

BEFORE THE HONOURABLE SERVICE TRIBUNAL, KHYBER  
PAKHTUNKHWA, PESHAWAR

*Amended* S.A No 931 /2022

Eng Riaz Arshad S/o Azim Ullah R/o House No.56, Street No.2, Sector  
E-7, Phase 7, Hayat Abad Peshawar

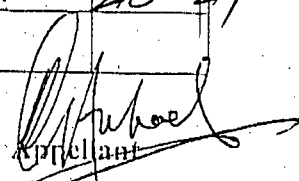
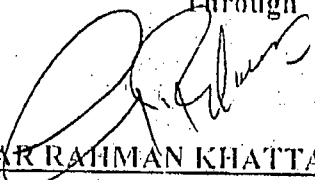
VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary Khyber  
Pakhtunkhwa, Peshawar and others

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Dated: -06-2022

  
Appellant  
Through  
  
**GOHAR RAHMAN KHATTAK**  
ADVOCATE,  
HIGH COURT PESHAWAR  
Office: I.A Nasir Mansion  
Shoba Bazar, Railway Road II,  
Peshawar, Cantt  
Cell# 0333-9107724  
Email:khattak\_law\_chamber@yahoo.com

(7)

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

Amended :

S.A No 931/2022

Eng Riaz Arshad S/o Azim Ullah R/o House No.56, Street No.2, Sector  
E-7, Phase 7, Hayat Abad Peshawar

..... Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar
2. Secretary Communication and Works Khyber Pakhtunkhwa, Peshawar
3. Secretary Finance, Khyber Pakhtunkhwa, Peshawar
4. Secretary Establishment & Admn department, Khyber Pakhtunkhwa

..... Respondents

**APPEAL UNDER SECTION 4 OF SERVICE**

**TRIBUNAL ACT, 1974**

***PRAYER IN APPEAL:***

On acceptance of this appeal the Honorable Tribunal may please be directed the respondents to consider the Appellant for promotion as to BS-20 from the date on which vacancy had become vacant/available/took acting charge of Chief Engineer BS-20 along-with all back benefits according to rules and law.

Any other relief which the Appellant is found fit in law, justice and equity.

RESPECTFULLY SHEWETH:

1. That the Appellant is the permanent resident of Peshawar and presently residing at Phase 7, Hayat Bad House No.56, Street No.2, Sector E, Peshawar.
2. That the Appellant was initially appointed as Assistant Engineer BS-17 in the C&W Department on 26-05-1988.
3. That the Appellant was promoted time to time on different posts and with different duties and lastly as Superintendent Engineer BS-19 on 09-12-2014 and was as being most senior officer appointed as Chief Engineer on acting charge basis on recommendation of PSB on 02-10-2019 . (Copies attached as annexure A)
4. That the Appellant being most senior in the seniority list of BS-19 upon the recommendation of PSB, the summary of notification and charge actualization was forwarded to Secretary Establishment but the same was returned with some observation, your worthy office removed observation and sent back to the concern department for approval and again it was returned with direction, relevant portion is reproduced "*if there exists no clear vacancy for regularization of his acting charge appointment in light of instruction of this department dated 13-01-1999*" it is pertinent to mention here that clear vacancies were available at that time but so far no intimation has been given to the undersigned despite repeated written and verbal requests of the applicant and finally retired from service on 31-03-2021 with effect from 24-11-2020. (Copies attached as annexure B and C)
5. That it is further to mention here that after retirement of Mr. Shahab Khattak BS-20 on 04-04-2020 another regular post was also became vacant.  
(Copies attached as annexure D)
6. That the Appellant was again referred by the respondent No.2 for promotion by forwarding working paper along with

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- seniority list vide dated 08-10-2020 but no response yet been received from the respondents. (Copy of working papers are attached as Annexure E)
7. That despite of written request for promotion to the next higher grade BPS-20 pretty a long time before retirement of Appellant, no action was taken in this very important service matter and Appellant was retired 31-03-2021 with effect from 24-11-2020 while working on Acting charge Basis on the post of Chief Engineer SB-20. (Copy attached as annexure F)
  8. That the Appellant filed application for redressal of his grievance but the same is not yet been received. (Copy of application is attached annexure G)
  9. That Appellant aggrieved from the said act of respondents by not promoting the Appellant from back date, (S 4 (b) ) Service Tribunal Act. 1973 barred the Appellant by approaching Tribunal , hence having no other adequate and efficacious remedy is available to Appellant except filed constitutional petition which was converted into appeal and sent to this Tribunal vide order dated 3-11-2021. Copy of order is attached as annexure H
  10. That the appellant submitted an application for granting permission to file amended appeal as directed the Honorable Peshawar High Court which was allowed and permission was granted vide order dated 24-6-2022, hence this amended appeal on the following grounds. (Copy attached as annexure I)

**GROUNDS:**

- A. That the action/impugned of respondents is illegal, unlawful and against the law.
- B. That the Appellant being most senior in the seniority list of BS-19 upon the recommendation of PSB. the summary of notification and charge actualization was

(4)

forwarded to Secretary Establishment but the same was returned with some observation. your worthy office removed observation and sent back to the concern department for approval and again it was returned with direction. relevant portion is reproduced "*if there exists no clear vacancy for regularization of his acting charge appointment in light of instruction of this department dated 13-01-1999*" it is pertinent to mention here that clear vacancies were available at that time but so far no intimation has been given to the undersigned despite repeated written and verbal requests of the applicant and finally retired from service on 31-03-2021 with effect from 24-11-2020.

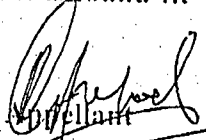
- C. That the in wake of Peshawar High Court Peshawar Judgment dated 19-02-2020 regarding age of retirement of Civil Servant which was dismissed by the August Supreme Court of Pakistan and through Ordinance of Governor age of retirement was re-fixed as 60 years.
- D. That the services of the Appellant had to be considered as regular after appointment on Acting Charge basis and also after retirement of the Mr. Shahab Khattak almost 3 posts were available/vacant posts.
- E. That the act of the respondents are in violation of article 4.8.25.27,30, of the Constitution of Islamic republic of Pakistan 1973.
- F. That as usual, the Appellant's case for promotion fell prey to the red-tappism and it was delayed till his retirement from service vide notification dated 31-03-2021.
- G. That the Appellant had served the department for almost 33 years on the lower posts and was entitled for the post of Chief Engineer BS-20 as the posts were vacant before retirement of the Appellant.

- H. That the Appellant was moved written request for the promotion to the next higher grade, but it seems that it was buried and no order, whatsoever, either of the grant or refusal of promotion was conveyed to the Appellant before retirement.
- I. That the Appellant had not been dealt with in accordance with law, rather has been discriminated and deprived from legal right bestowed on him by the law and rules of the subject.
- J. That there is no reason for denial of the grant of promotion to the Appellant to the subject post, when he fulfills all the prescribed criteria and when the posts are required to be filled on promotion.
- K. That the case of the Appellant was delayed upto his retirement for no reason, other than malafide and malice on the part of the respondents.
- L. That the Appellant had been deprived from his legal right and was ignored with malafide intention which is illegal, unlawful, against the law and natural justice.
- M. That the Appellant has the right to agitate any other additional grounds/fact at the time of arguments after the stance of the respondents with permission of this Honourable court.

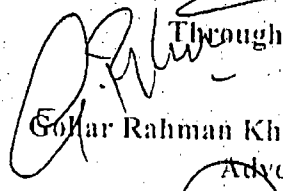
It is, therefore, humbly prayed that on acceptance of this appeal the Honorable Court may please be directed the respondents to consider the Appellant for promotion as to BS-20 from the date on which vacancy had become vacant/available/took acting charge of Chief Engineer BS-20 along-with all back benefits according to rules and law.

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Any other relief which the Appellant is found fit  
in law, justice and equity.

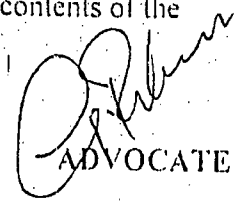
  
Appellant

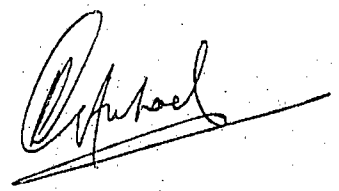
Dated: -06-2022

  
Through

Gohar Rahman Khattak  
Advocate,  
High Court Peshawar  
&  
Muhammad Arif (Firdous)  
Advocate, High Court  
Office: 1.A Nasir Mansion  
Shoba Bazar, Railway Road II.  
Peshawar, Cantt  
Cell# 0333-9107724  
0334-9215356  
Email:khattak\_law\_chamber@yahoo.com

No such like appeal has earlier been filed by the appellant and contents of the  
appeal are true and correct to the best of my knowledge.

  
ADVOCATE



GOVERNMENT OF NWFP  
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar, the Jan 23, 2010

**NOTIFICATION:**

No.SOE/C&W/4-5/72/2010: In consultation with the Provincial Selection Board (PSB), the competent authority has been pleased to promote the following Assistant Engineers/Sub Divisional Officers (BS-17) of C&W Department to the rank of Executive Engineers (BS-18) on regular basis, with immediate effect:

- 1) Shafiq Ahmad      2) Muhammad Uzair      3) Muhammad Tariq-I
- 4) Ejaz Hussain Ansari      5) M. Shahab Khattak      6) Zia-ur-Rehman
- 7) Shahid Hussain      8) Syed M. Ilyas Shah      9) Rizaz Arshad
- 10) Muhammad Ayub      11) Abdul Sattar      12) Arshad Khan
- 13) Noor-us-Saeed Shah      14) Amar Nadeem Durrani      15) Rafi-ud-Din.
- 16) Shakir Habib      17) Ahmad Nabi Sultan      18) Hamid Ajmal Khan
- 19) Aurangzeb      20) Habib-ur-Rahim      21) Fazli Wahab
- 22) Muhammad Nawaz-I      23) Bakht Rawan      24) Munir Hussain
- 25) Muhammad Tariq-II      26) Abdul Ghafoor      27) Bahadar Said
- 28) Rehmat Hakim      29) Kifayatullah      30) Jamil Ahmad
- 31) Mohd Tassaduq      32) Javald Akbar      33) Muhammad Adil
- 34) Muhammad Ayaz Khan

2. All the officers will be on probation for a period of one year, however, their promotion will be subject to the final order of NWFP Services Tribunal and Supreme Court of Pakistan on the main petition.

3. Consequent upon their promotion, the competent authority is further pleased to order the transfer/posting of the following officers of C&W Department, with immediate effect, in the public interest:

Sl. No.	Name of Officers	From	To	Remarks
1)	Shafiq Ahmad (BS-18)	Deputy Director Abasoon Construction Peshawar (OPS)	Services placed at the disposal of FATA Sectt.	---
2)	Muhammad Uzair (BS-18)	Deputy Director Frontier Highways Authority, Peshawar (OPS)	Design Engineer (Technical) O/O CE (Centre) C&W Peshawar. For actualization of promotion and then reposted as Deputy Director F.H.A.	---
3)	Muhammad Tariq-I (BS-18)	Deputy Director PERRA (OPS)	Senior Engineer (Building) O/O CE (CDO) C&W Peshawar. For actualization of promotion and then reposted as Deputy Director PERRA	---
4)	Ejaz Hussain Ansari (BS-18)	Deputy Director PERRA (OPS)	XEN (Electrical/Mechanical) O/O CE (Centre) C&W Peshawar. For actualization of promotion and then reposted as Deputy Director PERRA.	---

ATTESTED



Sl. No.	Name of Officers	From	To	Remarks
5)	M. Shahab Khattak (BS-18)	Executive Engineer Building Division Jamrud, Khyber Agency (OPS)	Executive Engineer Building Division Jamrud, Khyber Agency	
6)	Zia-ur-Rohman (BS-18)	Executive Engineer C&W Division Swat (OPS)	Executive Engineer C&W Division Swat	
7)	Shahid Hussain (BS-18)	Executive Engineer Building & Works Division-1 Peshawar (OPS)	Executive Provincial Building (Construction) Division-I, Peshawar	
8)	Syed Ilyas Shah (BS-18)	Deputy Director Frontier Highways Authority, Peshawar (OPS)	Design Engineer (R&B) O/O CE (North) C&W Peshawar, For actualization of promotion and then reposted as Deputy Director F.H.A.	
9)	Riaz Arshad (BS-18)	Executive Engineer Building & Works Division-1 Peshawar (OPS)	Executive Provincial Building (Construction) Division-II, Peshawar	
10)	Muhammad Ayub (BS-18)	Deputy Director Resettlement (FAP) C&W Department, Peshawar (OPS)	Design (Technical) O/O CE (North) C&W Peshawar, For actualization of promotion and then reposted as Deputy Director (resettlement) FAP Peshawar.	
11)	Abdul Sattar (BS-18)	Waiting for posting	Services placed at the disposal of FATA Sectt:	
12)	Arshad Khan (BS-18)	Deputy Director Frontier Highways Authority, Peshawar (OPS)	XEN (Electrical/Mechanical) O/O CE (North) C&W Peshawar, For actualization of promotion and then reposted as Deputy Director F.H.A.	
13)	Noor-us-Saeed Shah (BS-18)	Design Engineer (Building) O/O CE FATA, C&W, Peshawar (OPS)	Services placed at the disposal of FATA Sectt:	
14)	Amer Nadeem Durrani (BS-18)	Executive Engineer C&W Division Malakand (OPS)	Executive Engineer C&W Division Malakand	
15)	Rafi ud Din (BS-18)	Executive Engineer Highway Division Mardan (OPS)	Executive Engineer Highway Division Mardan	
16)	Shakir Habib (BS-18)	Design Engineer O/O CE (Centre) C&W, Peshawar (OPS)	Design Engineer (R&B) O/O CE (Centre) C&W Peshawar, For actualization of promotion and then reposted as Deputy Secretary (Technical, Pesh:	
17)	Ahmad Nabi Sultan (BS-18)	Executive Engineer C&W Division Dikhan (OPS)	Executive Engineer C&W Division Dikhan	
18)	Hamid Ajmal Khan (BS-18)	Section Officer (Building) C&W Sectt Peshawar	Design Engineer (R&B) O/O CE (Centre) C&W Peshawar.	
19)	Aurangzeb (BS-18)	Deputy Director PERRA (OPS)	Senior Engineer (Survey & RMU) O/O CE (CDO) C&W Peshawar, For actualization of promotion and then reposted as Deputy Director PERRA	

ATTESTED

No.	Name of Officers	From	To	Remarks
15	Habib-ur-Rahim (BS-18)	Design Engineer C/O CE FATA C&W Peshawar (OPS)	Services placed at the disposal of FATA Sectt.	---
16	Rashid Wahab (BS-18)	Waiting for posting	Design Engineer (R&B) C/O CE (North) C&W Peshawar	---
17	Muhammed Nawaz-I (BS-18)	Deputy Director Physical Housing Authority Peshawar (OPS)	Reappointed to C&W Department and posted as Research Officer Regional Roads Research & Material Testing Laboratory at Peshawar for actualization of promotion and then reposted as Deputy Director PHA Peshawar	---
18	Bakht Nawaz (BS-15)	Executive Engineer C&W Division Shangla (OPS)	Executive Engineer C&W Division Shangla	---
19	Muhammad Hussain (BS-15)	Executive Engineer C&W Division Battagram (OPS)	Executive Engineer C&W Division Battagram	---
20	Muhammad Tariq-II (BS-18)	Deputy Director-I F&P C&W Peshawar (OPS)	Senior Design Engineer (R&B) C/O CE (CD) C&W Peshawar for actualization of promotion and then reposted as Deputy Director (F&P) C&W Peshawar	---
21	Abdul Ghaffar (BS-18)	Deputy Director-II F&P C&W Peshawar (OPS)	Executive Engineer Highway Division Dikhan for actualization of promotion and then reposted as Deputy Director-II F&P C&W Peshawar	---
22	Bahadar Said (BS-18)	Executive Engineer C&W Division Buner (OPS)	Executive Engineer C&W Division Buner	---
23	Rahmat Hakim (BS-18)	Waiting for posting	Services placed at the disposal of FATA Sectt.	---
24	Kilayatullah (BS-18)	Executive Engineer C&W Division Kohat (OPS)	Executive Engineer C&W Division Kohat	---
25	Jamil Ahmad (BS-18)	Executive Engineer C&W Division Dir Lower (OPS)	Executive Engineer C&W Division Dir Lower	---
26	Mohd Taseedug (BS-18)	SDO (Road) Highway Division Peshawar Kurram	Services placed at the disposal of FATA Sectt.	---
27	Javed Akbar (BS-18)	Executive Engineer C&W Division Dir Upper (OPS)	Executive Engineer C&W Division Dir Upper	---
28	Muhammad Adil (BS-18)	Waiting for posting	Services placed at the disposal of FATA Sectt.	---
29	Muhammad Ayaz Khan (BS-18)	Executive Engineer (Building) Division Bajaur Agency (OPS)	Executive Engineer (Building) Division Bajaur Agency	---
30	Inayatullah (BS-18)	Waiting for posting	Services placed at the disposal of FATA Sectt.	---
31	Ludman Shah (BS-17)	Assistant Director (Technical) C/O Director PBMC, Peshawar	Design Engineer (Technical) C/O CE (Centre) C&W Peshawar (OPS) being senior most Assistant Engineer	Due to abolition of Post of AD (Tech) PBMC.

**ATTESTED**

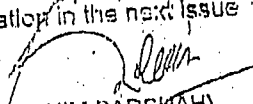
Secretary to Govt of NWFP  
Communication & Works Department

(10)

Encls. of even number and date

Copy is forwarded to the:-

1. Additional Chief Secretary FATA Sectt, Wabak Road, Peshawar
2. Principal Secretary to Chief Minister NWFP, Peshawar
3. Accountant General NWFP, Peshawar
4. Accountant General (PR) Sub Officer, Peshawar
5. DG-cum-Secretary PERRA, NWFP, Abbottabad
6. All Chief Engineers C&W, Peshawar
7. Chief Engineer PERRA, Manshehra
8. Managing Director Frontier Highways Authority, Peshawar
9. Managing Director Abaseen Construction Corporation, Peshawar
10. Project Director (FAP) C&W, Peshawar
11. All Superintending Engineers C&W Circles
12. All Executive Engineers C&W Divisions
13. Political Secretary to Chief Minister NWFP, Peshawar
14. District/Agency Accounts Officers concerned
15. PS to Chief Secretary NWFP, Peshawar
16. Incharge Computer Cell, C&W Department, Peshawar
17. PS to Secretary, C&W, Peshawar
18. Officers concerned
19. Manager Govt Printing Press, Peshawar for publication in the next issue of Govt Gazette
20. Office order File/Personal File.

  
(RAHIM BADSHAH)  
SECTION OFFICER (ESTT)

**ATTESTED**



GOVERNMENT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar the 09<sup>th</sup> Dec, 2014

**NOTIFICATION:**

No. SOE/C&W/4-53/2014: On the recommendations of Provincial Selection Board (PSB), the Competent Authority has been pleased to promote the following acting charge Superintending Engineers (BS-19) of C&W Department to the rank of Superintending Engineers (BS-19) on regular basis, with immediate effect:

- I. Engr. Riz Arshad
- II. Engr. Muhammad Ayub

2. The above officers shall remain on probation for a period of one year in terms of Rule-15 of (Appointment, Promotion & Transfer) Rules, 1989.

3. Consequent upon their promotion, the Competent Authority is further pleased to order the transfer/posting of the following officers of C&W Department, with immediate effect, in the public interest:

Sl. No.	Name of Officer & Designation	From	To
1.	Engr. Riz Arshad SE (BS-19)	Superintending Engineer C&W Circle Kohat (acting charge)	Superintending Engineer C&W Circle Kohat
2.	Engr. Muhammad Ayub SE (B-19)	Superintending Engineer Provincial Building (Constn) Peshawar (acting charge)	Superintending Engineer Provincial Building (Constn) Peshawar

SECRETARY TO  
Government of Khyber Pakhtunkhwa  
Communication & Works Department

End of avon number and date

Copy is forwarded to the:-

1. Principal Secretary to Chief Minister Khyber Pakhtunkhwa Peshawar
2. Accountant General Khyber Pakhtunkhwa Peshawar
3. All Chief Engineer (Centre/North/CDO) C&W Peshawar
4. Chief Engineer FATA W&S Peshawar
5. Managing Director Pakhtunkhwa Highway Authority, Peshawar
6. All Superintending Engineers C&W Circles
7. District Accounts Officer Kohat
8. Incharge Computer Cell, C&W Department, Peshawar.
9. PS to Secretary, C&W Peshawar.
10. Officers concerned
11. Manager Govt Printing Press, Pesh: for publication in the next issue of Govt Gazette
12. Office order File/Personal File

ATTESTED

(USMAN JAN)  
SECTION OFFICER (Estb)



(12)  
"B"

SUMMARY FOR CHIEF MINISTER

Subject: APPOINTMENT OF SUPERINTENDING ENGINEER (BS-19) AGAINST THE POST OF CHIEF ENGINEER BPS-20 ON ACTING CHARGE BASIS, C&W DEPARTMENT

The Provincial Selection Board in its meeting held on 23.09.2019 considered the case and was cleared/recommended the appointment of Engr. Riaz Arshad Superintending Engineers (BS-19) against the post of Chief Engineer BS-20 on acting charge basis (Annex-I).

2. The Establishment Department has obtained the approval of the recommendations of Provincial Selection Board from Competent Authority (Chief Minister) Annex-II.

3. In order to actualize the appointment of the officer mentioned above, the C&W Department proposes the following:

Sl. No.	Name of Officer & Designation	From	To	Remarks
1	Engr. Riaz Arshad (BS-20 A.C.B)	Awaiting posting	Chief Engineer (CDO) C&W Peshawar. He is also allowed to continue work as Project Director PaRRSA/USAID Directorate, Swat at Peshawar, in addition to his own duty.	Against vacant po

4. The Chief Minister Khyber Pakhtunkhwa (Competent Authority) is requested to approve the proposal with regard to his actualization on the eve of appointment contained in para-3 above, please.

MINISTER FOR C&W (Away)

ATTESTED

SECRETARY C&W

CHIEF SECRETARY

Pl. examine

Chief Secretary

Secy/Estab

N.P.P

(13)

~~(13)~~

06. Summary has been examined. It is observed that in the light of PSB minutes (Annex-I) the officer was recommended for appointment to the temporarily vacated post of Chief Engineer (BS-20) while the proposal of Administrative Department in Para-3 Column-4 of the summary is against the spirit of PSB minutes.

07. The summary is, therefore, returned to the Administrative Department for clarification.

*AOV*  
(Syed Jamal-ud-Din Shahi)  
Secretary Establishment  
20, October, 2019

Secretary C&W Department

ATTESTED

*Muzak P*

14

Para 1-7/N refer

8. As per Annex-I, the Provincial Selection Board (PSB) has recommended Engr. Riaz Arshad for appointment to the temporarily vacated post of Chief Engineer (BS-20) on acting charge basis. In compliance, the department submitted a summary to Chief Minister Khyber Pakhtunkhwa with the proposal that the said Engineer may be posted as Chief Engineer (CDO) C&W Peshawar against vacant post and he may also be allowed to continue work as Project Director PaRRSA/USAID Directorate, Swat at Peshawar, in addition to his own duty.

9. So far, the observations raised by Establishment Department narrated in para-6 of the summary is concerned, it is clarified that the post on which Engr. Riaz Arshad has been considered by the PSB for appointment as Chief Engineer BS-20 on acting charge basis has since been filled by way of transfer. Moreover, when an officer recommended for appointment against higher post on acting charge basis, then his adjustment are required to be accommodated, enabling the officer to avail the benefit of acting charge appointment, either against regular post or any other equivalent post.

10. Proposal contained in para-3 of the summary is resubmitted for approval please.

MINISTER FOR C&W

*Riaz Arshad*  
18/11/19  
SECRETARY  
C&W

SECRETARY ESTABLISHMENT

ATTESTED

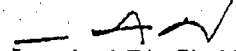
*[Signature]*  
18-11-19  
MINISTER  
Communication & Works Dept.  
Khyber Pakhtunkhwa

*N.F.P*

11. Summary for Chief Minister was examined previously vide Paras 6-7 and the Administrative Department has responded in Para-8 of the Summary stating therein that the post of Chief Engineer against which Engr. Riaz Arshad was appointed in BS-20 on acting charge basis has been filled by transfer and that his posting as Chief Engineer (CDO) is for the purpose of actualization to get the benefit of the higher post.

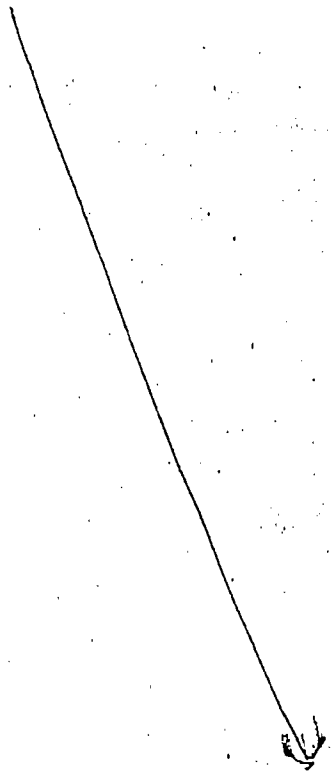
12. It is observed that if the post of Chief Engineer (BS-20) against which acting charge appointment of Engr. Riaz Arshad was made has been filled by transfer, then how two employees can draw pay against one post. Therefore, views of Finance Department are required in this regard.

13. The Administrative Department may re-submit the case after getting clarification from Finance Department.

  
(Syed Jamal-ud-Din Shah)  
Secretary Establishment  
26 November, 2019

Secretary C&W Department

**ATTESTED**

  
RPP



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*(Signature)*

Para 1-13/N refers

A working paper with regard to Appointment of Superintending Engineers BS-19 to Chief Engineer BS-20 on acting charge basis was placed before PSB for consideration (Annex-IV). In the working paper, the following position of 02 Nos acting charge appointment was highlighted.

- i. One (01) regular Chief Engineer (BS-20) C&W Department Engr. Muhammad Uzair has been posted as Director General PDA Peshawar.
- ii. One (01) regular Chief Engineer (BS-20) C&W Department Engr. Muhammad Shahab Khattak had been posted as Secretary C&W Department.

The PSB has considered the aforesaid working paper and recommended the appointment of Engr. Riaz Arshad SE BS-19 against the post of Chief Engineer BS-20 on acting charge basis but the term used for the said appointment as against the temporarily vacant post BS-20 on acting charge basis (Annex-I). Moreover, Engr. Muhammad Uzair Chief Engineer BS-20 C&WD, while posted as Director General PDA Peshawar has been repatriated to his parent Department i.e. C&WD on 26.11.2019 (Annex-V).

The proposal contained in para-3 ante of the summary is resubmitted for approval of the Chief Minister please.

Finance Department may add its views on the case as required by Establishment Department vide para-13 of the summary.

**ATTESTED**

*(Signature)*  
SECRETARY  
C&W

MINISTER FOR C&W

SECRETARY FINANCE

N.P.P.



GOVERNMENT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT

No. SOE/C&WD/4-2/79

Dated Peshawar, the February 10, 2020

17

(Signature)

To  
The Secretary to  
Govt of Khyber Pakhtunkhwa  
Establishment Department  
Peshawar

Subject: APPOINTMENT OF SUPERINTENDING ENGINEER (BS-19) AGAINST  
THE POST OF CHIEF ENGINEER (BS-20) ON ACTING CHARGE  
BASIS C&W DEPARTMENT

Dear Sir,

I am directed to refer to the subject noted above and to state that Provincial Selection Board (PSB) in its meeting held on 23.09.2019 and cleared/recommended the appointment of Engr. Riiaz Arshad Superintending Engineer (BS-19) against the post of Chief Engineer (BS-20) on acting charge basis (copy enclosed). Moreover, the Establishment Department has obtained the approval of the recommendations of the PSB from Competent Authority (Chief Minister KPK).

2. In this regard, the department has moved a summary to Chief Minister with the request to approve the posting proposal of Engr. Riiaz Arshad against the post of Chief Engineer (CDO) C&W Peshawar for his actualization on the eve of his appointment as BS-20 on acting charge basis. However, the Establishment Department returned the summary with some observations to which the department attended the same and resubmitted accordingly. But the summary is not yet received back to the Department. In this connection, the said officer (Riiaz Arshad) has requested for issuance of his appointment notification.

3. The request of the officer is submitted for necessary action, if deemed appropriate, please.

Yours' faithfully

sd  
(ABDUR RASHID KHAN)  
SECTION OFFICER (Estb)

ATTESTED

Endst even No. & date

Copy forwarded to the:

1. Section Officer (E-I) Establishment Department, Peshawar
2. PS to Secretary C&W Department, Peshawar

sd  
SECTION OFFICER (Estb)

(18)

20. Summary for Chief Minister has been examined. Engineer Muhammad Uzair was transferred and posted as Director General PDA and his successor Engineer Riaz Arshad was recommended by PSB in its meeting held on 23-09-2019 for acting charge appointment against the post vacated by Engineer Muhammad Uzair (Annex-I). On return of the original incumbent of the post i.e Engineer Muhammad Uzair, the acting charge appointment of Engineer Riaz Arshad shall be reverted to his original post, if there exists no clear vacancy for regularization of his acting charge appointment in light of instructions of this Department dated 13-01-1999 (Flag-B). Hence acting charge appointment needs to be withdrawn and no further posting is required.

(Syed Jamal-ud-Din Shah)  
Secretary Establishment  
19 February, 2020

Chief Secretary Khyber Pakhtunkhwa

Chief Minister

*[Signature]*  
21/2  
CHIEF SECRETARY  
Govt. of Khyber Pakhtunkhwa

22

Page 20 is approved.

**ATTESTED**

C.S

*[Signature]*  
3 - 2 - 2020  
Chief Minister  
Khyber Pakhtunkhwa



GOVERNMENT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar the June 18, 2020

**NOTIFICATION:**

No.SOE/C&WD/1-12/88: Without prejudice to the legal remedies available to Provincial Government and in pursuance of judgment of the Peshawar High Court Peshawar dated 19.02.2020 in W.P No. 5673-P/2019, Engr. Muhammad Shahab Khattak Chief Engineer (BS-20), while performing duty as Secretary to Govt of Khyber Pakhtunkhwa C&W Department stand retired from Government Service on 04.04.2020 (A.N) on attaining the age of superannuation, as his date of birth is 05.04.1960, subject to CPLA/Appeal of the Provincial Government against aforementioned judgment of Peshawar High Court Peshawar and any order contrary as and when issued by the Apex Court of Pakistan.

SECRETARY TO  
Government of Khyber Pakhtunkhwa  
Communication & Works Department

Ends of even number and date

Copy is forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa, Peshawar.
2. Secretary to Govt of Khyber Pakhtunkhwa, Establishment Department, Peshawar
3. PSO to Chief Secretary Khyber Pakhtunkhwa Peshawar
4. PS to Secretary, C&W Department Peshawar
5. Officer concerned
6. Office order File/Personal File

(ABDUR RASHID KHAN)  
SECTION OFFICER (Estb)

ATTESTED

WORKING PAPER FOR PROVINCIAL SELECTION BOARD

Department: Communication & Works Department

1. Nomenclature of the post/Basic Scale Chief Engineer (BPS-20)
2. Service/Group/Cadre Engineering (C&W)
3. Sanctioned strength of the Cadre Total posts 6 (5-regular and 01 Ex-Cadre) Annex-I

		Direct	Promotion	Transfer
4. i.	Percentage of share		100%	
ii.	No. of posts allocated to each category	-	06	-
iii.	Present occupancy position			
	1) Regular		04	
	2) Acting charge		00	
iv.	No. of vacancies in each category:			
	a. Regular		01	
	b. Acting charge		01	

- v. How did the vacancy(ies) under promotion quota accrue and since when

Position of 01 Nos Regular Post

- a. Due to retirements of Muhammad Shahab Khattak (Annex-II) - 01 Nos  
 Regular Vacant Post - 01 Nos

Position of 01 Nos Acting charge Appointment

- b. 01 No. ex-cadre post i.e. MD PKHA Peshawar (BS-20) is lying vacant. Therefore, the appointment of one (01) No. senior SE (BS-19) against the post of MD PKHA (BS-20) is required on acting charge basis, under Section-9 of APT Rule (Annex-III).

- vi. Recruitment Rules

By selection, on merit from amongst Superintending Engineers/Principal Design Engineers, with at least 17 (seventeen) years of service in BPS-17 and above possessing Degree in B.E/B.Sc. Engineering (Civil) from a recognized University and have successfully completed Senior Management Course Trainin (Annex-IV).

- vii. Required length of service

At least 17 (seventeen) years of service in BPS-17 and above

- viii. Whether to be promoted on regular basis or appointed on acting charge basis?

Regular = 01 post  
 Acting charge appointment = 01 post

- ix. Mandatory training, if any

S.M.C

- x. Minimum required score on EI.

70

**ATTESTED**

*[Handwritten signature]*

**PANEL OF OFFICERS FOR CONSIDERATION**

Sl. No.	Sen. No.	Name of Officer with qualification	Date of Birth	Date of 1 <sup>st</sup> entry into Govt Service	Date of Appointment/promotion to BS-19	Date of regular Appointment/promotion to the present scale	Whether fulfill the prescribed length of service	Qualified score	Missing PERs (if any)	Disciplinary proceedings (if any)	Case (if any) in any court of Law, including NAB/ Plea bargaining with NAB	Mandatory Training for promotion	Research papers	Present posting	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
1	1	Riaz Arshad B.Sc/MS (Civil)	25.11.1960 Peshawar	25.05.1988	09.12.2014	09.12.2014	Yes	63.64	—	—	—	—	—	CE (Reconstn) PERRA A'abad (OPS)	Exempted from SMC training as he has attained the age of 58 years
2	2	Muhammad Ayub B.Sc/MS (Civil)	03.02.1961 Kohat	26.09.1967	09.12.2014	09.12.2014	Yes	66.53	—	—	—	—	—	CE (GDO) C&W Peshawar (OPS)	Exempted from SMC training as he has attained the age of 58 years
3	3	Abdul Sattar B.Sc (Civil)	07.03.1961 Orakzai	26.05.1988	01.09.2016	01.09.2016	Yes	67.14	—	—	—	—	—	SE (Southern) C&W Circle Tribal Districts at Bannu	Exempted from SMC training as he has attained the age of 58 years
4	4	Arshad Khan B.Sc (Civil)	02.10.1961 Mardan (Swabi)	26.05.1988	21.11.2019	21.11.2019	Yes	58.13	—	—	—	—	—	Director (P&D) PKHA Peshawar	Exempted from SMC training as he has attained the age of 58 years
5	5	Noor-us-Saeed Shah B.Sc (Civil)	02.03.1962 Mardan	26.05.1988	05.06.2015	05.06.2015	Yes	64.85	—	—	—	Yes Annex-V	—	Principal Design Engineer O/D CE (CDO) Peshawar	—
6	6	Amer Nadeem Durrani B.Sc (Civil)	28.04.1962 Peshawar	26.05.1988	05.06.2015	05.06.2015	Yes	66.48	—	—	Yes	NA	—	MO (OPS) PKHA Peshawar	The officer was involved in VR case with NAB amounting to Rs.5,10,911/-. In pursuance of Supreme Court of Pakistan judgment dated 24.10.2016, he was proceeded against under E&D Rules 2011. After fulfillment of all codal formalities, a minor penalty of "Censure" has been imposed upon him (Annex-VI).

1. Certified that the officers included in the panel are eligible for promotion/ appointment to the post of BS-20 on acting charge basis in all respects.
2. Certified that the officers included in the panel are not involved in any NAB case nor entered into plea bargain or VR with National Accountability Bureau (NAB) except Sr.No.6

**ATTESTED**

Signature: \_\_\_\_\_

Date: 08/10/2020  
Secretary to  
Govt. of Khyber Pakhtunkhwa  
C&W Department

21

(22)

CERTIFICATE

It is certified that:-

1. The officers included in the panel are eligible in terms of length of service required for promotion.
2. No disciplinary action/proceedings or criminal charges in any court of law are pending against any of the officer included in the panel.
3. The seniority list of the officers, included in the panel issued on 04.08.2020 is final (Annex-VII).
4. As per record, the officers included in the panel are neither involved in any NAB case nor entered into plea bargaining/VR agreement with NAB authorities except Sr.No.6.

**ATTESTED**

SECRETARY  
C&W

Dated 08/10/2020  
Secretary to  
Govt. of Khyber Pakhtunkhwa  
C&W Department



GOVERNMENT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar the March 31, 2021

**NOTIFICATION:**

No.SOE/C&WD/1-16/88: In pursuance of section 13A(1) of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), and in supersession of Notification No.SOE/C&WD/1-16/88 dated 01.12.2020, Engr. Riaz Arshad Superintending Engineer (BS-19) C&WD, while posted as Chief Engineer (Reconstruction) PERRA, Abbottabad in his own pay & scale and authorized for the purpose of pay against the post of Superintending Engineer Provincial Building (Construction) Peshawar stands retired from Government Service with effect from 24.11.2020 on attaining sixtieth (60<sup>th</sup>) year of age, as his date of birth is 25.11.1960.

SECRETARY TO  
Government of Khyber Pakhtunkhwa  
Communication & Works Department

Endst of even number and date

Copy is forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa, Peshawar.
2. Chief Engineer (North/Centre/CDO) C&W Peshawar
3. Chief Engineer (Merged Areas) C&W Peshawar
4. Chief Engineer (East) C&W Abbottabad
5. DG-cum-Secretary, PERRA Abbottabad
6. Chief Engineer (Reconstruction) PERRA Abbottabad
7. Superintending Engineer (Construction) Peshawar
8. Project Director PaRRSA/USAID Directorate Swat stationed at Peshawar
9. District Accounts Officer Swat/Abbottabad
10. PS to Secretary Relief, Rehabilitation & Settlement Department, Peshawar
11. PS to Secretary, C&W Department Peshawar
12. Officer concerned
13. Office order File/Personal File

ATTESTED

*Zahoor Shah*  
31.03.2021  
(ZAHOOR SHAH)  
SECTION OFFICER (Estb)



C (24)  
(24)

TO THE SECRETARY COMMUNICATION & WORKS KHYBER  
PAKHTUNKHWA PESHAWAR

Application for granting ante-dated  
promotion/Performa promotion to the undersigned BS-20 from  
BS-19 from the date of vacant posts.

RESPECTFULLY SHEWETH:

1. That the applicant was initially appointed Assistant Engineer BS-17 vide order dated 25/05/1988 and was subsequently promoted to BS-18 in the year 2010 and again promoted to BS-19 (Superintendent Engineer).
2. That in October 2019, the provincial selection Board recommended the undersigned for promotion from BS-19 to BS-20 on Acting Charge basis vide approval minutes of PSB on 23-09-2019. (Copy attached)
3. The applicant being most senior in the seniority list of BS-19 upon the recommendation of PSB, the summary of notification and charge actualization was forwarded to Secretary Establishment but the same was returned with some observation, your worthy office removed observation and sent back to the concern department for approval and again it was returned with direction, relevant portion is reproduced "*if there exists no clear vacancy for regularization of his acting charge appointment in light of instruction of this department dated 13-01-1999*" it is pertinent to mention here that clear vacancies were available at that time but so far no intimation has been given to the undersigned despite repeated written and verbal requests of the applicant and finally retired from service on 31-03-2021 with effect from 24-11-2020. (Copy attached herewith)
4. That it is further to mention here that after retirement of Mr Shahab Khattak BS-20 on 04-04-2020 another regular post was also fell vacant but undersigned was again ignored. (Copy attached)
5. That the applicant being eligible for promotion to BS-20 as Performa promotion from the date on which post was vacant.
6. That the applicant has the right to agitate other grounds/facts later-on.

It is, therefore humbly requested that Performa Promotion may please be granted to the undersigned/applicant from the date of eligibility.

**ATTESTED**

Applicant

Eng Riaz Arshad  
Ex-Chief Engineer Reconstruction  
PERRA (Acting)  
0333-9163352

(25)  
"H"

**PESHAWAR HIGH COURT PESHAWAR**  
**FORM "A"**

**ORDER SHEET**

<i>Date of Order or Proceedings</i>	<i>Order or other Proceedings with Signature of Judge or that of parties or counsel where necessary</i>
2	3
3.11.2021	<p><u>WP No. 2183-P/2021.</u></p> <p>Present:</p> <p style="padding-left: 40px;">Mr. Gohar Rehman Khattak, Advocate for petitioner.</p> <p style="text-align: center;">*****</p> <p><u>ROOH-UL-AMIN KHAN, J.-</u> The petitioner, through the instant writ petition filed under Article-199 of the Constitution of Islamic Republic of Pakistan, 1973, seeks issuance of an appropriate writ directing the respondents to consider him for proforma promotion as to BPS-20 from the date of availability of vacancy/ taking acting charge of Chief Engineer BS-20 with all back benefits.</p> <p>2. In essence, the grievance of petitioner is that despite availability of vacant post, the respondents did not consider him for promotion as Chief Engineer BS-20. That; after retirement, the petitioner submitted application to the respondents for his pro-forma promotion however, the same was not considered by the respondents while, he is entitled for proforma promotion. Learned counsel for petitioner;</p>

when confronted with the proposition as to whether proforma promotion do not fall within the definition of promotion which is beyond the jurisdiction of this Court under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973, he referred to Section 4 (b) of Service Tribunal Act, 1973 which reads:

*"no appeal shall lie to a Tribunal against an order or decision of a departmental authority determining the fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher grade"*

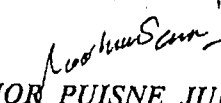

The law has been settled on the point in a recent judgment of august Supreme Court of Pakistan dated 01.07.2021 titled "*Chief Secretary Govt. of Punjab, Lahore etc. VS Ms. Shamim Usman*" rendered in Civil Petition No. 1097-L of 2020 wherein it has been held that proforma promotion is a kind of promotion, the jurisdiction of which is vested in Service Tribunal.

3. In view of above, this writ petition is not maintainable, however, instead of dismissing it, we deem it appropriate to convert it into appeal and transmit the same to the Service Tribunal in light of judgment in the case of "*Mian Asghar Ali VS Govt. of Punjab through Secretary (Colonies) BOR Lahore and others*" (2017

*Asghar Ali*

SCMR 118) where the petitioner may file an application for amendment of the appeal in accordance with law and subject to limitation.

4. In view of above, this writ petition stands disposed off.

  
**SENIOR PUISNE JUDGE**  
  
**JUDGE**

BEFORE THE HONOURABLE PESHAWAR HIGH COURT PESHAWAR

W.P.No. 2183P/2021 Appeal No. 931/2022

- Eng Riaz Arshad S/o Azeem Ullah R/o Phase 7, Hayat Bad House No.56,  
Street No.2, Sector E, Peshawar

..... Petitioner

VERSUS



1. Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar
2. Secretary Communication and Works Khyber Pakhtunkhwa, Peshawar
3. Secretary Finance, Khyber Pakhtunkhwa, Peshawar
4. Secretary Establishment & Admn department, Khyber Pakhtunkhwa
5. Accountant General, Khyber Pakhtunkhwa, Peshawar

..... Respondents

WRIT PETITIONER UNDER ARTICLE  
199 OF THE CONSTITUTION OF  
ISLAMIC REPUBLIC OF PAKISTAN,  
1973.

FILED TODAY  
Deputy Registrar  
25 MAY 2021

**PRAYER IN PETITION:**

On acceptance of this writ petition the Honorable Court may please be directed the respondents to consider the petitioner for promotion as to BS-20 from the date on which vacancy had become vacant/available/took acting charge of Chief Engineer BS-20 along-with all back benefits according to rules and law.

Any other relief which the petitioner is found fit in law, justice and equity.




Certified to be a true copy  
EX-AMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Form-A  
FORM OF ORDER SHEET

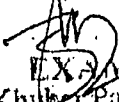
(29)

Court of \_\_\_\_\_  
Case No. 931/2022



S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	20/06/2022	<p>The present appellant initially went in Writ Petition before the Hon'ble Peshawar High Court Peshawar and the Hon'ble High Court vide its order dated 03.11.2022 treated the Writ Petition into an appeal and sent the same to this Tribunal for decision in accordance with law. The same may be entered in the Institution Register and put up to the worthy Chairman for further order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2	23.6.22	<p>This case is entrusted to S. Bench at Peshawar for preliminary hearing to be put up there on <u>24.6.22</u>. Notices shall be issued to appellants and his counsel for the date fixed.</p> <p style="text-align: right;"> CHAIRMAN</p>
	24 <sup>th</sup> June, 2022	<p>Learned counsel for the appellant present and submitted an application for granting permission to file amended appeal. Application is allowed. Appellant is directed to submit amended appeal on or before the next date of hearing. To come up for amended appeal/preliminary hearing on 17.08.2022 before S.B at Peshawar.</p> <p style="text-align: right;"></p>
Date of Presentation of Application		<u>29/6/22</u>
Number of Words		<u>800</u>
Copying Fee		<u>10/-</u>
Urgent		<u>     </u>
Total		<u>10/-</u>
Name of Copyist		<u>     </u>
Date of Completion of Copy		<u>26/7/22</u>
Date of Delivery of Copy		<u>26/7/22</u>

(Kalim Arshad Khan)  
Chairman

Certified to be true copy  
  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar