, 2012

I am directed to refer to your representation dated 02.04.2021 on the subject noted above and to state that amendment in the Service Rules was made on the recommendation of SSRC and approval of the Competent Authority, therefore your application is filed, please.


(Abdul Rauf)
Section Officer (Estt:)



SUPREME COURT
BAR ASSOCIATION
PAKISTAN

Ahmad Ali
Advocate



وکالت نامہ

44

President

Secretary

کوٹ
فیس

کتاب عدالتی وکالت نامہ

محمد اشرف
نام گورنمنٹ کالج

دعوی یا جرم
تفصیل دعوی یا جرم

سروس ایس

باعث تحریر آنکہ

مقدمہ مندرجہ بالا عنوان میں اپنی طرف واسطے بیرونی اور جواب دہی برائے پیشی یا تصفیہ مقدمہ
احمد علی ایڈووکیٹ سید کورٹ - شمالی احوال انٹرنیٹ

کو حسب ذیل شرائط پر وکیل مقرر کیا ہے کہ میں پیشی پر خود یا بنا بذریعہ رہ برو عدالت حاضر ہوتا رہوں گا اور ہر وقت پکارے جانے مقدمہ وکیل صاحب
موصوف کو اطلاع دے کر حاضر عدالت کروں گا اگر پیشی پر مظہر حاضر نہ ہو اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور میرے خلاف ہو گیا تو صاحب
موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے نیز وکیل صاحب موصوف صدر مقام پکھری کے علاوہ یا پکھری کے اوقات سے پہلے یا پیچھے یا بروز تعطیل
بیرونی کرنے کے ذمہ دار نہ ہوں گے اور مقدمہ صدر مقام پکھری کے علاوہ اور جگہ سماعت ہونے یا بروز تعطیل یا پکھری کے اوقات کے آگے یا پیچھے پیش ہونے
پر مظہر کوئی نقصان پہنچے تو اس کے ذمہ دار یا اسکے واسطے کسی معاوضہ کے ادا کرنے یا صحت نہ دالیں کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے مجھ
کو کل ساقت پر داخ صاحب موصوف پیش کردہ ذات خود منظور قبول ہو گا اور صاحب موصوف کو عرض دعوی یا جواب دعوی یا درخواست اجراء ایسے ڈگری
نظر ثانی اپیل گرانٹی و ہر قسم درخواست ہر قسم کے بیان دینے اور پر تاشی یا راضی نامہ و فیصلہ بر حلقہ کرنے اقبال دعوی کا بھی اختیار ہو گا اور بصورت مقرر ہونے
تاریخ تقرر مقدمہ مقرر بیرون از پکھری صدر بیرونی مقدمہ مزکورہ نظر ثانی اپیل و گرانٹی و برآمدگی مقدمہ یا مستوی ڈگری کیل طرہ یا درخواست حکم انتہائی یا ترقی
یا گرانٹی قس از فیصلہ ایسے ڈگری بھی صاحب موصوف کو بطور ادا دہی طرہ مختص دہی کا اختیار ہو گا اور تمام ساقت پر داخ صاحب موصوف پیش کردہ
از خود منظور و قبول ہو گا اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہو کہ مقدمہ مزکورہ یا اس کے کسی جزا کی کارروائی یا بصورت درخواست نظر ثانی
اپیل گرانٹی یا دیگر معاوضہ و مقدمہ مذکورہ کسی دوسرے وکیل یا بیرسٹر کو اپنے ہونے یا اپنے ہمراہ مقرر کریں اور ایسے مشیر قانون کو بھی ہر امر میں وہی اور ویسے
اختیارات حاصل ہوں گے جیسے صاحب موصوف کو حاصل ہیں اور دوران مقدمہ میں جو کچھ ہر جانب التوا پڑے گا وہ صاحب موصوف کا حق ہو گا مگر
صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہو گا کہ مقدمہ کی بروی نہ کریں اور ایسی صورت
میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا

لہذا وکالت نامہ لکھو یا سہے تاکہ مسترد ہے

31 مارچ 2021

مضمون وکالت نامہ ان ایما ہے اور اچھی طرح سمجھا گیا ہے اور مشکور ہے

محمد اشرف خان - سید

Handwritten signature

Accepted By
Handwritten signature



**OFFICE OF EXECUTIVE ENGINEER
CRBC IRRIGATION DIVISION DIKHAN.**

Phone & Fax No. 0966-9280237 Email: xencrbcirri@gmail.com

AUTHORITY LETTER.

