
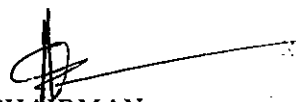
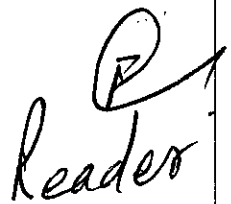



Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- _____ 104/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge		
1	2	3		
1-	25/01/2022	<p>The appeal of Mr. Ihsan Ullah presented today by Mr. Noor Muhammad Khattak 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>2-</p>	7-3-2022	<p>This case is entrusted to S. Bench at Peshawar for preliminary hearing to be put there on <u>07/03/22</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>Due to retirement of the Honorable Chairman the case is adjourned to come up for the same as before on 7/6/22</p> <p style="text-align: right;"> Reader</p>
	07.06.2022	<p>Junior to counsel for the appellant present.</p> <p>Lawyers are on general strike, therefore, case is adjourned to 28.07.2022 for preliminary hearing before S.B.</p> <p style="text-align: right;"> (Rozina Rehman) Member(J)</p>		

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. 104 /2022

IHSAN ULLAH

V/S

ENERGY & POWER
DEPTT:

INDEX

S.N O	DOCUMENTS	ANNEXUR E	PAGE
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4	Promotion order dt: 25.05.2018	A	7
5	Seniority lists	B	8 - 11
6	Service rules	C	12 - 16
7	Departmental appeal	D	17 - 20
8	Wakalat Nama	21

Dated : 01. 2022

APPELLANT

Through:

NOOR MOHAMMAD KHATTAK
ADVOCATE

0345-9383141

/

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. _____/2022

Engr. Ihsan Ullah, Deputy Electric Inspector (BPS-18) Energy & Power Department, Peshawar

..... **APPELLANT**

VERSUS

- 1- The Secretary to Government of Khyber Pakhtunkhwa, through Chief Secretary Peshawar.
- 2- The Secretary to Government of Khyber Pakhtunkhwa Energy & Power Department, Peshawar.
- 3- The Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Peshawar.
- 4- The Electrical Inspector, Electrical Inspectorate, Khyber Pakhtunkhwa, Peshawar.
- 5- Muhammad Mumtaz Khan Deputy Electric Inspector (Technologist) (BPS-18) Energy & Power Department, Peshawar.

..... **RESPONDENTS**

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE SONORITY LIST OF DEPUTY ELECTRIC INSPECTORS (BPS-18) & DEPUTY ELECTRIC INSPECTOR (TECHNOLOGIST) ISSUED VIDE IMPUGNED NOTIFICATIONS DATED 15-10-2021 & 10-01-2022 IN THE ELECTRIC INSPECTORATE OF ENERGY AND POWER DEPARTMENT GOVERNMENT OF KHYBER PAKHTUNKHWA AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

PRAYER:

That on acceptance of this appeal the impugned seniority list notified on 15.10.2021 & 10.1.2022 may very kindly be declared as illegal, unconstitutional and ineffective upon the rights of the appellant. That the respondents may very kindly be directed to exclude/delete the name of the private respondent No. 5 from the seniority list of the Deputy Electric Inspectors (BPS-18) degree holder engineers for onward promotion to BPS-19 in the upcoming P.S.B. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:
ON FACTS:

1. That the appellant is serving as Deputy Electrical Inspector (BPS 18) in the Electric Inspectorate of Energy & Power Department Khyber Pakhtunkhwa Peshawar.
Copy of the Promotion order dated 25-05-2018 is attached as annexure -----A.
2. That in the Electric Inspectorate of the respondent department two distinct cadres of officers are working against two different posts in BPS-18, one is those who have accreditation from the Pakistan Engineering Council (PEC) called 'Engineers' while the 2nd cadre having nexus with National Technology Council (NTC) are termed as 'Technologists' so these two different cadres cannot be taken into consideration equal with each other.
3. That by virtue of having qualification and registration with PEC, the appellant is an Engineer while the private respondent No. 5 is purely a Technologists.
4. That despite the facts both these factions have separate nomenclatures and services rules, however, with utter disregard of and law and rules on the subject the respondent department in consultation with Respondent No.3 has unilaterally and abruptly issued a final joint seniority list of these two different cadres of Engineers and Technologists (BPS-18).
Copy of Seniority lists as annexure-----B
5. That the respondent department has issued the final seniority list in haste and hurry manner without caring to the observation and reservation of the appellant over the tentative seniority list within the stipulated time period. That as a matter of fact the respondent department has issued the notification merely on presumption purporting that seniority of BPS -17 officers is common.
6. That based on laws and policies of PEC & HEC the two different factions have been bifurcated into two separate nomenclature of posts in BPS 18 i.e Deputy Electric Inspector (BPS-18) for Engineers and Deputy Electric Inspector (Technologist) BPS-18 through Standing Services Rules(SSRC) .
Copy of service rules is attached as annexure-----C.
7. That under the provision and spirit of Rule 17 of the APT Rules 1989 the inter-se seniority is determined amongst

officers of the same post/cadre and must not be of the two distant posts/cadres. Besides, there must be a separate seniority of each cadre, however, in contravention of the rules both the contrast entities have been merged malafidely just to pave way for promotion of the private respondent No.5 to BPS 19. So under the definition of Section 27(5A) of the PEC Act 1976 and the existing service rules for BPS-19, the respondent department is debarred from doing so either to equalize the private respondent No. 5 with the appellant.

8. That merging the Technologist with Engineers invariably means violation of Article 143 of the Constitution of the Islamic Republic of Pakistan 1973, however, the respondent department is adamant and reiterated to do what is not warranted by the law of the land and rules on the subject.
9. That feeling aggrieved the appellant preferred Departmental appeal to respondent No.2 but the same was not responded till date within the stipulated time period.
Copy of the Departmental appeal is attached as annexure -----D.
10. That appellant feeling highly aggrieved and having no other adequate remedy filed the instant appeal on the following grounds amongst the others.

GROUND:

- A- That impugned seniority of the private respondent No.5 is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.
- B- That appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That, the treatment meted out to the appellant clearly based on discrimination and malafide and as such the respondents violated the principle of natural justice.
- D- That issuance of seniority notification is against Section 8 of the KP Civil Servants Act 1973 read with Rule 17 of KP Civil Servants APT Rules 1989 .
- E- That merging the two different entities i.e Technology post/cadre with Engineering posts/cadre violates the Pakistan Engineering Council (PEC) Act 1976 and Article 143 of the Constitution of Pakistan 1973.

- F- That the impugned seniority notification whereby the private respondent has been declared senior to the appellant in clear violation of section 8 & 9 of the Civil servant Act, 1973 read with rule 7 of the appointment, promotion and transfer rules, 1989.
- G- That appellant is fully entitled for his promotion to BPS 19 in essence of the prevailing Rules and it is utmost essential to rectify and modify the seniority list.
- H- That the respondents acted in arbitrary and malafide manner while issuing the impugned seniority notification of the private respondent and ignoring the appellant.
- I- That the appellant deserves to be accommodated at due and proper place of seniority in preference to the private respondent No.5 in accordance with law, rules, maxims, dictums and rulings of superior courts.
- J- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

Dated: 21-01-2022.

APPELLANT


IHSANULLAH

THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT


KAMRAN KHAN

&


KHANZAD GUL ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. _____/2022

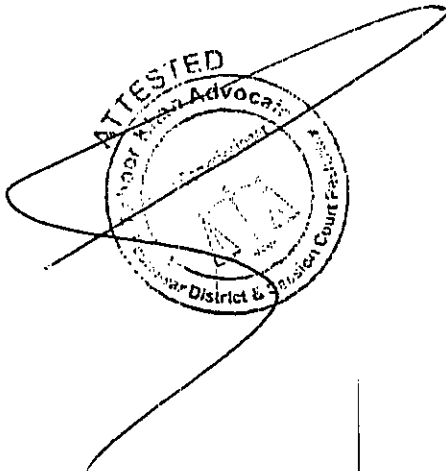
IHSAN ULLAH

VS

**GOVTI OF K.P
& OTHERS**

AFFIDAVIT

Stated on oath that the contents of the accompanying service appeal are correct to best of my knowledge and belief and nothing has been concealed from this Honorable Service Tribunal.



[Handwritten signature]

DEPONENT

CERTIFICATE:

Certify that no earlier service appeal has been filed by the appellant in the instant matter before this Honorable Service Tribunal.

[Handwritten signature]
CERTIFICATION

6

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

SERVICE APPEAL No. _____/2022

Ihsan Ullah

VS

Energy and Power Dept.

**APPLICATION FOR RESTRAINING THE RESPONDENTS
NOT TO PUT UP THE IMPUGNED SENIORITY LISTS
BEFORE THE UPCOMING P.S.B FOR ONWARD
PROMOTION TO BPS-19 TILL THE DISPOSAL OF THE
ABOVE MENTIONED APPEAL.**

R/SHEWETH:

- 1- That the above mentioned appeal along with this application has been filed by the appellant before this august service Tribunal in which no date has been fixed so far.
- 2- That appellant filed the above mentioned appeal against the incorrect seniority lists and on the basis of that lists the respondents are going to conduct PSB for promotion of the private respondents to the post of BPS-19.
- 3- That all the three ingredients necessary for the stay is in favor of the appellant.
- 4- That the impugned seniority lists have been issued by the respondents in utter disregard of law and prevailing Rules.
- 5- That the contents of the appeal may please be consider as part and parcel of this application.

It is therefore, most humbly prayed that on acceptance of this application the respondents may please be restrained not to put up the impugned seniority lists before the upcoming PSB for onward promotion to BPS-19 till the disposal of the above mentioned service appeal.

Dated: 21.01.2022

APPLICANT

IHSAN ULLAH

THROUGH:

**NOOR MOHAMMAD KHATTAK
ADVOCATE**



ANNEX A (7)
GOVERNMENT OF KHYBER PAKHTUNKHWA
ENERGY & POWER DEPARTMENT

1st Floor, Block A, Wali Khan, Multiplex, Civil Secretariat, Peshawar
Tel: 091-9223625, Fax No: 091-9223624

Dated Peshawar the, 25-05-2018 / 29

NOTIFICATION

No. SO(Estt)/E&P/ 5-10/APU/Electric Inspector/2018: In pursuance of the provisions under Rules 4 (1) (a) of Khyber Pakhtunkhwa Civil Servants (Appointment Promotion and Transfer) Rules, 1989, the Competent Authority on recommendation of the Provincial Selection Board is pleased to promote the following officers of Electric Inspectorate, Khyber Pakhtunkhwa with immediate effect subject to the condition of probation period for one year:-

Sr. No.	Name of the Officer	Promoted	
		From	To
1.	Mr. Ihsanullah	Assistant Electric Inspector (BPS-17).	Deputy Electric Inspector (BPS-18)
2.	Mr. Arifullah	Assistant Electric Inspector (BPS-17).	Deputy Electric Inspector (BPS-18)

Secretary
Energy & Power Department

Endst: No & Date Even:

Copy forwarded to the:-

1. Accountant General, Khyber Pakhtunkhwa.
2. Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department.
3. Secretary to Govt. of Khyber Pakhtunkhwa, Establishment Department.
- ✓ 4. Electric Inspector, Electric Inspectorate, Peshawar.
5. P.S to Secretary Energy & Power Department.
6. Officers concerned.



Section Officer (Estt)

ATTESTED

ANNEX B

8



GOVERNMENT OF KHYBER PAKHTUNKHWA
Energy and Power Department
1st Floor, Block-A, Abdul Wali Khan Multiplex Civil Secretariat Peshawar
Tel. 091-9210895 - Fax 091-9223624

Dated Peshawar, the 15th October, 2021

NOTIFICATION

NO.SO(E-I)/E&P/5-10/UPA/2021: In pursuance of section-8 of the Khyber Pakhtunkhwa Civil Servant Act 1973 read with Rule-17 of Civil Servant (Appointment, Promotion and Transfer) Rules 1989 and in light of the guidance/advice of Establishment Department received vide No. SO(O&M)E&AD/8-7/2020 dated 23rd September 2021, the competent Authority is pleased to notify and circulate the final seniority list of the Electric Inspectorate of the Energy and Power Department of the Deputy Electric Inspectors (BPS-18) to Government of Khyber Pakhtunkhwa for information of all concerned:-

S.#	Name of Officer	Academic Qualification	Date of Birth and Domicile	Date of 1 st Entry into Govt: Service	Regular appointment/promotion to present post.			Present Posting
					Date	BPS	Method of recruitment	
1	Muhammad Mumtaz Khan S/O Taj Muhammad	B-Tech (Hon) & DAE	10-05-1962	23-10-1985	03-10-2018	18	By Promotion (Permanent)	Deputy Electric Inspector (Holding charge of Electric Inspector Provincial)
2	Engr. Ihsanullah S/O Hayat Khan	B.Sc Electrical Engineering Registered with PEC	20-04-1984	28-03-2009	25-05-2018	18	By Promotion (Permanent)	Deputy Electric Inspector Abbottabad Region
3	Engr Arifullah S/O Salim Khan	M Sc Electrical Engineering Registered with PEC	14-03-1985	26-03-2009	25-05-2018	18	By Promotion (Permanent)	Deputy Electric Inspector Bannu Region

-Sd-
SECRETARY
Energy & Power Department

Rahman

ATTESTED

9

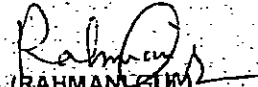
184-10

GOVERNMENT OF KHYBER PAKHTUNKHWA
Energy and Power Department
1st Floor, Block-A, Abdul Wali Khan Multiplex Civil Secretariat Peshawar
Tel. 091-9210895 - Fax 091-9223624

Endst: No. & Date Even:

Copy-forwarded to the:-

- 1) Secretary to Govt. of Khyber Pakhtunkhwa, Establishment Department
- 2) Electric Inspector Provincial, Khyber Pakhtunkhwa Peshawar
- 3) Section Officer (O&M), Establishment and Administration Department (Regulation Wing), Government of Khyber Pakhtunkhwa, Peshawar, with reference to his letter No. SO(O&M)E&AD/8-7/2020 dated 17th March, 2021 and No. SO(O&M)E&AD/8-7/2020 dated 17th March, 2021.
- 4) PS to Secretary Energy & Power Department Peshawar
- 5) PS to Special Secretary Energy & Power Department Peshawar
- 6) PA to Additional Secretary (Power), Energy & Power Department Peshawar
- 7) PA to Deputy Secretary (Power), Energy & Power Department Peshawar
- 8) Officers concerned.
- 9) Master file.


(RAHMAN GUV)
Section Officer (E-I)

~~ATTESTED~~

16



GOVERNMENT OF KHYBER PAKHTUNKHWA
Energy and Power Department
1st Floor, Block-A, Abdul Wali Khan Multiplex Civil Secretariat Peshawar
Tel. 091-9210895 - Fax 091-9223624

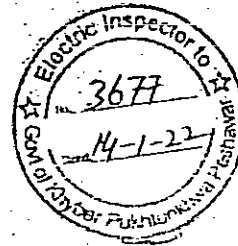
NOTIFICATION

Dated Peshawar, the 10th January, 2022 179-09

NO.SO(E-I)/E&P/5-10/UPA/2021: In pursuance of section-8 of the Khyber Pakhtunkhwa Civil Servant Act 1973 read with Rule-17 of Civil Servant (Appointment, Promotion and Transfer) Rules 1989, the Competent Authority is pleased to notify and circulate the final seniority list of the Electric Inspectorate of the Energy and Power Department of the Deputy Electric Inspectors (BPS-18) to Government of Khyber Pakhtunkhwa for information of all concerned:-

S.#	Name of Officer	Academic Qualification	Date of Birth and Domicile	Date of 1 st Entry into Govt. Service	Regular appointment/promotion to present post			Present Posting
					Date	BPS	Method of recruitment	
1	2	3	4	5	6	7	8	9
1	Muhammad Muntaz Khan S/O Taj Muhammad	M.Sc. in Electrical Engineering, B.Tech. (Hon) & DAE	10-05-1962	23-10-1985	03-10-2018	18	By Promotion (Permanent)	Deputy Electric Inspector (Holding charge of Electric Inspector Provincial)
2	Engr. Ihsanullah S/O Hayat Khan	B.Sc Electrical Engineering Registered with PEC	20-04-1984	28-03-2009	25-05-2018	18	By Promotion (Permanent)	Deputy Electric Inspector Abbottabad Region
3	Engr. Arifullah S/O Salim Khan	M.Sc Electrical Engineering Registered with PEC	14-03-1985	26-03-2009	25-05-2018	18	By Promotion (Permanent)	Deputy Electric Inspector Bannu Region

-Sd-
SECRETARY
Energy & Power Department



ATTENDED

E/c

Pl. keep in Record Pt.

14/01/22. Rahim Gul 10/1/22

11




GOVERNMENT OF KHYBER PAKHTUNKHWA
Energy and Power Department
1st Floor, Block-A, Abdul Wali Khan Multiplex Civil Secretariat Peshawar
Tel. 091-9210895 - Fax 091-9223624

Endst: No. & Date Even:

Copy forwarded to the:-

- 1) Secretary to Govt. of Khyber Pakhtunkhwa, Establishment Department
- 2) Electric Inspector Provincial, Khyber Pakhtunkhwa Peshawar
- 3) Section Officer (O&M), Establishment and Administration Department (Regulation Wing), Government of Khyber Pakhtunkhwa, Peshawar, with reference to his letters No. SO(O&M)E&AD/8-7/2020 dated 17th March, 2021 and No. SO(O&M)E&AD/8-7/2020 dated 17th March, 2021.
- 4) PS to Secretary Energy & Power Department Peshawar
- 5) PS to Special Secretary Energy & Power Department Peshawar
- 6) PA to Additional Secretary (Power), Energy & Power Department Peshawar
- 7) PA to Additional Secretary (Admn), Energy & Power Department Peshawar
- 8) PA to Deputy Secretary (Power), Energy & Power Department Peshawar
- 9) Officers concerned.
- 10) Master file.


(RAHMAN GUL)
Section Officer (E-I)

ATTESTED

ANNEX C (12)



GOVERNMENT OF KHYBER PAKHTUNKHWA
ENERGY & POWER DEPARTMENT

House No. 69, Street No. 3, Shami Road, Peshawar
Tel. 091-9212647 Fax 091-9212657

Dated Peshawar, the 16/07/2010

NOTIFICATION

No. SOG (E&P) / 5 - 10 / Electric Inspector / 2009. In pursuance of the provisions contained in sub-rule (2) of the North-West Frontier Province, Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, Energy & Power Department, in consultation with Establishment Department, Finance Department, Law, Parliamentary Affairs & Human Rights Department and Public Service Commission, hereby directs that the following amendments shall be made in the Energy & Power Department's Notification No. ROL/I&P/II-26/03, dated 17-08-2005:-

AMENDMENT

In the Appendix, -

- (i) Against serial No. 1, for the existing entries, the following shall be substituted in the respective columns, namely,

3.	4.	5.
(a) Master's Degree in Electrical Engineering from a recognized University with seven years experience in the relevant field and registered as professional Engineer with Pakistan Engineering Council; or	32 - 45 Years	By promotion, on the basis of seniority-cum-fitness from amongst Deputy Electric Inspectors having seven years service in BPS-18 or twelve years service in BPS-17 and above as Assistant Electric Inspector;
(b) Bachelor Degree in Electrical Engineering from a recognized University with ten years experience in the relevant field and registered as professional Engineer with Pakistan Engineering Council.		"Provided that if no suitable candidate is available for promotion then by initial recruitment."

120
BPS-19

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ATTESTED

(ii) After serial No. 1, the following new entries shall be inserted in the respective columns, namely,

1	2	3	4	5
*1 A.	Deputy Electric Inspector (BPS-18)	*(a) Master's Degree in Electrical Engineering from a recognized University with five years experience in the relevant field and registered as professional Engineer with Pakistan Engineering Council; or *(b) Bachelor Degree in Electrical Engineering from a recognized University with seven years experience in the relevant field and registered as professional Engineer with Pakistan Engineering Council.	25 - 40 Years	By promotion, on the basis of seniority-cum-fitness from amongst Assistant Electric Inspectors having B. Sc. Degree in Electric Engineering with five years service as such: *Provided that if no, suitable candidate is available for promotion then by initial recruitment.*

(iii) Against serial No. 8, for the existing entries in columns No. 5, the following shall be substituted, namely,

5.
*(a) Fifty percent by initial recruitment; and (b) Fifty percent by promotion, on the basis of seniority-cum-fitness, from amongst the Senior Clerks with three-years experience of Accounts matters, preparation of budget, estimates, reconciliation of Accounts";

S. N. H.

ATTESTED

122

(iv) Against serial No. 9, the following shall be substituted in the respective columns, namely,

1	2.	3.	4.	5.
9	Computer Operator (BPS-12)	2 nd Class graduation with one year Diploma in IT from Board of Technical Education or its equivalent.	18 - 28 Years	By initial recruitment

Note : Service Rules for this post have been notified by the Establishment Department vide Notification No. SOR-IV (ED) 3 - 2 / 07, dated 02-02-2007 and Finance Department vide Notification No. KC / FD / SO (FR) 7 - 3 / 2001, dated 12-07-2010.

Sd/
Secretary to Govt. of Khyber Pakhtunkhwa,
Energy & Power Department.

Endsl No. SOG (E&P) / 5 - 10 / Electric Inspector / 2009 / 2964 - 70. dated Peshawar, the 16 / 07 / 2010.

Copy forwarded to:-

- Secretary to Govt. of Khyber Pakhtunkhwa, Establishment Department.
- Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department.
- Secretary to Govt. of Khyber Pakhtunkhwa, Law, Parliamentary Affairs & Human Rights Department.
- Secretary, Public Service Commission, Khyber Pakhtunkhwa.
- Electric Inspector, Khyber Pakhtunkhwa, Peshawar with the request to provide ten copies of the Notification when published in the Government Gazette.
- Manager, Government Printing & Stationery Department, KPK.
- PS to Secretary, Energy & Power Department, Khyber Pakhtunkhwa.

Sd/
Section Officer (General)

ATTESTED

124
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and for further
necessary action
R

15

ENERGY & POWER DEPARTMENT

NOTIFICATION

Peshawar, dated the 14-09-2018

No. SC(E)/E&P/5-1/S.M/E.I/2016/Vol-II:- 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 Energy & Power Department, in consultation with the Establishment Department and the Finance Department, hereby directs that in this Department's Notification No. SOG(E&P)/5-10/Electric Inspector/2009, dated 16-10-2010, the following further amendment shall be made, namely:

In the Appendix, after Serial No. 1A, the following new entries shall be inserted, in the respective columns, namely:

AMENDMENT

S.No	Nomenclature of the post	Minimum qualification for appointment by initial recruitment.	Age limit.	Method of recruitment
1.	2.	3.	4.	5.
"1B.	Deputy Electric Inspector (Technologist) (BPS-18)			By promotion, on the basis of seniority-cum-fitness, from amongst the Assistant Electric Inspectors with five (05) years service as such, having qualification of B.Tech (Hon)".



SECRETARY TO
GOVERNMENT OF THE KHYBER PAKHTUNKHWA
ENERGY & POWER DEPARTMENT

ATTACHED

16


-2-

Endst. No. SO(E)/E&P/5-1/S:M/E.I/2016/Vol-II,

Dated , Peshawar the, 14-09-2018

Copy forwarded to the: -

1. Secretary to Govt. of Khyber Pakhtunkhwa, Establishment Department.
2. Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department.
3. Secretary to Govt. of Khyber Pakhtunkhwa, Law Department.
- ✓ 4. Electric Inspector, Electric Inspectorate, Khyber Pakhtunkhwa, with the request to provide ten copies of the Notification when published in the Government gazette.
5. Manager Government Printing & Stationer Department, Peshawar, KPK.
6. PS to Secretary Energy & Power Department.


Section Officer (Establishment)



CS No. 5407

Shahid
22-10-2021

17

To

The worthy Chief Secretary,
Government of Khyber Pakhtunkhwa,
Peshawar.

ANNEX D

Subject: APPEAL AGAINST THE FINAL SENIORITY LIST OF DEPUTY ELECTRIC INSPECTORS (BPS-18) ISSUED VIDE NOTIFICATION No. S.O (E.I)/E&P/5-10/UPA/2021/184-10 DATED 15/10/2021 IN ELECTRIC INSPECTORATE OF ENERGY & POWER DEPARTMENT GOVERNMENT OF KHYBER PAKHTUNKHWA

Dear Sir,

With due reverence, it is submitted that, on advice of the Establishment department, the administrative department of Energy & Power vide notification No. S.O (E.I)/E&P/5-10/UPA/2021/184-10 Dated 15/10/2021 has issued a final joint seniority list of two distinct Posts/Cadres of Engineers and Technologists in BPS-18 despite having their distinct/separate nomenclatures as Deputy Electric Inspector (BPS-18) for engineers and Deputy Electric Inspector (Technologist) (BPS-18) for technologists and having distinct/separate services rules for each.

The subject final notification has been issued without consideration and decision in the appeal submitted against the tentative seniority list within prescribed time period.

Issuance of such notification is against Section-8 of the Khyber Pakhtunkhwa Civil Servants Act 1973 read with Rule-17 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules 1989 and merging the Technology post/cadre with Engineering posts/cadre violates the Pakistan Engineering Council (PEC) Act 1976 and Article 143 of the Constitution of Pakistan 1973.

(Copies of Subject Notification and previous Appeal at Annexure-I)

Grounds and facts:

~~ATTESTED~~

The following grounds and facts, on the basis of relevant laws/rules/policies, are submitted;

1. The notification has been issued on the presumption that the officers in the subject notification have had a joint seniority list in (BPS-17). In this regard, it is clarified that the BPS-17 posts have a common nomenclature as Assistant Electric Inspector (BPS-17) occupied by the Technologists through 50% quota created in violation of the Pakistan Engineering Council (PEC) Act 1976 thus violating Article 143 of the Constitution of Pakistan 1973 just for accommodation rather than creation of respective posts for Technologists, thus encroaching the engineering positions in BPS-17. Whereas the positions of Engineers and Technologists have been segregated in BPS-18 with distinct nomenclatures as Deputy Electric Inspector (BPS-18) for Engineers and Deputy Electric Inspector (Technologist) (BPS-18) for Technologists through Standing Service Rules Committee (SSRC) to comply with Pakistan Engineering Council Act 1976, Article 143 of the Constitution of Pakistan 1973 and requirements of National Technology Council respectively. It is further clarified that both the posts/cadres/streams in BPS-18 have separate service rules for promotion to each.

(Copied of Service Rules for BPS-17 & BPS-18 at Annexure-II)

2. It is also submitted that engineering and technology are two distinct disciplines of knowledge with separate accreditation councils i.e. Pakistan Engineering Council (PEC) for Engineering whereas National Technology Council (NTC) for Technology as envisaged in Higher Education Commission (HEC) letter No. 8-61/A&A/2017/HEC/3811 dated 04/05/2017 and National Qualification Framework (NFQ) of Pakistan 2015 publicly available at official website www.hec.gov.pk of HEC. In light of which, the non-equivalence has been previously communicated to Mr. Muhammad Mamtaz (officer at S.No.1 of the tentative seniority list) by the administrative department Energy & Power department vide its letter No. SO (E.I)/E&P/5-10/E.I/Vol-I/2009/199-2 dated 19/01/2017 in reply to his appeal for promotion. Based on these laws and policies of PEC and HEC, the two cadres have been segregated into the above mentioned two separate nomenclature posts in BPS-18, i.e. DEI (BPS-18) for Engineers and

~~ATTESTED~~

19

DEI(Technologist)(BPS-18) for Technologists, through Standing Service Rules Committee (SSRC)

(Copy of HEC letter at Annexure-III)

3. As per provisions and spirit of Rule-17 under part-VI of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules 1989, the inter-se seniority is determined/exists amongst officers of the same post/cadre. There is no inter-se seniority amongst officers of two different/distinct posts/cadres and that inter-se seniority amongst officers of each post/cadre is determined separately. In contravention to the Rule *ibid*, the two different/distinct Cadres/ Posts have been malafidely merged into one to favour the officer at S. No. 1 of the seniority list for his unlawful promotion to BPS-19 which requires an engineer registered with Pakistan Engineering Council under Section-27(5A) of the PEC Act 1976 and the existing service rules for BPS-19.

Merging the Technologist with Engineers invariably means violation of Section 27(5A) of PEC Act 1976 (Act of the Parliament) which is also violation of Article 143 of the Constitution of Pakistan 1973 which provides that law of the Parliament shall prevail in case of repugnancy in laws of the Province/Provincial Assembly and the Parliament. Hence, no provincial law/rule can be enacted/framed in repugnancy to the PEC Act 1976.

(Copy of K.P. Civil Servants Appointment, Promotion & Transfer Rules 1989 at Annexure-IV)

4. The subject final seniority list is not only against the merit, HEC's policy, provisions and spirit of Pakistan Engineering Council (PEC) Act 1976, spirit of Supreme Court of Pakistan Judgment SC 2018 SCMR 2098 and Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules 1989 but also in sheer violation of Section-8 of the Khyber Pakhtunkhwa Civil Servants Act 1973; by spirit of which the seniority of each post/cadre should be determined/administered separately and the seniority of a Civil Servant is to be reckoned in relation to the other Civil Servants belonging to the same post/cadre.

~~ATTACHED~~

(Copies of Section-8 of Civil Servants Act 1973 & SC 2018 SCMR 2098 at Annexure-V)

Keeping in view the above, it is, therefore, very humbly prayed that the Subject notification may be cancelled/set aside as this will set a bad precedence for future and that revised notifications for each post/cadre i.e. Deputy Electric Inspector (BPS-18) and Deputy Electric Inspector (Technologist) (BPS-18) may be separately issued to honor the laws/rules of the land, please.

Ihsan Ulah 22/10/2021

Engr. Ihsan Ulah,
Deputy Electric Inspector (BPS-18),
Officer at S. No.2 of the Seniority List.

Arif Ullah 20-10-2021

Engr. Arif Ullah,
Deputy Electric Inspector (BPS-18),
Officer at S. No.3 of the Seniority List.

Copy to:

The Secretary Energy and Power department to Intervene into the matter for necessary action, please.

~~ATTESTED~~

VAKALATNAMA

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

APPEAL NO: _____ OF 2022

Ihsan ullah (APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Energy & Power & others (RESPONDENT)
(DEFENDANT)

I/We Ihsan ullah

Do hereby appoint and constitute **NOOR MUHAMMAD KHATTAK Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/2022

W

CLIENTS

ACCEPTED

W
NOOR MUHAMMAD KHATTAK

K
KAMRAN KHAN

Said Khan
SAID KHAN

Haider Ali
HAIDER ALI

&
**KHANZAD GUL
ADVOCATES**