I do hereby authorize Sub Divisional Officer CRBC Irrigation Sub Division No.II Dikhan to attend the Court of Service Tribunal Peshawar on behalf of the undersigned in connection with Appeal No.6703 & 6704 of 2021 Syed Mehar Ali Shah & others V/S Government of Khyber Pakhtunkhawa on each hearing date.


**EXECUTIVE ENGINEER
CRBC Irrigation Division Dikhan**

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

Service Appeal No. 6704 of 2021

Mr. Ashraf Khan Son of Nadir Khan resident of Mohalla
Alam Sher , Tehsil and Distt: DIKhan Sub Divisional Officer
(OPS) Gomal Zam Irrigation Division DIKhan

Appellant

Versus

1. Govt: of Khyber Pakhtunkhwa
Through Chief Secretary Khyber Pakhtunkhwa Peshawar.
2. Secretary to Government of
Khyber Pakhtunkhwa Irrigation Deptt: Peshawar.
3. Chief Engineer (South) Irrigation Department
Government of Khyber Pakhtunkhwa Peshawar.
4. Superintending Engineer DIKhan Irrigation Circle DIKhan.
5. Executive Engineer Irrigation Department DIKhan.

Respondents

INDEX

S.No	Description of Documents	Annexure	Pages
1	Para wise comments	-	01-02
2	Affidavit	-	03
3	Secretary to Govt: of Khyber Pakhtunkhwa Irrigation Department Notification No. SOE/IRRI/23-5/2010-11, dated 25-06-2012, No. SO(E)/IRRI/23-5/73/Vol-VI, dated 10-07-2020.	Annex-I	04, 05, 06,

1

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Appeal.No.6704 of 2021

Mr.Ashraf Khan Son of Nadir Khan resident of Mohalla
Alam Sher ,Tehsil and Distt: DIKhan Sub Divisional Officer
(OPS) Gomal Zam Irrigation Division DIKhan

Appellant

Versus

1. Govt: of Khyber Pakhtunkhwa
Through Chief Secretary Khyber Pakhtunkhwa Peshawar.

Respondents

2. Secretary to Government of
Khyber Pakhtunkhwa Irrigation Deptt: Peshawar.

3. Chief Engineer (South) Irrigation Department
Government of Khyber Pakhtunkhwa Peshawar.

4. Superintending Engineer DIKhan Irrigation Circle DIKhan.

5. Executive Engineer Irrigation Department DIKhan.

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO.1 TO 5

Respectfully sheweth

Preliminary Objections.

1. That the appellant has no cause of action.
2. That the appellant has not come to the Tribunal with clean hand.
3. That the appeal is bad for mis joinder and non joinder of necessary parties.
4. That the appellant has no locus standi.
5. That the appeal is time barred.

Objections on Facts

1. Para No.I pertains to record , needs no comments.
 2. It is correct, to the extent that the appellant has been posted as Sub Divisional Officer (OPS) as stop gap arrangement till availability of regular Sub Divisional Officer .
 3. Pertains to record, needs no comments, correct, to the extent that the appellant has passed Departmental Grade B&A examinations and acquired degree of B.tech: (Hons) on 21-7-2020.
 4. Correct to the extent that amendments in the existing service rules of the Sub Divisional Officer have been made vide Notification No.SO(E)IRR:/23-5/73/Vol:VI, dated 10-7-2020 (Annexure-I).
- 1

- 5. Not correct. To safeguard the right of promotion of existing degree holders amendments in the service rules was notified vide (Annexure-I) above. During the period the appellant was not having degree of B.Tech: (Hons) which he acquired on 21-7-2020 after amendments in the rules therefore his name was placed at appropriate place according to existing service rules. will be
- 6. Not correct, Amendments in the service rules has been notified on 10-7-2020 prior to acquiring degree of B.Tech: (Hons) by the appellant.
- 7&8. Not correct, the appeal was not justified and therefore filed.

GROUNDS

- i. Incorrect, The rules has been modified through Standing Service Rules Committee which is proper forum to safeguard the right of promotion of the existing degree holders .
- ii. Incorrect, the appellant acquired B.Tech: (Hons) degree on 21-7-2020 therefore, his seniority reckoned/fixed in the list of B.Tech: (Hons) Sub Engineers on the basis of date of acquiring degree as per existing rules.
- iii. Incorrect, seniority is being determined according to existing service rules.
- iv&v. Incorrect, Promotion of ~~B.Tech Hn~~ Sub Engineers to the rank of SDO is being considered according to existing service rules.
- vi. Incorrect, the amendments notified vide (Annexure-I) above is in the best interest of Government Civil Servants to safeguard the rights of seniority/ promotion of the existing degree holders.
- vii. No violation of the rules has been made.
- viii. The respondents may also kindly be allowed to present additional grounds during the course of arguments.

It is very humbly prayed to dismiss the appeal with cost and vacate the stay in the instant appeal .

Chief Secretary
Government of KPK
(Respondent No.1)

Secretary to Government of KPK
Irrigation Department
(Respondent No.2)

Chief Engineer (South)
Irrigation Department
(Respondent No.3)

Superintending Engineer
DIKhan Irrigation Circle DIKhan
(Respondent No.4)

Executive Engineer
Irrigation Department DIKhan
(Respondent No.5)

2

3

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Appeal.No.6704 of 2021

Mr.Ashraf Khan Son of Nadir Khan resident of Mohalla
Alam Sher ,Tehsil and Distt: DIKhan Sub Divisional Officer
(OPS) Gomal Zam Irrigation Division DIKhan

Appellant

Versus

1. Govt: of Khyber Pakhtunkhwa
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Government of Khyber Pakhtunkhwa Peshawar.
4. Superintending Engineer DIKhan Irrigation Circle DIKhan.
5. Executive Engineer Irrigation Department DIKhan.

Respondents

COUNTER AFFIDAVIT

We do hereby solemnly affirm and declare that contents of the parawise
comments in Service Appeal No.6704/2021 filed by Mr.Ashraf Khan Sub Divisional
Officer (OPS) are correct to the best of our knowledge and nothing has been concealed
from August Service Tribunal.

Chief Secretary
Government of KPK
(Respondent No.1)

Secretary to Government of KPK
Irrigation Department
(Respondent No.2)

Chief Engineer (South)
Irrigation Department
(Respondent No.3)

Superintending Engineer
DIKhan Irrigation Circle DIKhan
(Respondent No.4)

Executive Engineer
Irrigation Department DIKhan
(Respondent No.5)



KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, MONDAY, 25TH JUNE, 2012.

GOVERNMENT OF KHYBER PAKHTUNKHWA, IRRIGATION DEPARTMENT.

NOTIFICATION

Dated: 25th June, 2012.

No. SOE/IRRI/23-5/2010-11. — In pursuance of the provisions contained in sub-rule (2) of rule-3 of the Khyber Pakhtunkhwa, Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Irrigation Department in consultation with the Establishment Department and the Finance Department, hereby directs that in this Department's Notification No. SO(E)Irr./23-5/73 dated 17.02.2011, the following amendments shall be made namely:-

AMENDMENTS

In the Appendix,

i. Against Serial No. 4, in column No. 5, for the existing entries, in clause (b), (c) and (d), the following shall be respectively substituted, namely:

ii. (b) twelve percent by promotion, on the basis of seniority-cum-fitness, from amongst the Sub Engineers, having degree in Civil Engineering or Mechanical Engineering from a recognized university and have passed departmental grade B&A examination with five year service of such.

Note- For the purpose of Clause (b), a Joint seniority list of the Sub Engineers having Degree in Civil Engineering or Mechanical Engineering shall be maintained and their seniority is to be reckoned from the date of their 1st appointment as Sub Engineer.

(c) eight percent by promotion, on the basis of seniority-cum-fitness, from amongst the Sub Engineers, having Degree in B. Tech (Hons) and have passed departmental Grade B and A examination with five years service as such; and

C Note- For the purpose of clause (c), a seniority list of Sub Engineers having Degree in B. Tech (Hons) shall be maintained and their seniority is to be reckoned from the date of their 1st appointment as Sub Engineer.

(d) fifteen percent by promotion, on the basis of seniority-cum-fitness, from amongst the Sub Engineers, who hold a Diploma of Associate Engineer in Civil, Mechanical, Electrical or Auto Technology and have passed departmental Grade B and A examination, with five years service as such.

Note- For the purpose of clause (d), a seniority list of Sub Engineers having Diploma of Associate Engineering in Civil Mechanical, Electrical, or Auto Technology shall be maintained and their seniority is to be reckoned from the date of their 1st appointment as Sub Engineer.

Note- The quota of clause (b), (c) and (d), above respectively shall be filled in by initial recruitment, if no suitable Sub Engineer is available for promotion:

- ii. against serial No. 5, in column No. 5, for the existing entries in clause (b), the following shall be substituted, namely:
- (b) fifteen percent by promotion, on the basis of seniority-cum-fitness, from amongst the Canal Inspectors, Work Takers, Gauge Readers, Surveyors, having Diploma of Associate Engineering in Civil, Mechanical, Electrical or Auto-Technology from a recognized Board of Technical Education, having passed the departmental Grade-B and Grade-A examination, with at-least seven years service as such; and
 - (c) five percent by promotion, on the basis of seniority-cum-fitness, from amongst the Canal Inspectors, Work Takers, Work Munshi, Surveyors, and work superintendent, having passed the departmental Grade-B examination with at-least ten years service as such;
- iii. Against serial No. 7, in column No. 5, for the words "three years" the words "one year" shall be substituted;
- iv. against serial No. 9, in column No. 3, for the existing entry the following shall be substituted, namely:
- a. Bachelor Degree or equivalent qualification from a recognized University; and
 - b. A speed of 80 words per minute in short hand in English and 40 words per minute in English typing; and
- v. against serial No. 13, in column No. 5, in clause (b), the words and figures "and are under 45 years of age" shall be deleted.

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT.



Ann: H 31
6

GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

Dated Peshawar the 10th July, 2020

NOTIFICATION

No. SO(E)/IRRI/23-5/73/Vol-VI: In pursuance of the provisions contained in sub rule (2) of Rule-3 of the Khyber Pakhtunkhwa, Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Irrigation Department in consultation with the Establishment Department and Finance Department, hereby notifies that in this Department's Notifications No. SO(E)IRR/23-5/73 dated 17.02.2011 amended vide Notification No. SO(E)IRR/23-5/2010-11 dated 25.06.2012, the following further amendments shall be made namely:-

AMENDMENTS

In the Appendix:-

- (i) Against Sr. No. 04, in Column No. 5, in the Note, in clauses (b), and (c), after the words "as Sub Engineer", the words "or from the date of acquiring degree whichever is later" shall be inserted.


Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

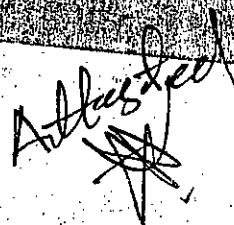
Ends: No and date even

Copy of the above is forwarded:-

1. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. The Secretary to Governor, Khyber Pakhtunkhwa.
3. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
4. The Accountant General, Khyber Pakhtunkhwa.
5. The Additional Accountant General (PR, Sub Office), Peshawar.
6. All the Commissioners in Khyber Pakhtunkhwa.
7. The Chief Engineers (North)/South & NMAs) Irrigation Department, Khyber Pakhtunkhwa.
8. The Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
9. The Secretary, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
10. PS to Chief Secretary, Khyber Pakhtunkhwa.
11. PS to Secretary Irrigation Department, Peshawar.
12. The Manager Govt. Printing Press, Khyber Pakhtunkhwa, Peshawar. He is requested to supply 200 copies of the printed gazette, for further distribution.
13. PA to Additional Secretary, Irrigation Department, Peshawar
14. Master File.

may be withdrawn


(ABDUL RAUF)
Section Officer (Estt)

Attached




KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

No. 2033 /ST

Dated: 12/10 /2021

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

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


To

The Secretary Irrigation,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: JUDGMENT IN APPEAL NO. 6704/2021, MR. ASHRAF & 1 OTHERS

I am directed to forward herewith a certified copy of Judgement dated 29.09.2021 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR