


5<sup>th</sup> Oct, 2022

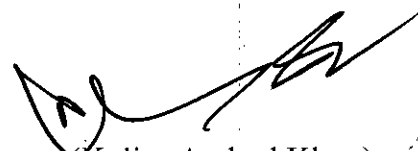
1. None present for the appellant. Mr. Muhammad Adeel Butt, Additional Advocate General for respondents present.

2. Called several times till last hours of the court but neither appellant nor his counsel is present. In view of the above, the instant appeal is dismissed in default.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 5<sup>th</sup> day of October, 2022.*



(Fareeha Paul)  
Member(E)



(Kalim Arshad Khan)  
Chairman

21.07.2022

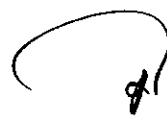
Zartaj Anwar Advocate present and submitted Wakalat Nama in favor of appellant.

Muhammad Adeel Butt, learned Additional Advocate General alongwith Zafar Ullah Superintendent for respondents present.

Being freshly engaged, learned counsel for appellant requested for adjournment in order to prepare the brief. Adjourned. To come up for arguments on 16.09.2022 before D.B.



(Fareeha Paul)  
Member(E)




(Rozina Rehman)  
Member (J)

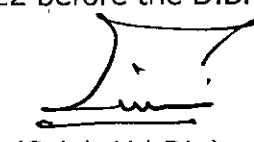
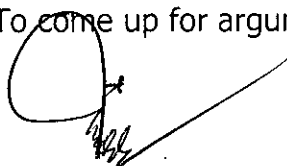
16.09.2022

Clerk of learned counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

Clerk of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy in the august Peshawar High Court, Peshawar. Last opportunity given. Adjourned. To come up for arguments on 05.10.2022 before the D.B.



(Mian Muhammad)  
Member (E)

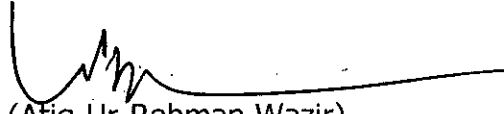


(Salah-Ud-Din)  
Member (J)

19.01.2022

Nemo for the appellant. Mr. Javaidullah, DDA for the respondents present.

Notice be issued to appellant/counsel for prosecution of the appeal. Case to come up for arguments on 10.05.2022 before the D.B.


  
(Atiq-Ur-Rehman Wazir)  
Member (E)

  
Chairman

10.05.2022

None present on behalf of the appellant. Mr. Naseer-ud-din Shah, Assistant Advocate General for the respondents present.

This case pertains to the year 2014, it seems that none of the parties is interested in disposal of this case, therefore, case to come up for order before the D.B on 02.06.2022. Parties may argue the case before the announcement. Notice be issued to the parties in this regard.

  
(Fareeha Paul)  
Member (E)

  
Chairman


02.06.2022

Appellant present through representative.

Kabir Ullah Khattak learned Additional Advocate General Hamad Khan Section Officer for respondents present.

Lawyers are on general strike, therefore, case is adjourned to 21.07.2022 for arguments before D.B.

  
(Fareeha Paul)  
Member(E)

  
(Rozina Rehman)  
Member (J)

04.06.2021

Appellant present in person.

Muhammad Adeel Butt, learned Additional Advocate General for respondents present.

Appellant states that his counsel has been appointed as Additional Advocate General and requested for time to engage another counsel; granted. To come up for arguments on 30.08.2021 before D.B.



(Rozina Rehman)  
Member (J)



Chairman

30.08.2021

Due to summer vacations, the case is adjourned to 12.11.2021 for the same as before.



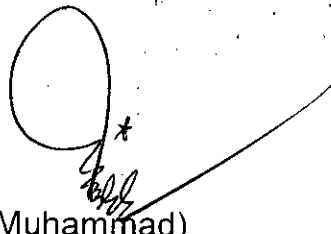
READER

12.11.2021

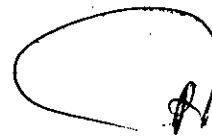
Appellant in person present.

Muhammad Riaz Khan Paindakhel, Asst. AG for respondents present.

Appellant requested for time to engage another counsel; granted. To come up for arguments on 19.01.2022 before D.B.



(Mian Muhammad)  
Member (E)



(Rozina Rehman)  
Member (J)

29.10.2020

Junior to counsel for the appellant and Addl. AG for the respondents present.

The Bar is observing general strike, therefore, the matter is adjourned to 05.01.2021 for hearing before the D.B.



(Atiq-ur-Rehman Wazir)  
Member



Chairman

05.01.2021

Appellant present in person.

Riaz Khan Paindakhel Assistant Advocate General for respondents present.

Former made a request for adjournment as his counsel has gone for funeral of his Clerk's mother; granted. To come up for arguments on 08.03.2021 before D.B.



(Atiq-Ur-Rehman Wazir)  
Member (E)



(Rozina Rehman)  
Member (J)

08.03.2021

Junior to counsel for the appellant and Assistant A.G for the respondents present.

Former requests for adjournment as learned senior counsel for the appellant is attending his ailing father today. Adjourned to 04.06.2021 for hearing before the D.B.



(Atiq-ur-Rehman Wazir)  
Member(E)



Chairman

25.02.2020

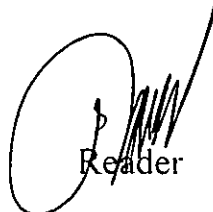
Junior to counsel for the appellant present. Mr. Riaz Khan Paindakheil learned Assistant Advocate General present. Junior to counsel for the appellant seeks adjournment as senior learned counsel is not available. Adjourn. To come up for arguments on 26.03.2020 before D.B.

  
Member

  
Member

31.03.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 12.06.2020 before D.B.

  
Reader


12.06.2020

Bench is incomplete. Therefore, the case is adjourned. To come up for the same on 25.08.2020 before D.B.

  
Reader

25.08.2020

Due to summer vacation case to come up for the same on 29.10.2020 before D.B.

  
Reader

15.11.2019

Clerk to counsel for the appellant and Mr. Usman Ghani learned District Attorney present. Clerk to counsel for appellant seeks adjournment as counsel for the appellant is not available today. Being an old case of the year 2014 adjourned by way of last chance. To come up for arguments on 02.01.2020 before D.B.


  
Member

  
Member

02.01.2020

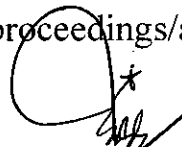
Clerk of counsel for the appellant and Mr. Usman Ghani, District Attorney alongwith Mr. Arsalan, Section Officer for the respondents present. Clerk of counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is not available today. Adjourned to 14.02.2020 for arguments before D.B.

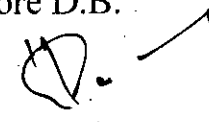
  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member

14.02.2020

Learned counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney present. Learned counsel for the appellant seeks adjournment to submit written arguments. Adjourned To come up for further proceedings/arguments on 25.02.2020 before D.B.

  
Member

  
Member


14.05.2019

Junior to counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney for the respondents present. Due to leave of the worthy Chairman the case is adjourned to 19.07.2019 for arguments before D.B.

  
(Hussain Shah)  
Member

19.07.2019

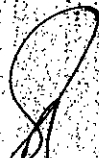
Junior counsel for the appellant Mr. Ayub Amin, Advocate and Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Arsalan, Section Officer (Litigation) for the respondents present. Junior counsel for the appellant requested for adjournment on the ground that learned senior counsel for the appellant is not available today. Adjourned to 07.10.2019 for arguments before D.B.

  
(HUSSAIN SHAH)  
MEMBER

  
(M. AMIN KHAN KUNDI)  
MEMBER

07.10.2019

Due to official tour of Hon'ble Members to Camp Court Swat, instant appeal is adjourned to 15.11.2019 for the same.

  
Reader



21.01.2019

Clerk of counsel for the appellant present. Mr. Ziaullah, Deputy District Attorney for the respondents present. Clerk of counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is not available today due to strike of Khyber Pakhtunkhwa Bar Council. Adjourned to 12.02.2019 for arguments before D.B.

  
(HUSSAIN SHAH)  
MEMBER

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

12.02.2019

Junior to counsel for the appellant and District Attorney for the respondents present.

A request is made for adjournment due to non-availability of learned senior counsel for appellant who is in appearance before the Apex Court at Islamabad today. Adjourned to 25.03.2019 before the D.B.

  
Member

  
Chairman

25.03.2019


Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned to 14.05.2019 for arguments before D.B.


  
(HUSSAIN SHAH)  
MEMBER

  
(M. AMIN KHAN KUNDI)  
MEMBER

01.06.2018


Appellant alongwith counsel and Mr. Muhammad Jan, DDA for official respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 06.07.2018 before D.B.

  
(M. Amin Khan Kundi)  
Member

  
(M. Hamid Mughal)  
Member

06.07.2018


Counsel for the appellant present. Mr. Sardar Shoukat Hayat, Addl: AG for respondents present. Arguments could not be heard due to incomplete bench. To come up for arguments on 27.11.2018 before D.B.

  
(Muhammad Amin Kundi)  
Member

27.11.2018

Junior to counsel for the appellant. Mr. Ziaullah, DDA for the respondents present.

The former requests for adjournment on account of engagement of learned counsel for the appellant before the Hon'ble High Court. Adjourned to 21.01.2019 for arguments before the D.B.

  
Member

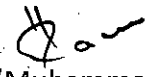
  
Chairman

Service Appeal No. 1389/2014

09.08.2017


Clerk of the counsel for appellant present. Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Clerk of the counsel for appellant seeks adjournment on the ground that learned counsel for the appellant is not available today. Adjourned. To come up for arguments on 08.12.2017 before D.B.


  
(Muhammad Amin Khan Kundi)  
Member (J)

  
(Muhammad Hamid Mughal)  
Member (J)

08.12.2017


Junior to counsel for the appellant present. Mr. Muhammad Jan, Deputy District Attorney for the respondents also present. Junior to counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 02.02.2018 before D.B.

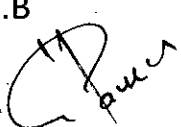
  
(Ahmad Hassan)  
Member (E)

  
(Muhammad Amin Khan Kundi)  
Member (J)

02.01.2018

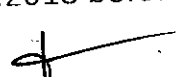
Learned counsel for the appellant and Mr. Zia Ullah, Learned Deputy District Attorney for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 03.04.2018 Before D.B

  
(Muhammad Amin Kundi)  
MEMBER

  
(Muhammad Hamid Mughal)  
MEMBER

03.04.2018

Learned counsel for the appellant and Mr. Zia Ullah, learned Deputy District Attorney for official respondents present. Learned counsel for private respondent also present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 01.06.2018 before D.B

  
(Ahmad Hassan)

  
(Muhammad Hamid Mughal)  
Member

30.08.2016

Clerk to counsel for the appellant and Muhammad Jan, GP for respondents present. Written reply to the impleadment application submitted. To come up for arguments on main appeal as well as on application on 14.12.2016 before D.B.

  
Chairman

14.12.2016

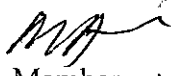
Agent to counsel for the appellant and Addl:AG for respondents present. Agent to counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 24.04.2017 before D.B.

  
(ASHFAQU TAJI)  
MEMBER

  
(MUHAMMAD AAMIR NAZIR)  
MEMBER

24.04.2017

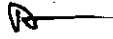
Agent to counsel for the appellant and Mr. Muhammad Jan, Government Pleader for respondents present. Learned counsel for the appellant is stated busy before the Supreme Court of Pakistan. Adjourned for final hearing to 09.08.2017 before D.B.

  
Member

  
Chairman

05.08.2015

Counsel for the appellant and Mr. Abdur Razzaq, Assistant  
alongwith Addl: A.G for respondents present. Rejoinder submitted, copy  
whereof supplied to learned Addl: A.G. To come up for arguments on  
12-1-2016.

  
Member

  
Member

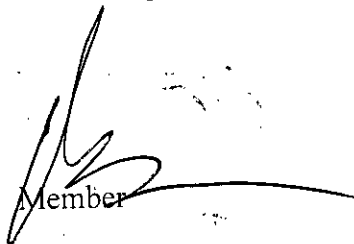
12.01.2016

Counsel for the appellant and Mr. Abdur Razzaq, Assistant  
alongwith Addl: A.G for respondents present. The learned Member  
(Executive) is on official tour to Swat therefore, Bench is incomplete.  
To come up for arguments on 11-5-16.

  
MEMBER

11.05.2016

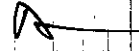
Counsel for the appellant and Mr. Abdur Razzaq, Assistant  
alongwith Mr. Usman Ghani, Sr.GP for respondents present. Mr.  
Ghulam Mohy-ud-Din also present and submitted an application  
for impleadment as respondents, copy of which is handed over the  
learned counsel for the appellant. To come up for reply on  
application as well as arguments on main appeal on 30.08.2016.

  
Member

  
Member

19.01.2015

Clerk of counsel for the appellant present, and requested for adjournment due to General Strike of the Bar. Request accepted. To come up for preliminary hearing on 13.02.2015.

  
Member

13.02.2015

Learned counsel for the appellant argued that identical appeals have been admitted to regular hearing vide orders passed in appeals No. 1390 and 1391 of 2014.

In view of the above, this appeal is also admitted to regular hearing. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply for 8.4.2015 before S.B alongwith connected appeals.

  
Chairman

08.4.2015

Clerk of counsel for the appellant and Mr. Muhammad Jan, GP with Addl. AG for the respondents present. Reply filed. To come up for rejoinder on 04.6.2015.

  
MEMBER

  
MEMBER

4.6.2015

Clerk of counsel for the appellant and Mr. Muhammad Jan, GP for the respondents present. Request made on behalf of the appellant for submission of rejoinder. Therefore, case to come up for rejoinder on 05.08.2015.

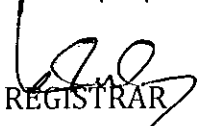

  
MEMBER

*Appeal not deposited  
Process fee & security*

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 1389/2014


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	09.12.2014	<p>The appeal of Mr. Asif Khan resubmitted today by Mr. Khaled Rehman Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p> <p><del>This case is entrusted to remain for preliminary hearing to be put up there on</del></p> <p style="text-align: right;"></p>
2		

The appeal of Mr. Asif Khan SDO Irrigation Shahbaz Garhi Mardan received today i.e. on 17.11.2014 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days:

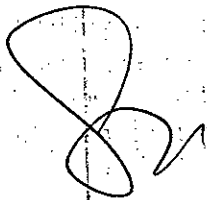
- 1- Memorandum of appeal is unsigned which may be got signed.
- 2- Annexures of the appeal may be attested.
- 3- Heading of the appeal is incomplete which may be completed.
- 4- Annexure-I of the appeal is incomplete which may be completed.

No. 1635 /S.T,

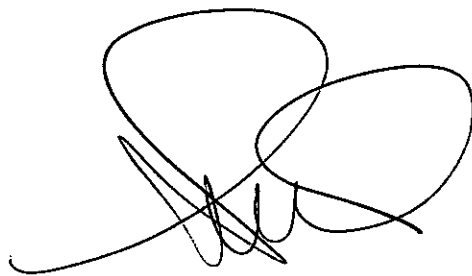
Dt. 18/11 /2014.

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Khaled Rehman Adv. Peshawar.



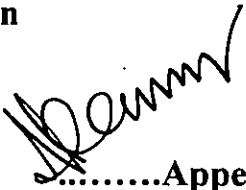
- ① Appeal
- ② was been attested
- ③ Objeartive has cleared
- ④ has been received





BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1389 /2014

Asif Khan  
  
 .....Appellant

Versus

The Govt. and others  
 .....Respondents

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4.	Notified amended Rules	17.02.2011	C	12-14
5.	Departmental Representation	14.07.2010	D	15-16
6.	Combined Representation/ appeal	28.02.2011	E	17-18
7.	Letter	19.03.2011	F	0-19
8.	Letter of Chief Engineer	07.04.2011	G	0-20
9.	Notification of Promotion	13.12.2011	H	21-23
10.	Notified amended Rules	25.06.2012	I	24-25
11.	Departmental Representation		J	26-27
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13.	Parawise Comments		L	36-39
14.	Judgment in W.P.3388-P/2012	04.09.2014	M	40-58
15.	Wakalat Nama			

Through

  
Appellant

  
Khaled Rahman  
Advocate, Peshawar

3-D, Haroon Mansion  
Khyber Bazar, Peshawar  
Off: Tel: 091-2592458  
Cell # 0345-9337312

Dated: 17/11 /2014

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No. 1389 /2014**

**G. W. P. Proceedings**  
1371  
17/11/2014

**Mr. Asif Khan,**  
Sub Divisional Officer (Irrigation)  
Shahbaz Garhi, Mardan

.....**Appellant**

**Versus**

1. **The Govt. of Khyber Pakhtunkhwa**  
through Chief Secretary,  
Civil Secretariat, Peshawar.
2. **The Secretary,**  
Govt. of Khyber Pakhtunkhwa, Irrigation Department,  
Civil Secretariat, Peshawar.
3. **The Chief Engineer (North)**  
Irrigation Department,  
Warsak Road, Kababiyian, Peshawar
4. **The Chief Engineer (South)**  
Irrigation Department,  
Warsak Road, Kababiyian, Peshawar

.....**Respondents**

**SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 FOR SETTING ASIDE THE IMPUGNED REFUSAL OF RESPONDENTS TO CONSIDER APPELLANT FOR PROMOTION TO THE NEXT HIGHER GRADE AND TO DIRECT THEM TO ACT IN THE MATTER IN ACCORDANCE WITH LAW AND TO CONSIDER APPELLANT FOR PROMOTION TO THE POST OF ASSISTANT ENGINEER (BPS-17) W.E.F. THE DATE HE WAS PROMOTED TO SUCH POST ON ACTING CHARGE BASIS WITH ALL CONSEQUENTIAL BACK BENEFITS.**

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

1. That appellant joined the Irrigation Department as Pre-service Graduate Sub-Engineers (BPS-11) on 20.05.1995 and at the moment has got about more than 19 years unblemished and outstanding service record at his credit. (Seniority List **Annex:-A**).

*[Handwritten signature]*  
17/11/14

re-submitted to 2. and filed.

That as per the previous service rules of the Irrigation Department notified in the year 1979 as further amended vide Notification dated 27.02.1999 (**Annex:-B**), the posts of Sub-Divisional Officers/

*[Handwritten signature]*  
9/12/14

Assistant Directors/Assistant Engineers (BPS-17) were to be filled in as follows:

- “(a) 65% of the total posts by initial recruitment;*
- (b) 10% of the total posts by promotion, on the basis of seniority-cum-fitness from amongst the Sub Engineers possessing Diploma at the time of their induction into service but acquired degree in Engineering during service;*
- (c) 10% of the total posts by promotion, on the basis of seniority-cum-fitness from amongst the Sub Engineers who joined service as Degree holders in Engineering; and*
- (d) 15% of the total posts by selection on merit with due regard to seniority, from amongst the officiating Assistant Engineers/Senior Scale Sub-Engineers who hold a diploma in Engineering and have passed departmental examination.”*

The rules *ibid*, were again amended vide Notification dated 17.02.2011 (*Annex:-C*) relevant portion of which provided as follows:

1	2	3	4	5
4.	Assistant Engineer/ Sub Divisional Officer/ Assistant Director (BPS-17).	BE/BSc Degree in Civil/ Mechanical Engineering from a recognized University.	21 to 32 Years	<p>a. Sixty five percent by initial recruitment;</p> <p>b. ten percent by promotion, on the basis of seniority cum fitness from amongst the Sub Engineers who has acquired during service degree in Civil or Mechanical Engineering from a recognize University.</p> <p>c. five percent by promotion, on the basis of seniority cum fitness, from amongst the Sub Engineers who joined service as degree holders in Civil/Mechanical Engineering and</p> <p>d. twenty percent by promotion, on the basis of seniority cum fitness from amongst the Sub Engineers who hold a diploma of Civil, Mechanical, Electrical or Auto Technology and have passed Departmental Grade A examination with ten years service as such.</p> <p>Note:- Provided that where candidate under Clause (b) &amp; (c) above is not available for promotion, the vacancy shall be filled in by initial recruitment.</p>

Before framing of rules *ibid*, appellant alongwith others submitted a departmental Representation on 14.07.2010 (*Annex:-D*) to the competent authority thereby bringing their grievances in the notice of the competent authority and requesting for not reducing their quota but their request bore no fruitful result and consequently the rules *ibid* were further amended and thereby abridging the quota of direct graduate Sub-Engineers/Pre-Service Graduate Sub-Engineers, therefore, again a combined Representation/appeal on 28.02.2011 (*Annex:-E*) was filed before the competent authority, which was processed as would be evident from the letter dated 19.03.2011 (*Annex:-F*) wherein a detailed Working Paper for consideration before holding SSRC meeting was called from the Chief Engineer (O&M) who vide his letter dated 07.04.2011 (*Annex:-G*) clarified the position but then the matter could not move ahead.

3. That during this period meeting of the Departmental Promotion Committee was held wherein appellant and his other colleagues being eligible as well as seniors, were duly recommended for promotion to the next higher grade and accordingly they were promoted vide Notification dated 13.12.2011 (*Annex:-H*) to the posts of Assistant Engineers/Sub-Divisional Officers (BPS-17) but on acting charge basis instead of regular basis and on such promotion were posted at the position mentioned in the title of the appeal.
4. That once again the rules *ibid*, were subjected to another amendment vide Notification dated 25.06.2012 (*Annex:-I*). Relevant portion of the amendment is reproduced as follows;-

1	2	3	4	5
4.	Assistant Engineer/ Sub Divisional Officer/ Assistant Director (BPS-17).	BE/BSc Degree in Civil/ Mechanical Engineering from a recognized University.	21 to 32 Years	a. Sixty five percent by initial recruitment; 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 recognize University and have passed the

Departmental grade B and A Examination with five years service as such.

Note. For the purpose of Clause (b) a joint seniority list of the Sub-Engineers having Degrees 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 (Honrs) and having passed Departmental Grade B and A Examination with five years service as such; and

Note. For the purpose for Clause (C) a seniority list of Sub-Engineers having degree in B.Tech (Honrs) 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, Civil, Mechanical, Electrical or Auto Technology and have passed Departmental Grade B and A examinations 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.

Thus the quota of Pre-Service and post-service Graduate Sub-Engineers was reduced from 15% to 12% thereby adversely affecting their rights, therefore, appellant and others again preferred a departmental Representation (*Annex:-J*) before the Respondent No.1 against the Notification dated 25.06.2012 but the same is still lying pending.

5. That thereafter the Respondents initiated the process of promotion of others to the next higher grade but the appellant and others were unlawfully ignored on the ground of newly formulated rules although the same could not adversely affect the rights of the appellant inasmuch as appellant being senior and eligible for promotion was promoted alongwith others to the posts of Assistant Engineer/SDO (BPS-17) on the recommendation of proper constituted Departmental Promotion Committee on 13.12.2011 but before the promulgation of the rules on 25.06.2012 but on acting charge basis instead of regular.
6. That appellant and others then approached the Peshawar High Court, Peshawar in W.P.3388-P/2012 (*Annex:-K*) wherein the Respondents filed their Parawise Comments (*Annex:-L*) and was clubbed with other writ petition and finally disposed of vide Judgment dated 04.09.2014 (*Annex:-M*), relevant portion of the Judgment is as under:-

“16. Accordingly, for the reasons stated above, this Court:

- i. *Declare grievance of the petitioners relating to their rights to be eligible for promotion to a higher post are “vested right” provided and protected under Section 9 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 and hence, are terms and conditions of service of the petitioners.*
- ii. *Declare that as the respondents have refused the right of petitioners to be considered for promotion in their comments, the same are deemed as final order provided under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.*

- iii. *Declare that the exclusive jurisdiction to entertain and adjudicate upon the matters relating to the right to be considered for promotion to a higher grade vested in in the Khyber Pakhtunkhwa Service Tribunal Act, 1974 and that this Court is constitutionally barred under Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973 to take cognizance thereof.*
- iv. *Direct the office to retain copies of the memo of writ petitions bearing No.2440-P, 3388-P/2012 and transmit the same to the Khyber Pakhtunkhwa Service Tribunal for decision in accordance with law. Parties are directed to appear before the Service Tribunal on 10<sup>th</sup> October, 2014.*
- v. *In view of the above directions writ petition No.3595-P/2012 having become infructuous is disposed of accordingly."*

### Grounds:

- A. That Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully ignored the appellant for regular promotion to the next higher grade, which is unjust, unfair and hence not sustainable in the eye of law.
- B. That appellant was granted promotion to next higher grade in view his long standing seniority, eligibility and fitness for promotion after observing all codal formalities including due consideration by properly constituted Departmental Promotion committee but instead of regular promotion he was promoted on acting charge basis, therefore now he cannot be denied the benefit of regular promotion on misplaced excuses including the framing of the new Rules.
- C. That the right of promotion which accrued to appellant due to his long previous service cannot be denied on the ground of adopting new Rules because notifications impairing existing rights cannot be read into retrospect so as to adversely affect the available vested rights of the incumbents. Viewed from this angle the denial on the part of the Respondents to promote appellant to the next higher grade on regular


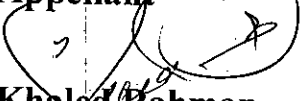
basis is unwarranted, arbitrary and not sustainable.

- D. That the appellant has put considerable long prime time of his precious life in the service of the Department with a hope that he would once grab the chance of promotion to the next higher grade and after long wait, when the opportunity emerged the Respondents have started creating needless bottlenecks and attempting to deprive appellant of his due rights which has resulted in serious miscarriage of justice.
- E. That appellant has been holding the posts of Assistant Engineers (BPS-17) since 13.12.2011 for almost 3 years and has performed up-to-the-mark till date and now he cannot be deprived of the same under the principle of locus Poenitentiae and for that matter the principle of promissory estoppel.
- F. That appellant would like to offer some other grounds during the course of arguments.

It is therefore, humbly prayed that on acceptance of this appeal, the impugned refusal of the Respondents may graciously be set aside and they be directed to act in the matter in accordance with law and to allow regular promotion to the appellant to the post of Assistant Engineer (BPS-17) w.e.f. the date he was promoted on acting charge basis with all consequential back benefits.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.

Through

  
Appellant  
  
Khaled Rahman,  
Advocate, Peshawar

Dated: 17/11/2014



EXTRAORDINARY  
GOVERNMENT



REGISTERED NO. RIII  
GAZETTE

*Ans. C* (12)  
**KHYBER PAKHTUNKHWA**

Published by Authority

PESHAWAR, SATURDAY, 2ND APRIL, 2011.

GOVERNMENT KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT,

**NOTIFICATION**

Dated Peshawar the 17<sup>th</sup> February, 2011

NO.SO(E)IRR:/23-5/73: In pursuance of the provisions contained in sub rule (2) of Rule-3 of the North-West Frontier Province Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 and in supersession of all previous rules and notifications, issued in this behalf, except Notification No.SO(E)IRR:/23-5/73 dated 20-12-2006, the Irrigation Department, in consultation with the Establishment Department and the Finance Department hereby lays down, the method of recruitment, qualification and other conditions specified in columns No. 3 to 5 of the Appendix (pages 1 to 5) to this Notification which shall be applicable to the posts in column No. 2 of the Appendix.

Secretary to Government of the Khyber Pakhtunkhwa Province  
Irrigation Department.

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Printed and published by the Manager,  
Staty. & Ptg. Deptt., Khyber Pakhtunkhwa, Pesh.

*[Handwritten signature]*  
2011

## APPENDIX

S#	Nomenclature of Post	Qualification for appointment	Age Limit	Method of recruitment
1	2	3	4	5
<b>PART-I-ENGINEERING STAFF</b>				
1.	Chief Engineer/ Director General (BPS-20)			By selection, on merit from amongst the Senior Superintending Engineers and Directors with at least seventeen years service in and above, possessing Degree in B.E/BSc Engineering (Civil) from a recognized University.
2.	Superintending Engineer/Director (BPS-19)			By promotion, on the basis of seniority-cum-fitness, from amongst the Executive Engineers/Deputy Directors with at least twelve years service in BPS-17 and above.
3.	Executive Engineer/ Deputy Director (BPS-18)			By promotion, on the basis of seniority cum fitness, from amongst the Sub Divisional Officers, Assistant Engineers and Assistant Directors possessing Degree in B.E/BSc Engineering (Civil or Mechanical) from a recognized University, with at least five years service as such, and have passed the Professional or Revenue Examination under the prescribed rules.
4.	Assistant Engineer/Sub Divisional Officer/ Assistant Director (BPS-17)	BE/BSc Degree in Civil/Mechanical Engineering from a recognized University	21 to 32 years	<p>a. Sixty five percent by initial recruitment.</p> <p>b. ten percent by promotion, on the basis of seniority cum fitness, from amongst the Sub Engineer's who has acquired during service degree in Civil or Mechanical Engineering from a recognize university.</p> <p>c. five percent by promotion, on the basis of seniority cum fitness, from amongst the Sub Engineer's who joined service as degree holders in Civil/Mechanical Engineering and</p> <p>d. twenty percent by promotion, on the basis of seniority-cum-fitness from amongst the Sub Engineer's, who hold a diploma of Civil, Mechanical, Electrical or Auto Technology and have passed Departmental Grade A examination with ten years service as such.</p> <p>Note: - Provided that where candidate under Clause (b) &amp; (c) above is not available for promotion, the vacancy shall be filled in by initial recruitment.</p>
5.	Sub Engineer (BPS-11)	Diploma of Associate Engineering in Civil/Mechanical/Auto/Electrical Technology from a recognized Institute.	18 to 30 years	<p>a. Eighty percent by initial recruitment; and</p> <p>b. twenty percent by promotion, on the basis of seniority-cum-fitness, from amongst the Canal Inspectors, Work Takers, Gauge Readers, Surveyors and other establishments having Diploma of Associate Engineering in Civil, Mechanical, Electrical or Auto Technology from a recognized institute or Board of Technical Education of Government with at least ten years service, and have passed the departmental Grade B and Grade A examination.</p>

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KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 2ND APRIL, 2011. 690

6. Geologist (BPS-17)	MSc: Geology from a recognized University with 03 years experience in the relevant field.	18 to 32 years	By initial recruitment.
PART-II-MINISTERIAL ESTABLISHMENT			
7. Administrative Officer/ Budget and Accounts Officer (BPS-16)			By promotion, on the basis of seniority-cum-fitness, from amongst the Superintendents of the Department having at least three years service.
8. Superintendent (BS-16)			<p>By promotion, on the basis of seniority-cum-fitness, from amongst the Assistants, Head Clerks and Senior Scale Stenographers with at least five years service as such.</p> <p>Note 1: - For the purpose of promotion, a joint seniority list of Assistants and Senior Scale Stenographers shall be maintained. If the date of appointment of both the officials is the same, then Assistant shall rank senior.</p> <p>Note 2. Promotion to the post of Superintendents in Regional Office cadre shall be considered from amongst the Assistants, Head Clerks and Senior Scale Stenographers of Regional Office cadre and that of Circle Office Cadre from the Assistants, Head Clerks and Senior Scale Stenographers of Circle Office Cadre.</p>
9. Senior Scale Stenographer (BPS-15)	<p>a. Bachelor's Degree/ B.Com from a recognized University; and</p> <p>b. A speed of 100 words per minute in short hand in English and 40 words per minute in English typing.</p>	18 to 30 years	<p>a. Forty percent by initial recruitment; and</p> <p>b. sixty percent by promotion, on the basis of seniority-cum-fitness, from amongst the Junior Scale Stenographers with at least three years service as such.</p>
10. Assistants/Head Clerk (BPS-14)	Second Class Bachelor's Degree with Economics/ Statistics as one of the subject or B.Com, from a recognized University.	18 to 30 years	<p><u>In Regional Office Cadre.</u></p> <p>a. Twenty five percent by initial recruitment; and</p> <p>b. seventy five percent by promotion, on the basis of the seniority cum fitness, from amongst Accounts Clerks and Senior Clerks in Regional Office Cadre with at least 5 years service as such.</p> <p><u>In Circle Office Cadre.</u></p> <p>By promotion, on the basis of seniority cum fitness; from among the Accounts Clerks and Senior Clerks with at least 5 years service as such, in the Circle where the vacancies occurs.</p>

DEPARTMENT OF REVENUE

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## KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 2ND APRIL, 2011.

11	Junior Scale Stenographer (BPS-12)	(a) Intermediate or D.Com From a recognized Board; and  (b) A speed of 50 words per minute in Short hand in English and 35 words per minute in English typing with computer knowledge of Microsoft Words and Excel.	18 to 30 years	By Initial Recruitment.
12	Accounts Clerk/ Senior Clerk (BPS-9)			By promotion, on the basis of seniority cum fitness, from among the Junior Clerks with atleast 5 years service in the respective regional or Circle cadre as such;  Note. Promotion to the post of Accounts Clerk or Senior clerk in Regional Office cadre shall be considered from amongst the Junior Clerks of Regional Office Cadre and that of Circle Office Cadre from amongst the Junior Clerks of Circle Office Cadre).
13	Junior Clerk (BPS-7)	(a) Secondary School Certificate from a recognized Board; and (b) A speed of 30 words per minute in English typing.	18 to 30 years	(a) Sixty Seven percent by initial recruitment; and  (b) Thirty three percent by promotion, from amongst the Daitaries, Record Lifters, Naib Qasids, Chowkidars and other equivalent posts who have Secondary School Certificate and are under 45 years of age and have at least two years service as such in the respective Regional and Circle Office Cadre  Note For the purpose of promotion, there shall be maintained a joint seniority list of Daitaries, Record Lifters, Naib Qasids, Chowkidars with reference to the date of regular appointment to the post or that of acquiring the Secondary school certificate which ever is later, provided that if two dates are the same, the person older in age or having longer service, whichever is more beneficial to him, shall rank senior.
PART-III COMPUTER ESTABLISHMENT				
14	Data Processing Supervisor (BPS-14)	Bachelor's Degree from a recognized University with 03 years Diploma in Computer Science, from recognize institute	16 to 30 years	(a). Twenty five percent by initial recruitment; and (b). Seventy five percent by promotion, on the basis of seniority cum fitness, from amongst the Data Entry Operators and Key Punch Operators with five years service as such.

(17)

**KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 2ND APRIL, 2011.**

690

6.	Geologist (BPS-17)	MSc: Geology from a recognized University with 03 years experience in the relevant field.	18 to 32 years	By initial recruitment.
<b>PART-II-MINISTERIAL ESTABLISHMENT</b>				
7.	Administrative Officer/ Budget and Accounts Officer (BPS-16)			By promotion, on the basis of seniority-cum-fitness, from amongst the Superintendents of the Department having at least three years service.
8.	Superintendent (BS-16)			By promotion, on the basis of seniority-cum-fitness, from amongst the Assistants, Head Clerks and Senior Scale Stenographers with at least five years service as such.  Note 1: - For the purpose of promotion, a joint seniority list of Assistants and Senior Scale Stenographers shall be maintained. If the date of appointment of both the officials is the same, then Assistant shall rank senior.  Note 2: Promotion to the post of Superintendents in Regional Office cadre shall be considered from amongst the Assistants, Head Clerks and Senior Scale Stenographers of Regional Office cadre and that of Circle Office Cadre from the Assistants, Head Clerks and Senior Scale Stenographers of Circle Office Cadre.
9.	Senior Scale Stenographer (BPS-15)	a. Bachelor's Degree/ B.Com from a recognized University; and b. A speed of 100 words per minute in short hand in English and 40 words per minute in English typing.	18 to 30 years	a. Forty percent by initial recruitment; and b. sixty percent by promotion, on the basis of seniority-cum-fitness, from amongst the Junior Scale Stenographers with at least three years service as such.
10.	Assistant/Head Clerk (BPS-14)	Second Class Bachelor's Degree with Economics/ Statistics as one of the subject or B.Com, from a recognized University.	18 to 30 years	<b>In Regional Office Cadre</b> a. Twenty five percent by initial recruitment; and b. seventy five percent by promotion, on the basis of the seniority cum fitness, from amongst Accounts Clerks and Senior Clerks in Regional Office Cadre with at least 5 years service as such.  <b>In Circle Office Cadre</b> By promotion, on the basis of seniority cum fitness, from among the Accounts Clerks and Senior Clerks with at least 5 years service as such, in the Circle where the vacancies occurs.

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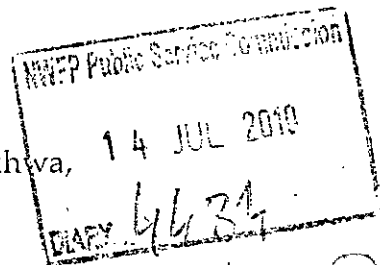
(14)

(17)

11	Junior Scale Stenographer (BPS-12)	(a) Intermediate or D.Com From a recognized Board; and  (b) A speed of 50 words per minute in Short hand in English and 35 words per minute in English typing with computer knowledge of Microsoft Words and Excel.	18 to 30 years	By Initial Recruitment.
12	Accounts Clerk/ Senior Clerk (BPS-9)			By promotion, on the basis of seniority cum fitness, from among the Junior Clerks with atleast 5 years service in the respective regional or Circle cadre as such;  Note. Promotion to the post of Accounts Clerk or Senior clerk in Regional Office cadre shall be considered from amongst the Junior Clerks of Regional Office Cadre and that of Circle Office Cadre from amongst the Junior Clerks of Circle Office Cadre).
13	Junior Clerk (BPS-7)	(a) Secondary School Certificate from a recognized Board; and (b) A speed of 30 words per minute in English typing.	18 to 30 years	(a) Sixty Seven percent by initial recruitment, and  (b) Thirty three percent by promotion, from amongst the Daftaries, Record Lifters, Naib Qasids, Chowkidars and other equivalent posts who have Secondary School Certificate and are under 45 years of age and have at least two years service as such in the respective Regional and Circle Office Cadre  Note For the purpose of promotion, there shall be maintained a joint seniority list of Daftaries, Record Lifters, Naib Qasids, Chowkidars with reference to the date of regular appointment to the post or that of acquiring the Secondary school certificate which ever is later, provided that if two dates are the same, the person older in age or having longer service, whichever is more beneficial to him, shall rank senior.
PART-III COMPUTER ESTABLISHMENT.				
14	Data Processing Supervisor (BPS-14)	Bachelor's Degree from a recognized University with 03 years Diploma in Computer Science, from recognize institute.	16 to 30 years	(a). Twenty five percent by initial recruitment; and (b). Seventy five percent by promotion, on the basis of seniority cum fitness, from amongst the Data Entry Operators and Key Punch Operators with five years service as such.

To

ANNEX D  
15  
The Secretary to Govt of Khyber Pakhtunkhwa,  
Irrigation Department, Peshawar.



Through:

Proper Channel.

SUBJECT:

REQUEST FOR RETAINING THE SHARE QUOTA RESERVED FOR DIRECT GRADUATE/IN-SERVICE GRADUATE SUB-ENGINEERS i.e. 10% 10% QUOTA IN PROPOSED AMENDMENT IN THE RECRUITMENT RULES.

Dear Sir,

It is with due remuneration submitted that after due consideration by the Administrative Department, certain amendments in the recruitment rules of Assistant Engineers BS-17 of Irrigation Department were made in 1989 after fulfillment all codal formalities and on the recommendations of Standing Service Rules Committee the following method of recruitment for the post of Assistant Engineer was approved:

- Inservice*
- Prom*
- Sixty five percent (65%) of the total posts by initial recruitment ;
  - Ten percent (10%) of the total posts by promotion, on the basis of seniority cum fitness, from amongst the Sub Engineer possessing diploma at the time of their induction into service but required degree in engineering during service;
  - Ten percent (10%) of the total posts by promotion, on the basis of seniority cum fitness, from amongst the Sub Engineer who joined service as Degree Holders in Engineering ; and
  - Fifteen percent (15%) of the total posts by selection on merit, with due regard to seniority, from amongst the officiating Assistant Engineers/ Senior Scale Sub Engineer, who hold a diploma in Engineering and have passed Departmental Examination;

We the direct /In-Service Graduate Sub-Engineers having more than 20 years service are waiting for promotion since decades; Now it has been learnt that the department is amending the recruitment rules for the post of Assistant Engineer by reducing the reserved quota in respect of Direct/In-Service Graduate Sub-Engineers as per the following share quota:-

- 8*
- Sixty five percent (65%) of the total posts by initial recruitment
  - Ten percent (10%) of the total posts by promotion, on the basis of seniority cum fitness, from amongst the Sub Engineer possessing diploma at the time of their induction into service and acquired degree in Civil/Mechanical Engineering during service;
  - Five percent (5%) of the total posts by promotion, on the basis of seniority cum fitness, from amongst the Sub Engineer who joined service as Degree Holders in Civil/Mechanical Engineering, and
  - Twenty percent (20%) of the total posts by selection on merit, with due regard to seniority, from amongst the Sub Engineer, who hold a diploma in Civil/Mechanical Engineering and have passed Departmental Examination;

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12/15/17

It would not be out of place to mention here that after amendment in 1999 in recruitment rules and reserving 10% quota for Direct Graduate Sub-Engineers and 10% quota for In-Service Graduate Sub-Engineers, 12 No Sub-Engineers have been promoted as Sub-Division Officers on regular basis in the share quota of Direct Graduate Sub-Engineers and 7 Nos. In-Service Graduate Sub-Engineer have been promoted as Sub-Divisional Officers on regular basis in share quota of In-Service Graduate Sub-Engineers whereas 6 No. Direct Graduate Sub-Engineers have been posted as Sub-Divisional Officers in their own pay and scale in their share quota and 1 No. In-Service Graduate has been posted in his own pay and scale in share quota of In Service Graduate Sub-Engineers.

From perusal of the above it is crystal clear that if proposed amendment is approved for the service rules, the Direct Graduate Sub-Engineers will be deprived from their due right of promotion which will be great injustice with Direct Graduate Sub-Engineers, therefore, are requesting the Administrative Department to re-consider the proposed amendments in the recruitment rules of Assistant Engineers.

It is further added that in case of not consideration of genuine request of Direct Graduate Sub-Engineers, there would be no option left for us except to knock the door of court of law and in that case all the litigation expenses will lie upon the Administrative Department.

Yours Faithfully,

In-Service Graduate Sub-Engineer working as SDO in OPS.

1. Faisal Maula

Direct Graduate Sub-Engineers working as SDOs in OPS.

1. Shaukat Badshah
2. Fazl Subhan
3. Baqar
- 4.
- 5.
- 6.

12 - Pre serv  
 7 - In serv  
 6 - OPS (Pre serv)  
 1 - OPS (In serv)

14.07.2010

Copy in advance is forwarded to:

1. Chief Minister, Khyber Pakhtunkhwa, Peshawar.
2. The Registrar Khyber Pakhtunkhwa Service Tribunal, Peshawar.
3. The Registrar Peshawar High Court Peshawar.
4. The Chairman, Khyber Pakhtunkhwa Public Service Commission, Peshawar.

(5) [Chief Engr. (O & M) Peshawar  
Litigation Dept]


ESTED  
15/7



17  
Joint No. 1420  
28/12/94

The secretary irrigation  
Khyber pukhtun khwa irrigation department  
peshawar

*Amir E*

*Amir E*  


subject:- APPEAL FOR ENHANCEMENT OF SHARE QUOTA FOR PROMOTION OF DIRECT GRADUATE SUB ENGINEER IN IRRIGATION DEPARTMENT

Sir, It is submissively stated that the post of sub engineers BS-11 in irrigation department was regulated under S.No 5 of schedule to the NWFP irrigation and PHE department (Recruitment and Appointment) rules 1979 (Annex; i) under which the following share quota of different categories of sub engineers was provided:-

- (i) 70% by initial recruitment
- (ii) 10% for promotion of graduate sub engineers
- (iii) 20% for promotion of senior scale BS-16 sub engineers.

(1) Under the above mentioned rules separate seniority lists of civil/Mechanical sub engineers (Graduate/diploma holders) was maintained and as such the promotion of civil/mechanical were considered as the case may be. At the passage of time the mechanical graduate sub engineers BS-11 requested to combined the seniority list of civil/mechanical (Graduate) sub engineers which were accepted to the detriment of civil graduate sub engineers vide No 23150/IB/A/3-E(iii) dated pesh; 29/8/1991. (Annex; II). Against which appeal were preferred. The same were neither replied nor considered and promotion case of senior graduate sub engineer (Mechanical) was considered and notified vide No SO(E) I&PHE/4-6/73/126-30 Dated 01/01/1994 (Annex; III). It is pertinent to mention that total 9NO sanction post of assistant engineer (Mechanical) are in the irrigation department out of which they have promoted 5NO mechanical graduate sub engineer up till now. while there share quota is becoming 1NO as per above rules.

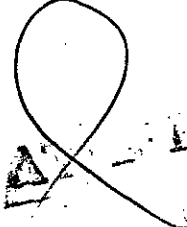
(2) Subsequently on the request of in service graduate sub engineers 10% share quota were bifurcated vide notification No SO(E)PHE/6-12/94 dated 30/5/1994 (Annex; IV) as under

- (i) 5% for in-service graduate sub engineer
- (ii) 5% for pre-service graduate sub engineer

(3) The above bifurcation subsequently again reconsidered vide notification No SO(E)IRRI/23-5/ Dated 27/02/1999 (Annex; V) as under and promotion case of in-service graduate sub engineers who were too junior than pre-service graduate sub engineers were considered vide notification No SO(E)IRRI/4-3/91 Dated Peshawar 13/08/1999 (Annex; vi)

- (i) 10% for in-service graduate sub engineer
- (ii) 10% for pre-service graduate sub engineer

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(4) Now another notification no SO(E) IRR/23-5/73 dated 17/02/2011 (Annex vii) the 10% share quota for pre-service graduate sub engineers has been reduced to 5% which added insult to injury. Although your good self has been approached against the said expected notification but it all in vain.

(5) We the pre-service graduate sub engineers acquired degree from different universities in civil technology and joined the department after proper competitive examination through public service commission and rendered about 15 to 21 year service to the entire Satisfaction of our high ups but we are deprived from our legal right of promotion as narrated below

a) By maintaining joint seniority list of civil/mechanical graduate sub engineers

b) BY bifurcation of 10% share quota for in-service/pre-service graduate sub engineers

c) BY reducing the share quota of promotion from 10% to 5%

(6) BY doing so the benefit of promotion was snatched from the undersign and granted to mechanical and in-service graduate sub engineers. At the moment 11 (eleven) graduate sub engineers (pre-service) and one in-service graduate sub engineer is working in the department but the SSRC while considering the service rules have reduced the share quota of 10% of pre-service graduate sub engineers to 5% (11 person) and left 10% share quota for in-service graduate sub engineer remained the same (1 person) and enhanced the share quota of diploma holders from 15% to 20% which is lower in qualification. The action of the department is therefore seems to be favoritism to the mechanical/ in-service graduate sub engineers and nepotism to the pre-service graduate sub engineers and as well as favoritism to the diploma holders sub engineers which is against the spirit of law and justice.

In view of the foregoing reason and position as explained above, it is humbly prayed that the issue may kindly be re-considered and enhance share quota of promotion from existing to 30% so as to compensate the applicants against the past injustices committed against them. It is also worthy to mention that presently seven out of eleven (pre-service) graduate sub engineers are working as assistant engineer in their own pay scale at different position in the department.

(1) Pr Shaukat Badshah

(2) R Ruhul Amin

(3) H Asif Khan

(4) B Bakhtiar

(5) S Saeed

(6) M Faridulhaq

Your: obediently

~~ACCEPTED~~

(11)

OFFICE OF THE CHIEF ENGINEER (O&M) WING  
IRRIGATION DEPARTMENT KHYBER PAKHTUNKHWA PESHAWAR

Phone No. 091-9212114 Fax No. 091-9212652

No. 8236 /IB/3-E

Dated Peshawar the 7/04/2011

The Secretary to Govt: of  
Khyber Pakhtunkhwa  
Irrigation Deptt: Peshawar.

Subject: -

APPEAL FOR ENHANCEMENT OF SHARE QUOTA FOR PROMOTION OF  
DIRECT GRADUATE SUB ENGINEER IN IRRIGATION DEPARTMENT

Reference: - Your office letter No.SO(E)/IRR/23-5/73-Service Rules Dated 19/03/2011.

It is clarified that the post of Sub Divisional Officer, BS-17 was regulated under S.No.4 of schedule to the NWFP Irrigation & PHE Deptt: (Recruitment & appointment) Rules 1979 (Annexure-I) whereby 70% quota for initial recruitment, 10% quota for graduate Sub Engineer and 20% quota for promotion of Diploma holders was provided. But the rules ibid were amended time and again and the share quota of graduate was increased/decreased and bifurcated as well and as such the junior in service graduate Engineers and Mechanical Sub Engineers were promoted. In the rules notified vide notification No.SO(E)/IRR/23-5/73 dated 17/2/20011 (Annexure-I) once again the share quota of pre-service graduates Sub Engineers has been reduced to 5%.

It is further clarified that Civil/Mechanical Engineers are two separate/different cadres who having separate courses at university levels. The Mechanical Engineers have no knowledge of civil works. Moreover separate requisition for induction of Civil/Mechanical Engineers is being made to the Khyber Pakhtunkhwa Public Service Commission. In light of which the Mechanical Engineers can not apply to civil job and civil to mechanical job. Besides the Mechanical Engineers are exempted from professional papers of Department Professional Examination being conducted under Para 29 of the PWD Code.

In this connection the Resolution passed in 2<sup>nd</sup> Annual General Body meeting of Pakistan Engineering Council contained in Additional Registrar No.PEC/CPD/AGM/2010, dated 15-11-2010 received vide Secretary Irrigation letter NO. SO(Dev.)IRR/2-30/2010, dated 13-12-2010 is referred. In light of which joint posting of Civil/Mechanical Engineers is against the policy and in violation of Govt: of Khyber Pakhtunkhwa PHE Department circular letter No.SO(Estab.)PHED/1-9/09, dated 12-05-2010. (Copy enclosed).

In this regard joint appeal preferred by the Civil Engineer (Copy enclosed) is also referred.

In view of the above, it is recommended to accept the appeal so that proper case is presented to the Standing Service Rules Committee please.

Draft Working Papers are enclosed for perusal/approval please.

Encl: As above

CHIEF ENGINEER

6/9/11

**APPROVED**

13

16



**GOVERNMENT OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT**

*ANNEX H'*

21

Dated Peshawar 13<sup>th</sup> Dec, 2011.

**NOTIFICATION**

2854-69

NO. SO(E)/IRR/14-5/2011 Vol-II / Consequent upon the recommendations of the Departmental Promotion Committee, the Competent Authority is pleased to appoint the following Sub Engineers to the posts of Assistant Engineers / Sub Divisional Officers (BS-17) of Irrigation Department on acting charge basis with immediate effect: -

- i. Mr. Muhammad Sadiq
- ii. Mr. Muhammad Parwiz
- iii. Mr. Farid Gul
- iv. Mr. Abdur Rahim
- v. Mr. Shabaz Khan
- vi. Mr. Muhammad Akhtar Jan
- vii. Mr. Inayatullah Jan
- viii. Mr. Fatihullah
- ix. Mr. Riaz Muhammad
- x. Mr. Waqar Shah
- xi. Mr. Musharaf Shah
- xii. Mr. Fazli Subhan
- xiii. Mr. Roohul Amin
- xiv. Mr. Shoukat Badshah ✓
- xv. Mr. Saeedullah ✓
- xvi. Mr. Bakhtiar
- xvii. Mr. Farid Ullah
- xviii. Mr. Asif Khan ✓

*not mentioned till arrival nominees of PSC*

*2-E*

*PK-3  
PK-2  
PK No. 1*

2- Upon their appointment on acting charge basis as Assistant Engineers / Sub Divisional Officers (BS-17), the competent authority is further pleased to order the transfers / postings of the following officers of Irrigation Department with immediate effect, in the public interest: -

Sr. No.	Name of Officer	From	To	Remarks
1	Mr. Muhammad Sadiq	Sub Engineer, Irrigation Sub Division Kohistan	Sub Divisional Officer, Hydrology Abbottabad	Relieving Mr. Abdur Rahim, SDO Irrigation Sub Division, Abbottabad from additional charge of the post.
2	Mr. Muhammad Parwiz	Sub Engineer, Chitral Irrigation Sub Divn. Timergara	Sub Divisional Officer, Irrigation Sub Div: Chitral	Vice at Sr. No. 19
3	Mr. Farid Gul	Assistant Engineer (OPS), Leave Reserve Post in Peshawar Canal Divn.	Assistant Engineer, Leave Reserve Post in Peshawar Canal Divn.	The officer will continue to perform the duties of AD-IV, FDRD.

*AD-II*

14 **TESTED**

4	Mr. Abdur Rahim	Sub Divisional Officer (OPS), Irr: Sub Divn: Abbottabad	Sub Divisional Officer, Irr: Sub Divn: Abbottabad	The officer will continue to perform his duties against his existing posting.
5	Mr. Shabaz Khan	Sub Divisional Officer (OPS), Flood Sub Divn: No. 2, Flood Divn: Peshawar	Sub Divisional Officer, Flood Sub Divn: No. 2, Flood Divn: Peshawar	The officer will continue to perform his duties against his existing posting.
6	Mr. Muhammad Akhtar Jan	Sub Divisional Officer (OPS), Mech: Irr: Sub Divn: D. I. Khan	Sub Divisional Officer, Mech: Irr: Sub Divn: D. I. Khan	The officer will continue to perform his duties against his existing posting.
7	Mr. Inayatullah Jan	Sub Engineer, Tube Well Irr: Divn: Peshawar	Sub Divisional Officer, Mech: Irr: Sub Divn: Mardan	Relieving SDO Workshop Sub Divn: Peshawar from looking after duties of the post.
8	Mr. Fatihullah	Sub Divisional Officer (OPS), Hydrology Irr: Sub Divn: Bannu	Sub Divisional Officer, Hydrology Irr: Sub Divn: Bannu	The officer will continue to perform his duties against his existing posting.
9	Mr. Muhammad Riaz	Sub Engineer, Warsa Canal Irr: Divn: Peshawar	Assistant Director, Office of the P. D. Rehabilitation of Irr: System, Pesh.	Against the vacant post.
10	Mr. Waqar Shah	Sub Engineer, Flood & Drainage Divn: Peshawar	Assistant Director, Office of the P. D. Rehabilitation of Irr: System, Pesh.	Relieving Miss. Tabinda Nosheen, AD (Rehab.) from looking after charge of the post.
11	Mr. Musharaf Shah	Sub Engineer, Mkd: Irr: Div: Mkd.	Assistant Director (Design), Office of the Chief Engineer (South), Irrigation Department.	Vice at Sr. No. 22
12	Mr. Fazli Subhan	Sub Divisional Officer (OPS), Tube Well Irr: Sub Divn: Pabbi	Sub Divisional Officer, Tube Well Irr: Sub Divn: Pabbi	The officer will continue to perform his duties against his existing posting.
13	Mr. Raqul Amin	Sub Divisional Officer (OPS), Irr: Sub Divn: Gohari, Swabi	Sub Divisional Officer, Irr: Sub Divn: Gohari, Swabi	The officer will continue to perform his duties against his existing posting.
14	Mr. Shoukat Badshah	Assistant Director (OPS), Bazai Irr: Project Mardan	Assistant Director, Bazai Irr: Project Mardan	The officer will continue to perform his duties against his existing posting.
15	Mr. Saeedullah	Sub Engineer, Irr: Sub Divn: Civil Canal: Bannu	Sub Divisional Officer, Irr: Sub Divn: Shangla	Relieving SDO, Irr: Sub Divn: Swat from additional charge of the post.
16	Mr. Bakhtiar	Sub Divisional Officer (OPS), Swat Irr: Sub Divn: Swat	Sub Divisional Officer, Swat Irr: Sub Divn: Swat	The officer will continue to perform his duties against his existing posting.
17	Mr. Farid Ullah	Sub Divisional Officer (OPS), Jani Khel Irr: Sub Divn: Bannu	Sub Divisional Officer, Jani Khel Irr: Sub Divn: Bannu	The officer will continue to perform his duties against his existing posting.

Bazai

18	Mr. Asif Khan	Sub Divisional Officer (OPS), Shahbz Ghari Irr: Sub Divn: Swabi	Sub-Divisional Officer, Shahbz Ghari Irr: Sub Divn: Swabi	The officer will continue to perform his duties against his existing posting.
19	Mr. Faiz ur Rehman	Sub Divisional Officer, Irr: Sub Divn: Chitral	Assistant Director (Design), Office of the Chief Engineer (South)	Against the vacant post.
20	Mr. Muhammad Idrees	Asstt. Director (Rehabilitation)	Assistant Engineer (leave reserve) Office of the Chief Engineer (South)	The officer will continue to perform his duties as Assistant Director-V, FDRD
21	Mr. Wasim Malik	Sub Divisional Officer, Hydrology Abbottabad	Assistant Engineer (leave reserve) attached with Dy: Director (Plg) O/O Chief Engineer (North)	The officer will continue to perform his duties as Dy: Project Director-II, FDRD.
22	Mr. Hazrat Hassan	Assistant Director (Design), Office of the Chief Engineer (South), Irrigation Department.	Sub Divisional Officer, Hydrology Irr: Sub Divn: Pesh	Against the vacant post.

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT

Encl: No. & date as above.

Copy of the above is forwarded to:

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Chief Engineer (South), Irrigation Department, Peshawar.
3. The Chief Engineer (North), Irrigation Department, Peshawar.
4. The Director General, Small Dams Organization, Peshawar.
5. The Director General, Flood Damages Restoration, Khyber Pakhtunkhwa, Peshawar.
6. The Project Director Baizai Irrigation Project, Mardan.
7. The Project Director, Rehabilitation of Irrigation System, Peshawar.
8. All Superintending Engineers of Irrigation Department.
9. All the Districts Accounts Officer, in Khyber Pakhtunkhwa.
10. The Manager, Govt. Stationery & Printing Department, Peshawar.
11. PS to Minister for Irrigation Khyber Pakhtunkhwa, Peshawar.
12. PS to Chief Secretary, Khyber Pakhtunkhwa.
13. PS to Secretary, Establishment & Administration Department.
14. PS to Secretary, Irrigation Department, Peshawar.
15. Officer concerned.
16. Personal File.
17. Master File.

**ATTESTED**

*Misai Khan*  
(MISAI KHAN)  
Section Officer (Establishment)

16

**KHYBER PAKHTUNKHWA**

Published by Authority

PESHAWAR, MONDAY, 25TH JUNE, 2012.

**GOVERNMENT OF KHYBER PAKHTUNKHWA,**  
**IRRIGATION DEPARTMENT.****NOTIFICATION**Dated: 25<sup>th</sup> 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:

"(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 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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.**



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GOVERNMENT OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT

Dated Peshawar 22/05/2010

**NOTIFICATION**  
SOE/IRRI/23-5/2010-11 in pursuance of the provisions contained in

Section 4 of the Khyber Pakhtunkhwa Civil Servants (Appointment and Promotion) Rules, 1989. The Irrigation Department, Civil Engineering Department and the Finance Department have decided that the promotion of Sub-Inspisors to the grade of Assistant Engineer will be made on the basis of the following conditions:

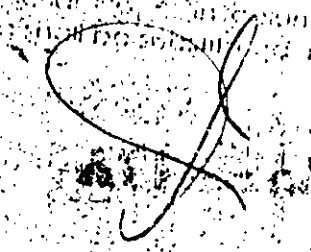
**AMENDMENTS**

1. Serial No. 4 in column No. 5 for the existing entries (a) to (e) following shall be respectively substituted, amended or deleted by:

- (a) Twelve persons by promotion on the basis of seniority amongst the Sub-Inspisors, having degrees in Civil Engineering or Engineering from a recognized university and having experience in the grade of Sub-Inspisor with two year service on such grade.
- (b) For the purpose of clause (a) a joint seniority list of the holders of Degree in Civil Engineering or Mechanical Engineering shall be maintained and their seniority shall be determined from the date of appointment to Sub-Inspisor.
- (c) The promotion of grade 5 and 6 shall be made on the basis of promotion amongst the Sub-Inspisors, having Degree in Civil Engineering or Mechanical Engineering from a recognized university and having experience in the grade of Sub-Inspisor with two year service on such grade.
- (d) For the purpose of clause (c) a seniority list of Sub-Inspisors shall be maintained and their seniority shall be determined from the date of their appointment as Sub-Inspisors.
- (e) Promotion of Sub-Inspisors who hold a Diploma of Associate Mechanical or Electrical Engineering, Auto Technology, Civil Engineering or Degree in any other branch of Engineering shall be made on the basis of a seniority list of Sub-Inspisors who hold a Diploma of Associate Mechanical or Electrical Engineering, Auto Technology, Civil Engineering or Degree in any other branch of Engineering with two year service on such grade.

2. For the purpose of clause (a) a seniority list of Sub-Inspisors shall be maintained and their seniority shall be determined from the date of their appointment as Sub-Inspisors.

3. For the purpose of clause (c) a seniority list of Sub-Inspisors shall be maintained and their seniority shall be determined from the date of their appointment as Sub-Inspisors.

 18

To

Chief Secretary  
Khyber Pakhtun Khwa  
Peshawar

*20-7-2012*  
**ISSUE BRANCH**  
CHIEF SECRETARY  
Govt. of Khyber Pakhtunkhwa  
Peshawar

*Still pending*

*26*

*ANNEX I*

Subject:

**APPEAL AGAINST SERVICE RULES NOTIFIED ON 25/06/2012 & PROMOTION OF GRADUATE SUB ENGINEERS IN IRRIGATION DEPARTMENT**

Sir,

It is humbly stated that according to Recruitment & Appointment Rules 1979 NWF P Irrigation & PHE 10 % Share Quota were provided to graduate Sub Engineers. But after ward the Service Rules are constantly changed to favour some individuals Resultantly pre service graduate Sub Engineer deprived from promotion detail of which as under.

- (1) In 1991 the Mechanical graduate Sub Engineers Requested to combine the seniority list of civil / Mechanical graduate Sub Engineers which were accepted and the promotion case of Senior graduate Sub Engineer (Mechanical) were considered total sanction post of BPS-17 (Mechanical) were 06 no while 05 no Sub Engineer promote so far.
- (2) In 1994 on the Request of in Service graduate Sub Engineer 10 % share Quota were bifurcated.
- (3) In 1999 the above bifurcation were Reconsidered & increased the share Quota 10 % for each category due to which 7 no in service graduate Sub Engineer promoted.
- (4) In 17/06/2011 the Service Rules are changed and share Quota of pre service graduate Sub Engineers reduced from 10% to 5 % (for 11 person), while in service graduate Sub Engineer remained the same i.e 10 % (for one person) and increased the Quota of diploma holder from 15% to 20 % against which appeal were preferred.
- (5) On 25/06/2012 another amendment /change in the service Rules were notified brief of which as under.
  - a) 12 % share Quota for in service/ pre service graduate Sub Engineers who have passed Grad B & A examination with joint seniority list shall be maintained.
  - b) Share Quota of diploma holders reduced from 20 % to 15 %.
  - c) 8 % share Quota are provided to B-tech (Hons) for the first time on their request on the basis of ambiguous / time bart decision copies of high court / supreme court and which is the prime theme of this amendments.
- (6) Initial recruitment is 65 % one no was shortfall in this Quota while the deptt; recruited 13 no Assistant Engineers (12 no extra from its due share)

*9 filed w.p  
for recognizing it*

*19*  
**APPROVED**

27



In view of above fact it is requested to with draw the condition of Grade B & A examination because we are professional Engineer and the service Rules Changes / amendment cited above no one have this condition before, it is a new Barrier put across in our promotion. Total Post of Assistant Engineers is 76 in Irrigation Department and 9 no post becoming to graduate sub-engineer according 12% share Quota. it is requested to promote 9 no graduate sub engineer into the post of Assistant Engineers EPS-17 immediately please.

Your's Faithfully

- 1- Shoukat Badsha
- 2- Bakhtiar Bakhter
- 3- Asif Khan

$76 \times \frac{12}{100} = 9.12$   
 out of 76 posts total  
 09 fall within quota of  
 Graduate and (under name  
 people need promote

REQUESTED

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IN THE PESHAWAR HIGH COURT PESHAWAR

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WRIT PETITION No. 3388/P/2012

- 1. Mr. Asif Khan,  
Sub Divisional Officer (Irrigation)  
Shahbaz Garhi, Mardan.
- 2. Mr. Shaukat Bacha,  
Assistant Director,  
Baizi Irrigation Project, Mardan.
- 3. Mr. Bakhtiar,  
Sub Divisional Officer (Irrigation)  
Sub Division Swat at Gul Kada..... Petitioners

ANNEX K

Versus

- 1. The Govt. of Khyber Pakhtunkhwa  
through Chief Secretary,  
Civil Secretariat, Peshawar.
- 2. The Secretary,  
Govt. of Khyber Pakhtunkhwa,  
Irrigation Department,  
Civil Secretariat, Peshawar.
- 3. The Chief Engineer (North)  
Irrigation Department,  
Warsak Road, Kababiyah, Peshawar
- 4. The Chief Engineer (South)  
Irrigation Department,  
Warsak Road, Kababiyah,  
Peshawar ..... Respondents

*As per court order dt. 28/12/12  
the following have been impleaded  
in the panel of respondents*

- ⑤ Amanullah, Sub Divisional Officer  
(OPS) Swat Irrigation Division, Swat
- ⑥ Niaz Badshah, Sub Divisional Officer  
(OPS) Flood Division Warsak Road Peshawar
- ⑦ Saifullah, Sub Divisional Officer  
(OPS) Kabal River Kanal Warsak  
Road, Peshawar.

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

Respectfully Sheweth,

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~~ARRESTED~~

FILED IN...  
21 DEC 2012

Facts giving rise to the present writ petition are as under:-

1. That Petitioners joined the Irrigation Department as Pre-service Graduate Sub-Engineers (BPS-11) on 20.05.1995, 18.12.1990 and 22.03.1992 and at the moment have got about more than 17, 22 and 20 years unblemished and outstanding service record at their credit. (Seniority List *Annex:-A*).
2. That as per the previous service rules of the Irrigation Department notified in the year 1979 as further amended vide Notification dated 27.02.1999 (*Annex:-B*), the posts of Sub-Divisional Officers/Assistant Directors/Assistant Engineers (BPS-17) were to be filled in as follows:

- “(a) Sixty percent of the total posts by initial recruitment;*
- (b) Ten percent of the total posts by promotion, on the basis of seniority-cum-fitness from amongst the Sub Engineers possessing Diploma at the time of their induction into service but acquired degree in Engineering during service;*
- (c) Ten percent of the total posts by promotion, on the basis of seniority-cum-fitness from amongst the Sub Engineers who joined service as Degree holders in Engineering; and*
- (d) fifteen percent of the total posts by selection on merit with due regard to seniority, from amongst the officiating Assistant Engineers/Senior Scale Sub-Engineers who hold a diploma in Engineering and have passed departmental examination.”*

The rules *ibid*, were again amended vide Notification dated 17.02.2011 (*Annex:-C*) relevant portion of which provided as follows:

(22)

**ADMITTED**

1	2	3	4	5
4.	Assistant Engineer/ Sub Divisional Officer/ Assistant Director (BPS-17).	BE/BSc Degree in Civil/ Mechanical Engineering from a recognized University.	21 to 32 Years	<p>a. Sixty five percent by initial recruitment;</p> <p>b. ten percent by promotion, on the basis of seniority cum fitness from amongst the Sub Engineers who has acquired during service degree in Civil or Mechanical Engineering from a recognize University.</p> <p>c. five percent by promotion, on the basis of seniority cum fitness, from amongst the Sub Engineers who joined service as degree holders in Civil/Mechanical Engineering and</p> <p>d. twenty percent by promotion, on the basis of seniority cum fitness from amongst the Sub Engineers who hold a diploma of Civil, Mechanical, Electrical or Auto Technology and have passed Departmental Grade A examination with ten years service as such.</p> <p>Note:- Provided that where candidate under Clause (b) &amp; (c) above is not available for promotion, the vacancy shall be filled in by initial recruitment.</p>

Before framing of rules *ibid*, Petitioners have submitted a departmental Representation on 14.07.2010 (*Annex:-D*) to the competent authority thereby bringing the grievances of Petitioners in his notice and requesting for not reducing the quota of Petitioners but their request bore no fruitful result and consequently the rules *ibid* were further amended and thereby abridging the quota of direct graduate Sub-Engineers/Pre-Service Graduate Sub-Engineers, therefore, again a combined Representation/appeal on 28.02.2011 (*Annex:-E*) was filed before the competent authority, which was processed as would be evident from the letter dated 19.03.2011 (*Annex:-*

FILED TODAY

Deputy Registrar

01 DEC 2012

23

ATTENDED

F) wherein a detailed Working Paper for consideration before holding SSRC meeting was called from the Chief Engineer (O&M) who vide his letter dated 07.04.2011 (*Annex:-G*) clarified the position but then the matter could not move ahead.

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3. That during this period meeting of the Departmental Promotion Committee was held wherein Petitioners being eligible as well as seniors, were duly recommended for promotion to the next higher grade and accordingly they were promoted vide Notification dated 13.12.2011 (*Annex:-H*) to the posts of Assistant Engineers/Sub-Divisional Officers (BPS-17) but on acting charge basis instead of regular basis and on such promotion were posted at the positions mentioned in the titled of the petition.
4. That once again the rules *ibid*, were subjected to another amendment vide Notification dated 25.06.2012 (*Annex:-I*). Relevant portion of the amendment is reproduced as follows;-

1	2	3	4	5
4.	Assistant Engineer/ Sub Divisional Officer/ Assistant Director (BPS-17).	BE/BSc Degree in Civil/ Mechanical Engineering from a recognized University.	21 to 32 Years	<p>a. Sixty five percent by initial recruitment;</p> <p>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 recognize University and have passed the Departmental grade B and A Examination with five years service as such.</p> <p><u>Note.</u> For the purpose of Clause (b) a joint seniority list of the Sub-Engineers having Degrees in Civil Engineering or Mechanical</p>

**ATTESTED**

FILED TODAY  
Deputy Registrar  
01 DEC 2012

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Engineering shall be maintained and their seniority is to be reckoned from the date of their 1st appointment as Sub-Engineer.

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c. Eight percent by promotion, on the basis of seniority cum fitness, from amongst the Sub Engineers having degree in B.Tech (Honrs) and having passed Departmental Grade B and A Examination with five years service as such; and

Note. For the purpose for Clause (C) a seniority list of Sub-Engineers having degree in B.Tech (Honrs) 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, Civil, Mechanical, Electrical or Auto Technology and have passed Departmental Grade B and A examinations 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.

Thus the quota of Pre-Service and post-service Graduate Sub-Engineers was reduced from 15% to 12% thereby adversely affecting their rights, therefore, Petitioners again preferred a

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**ATTESTED**



departmental Representation (*Annex:-J*) before the Respondent No.1 against the Notification dated 25.06.2012 but the same is still lying pending.

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5. That now Respondents have initiated the process of promotion of others to the next higher grade but to the misfortune of Petitioners have unlawfully ignored the cases of Petitioners on the false pretext of the newly promulgated Rules albeit the same cannot adversely affect the vested rights of Petitioners inas much as they being seniors and eligible for promotion to the next higher grades were promoted alongwith others to the post of Assistant Engineer/Sub-Divisional Officer (BPS-17) on the recommendation of properly constituted Departmental Promotion Committee on 13.12.2011 much before the promulgation of the those rules on 25.06.2012 but on acting charge basis instead of regular basis and since then have been serving as such.
6. That being aggrieved of the acts and actions of Respondents, Petitioners having no other adequate and efficacious remedy, file this constitutional petition inter-alia on the following grounds:-

**Grounds:**

- A. That Respondents have not treated Petitioners in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully ignored the Petitioners for regular promotion to the next higher grade, which is unjust, unfair and hence not sustainable in the eye of law.

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Deputy Registrar  
01 DEC 2012

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ATTESTED

- 34
- B. That Petitioners were granted promotion to next higher grade in view their long standing seniority, eligibility and fitness for promotion after observing all codal formalities including due consideration by properly constituted Departmental Promotion committee but instead of regular promotion they were promoted on acting charge basis, therefore now they cannot be denied the benefit of regular promotion on misplaced excuses including the framing of the new Rules.
- C. That the right of promotion which accrued to Petitioners due to their long previous service cannot be denied on the ground of adopting new Rules because notifications impairing existing rights cannot be read into retrospect so as to adversely affect the available vested rights of the incumbents. Viewed from this angle the denial on the part of the Respondents to promote Petitioners to the next higher grade on regular basis is unwarranted, arbitrary and not sustainable.
- D. That the Petitioners have put considerable long-prime time of their precious lives in the service of the Department with a hope that they would once grab the chance of promotion to the next higher grade and after long wait when the time has ripened to reap the fruit, the Respondents have started creating needless bottlenecks and attempting to deprive them of their due rights which has resulted in serious miscarriage of justice.
- E. That Petitioners have been holding the posts of Assistant Engineers BPS-17 since 13.12.2011 for almost a year and have performed up-to-the-mark

FILED TODAY  
01 DEC 2012

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ATTESTED

till date and now they cannot be deprived of the same under the principle of locus Poenitentiae and for that matter the principle of promissory estoppel.

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For the aforesaid reasons, it is therefore, humbly prayed that on acceptance of this writ petition, this Hon'ble Court may graciously be pleased to declare the acts and actions of the Respondents and their refusal to promote Petitioners to the next higher grade on regular basis as without lawful authority and hence of no legal effect and this August Court may further be pleased to direct the Respondents to act in the matter in accordance with law and to allow regular promotion to Petitioners to the posts of Assistant Engineers BPS-17 with effect from the due date with all consequential back benefits.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to Petitioners.

### Interim relief

By way of interim relief, the Respondents may graciously be restrained from processing the promotion cases to the posts of Assistant Engineers (BPS-17) and further not to change the present nature of services of Petitioners till the final disposal of the instant writ petition.

Through

Petitioners

Khaleq Rahman  
Advocate, Peshawar.

Dated: 1 / 11 / 2012

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ATTESTED

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.

Writ Petition No. 3388-P/2012

Asif Khan, Sub Divisional Officer, Irrigation & others

(Petitioners)

VERSUS

Govt. of Khyber Pakhtunkhwa,  
& others

(Respondents)

Subject:- JOINT PARAWISE COMMENTS IN W.P. NO. 3388-P/2012 FILED BY ASIF KHAN, SUB DIVISIONAL OFFICER & OTHERS V/S GOVT. OF KHYBER PAKHTUNKHWA AND OTHERS

Respectfully Sheweth:

Preliminary objections

- i. That the petition of the petitioner is in-competent, without cause of action and locus standi.
- ii. That respondents have no enmity with any class/category/cadre and the rules in question have been framed for betterment of the department/petitioners.
- iii. That the subject matter has already been decided by the Honourable Peshawar High Court Peshawar as well as Service Tribunal.
- iv. That amendments in the rules cannot be claimed as a vested right.
- v. That it is a service matter and the jurisdiction of this honourable court is barred by Article 212 of the Constitution of the Republic of Pakistan 1973.
- vi. That the petitioners were appointed on Acting Charge basis which is clear from the appointment order dated 13.12.2011 and not promoted to the BPS-17 on regular basis.
- vii. That acting charge basis appointment creates no right of regular promotion of the petitioners as settled by the higher courts as a question of law.
- viii. That they are estopped by their acts of accepting appointments as Assistant Engineers on Acting Charge Basis.
- ix. That the Writ Petition is too late because they were appointed on 13.12.2011 on Acting Charge Basis if they were aggrieved by the order of acting charge basis appointments why they did not challenge it before the competent forum at proper time.
- x. That there is mis-joinder and non-joinder of necessary parties.

ON FACTS

- 1) That Para- 1 is admitted to the fact that the petitioners have joined the department as a Pre Service Graduate Sub Engineers on their respective dates.

(29)

ATTESTED

2) That Para 2 is not fully correct. They have concealed material facts from the august court regarding their own share of quota in the rules. The rules were framed and amended from time to time by the competent authority at competent forum for the betterment of the department as well as their incumbents of all categories with due regard to the seniority cum-fitness and suitability for the posts, keeping in view the strength of each category of Sub Engineers to the posts of Assistant Engineers in the department. So far the representation of the petitioners is concerned, the same was considered by the competent forum by providing 12% quota to the graduate Sub Engineers!

in correct

15)

3) In correct. They were not promoted to the post of Assistant Engineers but have been appointed on acting charge basis vide notification dated 13<sup>th</sup> Dec. 2011 (Annex-A) against the posts vacated due to posting of regular Assistant Engineers against the project/ex-cadre posts of Assistant Engineers, which are temporary and is a stop gap arrangements to run the affairs of department and provide incentive to the incumbents of the department for their betterments. The petitioners have their own category of graduate Sub Engineers holding B. Sc Engineering in their own share of quota. They will be promoted on their turn subject to the availability of posts in their respective cadre.

4) That in response to this para the subject quota for each category was taken into consideration and fixed 12% quota for the Graduates Sub Engineers against their total strength of 137 number Sub Engineers is more than sufficient (Annex-B). The senior incumbents of this cadre have already been promoted to the post of Assistant Engineers on the previous rules. The quota is highly saturated and exhausted and there is no single vacancy to promote the petitions to the post of Assistant Engineers. So far as departmental representation of the petitioner is concerned, the same is under consideration of the competent authority. However, previously similar nature departmental representations, filed by other category of Sub Engineers have been filed by the competent authority, having no tenable justification (Annex-C).

admits pendency

appeal

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~~APPEAL~~

- 5) In correct. As stated earlier not a single vacancy is lying vacant in their category to be promoted to the post of Assistant Engineer while some senior incumbents having B. Tech (Hons) degree who have not ever availed the quota as Assistant Engineers were considered for promotion to the post of Assistant Engineers and got approved by the competent authority according to the rules notified on 25.06.2012 but promotion notification could not be issued due to status quo granted by the honourable court. No vested right of the petitioners have been accrued to promotion nor it is violated by any of the respondents. All the employees of the department are equal in the eye of law and rules. The petitioners have no cause of action to approach this honourable court.
- 6) Not correct. The matter pertains to service matter, therefore Article 212 of the Republic of Pakistan Constitution 1973 provides no jurisdiction for this honourable court, the petitioners have no locus standi and the petition is also time barred.

#### GROUNDS

- a. Not correct. No omission nor any violation has been made by the respondents. Each and every employee of the department is equally treated in accordance with the law and rules in vogue. They have no vested right to be promoted to the post of Assistant Engineers as a rule of law.
- b. Not correct. The petitioners were not promoted but were appointed on acting charge basis as Assistant Engineers for the time being on the posts vacated due to posting of regular Assistant Engineers against the project/ex-cadre posts. Their appointment on acting charge basis will be withdrawn on completion of the project and return of regular Assistant Engineers from ex-cadre posts. As their quota was exhausted by their senior incumbents according to the rules, therefore, no vacancy is available for promotion of the petitioners in their quota. This is the main point for the consideration before the august court.

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c. Not Correct. The rules amended were for the benefit of all categories of the Sub Engineers and no one has been given any preference. The rules are framed by the competent forum in pursuance of Section 3 of (Appointment, Promotion & Transfer) Rules, 1989 of Khyber Pakhtunkhwa. The petitioners will be considered on their turn for promotion according to the law and availability of posts in their respective cadre.

d. Not correct. The petitioners are govt. servants and have to abide by rules and regulations. The rules framed under the mandate of Section 3 of the APT Rules, 1989 of Khyber Pakhtunkhwa for the betterment of each categories of Sub Engineers of the department. No one has been deprived from his due right. The matter is a policy of the department and approved by the competent authority under the theory of delegated legislation.

e. Not correct. Acting Charge appointment creates no right of confirmation of a Civil Servant to be considered for the next higher grade as a matter of right. This is subject to the availability of posts and seniority-cum-fitness from the respective cadre.

It is therefore humbly prayed that the petition of the petitioners is devoid of merit and without substance be dismissed with cost and the status quo may also be vacated.

*[Signature]*  
 27 Dec 2012  
 Chief Secretary,  
 Govt. of Khyber Pakhtunkhwa  
 (Respondent No. 1)

*[Signature]* Dec 26, 12  
 Secretary to Govt. of  
 Khyber Pakhtunkhwa  
 Irrigation Department  
 (Respondent No. 2)

**ATTESTED** (32)

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ANNEX M

JUDGMENT SHEET  
PESHAWAR HIGH COURT, PESHAWAR  
JUDICIAL DEPARTMENT

Writ Petition No 3388/12

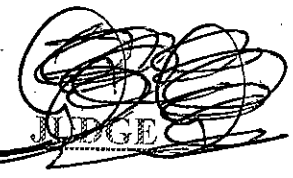
JUDGMENT

Date of hearing.....4.9.2014.....

Petitioner(s) by Mr. Khalid Rehman, Advocate


Respondent(s) by Syed Qasim Alishah, B.A., M/S Ghulam  
Muhammad Malik and Saadullah Khan Mustroz  
Advocates

YAHYA AFRIDI J.- For reasons recorded in the  
connected Writ Petition No. 2440-P/2012 (Engineer  
Musharaf Shah vs. Govt. of Khyber Pakhtunkhwa and  
others), this Writ Petition is disposed of.

  
JUDGE

  
JUDGE

\*Nawab Shah\*

  
ATTESTED

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14/9/14



JUDGMENT SHEET  
PESHAWAR HIGH COURT, PESHAWAR  
JUDICIAL DEPARTMENT

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Writ Petition No.2440-P/2012

JUDGMENT

Date of hearing.....4.9.2014.....

Petitioner(s) by Mr. Ijaz Arwaj, Advocate.

Respondent(s) by Syed. Qaiser Ali Shah, Advocate. M/s Abdul Latif Afzali,  
Ghulam Mohyeddin Malik and Saadullah Khan Murat,  
Advocates.

YAHYA AFRIDI, Through this single judgment,  
we propose to dispose of three Writ Petitions, as  
common questions of law. The particulars of the  
said writ petitions are as under:-

1. W.P.No.2440-P/2012 (Engineer Musharaf Shah, Assistant Engineer (Acting Charge Basis) Rehabilitation of Irrigation System of Khyber Pakhtunkhwa Directorate Peshawar vs. Govt. of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa Peshawar and other).
2. WP No. 3388-P/2012 (Asif Khan, Sub-Divisional Officer (Irrigation) Shahbaz Garhi, Mardan and others vs. The Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and others).

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ATTESTED

3. WP No. 3595-P/2012 (Saifullah S/o Abdullah Khan, Sub-Divisional Officer (OPS), Peshawar vs. Secretary, Govt. of KPK, Irrigation Department, Peshawar and others).

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2. In the first two petitions (Writ Petitions No. 2440- P & 3388-P/2012), hereinafter referred to as "first set of petitions, the petitioners are seeking the following common relief:

Firstly, to direct the respondents to act in accordance with law and to allow regular promotion to the petitioner & to place his cases before the Departmental Promotion Committee for his confirmation/regular promotion against the post of Assistant Engineer BPS-17;

Secondly, to declare the amendment introduced in the recruitment rules vide Notification NO. SOE/IRR/2-3-5-2010-11 dated 25.6.2012 are inapplicable to the case of the petitioner and have no retrospective effect;

Thirdly, the respondents are legally not competent to process the promotion cases on such rules to the detriment of the rights of the petitioner or any other remedy deemed proper may also be allowed.

While in the third petition (Writ Petition No. 3595-P/2012), hereinafter referred to as "third

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TESTED

*petition*", the petitioner is seeking essentially the following:-

- 43
- I. *Direct the authority /department to issue Notification of Promotion of the petitioner, etc to the post of Assistant Engineer, BPS-17 with all service benefits; and/or*
  - II. *Any other writ/ order/direction deemed proper and just in the circumstances of the case, be also issued/ ordered/given".*

3. Before this Court considers the petitions on merits, it would be essential to first decides the preliminary jurisdictional objection raised by the respondent department in view of the express bar provided in Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 ("Constitution").

4. The constitutional bar imposed upon this Court under Sub-Article (2) of Article 212 of the Constitution reads as under:-

"212. Administrative Courts and Tribunals.

*(1) Notwithstanding anything hereinbefore contained the appropriate Legislature may by Act provide for the establishment of one or more Administrative Courts or Tribunals to exercise*

~~ATTESTED~~

exclusive jurisdiction in respect of—

- (a) matters relating to the terms and conditions of persons who are or have been in the service of Pakistan, including disciplinary matters;
- (b) matters relating to claims arising from tortuous acts of Government, or any person in the service of Pakistan, or of any local or other authority empowered by law to levy any tax or cess and any servant of such authority acting in the discharge of his duties as such servant; or
- (c) matters relating to the acquisition, administration and disposal of any property which is deemed to be enemy property under any law.

(2) Notwithstanding anything hereinabove contained, where any Administrative Court or Tribunal is established under clause (1), no other court shall grant an injunction, make any order or entertain any proceedings in respect of any matter to which the jurisdiction of such Administrative Court or Tribunal extends:

*Provided that the provisions of this clause shall not apply to an Administrative Court or Tribunal established under an Act of a Provincial Assembly unless, at the request of that Assembly made in the form of a resolution, Parliament by law extends the provisions to such a Court or Tribunal.*

(3) .....

(Emphasis provided)

5. The above constitutional provision, opening with the "non-obstante" clause, expressly bars all Courts, including the High Court to take cognizance

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~~APPEALED~~

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of matters, which can be agitated and adjudicated before an administrative tribunal constituted and functioning under the law. This essential principle has been eloquently explained in the authoritative judgment of this Court in Mian Amanul Mulk's case (PLD 1981 Peshawar 1) and the decision of full bench Court of the Sindh High Court in Abdul Bari's case (PLD 1987 Karachi 290).

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6. Now, in order to appreciate the scope of matters, which can be adjudged exclusively by an administrative tribunal, we will have to refer to section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 ("Act of 1974"), which reads as under:-

4. Appeal to Tribunals.

Any civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him or within six months of the establishment of the appropriate Tribunal, whichever is later, prefer an appeal of the Tribunal having jurisdiction in the matter:

TESTED

Provided that:-

(a).....

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(b) *no appeal shall lie to a Tribunal against an order or decision of a departmental authority determining..*

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(i) *the fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher post or grade; or*

(ii) *the quantum of departmental punishment or penalty imposed on a civil servant as a result of a departmental inquiry, except where the penalty imposed is dismissal from service, removal from service or compulsory retirement; and*

(c) *no appeal shall lie to a Tribunal against an order or decision of a departmental authority made at any time before the 1<sup>st</sup> July, 1969.*

(Emphasis provided)

7. In view of the above provision of the Act of 1974, the condition precedents for invoking the jurisdiction of the Tribunal are as under:-

- i. *Civil servant is to be aggrieved of a final order;*
- ii. *The said order has to be passed by the departmental authority; and*
- iii. *finally, the said order is to relate to terms and conditions of service of the aggrieved civil servant.*

~~TESTED~~

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8. When we consider the circumstances leading to the filing of the "*first set of petitions*", it is noted that the same fulfils the three essential conditions of invoking the jurisdiction of the Tribunal, which are explained as under;

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Condition No.I

As far as the first condition precedent is concerned, no doubt, prior to the filing of the "*first set of petitions*", there was no "*final order*" passed by the departmental authority, denying the rights of the petitioners to be "*eligible*" for promotion to a higher post. However, after the institution of "*first set of petitions*", the respondent department, *inter-alia*, has denied and disputed the "*eligibility*" of the petitioner to be considered for promotion. The said denial in writing, duly supported by an affidavit of a responsible competent officer would, thus, be deemed a "*final order*", as envisaged under Section 4 of the Act of 1974.

Condition No.II

As the respondent department has responded in the negative to the claim of the petitioners, the second condition is also fulfilled.

~~NOT~~ STED

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Condition No.III

Before we discuss the third condition precedent, it would be pertinent to understand the true import of the term; "*terms and conditions of service*" of a civil servant. The said term has been defined in Section 3 of the Khyber Pakhtunkhwa Civil Servants Acts, 1973 ("*Act of 1973*"), which reads as under:-

*"3. Terms and conditions.—The terms and conditions of service of a civil servant shall be as provided in this Act and the rules".*

It is by now a settled principle of administrative and service laws that a civil servant has no "*right to promotion*" to a higher post. However, a "*right to be considered for promotion*" would accrue in favour of the civil servant on his fulfilling the requisite prescribed qualification. The basic decision on this issue was rendered in *Fida Muhammad Khan's case (PLD 1960 S.C. 45)* and later in *Muhammad Akbar Oureshi's case (PLD 1962 S.C. 428)* and thereafter, consistently followed in various decisions including that of *M.A. Rafique's case (1990 SCMR 927)* and *Fazali Rahmani's case (PLD 2008 S.C. 769)*.

~~REQUESTED~~ (41)

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9. In addition to the above-stated general principles concerning the civil servant's right to promotion and to be considered for promotion, the statutory service provisions also supplements the said principles.

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Firstly, it is noted that there is no express statutory "*right to promotion*" vested in a civil servant. However, every civil servant, when he joins the civil service has a "*legitimate expectation*" to rise up the rungs of the service structural ladder. This "*legitimate expectation*" is not legally enforceable.

Secondly, it is only when the civil servant fulfills the essential prescribed qualifications for promotion that his "*legitimate expectation*" matures into a "*vested right*".

Thirdly, the civil servant's "*vested right*" to be considered for promotion to a higher post, has been expressly provided under Section 9 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 ("Act of 1973") read with sub-rule (3) of Rule-7 of Khyber Pakhtunkhwa Civil Servants (Appointments, Promotion and Transfer) Rules, 1989 ("Rules of 1989"). The said provisions read as follows:

~~CONFIDENTIAL~~ 42

Act of 1973

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"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.

Rules of 1989.

7. Appointment by Promotion or Transfer.

(1) .....

(2) .....

(3) Persons possessing such qualifications and fulfilling such conditions as laid down for the purpose of promotion or transfer to a post shall be considered by the Departmental Promotion Committee or the Provincial Selection Board for promotion or transfer, as the case may be".

10. In order to appreciate the true scope of the right of a civil servant to be considered for promotion, it would be appropriate to review the various stages his promotion case proceeds. The promotion process generally takes the following course:-

PROMOTION PROCESS.

Eligibility Test (First Stage).

~~ATTESTED~~ 43

On creation of a new post or availability of a vacancy in a higher post, civil servants, who are "*eligible*" under the prescribed rules to be promoted to the said higher post, are shortlisted by the department, keeping in view the number of post; thereafter, the department prepares the list of eligible officers for its placement before the competent promotion authority/Board for its decision.

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Fitness Test (Second Stage).

On receipt of the shortlisted eligible civil servants for promotion, the competent promotion authority/Board, in cases of selection posts, considers the "*fitness*" of all short listed eligible civil servants placed before it for promotion to the higher grade, keeping in view the criteria prescribed under the relevant rules of promotion.

What is crucial to understand is that in the First Stage, the essential and determining factor is the "*eligibility*" of the civil servant. While in the second stage, in cases of selection posts, it is "*fitness*" of the civil servant, which is the determining factor for promotion of the civil servant to the higher post.

11. Now, let us move on to the legal forums available to a civil servant for redressal of his

ATTESTED



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grievance during the various stage his promotion case proceeds. The competent forum for redressal during each stage of the promotion process can be explained as under:

LEGAL FORUMS.

Pre-eligibility stage.

In case the departmental authority, despite clear availability of vacancies in the higher post is not processing the promotion case of the eligible civil servants, they cannot seek "*mandamus*" from the Tribunal, as aptly explained by the Apex Court in Qamar Dost Khan's case (2006 SCMR 1630). In such circumstances, the aggrieved civil servant may seek the indulgence of the constitutional Court under Article 199 of the Constitution. The writ so issued by the Constitutional Court would only be to the extent of directing the departmental authority to act in accordance with law and to initiate the process of promotion.

Eligibility Stage. Once the departmental authority proceeds with the promotion process and decides on the "*eligibility*" of the civil servants and shortlists the candidates to be placed before the competent departmental promotion authority/Board, the issue would transform from inaction of the department to

**TESTED**



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(52)

that of "*terms and conditions*" of the aggrieved civil servant. In such circumstances, the legal forum for redressal of a grievance of the said aggrieved civil servant would then only be entertained and determined by a validly constituted and functioning Tribunal. The order of referring the promotion case of others to the departmental promotion authority/Board would be the "*final order*", as envisaged under Section 4 of the Act of 1974.

Fitness stage. The legal forum for redressal of a civil servant aggrieved of the decision of the promotion authority/Board on his lack of "*fitness*" to be promoted to a higher post would not be the Tribunal. No doubt, the subject-matter of promotion falls within the scope of "*terms and conditions*" of his service, as the process and criteria of promotion has been provided under the Act of 1973 and the relevant Rules. However, the "*proviso*" to subsection (2) of Section 4 of the Act 1974, has expressly barred the Tribunal to entertain any such grievance of a civil servant. In addition thereto, Section 23B of the Act of 1973 also bars the ordinary Courts of civil jurisdiction from entertaining any matters relating to the "*terms and*

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**ATTESTED**

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*conditions of service*" of a civil servant. Thus, a civil servant's grievance regarding the decision of the competent departmental promotion authority/Board on his lack of "*fitness*" to be promoted to a higher post cannot be agitated before a civil Court or the Tribunal. Faced with having no alternative remedy, the aggrieved civil servant may approach the constitutional Court for redressal of his grievance by invoking Article 199 of the Constitution.

12. The jurisprudential distinctions in regard to maintainability of petitions before the constitutional Courts and the Tribunals have by now been settled. While dealing with maintainability of petitions filed by a civil servant relating to "*terms and conditions*" of his service, it is settled that the exclusive jurisdiction to decide the same vests in the Service Tribunal and not the constitutional Courts. The leading pronouncements on the matter have been explained in Muhammad Anis and others v. Abdul Haseeb and others (PLD 1994 SC 539), Muhammad Iqbal v Executive District Officer (Revenue) (2007 SCMR 682), Syed Abdul Qadir Shah v. Government of Punjab (1972 SCMR 323),

**TESTED**

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Mian Abdul Malik v. Dr. Sabir Zameer Siddiqui and others (1991 SCMR 1129), Muhammad Akram and others v. The State and others (1996 SCMR 324), Muhammad Rehman Khan v. Chief Secretary, NWFP and others (2004 PLC (C.S) 62), Abdul Ghafoor, Supervisor/Inspector, NHA v. National Highway Authority and others (2002 SCMR 574) and Zafarullah Baloch v. Government of Balochistan and others (2002 SCMR 1056).

13. It would be interesting to note that the apex Court has in some cases clearly vested the Tribunal with exclusive jurisdiction on matters relating to terms and conditions of a civil servant, wherein the impugned action or inaction of the departmental authority did not have a formal "final order". Some of the leading cases are as follows:-

Vires of Rules.

Service Tribunal was competent to adjudicate on the question of "vires" of rules framed by the department, even if the same were challenged on the basis of violating fundamental rights of the civil servant. The very rules were deemed to be the "final order". Cases in point are Iqan Ahmed Khurram's case (PLD 1980 S.C. 153) and I.A. Sharwani's case (1991 SCMR 1041).

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RESTRICTED

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Departmental Inquiry Proceedings

A challenge was made to the enquiry proceedings before the constitutional Court, where it was argued that as there is no "final order", the enquiry proceedings could be challenged before a constitutional Court. The apex Court in Abdul Wahab Khan's case (PLD 1989 S.C. 508), while dealing with matter held otherwise with the following observations:

*"Even without such observation, the petitioner is entitled to seek remedy in accordance with the law applicable to the tribunal concerned with regard to the filing of appeals. The petitioner would have to satisfy all the conditions for filing such an appeal. One of the conditions being that the order impugned before the Tribunal should be such which is appealable in accordance with the relevant Service Tribunals Act. But the order impugned before the High Court vis-à-vis the stage at which it has been passed, is not appealable, the petitioner would have to wait till such an order is passed against him which is appealable before the tribunal".*

**INDEXED**



14. In view of the above legal discourse, it can safely be stated that the right to be considered for promotion to a higher post by a civil servant is a matter, which relates to the "*terms and conditions of service*" and the Services Tribunal has to decide the same. It is an admitted position that the Administrative Service Tribunal has been duly constituted and is presently functioning in Khyber Pakhtunkhwa under the enabling provision of the Act of 1974.

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15. Having reached the conclusion that this constitutional Court lacks the jurisdiction to entertain the petitions, it would not be appropriate to pass any finding on merits and the challenge made to *vires* of the impugned rules in both sets of petitions.

16. Accordingly, for the reasons stated above, this Court:

- i. *Declare grievance of the petitioners relating to their rights to be eligible for promotion to a higher post are "vested right" provided and protected under Section 9 of the Khyber Pakhtunkhwa Civil Servants Acts, 1973 and hence, are terms and conditions of service of the petitioners.*
- ii. *Declare that as the respondents have refused the right of*

ADMITTED

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*petitioners to be considered for promotion in their comments, the same are deemed as final order provided under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.*

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- iii. *Declare that the exclusive jurisdiction to entertain and adjudicate upon the matters relating to the right to be considered for promotion to a higher grade vested in the Khyber Pakhtunkhwa Service Tribunal Act, 1974 and that this Court is constitutionally barred under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 to take cognizance thereof.*
- iv. *Direct the office to retain copies of memo of Writ Petitions bearing No. 2440-P and 3388-P/2012 and transmit the same to the Khyber Pakhtunkhwa Services Tribunal for decision in accordance with law. Parties are directed to appear before the Services Tribunal on 10<sup>th</sup> October, 2014.*
- v. *In view of the above directions, Writ Petition NO. 3595-P/2012 having become infructuous is disposed of, accordingly.*

**ANTESTED**

~~JUDGE~~

~~JUDGE~~

\*Nawab Shah\*

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SA/1389/14

WAKALAT NAMA

IN THE COURT OF KPK Service Tribunal

Asif Khan SA  
Appellant(s)/Petitioner(s)

Growth - etc VERSUS  
Respondent(s)

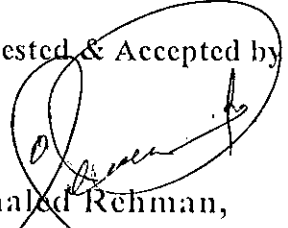
I/We \_\_\_\_\_ do hereby appoint Mr. Khaled Rehman, Advocate in the above mentioned case, to do all or any of the following acts, deeds and things.

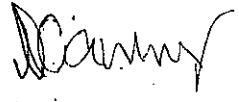
1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.


AND hereby agree:-

- a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this \_\_\_\_\_

Attested & Accepted by  
  
Khaled Rehman,  
Advocate, Peshawar.

  
Signature of Executants

M. Gulzar Khan SA  


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

**Service Appeal No. 1389/2014**

Asif Khan, Sub Divisional Officer

(Appellant)

**VERSUS**

Government of Khyber Pakhtunkhwa through Chief Secretary & others.

(Respondents)

**JOINT PARA WISE COMMENTS**

**Respectfully Sheweth:**

**Preliminary Objections.**

1. That the appeal is in-competent without cause of action and locus standi.
2. That the amendments in the service recruitment rules have been made in the interest of the appellant/department.
3. That the subject matter has already been decided by the Supreme Court of Pakistan.
4. That the amendments in the rules could not be claimed as a vested right.
5. That the appellant was appointed on acting charge basis which is clear from the appointment order dated 13.12.2011 and not promoted to BS-17 on regular basis.
6. That under rule 9(6) of Khyber Pakhtunkhwa (Appointment, Promotion & Transfer) Rules, 1989, acting charge basis appointment creates no right of regular promotion.
7. That he is estopped by his acts of accepting appointment as Assistant Engineer (BS-17) on acting charge basis.
8. That there is mis-joinder and non-joinder of necessary parties.

**ON FACTS**

- i. That Para-I is admitted to the effect that the appellant has joined the Department as a pre-service Graduate Sub Engineer on 18.12.1990.

- ii. That Para-2 is not fully correct. The appellant has concealed material facts from this Hon'able Tribunal regarding his own share of quota in the rules. The rules were framed and amended from time to time by the competent authority at competent forum for the betterment of the department as well as incumbents of all category with due regard to the seniority-cum-fitness and suitability for the posts, keeping in view the strength of each category of Sub Engineers to the post of Assistant Engineers in the Department. So far the representation of the appellant is concerned, the same was considered by the competent forum by providing 12% quota to the Graduate Sub Engineers.
- iii. Incorrect. The appellant alongwith his other colleagues were not promoted to the post of Assistant Engineers but have been appointed on acting charge basis vide notification dated 13.12.2011 **(Annex-I)** against the posts vacated due to posting of regular Assistant Engineers against the project/ex-cadre posts of Assistant Engineers, which are temporary and is a stop-gap arrangements to run the affairs of the Department and provide incentive to the incumbents of the department for their betterment. The appellant has own category of Graduate Sub Engineers holding B. Sc Engineering in his own share of quota. He will be promoted on his turn subject to the availability of post in his cadre.
- iv. That in response to this Para the subject quota for each category was taken into consideration and fixed 12% quota for the Graduate Sub Engineers against their total of 13 No. Sub Engineers is more than sufficient **(Annex-II)**. The senior incumbents of this cadre have already been promoted to the post of Assistant Engineers on the previous rules. The quota is highly saturated and exhausted and there is no single vacancy to promote the appellant to the post of Assistant Engineer. So far as departmental representation of the appollant is concerned, the same has been sent and filed by the competent authority having no tenable justification **(Annex-III)**.


- v. Incorrect. As stated earlier not a single vacancy is lying vacant in the category of Graduate Sub Engineers for promotion to the post of Assistant Engineer while some senior incumbents having B. Tech (Hons) Degree who have not ever availed the quota as Assistant Engineers were considered for promotion to the post of Assistant Engineers and got approved by the competent authority according to the rules notified on 25.06.2012. No vested right of the appellant has been accrued to promotion nor its violated by any of the respondents. All the employees of the department are equal in the eye of law and rules. The appellant has no cause of action to approach this Hon'able Tribunal.
- vi. Para-6 correct to the extent that the appellant and others approached the Peshawar High Court, Peshawar but the August court disposed off the writ petition of the appellant and others with the direction that the exclusive jurisdiction to entertain and adjudicate upon the matter relating to the right to be considered for promotion to a higher grade are vested in the Khyber Pakhtunkhwa Service Tribunal Act, 1974 and under Article 212 of the Constitution of Islamic Republic of Pakistan 1973 to take cognizance thereof.

**Grounds:-**


- A. Not correct. Neither omission nor any violation has been made by the respondents. Each and every employee of the department is equally treated in accordance with the law and rules in vogue. They have no vested right to be promoted to the post of Assistant Engineers as a rule of law.
- B. Not correct. The appellant was not promoted but was appointed on acting charge basis as Assistant Engineers for the time being on the posts vacated due to posting of regular Assistant Engineers against the project/ex-cadre posts. His appointment on acting charge basis will be withdrawn on completion of the project and return of regular Assistant Engineers from ex-cadre posts. As their quota was exhausted by their senior incumbents according to the rules, therefore, no vacancy is available for promotion of the appellant in their quota. This is the main point for the consideration before the august court.

- C. Not correct. The rules amended were for the benefit of all categories of the Sub Engineers and no one has been given any preference. The rules are framed by the competent forum in pursuance of Section 3 of Khyber Pakhtunkhwa (Appointment, Promotion & Transfer) Rules, 1989. The appellant will be considered on their turn for promotion according to the law and availability of posts in their respective cadre.
- D. Not correct. The appellant is government servant and has to abide by rules and regulations. The rules framed under the mandate of Section 3 of the APT Rules, 1989 of Khyber Pakhtunkhwa for the betterment of each categories of Sub Engineers of the department. No one has been deprived from his due right. The matter is a policy of the department and approved by the competent authority under the theory of delegated legislation.
- E. Not correct. Acting Charge appointment creates no right of confirmation of a Civil Servant to be considered for the next higher grade as a matter of right. This is subject to the availability of posts and seniority-cum-fitness from the respective cadre.
- F. The respondents would like to offer some other grounds during the course of arguments.

It is therefore humbly prayed that the appeal of the appellant is devoid of merit and without substance be dismissed with cost.

  
Chief Secretary, Khyber Pakhtunkhwa  
(Respondent No. 1)

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

  
Chief Engineer (North) Irrigation  
(Respondent No. 3)

  
Chief Engineer (South) Irrigation  
(Respondent No. 4)



GOVERNMENT OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT

Dated Peshawar, 13<sup>th</sup> Dec, 2011

NOTIFICATION

NO. SO(E)/IRR/4-5/2011 Vol-II: Consequent upon the recommendations of the Departmental Promotion Committee, the Competent Authority is pleased to appoint the following Sub Engineers to the posts of Assistant Engineers / Sub Divisional Officers (BS-17) of Irrigation Department on acting charge basis with immediate effect: -

- i. Mr. Muhammad Sadiq
- ii. Mr. Muhammad Parwish
- iii. Mr. Farid Gul
- iv. Mr. Abdur Rahim
- v. Mr. Shabaz Khan
- vi. Mr. Muhammad Akhtar Jan
- vii. Mr. Inayatullah Jan
- viii. Mr. Fajihullah
- ix. Mr. Riaz Muhammad
- x. Mr. Waqar Shah
- xi. Mr. Musharaf Shah
- xii. Mr. Fazli Subhan
- xiii. Mr. Roohul Amin
- xiv. Mr. Shoukat Badshah
- xv. Mr. Saeedullah
- xvi. Mr. Bakhtiar
- xvii. Mr. Farid Ullah
- xviii. Mr. Asif Khan

2- Upon their appointment on acting charge basis as Assistant Engineers / Sub Divisional Officers (BS-17), the competent authority is further pleased to order the transfers / postings of the following officers of Irrigation Department with immediate effect, in the public interest:

Sr. No.	Name of Officer	From	To	Remarks
1	Mr. Muhammad Sadiq	Sub Engineer, Irrigation Sub Division, Kohistan	Sub Divisional Officer, Hydrology Abbottabad	Relieving Mr. Abdur Rahim, SDO Irrigation Sub Division, Abbottabad from additional charge of the post.
2	Mr. Muhammad Parwish	Sub Engineer, Balambat Irrigation Sub Divn: Timergara	Sub Divisional Officer, Irrigation Sub Div: Chitral	Vice at Sr. No. 19
3	Mr. Farid Gul	Assistant Engineer (OPS), Leave Reserve Post in Peshawar Canal Divn:	Assistant Engineer, Leave Reserve Post in Peshawar Canal Divn:	The officer will continue to perform the duties of AD-IV, FDRD



4	Mr. Abdur Rahim	Sub Divisional Officer (OPS), Irr: Sub Divn: Abbottabad	Sub Divisional Officer, Irr: Sub Divn: Abbottabad	The officer will continue to perform his duties against his existing posting.
5	Mr. Shabaz Khan	Sub Divisional Officer (OPS), Flood Sub Divn: No. 2, Flood Divn: Peshawar	Sub Divisional Officer, Flood Sub Divn: No. 2, Flood Divn: Peshawar	The officer will continue to perform his duties against his existing posting.
6	Mr. Muhammad Akhtar Jan	Sub Divisional Officer (OPS), Mech: Irr: Sub Divn: D. I. Khan	Sub Divisional Officer, Mech: Irr: Sub Divn: D. I. Khan	The officer will continue to perform his duties against his existing posting.
7	Mr. Inayatullah Jan	Sub Engineer, Tube Well Irr: Divn: Peshawar	Sub Divisional Officer, Mech: Irr: Sub Divn: Mardan	Relieving SDO Workshop Sub Divn: Peshawar from looking after duties of the post.
8	Mr. Fatihullah	Sub Divisional Officer (OPS), Hydrology Irr: Sub Divn: Bannu	Sub Divisional Officer, Hydrology Irr: Sub Divn: Bannu	The officer will continue to perform his duties against his existing posting.
9	Mr. Muhammad Riaz	Sub Engineer, Warsak Canal Irr: Divn: Peshawar	Assistant Director, Office of the P. D, Rehabilitation of Irr: System, Pesh.	Against the vacant post.
10	Mr. Waqar Shah	Sub Engineer, Flood & Drainage Divn: Peshawar	Assistant Director, Office of the P. D, Rehabilitation of Irr: System, Pesh.	Relieving Miss. Tabinda Nosheen, AD (Rehab:) from looking after charge of the post.
11	Mr. Musharaf Shah	Sub Engineer, Mkd: Irr: Div: Mkd.	Assistant Director (Design), Office of the Chief Engineer (South) Irrigation Department.	Vice at Sr. No. 22
12	Mr. Fazli Subhan	Sub Divisional Officer (OPS), Tube Well Irr: Sub Divn: Pabbi	Sub Divisional Officer, Tube Well Irr: Sub Divn: Pabbi	The officer will continue to perform his duties against his existing posting.
13	Mr. Roohul Amin	Sub Divisional Officer (OPS), Irr: Sub Divn: Gohati, Swabi	Sub Divisional Officer, Irr: Sub Divn: Gohati, Swabi	The officer will continue to perform his duties against his existing posting.
14	Mr. Shoukat Badshah	Assistant Director (OPS), Bazai Irr: Project Mardan	Assistant Director, Bazai Irr: Project Mardan	The officer will continue to perform his duties against his existing posting.
15	Mr. Saeedullah	Sub Engineer, Irr: Sub Divn: Civil Canal Bannu	Sub Divisional Officer, Irr: Sub Divn: Shangla	Relieving SDO, Irr: Sub Divn: Swat from additional charge of the post.
16	Mr. Bakhtiar	Sub Divisional Officer (OPS), Swat Irr: Sub Divn: Swat	Sub Divisional Officer, Swat Irr: Sub Divn: Swat	The officer will continue to perform his duties against his existing posting.
17	Mr. Farid Ullah	Sub Divisional Officer (OPS), Jani Khel Irr: Sub Divn: Bannu	Sub Divisional Officer, Jani Khel Irr: Sub Divn: Bannu	The officer will continue to perform his duties against his existing posting.

18	Mr. Asif Khan	Sub Divisional Officer (OPS), Shahbz Ghari Irri: Sub Divn: Swabi	Sub Divisional Officer, Shahbz Ghari Irri: Sub Divn: Swabi	The officer will continue to perform his duties against his existing posting.
19	Mr. Faiz ur Rehman	Sub Divisional Officer, Irri: Sub Divn: Chitral	Assistant Director (Design), Office of the Chief Engineer (South)	Against the vacant post.
20	Mr. Muhammad Idrees	Asstt: Director (Rehabilitation),	Assistant Engineer (leave reserve) Office of the Chief Engineer (South)	The officer will continue to perform his duties as Assistant Director-V, FDRD
21	Mr. Wasim Malik	Sub Divisional Officer, Hydrology Abbottabad	Assistant Engineer (leave reserve) attached with Dy: Director (Plg) O/O Chief Engineer (North)	The officer will continue to perform his duties as Dy: Project Director-II, FDRD.
22	Mr. Hazrat Hassan	Assistant Director (Design), Office of the Chief Engineer (South), Irrigation Department.	Sub Divisional Officer, Hydrology Irri: Sub Divn: Pesh	Against the vacant post.

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT

Endst: No. & date as above.

Copy of the above is forwarded to:

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Chief Engineer (South), Irrigation Department, Peshawar.
3. The Chief Engineer (North), Irrigation Department, Peshawar.
4. The Director General, Small Dams Organization, Peshawar.
5. The Director General, Flood Damages Restoration, Khyber Pakhtunkhwa, Peshawar.
6. The Project Director Baizai Irrigation Project, Mardan.
7. The Project Director, Rehabilitation of Irrigation System, Peshawar.
8. All Superintending Engineers of Irrigation Department.
9. All the Districts Accounts Officer, in Khyber Pakhtunkhwa.
10. The Manager, Govt. Stationery & Printing Department, Peshawar.
11. PS to Minister for Irrigation Khyber Pakhtunkhwa, Peshawar.
12. PS to Chief Secretary, Khyber Pakhtunkhwa.
13. PS to Secretary, Establishment & Administration Department.
14. PS to Secretary, Irrigation Department, Peshawar.
15. Officer concerned.
16. Personal File.
17. Master File.

(MISAL KHAN)

Section Officer (Establishment)

EXTRAORDINARY  
GOVERNMENT



REGISTERED NO. PIII  
G A Z E T T E

## KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, SATURDAY, 2ND APRIL, 2011.

GOVERNMENT KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT,

### NOTIFICATION

Dated Peshawar the 17<sup>th</sup> February, 2011

**NO.SO(E)IRR:/23-5/73:** In pursuance of the provisions contained in sub rule (2) of Rule-3 of the North-West Frontier Province Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 and in supersession of all previous rules and notifications, issued in this behalf, except Notification No.SO(E)IRR:/23-5/73 dated 20-12-2006, the Irrigation Department, in consultation with the Establishment Department and the Finance Department hereby lays down, the method of recruitment, qualification and other conditions specified in columns No. 3 to 5 of the **Appendix (pages 1 to 5)** to this Notification which shall be applicable to the posts in column No. 2 of the **Appendix**.

Secretary to Government of the Khyber Pakhtunkhwa Province  
Irrigation Department.

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Printed and published by the Manager,  
Staty. & Ptg. Deptt., Khyber Pakhtunkhwa, Pesh.

APPENDIX

S#	Nomenclature of Post	Qualification for appointment	Age Limit	Method of recruitment
1	2	3	4	5
<b>PART-I-ENGINEERING STAFF</b>				
1.	Chief Engineer/ Director General (BPS-20)			By selection, on merit from amongst the Senior Superintending Engineers and Directors with at least seventeen years service in BPS-17 and above, possessing Degree in B.E/BSc Engineering (Civil) from a recognized University.
2.	Superintending Engineer/Director. (BPS-19)			By promotion, on the basis of seniority-cum-fitness, from amongst the Executive Engineers/Deputy Directors with at least twelve years service in BPS-17 and above.
3.	Executive Engineer/ Deputy Director (BPS-18)			By promotion, on the basis of seniority cum fitness, from amongst the Sub-Divisional Officers, Assistant Engineers and Assistant Directors possessing Degree in B.E/BSc Engineering (Civil or Mechanical) from a recognized University, with at least five years service as such, and have passed the Professional or Revenue Examination under the prescribed rules.
4.	Assistant Engineer/Sub Divisional Officer/ Assistant Director (BPS-17)	BE/BSc Degree in Civil/Mechanical Engineering from a recognized University	21 to 32 years	<p>a. Sixty five percent by initial recruitment.</p> <p>b. ten percent by promotion, on the basis of seniority cum fitness, from amongst the Sub Engineer's who has acquired during service degree in Civil or Mechanical Engineering from a recognize university.</p> <p>c. five percent by promotion, on the basis of seniority cum fitness, from amongst the Sub Engineer's who joined service as degree holders in Civil/Mechanical Engineering and</p> <p>d. twenty percent by promotion, on the basis of seniority-cum-fitness from amongst the Sub Engineer's, who hold a diploma of Civil, Mechanical, Electrical or Auto Technology and have passed Departmental Grade A examination with ten years service as such.</p> <p>Note: - Provided that where candidate under Clause (b) &amp; (c) above is not available for promotion, the vacancy shall be filled in by initial recruitment.</p>
5.	Sub Engineer (BPS-11)	Diploma of Associate Engineering in Civil/Mechanical/Auto/Electrical Technology from a recognized Institute.	18 to 30 years	<p>a. Eighty percent by initial recruitment; and</p> <p>b. twenty percent by promotion, on the basis of seniority-cum-fitness, from amongst the Canal Inspectors, Work Takers, Gauge Readers, Surveyors and other establishments having Diploma of Associate Engineering in Civil, Mechanical, Electrical or Auto Technology from a recognized institute or Board of Technical Education of Government with at least ten years service, and have passed the departmental Grade B and Grade A examination.</p>



## KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, MONDAY, 25TH JUNE, 2012.

### GOVERNMENT OF KHYBER PAKHTUNKHWA, IRRIGATION DEPARTMENT.

#### NOTIFICATION

Dated: 25<sup>th</sup> 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,

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 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 1<sup>st</sup> 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 1<sup>st</sup> 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 a 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 1<sup>st</sup> 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.

Printed and published by the Manager,  
Staty. & Ptg. Deptt., Khyber Pakhtunkhwa, Pesh.

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GOVERNMENT OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT

No. SO(E)/Irr:/23-5/73/2012  
Dated Peshawar the 15<sup>th</sup> Jan, 2013

To  
The Chief Engineer (South),  
Irrigation Department.

Subject: **APPEAL AGAINST THE AMENDMENTS IN SERVICE RULES NOTIFIED  
ON 25.06.2012**

I am directed to refer to the subject noted above and to state that the following Graduate Sub Engineers have made a joint appeal/representation with the request that the condition of Grade B&A examination may be withdrawn from the Service Rules and according to 12% share quota 9 number Graduate Sub Engineers may be promoted to the post of Assistant Engineers (BS-17):-

- i. Mr. Shoukat Badshah
- ii. Mr. Bakhtyar
- iii. Mr. Asif Khan

It is pointed out that earlier Mr. Khurshid Ahmad B. Tech (Hons) Sub Engineer was preferred a departmental representation for exemption from Grade B&A examination and reckoning his seniority from the date of acquiring B. Tech (Hons) degree. The Establishment Department vide letter dated 11.09.2012 did not accede to the request of the official and regretted his appeal, being not entertainable under the rules (**copy attached**).

In view of the above, the joint appeal of the graduate Sub Engineers is not entertainable because the graduate Sub Engineers have already exceeded their share in promotion to the post of Assistant Engineer (BS-17).

I am, therefore directed to request you to please inform the above named graduate Sub Engineers accordingly under intimation to this department, please.

Encl: as above

(MISAL KHAN)  
Section Officer (Estt :)

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

**Service Appeal No. 1389/2014**

Asif Khan, Sub Divisional Officer

(Appellant)

**VERSUS**

Government of Khyber Pakhtunkhwa through Chief Secretary & others.

(Respondents)

**JOINT PARA WISE COMMENTS**

**Respectfully Sheweth:**

**Preliminary Objections.**

1. That the appeal is in-competent without cause of action and locus standi.
2. That the amendments in the service recruitment rules have been made in the interest of the appellant/department.
3. That the subject matter has already been decided by the Supreme Court of Pakistan.
4. That the amendments in the rules could not be claimed as a vested right.
5. That the appellant was appointed on acting charge basis which is clear from the appointment order dated 13.12.2011 and not promoted to BS-17 on regular basis.
6. That under rule 9(6) of Khyber Pakhtunkhwa (Appointment, Promotion & Transfer) Rules, 1989, acting charge basis appointment creates no right of regular promotion.
7. That he is estopped by his acts of accepting appointment as Assistant Engineer (BS-17) on acting charge basis.
8. That there is mis-joinder and non-joinder of necessary parties.

**ON FACTS**

- i. That Para 1 is admitted to the effect that the appellant has joined the Department as a pre-service Graduate Sub Engineer on 18.12.1990.



- ii. That Para 2 is not fully correct. The appellant has concealed material facts from this Hon'able Tribunal regarding his own share of quota in the rules. The rules were framed and amended from time to time by the competent authority at competent forum for the betterment of the department as well as incumbents of all category with due regard to the seniority-cum-fitness and suitability for the posts, keeping in view the strength of each category of Sub Engineers to the post of Assistant Engineers in the Department. So far the representation of the appellant is concerned, the same was considered by the competent forum by providing 12% quota to the Graduate Sub Engineers.
- iii. Incorrect. The appellant alongwith his other colleagues were not promoted to the post of Assistant Engineers but have been appointed on acting charge basis vide notification dated 13.12.2011 (**Annex-I**) against the posts vacated due to posting of regular Assistant Engineers against the project/ex-cadre posts of Assistant Engineers, which are temporary and is a stop-gap arrangements to run the affairs of the Department and provide incentive to the incumbents of the department for their betterment. The appellant has own category of Graduate Sub Engineers holding B. Sc Engineering in his own share of quota. He will be promoted on his turn subject to the availability of post in his cadre.
- iv. That in response to this Para the subject quota for each category was taken into consideration and fixed 12% quota for the Graduate Sub Engineers against their total of 13 No. Sub Engineers is more than sufficient (**Annex-II**). The senior incumbents of this cadre have already been promoted to the post of Assistant Engineers on the previous rules. The quota is highly saturated and exhausted and there is no single vacancy to promote the appellant to the post of Assistant Engineer. So far as departmental representation of the appellant is concerned, the same has been sent and filed by the competent authority having no tenable justification (**Annex-III**).


- v. Incorrect. As stated earlier not a single vacancy is lying vacant in the category of Graduate Sub Engineers for promotion to the post of Assistant Engineer while some senior incumbents having B. Tech. (Hons) Degree who have not ever availed the quota as Assistant Engineers were considered for promotion to the post of Assistant Engineers and got approved by the competent authority according to the rules notified on 25.06.2012. No vested right of the appellant has been accrued to promotion nor its violated by any of the respondents. All the employees of the department are equal in the eye of law and rules. The appellant has no cause of action to approach this Hon'able Tribunal.
- vi. Para 6 correct to the extent that the appellant and others approached the Peshawar High Court, Peshawar but the August court disposed off the writ petition of the appellant and others with the direction that the exclusive jurisdiction to entertain and adjudicate upon the matter relating to the right to be considered for promotion to a higher grade are vested in the Khyber Pakhtunkhwa Service Tribunal Act, 1974 and under Article 212 of the Constitution of Islamic Republic of Pakistan 1973 to take cognizance thereof.

**Grounds:-**


- A. Not correct. Neither omission nor any violation has been made by the respondents. Each and every employee of the department is equally treated in accordance with the law and rules in vogue. They have no vested right to be promoted to the post of Assistant Engineers as a rule of law.
- B. Not correct. The appellant was not promoted but was appointed on acting charge basis as Assistant Engineers for the time being on the posts vacated due to posting of regular Assistant Engineers against the project/ex-cadre posts. His appointment on acting charge basis will be withdrawn on completion of the project and return of regular Assistant Engineers from ex-cadre posts. As their quota was exhausted by their senior incumbents according to the rules, therefore, no vacancy is available for promotion of the appellant in their quota. This is the main point for the consideration before the august court.


- C. Not correct. The rules amended were for the benefit of all categories of the Sub Engineers and no one has been given any preference. The rules are framed by the competent forum in pursuance of Section 3 of Khyber Pakhtunkhwa (Appointment, Promotion & Transfer) Rules, 1989. The appellant will be considered on their turn for promotion according to the law and availability of posts in their respective cadre.
- D. Not correct. The appellant is government servant and has to abide by rules and regulations. The rules framed under the mandate of Section 3 of the APT Rules, 1989 of Khyber Pakhtunkhwa for the betterment of each categories of Sub Engineers of the department. No one has been deprived from his due right. The matter is a policy of the department and approved by the competent authority under the theory of delegated legislation.
- E. Not correct. Acting Charge appointment creates no right of confirmation of a Civil Servant to be considered for the next higher grade as a matter of right. This is subject to the availability of posts and seniority-cum-fitness from the respective cadre.
- F. The respondents would like to offer some other grounds during the course of arguments.

It is therefore humbly prayed that the appeal of the appellant is devoid of merit and without substance be dismissed with cost.

  
Chief Secretary, Khyber Pakhtunkhwa  
(Respondent No. 1)

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

  
Chief Engineer (North) Irrigation  
(Respondent No. 3)

  
Chief Engineer (South) Irrigation  
(Respondent No. 4)



GOVERNMENT OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT

Dated Peshawar 13<sup>th</sup> Dec, 2011

NOTIFICATION

NO. SO(E)/IRR/4-5/2011 Vol-II: Consequent upon the recommendations of the Departmental Promotion Committee, the Competent Authority is pleased to appoint the following Sub Engineers to the posts of Assistant Engineers / Sub Divisional Officers (BS-17) of Irrigation Department on acting charge basis with immediate effect: -

- i. Mr. Muhammad Sadiq
- ii. Mr. Muhammad Parwish
- iii. Mr. Farid Gul
- iv. Mr. Abdur Rahim
- v. Mr. Shabaz Khan
- vi. Mr. Muhammad Akhtar Jan
- vii. Mr. Inayatullah Jan
- viii. Mr. Fatihullah
- ix. Mr. Riaz Muhammad
- x. Mr. Waqar Shah
- xi. Mr. Musharaf Shah
- xii. Mr. Fazli Subhan
- xiii. Mr. Roohul Amin
- xiv. Mr. Shoukat Badshah
- xv. Mr. Saeedullah
- xvi. Mr. Bakhtiar
- xvii. Mr. Farid Ullah
- xviii. Mr. Asif Khan

2- Upon their appointment on acting charge basis as Assistant Engineers / Sub Divisional Officers (BS-17), the competent authority is further pleased to order the transfers / postings of the following officers of Irrigation Department with immediate effect, in the public interest:

Sr. No.	Name of Officer	From	To	Remarks
1	Mr. Muhammad Sadiq	Sub Engineer, Irrigation Sub Division, Kohistan	Sub Divisional Officer, Hydrology Abbottabad	Relieving Mr. Abdur Rahim, SDO Irrigation Sub Division, Abbottabad from additional charge of the post.
2	Mr. Muhammad Parwish	Sub Engineer, Balambat Irrigation Sub Divn: Timergara	Sub Divisional Officer, Irrigation Sub Div: Chitral	Vice at Sr. No. 19
3	Mr. Farid Gul	Assistant Engineer (OPS), Leave Reserve Post in Peshawar Canal Divn:	Assistant Engineer, Leave Reserve Post in Peshawar Canal Divn:	The officer will continue to perform the duties of AD-IV, FDRD

4	Mr. Abdur Rahim		Sub Divisional Officer (OPS), Irr: Sub Divn: Abbottabad	Sub Divisional Officer, Irr: Sub Divn: Abbottabad	The officer will continue to perform his duties against his existing posting.
5	Mr. Shabaz Khan		Sub Divisional Officer (OPS), Flood Sub Divn: No. 2, Flood Divn: Peshawar	Sub Divisional Officer, Flood Sub Divn: No. 2, Flood Divn: Peshawar	The officer will continue to perform his duties against his existing posting.
6	Mr. Muhammad Akhtar Jan		Sub Divisional Officer (OPS), Mech: Irr: Sub Divn: D. I. Khan	Sub Divisional Officer, Mech: Irr: Sub Divn: D. I. Khan	The officer will continue to perform his duties against his existing posting.
7	Mr. Inayatullah Jan		Sub Engineer, Tube Well Irr: Divn: Peshawar	Sub Divisional Officer, Mech: Irr: Sub Divn: Mardan	Relieving SDO Workshop Sub Divn: Peshawar from looking after duties of the post.
8	Mr. Fatihullah		Sub Divisional Officer (OPS), Hydrology Irr: Sub Divn: Bannu	Sub Divisional Officer, Hydrology Irr: Sub Divn: Bannu	The officer will continue to perform his duties against his existing posting.
9	Mr. Muhammad	Riaz	Sub Engineer, Warsak Canal Irr: Divn: Peshawar	Assistant Director, Office of the P. D, Rehabilitation of Irr: System, Pesh.	Against the vacant post.
10	Mr. Waqar Shah		Sub Engineer, Flood & Drainage Divn: Peshawar	Assistant Director, Office of the P. D, Rehabilitation of Irr: System, Pesh.	Relieving Miss. Tabinda Nosheen, AD (Rehab:) from looking after charge of the post.
11	Mr. Musharaf Shah		Sub Engineer, Mkd: Irr: Div: Mkd.	Assistant Director (Design), Office of the Chief Engineer (South), Irrigation Department.	Vice at Sr. No. 22
12	Mr. Fazli Subhan		Sub Divisional Officer (OPS), Tube Well Irr: Sub Divn: Pabbi	Sub Divisional Officer, Tube Well Irr: Sub Divn: Pabbi	The officer will continue to perform his duties against his existing posting.
13	Mr. Roohul Amin		Sub Divisional Officer (OPS), Irr: Sub Divn: Gohati, Swabi	Sub Divisional Officer, Irr: Sub Divn: Gohati, Swabi	The officer will continue to perform his duties against his existing posting.
14	Mr. Shoukat Badshah		Assistant Director (OPS), Bazai Irr: Project Mardan	Assistant Director, Bazai Irr: Project Mardan	The officer will continue to perform his duties against his existing posting.
15	Mr. Saeedullah		Sub Engineer, Irr: Sub Divn: Civil Canal Bannu	Sub Divisional Officer, Irr: Sub Divn: Shangla	Relieving SDO, Irr: Sub Divn: Swat from additional charge of the post.
16	Mr. Bakhtiar		Sub Divisional Officer (OPS), Swat Irr: Sub Divn: Swat	Sub Divisional Officer, Swat Irr: Sub Divn: Swat	The officer will continue to perform his duties against his existing posting.
17	Mr. Farid Ullah		Sub Divisional Officer (OPS), Jani Khel Irr: Sub Divn: Bannu	Sub Divisional Officer, Jani Khel Irr: Sub Divn: Bannu	The officer will continue to perform his duties against his existing posting.

18	Mr. Asif Khan	Sub Divisional Officer (OPS), Shahbz Ghari Iri: Sub Divn: Swabi	Sub Divisional Officer, Shahbz Ghari Iri: Sub Divn: Swabi	The officer will continue to perform his duties against his existing posting.
19	Mr. Faiz ur Rehman	Sub Divisional Officer, Iri: Sub Divn: Chitral	Assistant Director (Design), Office of the Chief Engineer (South)	Against the vacant post.
20	Mr. Muhammad Idrees	Asstt: Director (Rehabilitation),	Assistant Engineer (leave reserve) Office of the Chief Engineer (South).	The officer will continue to perform his duties as Assistant Director-V, FDRD
21	Mr. Wasim Malik	Sub Divisional Officer, Hydrology Abbottabad	Assistant Engineer (leave reserve) attached with Dy: Director (Plg) O/O Chief Engineer (North)	The officer will continue to perform his duties as Dy: Project Director-II, FDRD.
22	Mr. Hazrat Hassan	Assistant Director (Design), Office of the Chief Engineer (South), Irrigation Department.	Sub Divisional Officer, Hydrology Iri: Sub Divn: Pesh	Against the vacant post.

SECRETARY TO GOVT: OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT

Endst: No. & date as above.

Copy of the above is forwarded to:

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Chief Engineer (South), Irrigation Department, Peshawar.
3. The Chief Engineer (North), Irrigation Department, Peshawar.
4. The Director General, Small Dams Organization, Peshawar.
5. The Director General, Flood Damages Restoration, Khyber Pakhtunkhwa, Peshawar.
6. The Project Director Baizai Irrigation Project, Mardan.
7. The Project Director, Rehabilitation of Irrigation System, Peshawar.
8. All Superintending Engineers of Irrigation Department.
9. All the Districts Accounts Officer, in Khyber Pakhtunkhwa.
10. The Manager, Govt. Stationery & Printing Department, Peshawar.
11. PS to Minister for Irrigation Khyber Pakhtunkhwa, Peshawar.
12. PS to Chief Secretary, Khyber Pakhtunkhwa.
13. PS to Secretary, Establishment & Administration Department.
14. PS to Secretary, Irrigation Department, Peshawar.
15. Officer concerned.
16. Personal File.
17. Master File.

(MISAL KHAN)  
Section Officer (Establishment)

EXTRAORDINARY  
GOVERNMENT



REGISTERED NO. P.III  
GAZETTE

## KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, SATURDAY, 2ND APRIL, 2011.

GOVERNMENT KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT,

### NOTIFICATION

Dated Peshawar the 17<sup>th</sup> February, 2011

NO.SO(E)IRR:/23-5/73: In pursuance of the provisions contained in sub rule (2) of Rule-3 of the North-West Frontier Province Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 and in supersession of all previous rules and notifications, issued in this behalf, except Notification No.SO(E)IRR:/23-5/73 dated 20-12-2006, the Irrigation Department, in consultation with the Establishment Department and the Finance Department hereby lays down, the method of recruitment, qualification and other conditions specified in columns No. 3 to 5 of the Appendix (pages 1 to 5) to this Notification which shall be applicable to the posts in column No. 2 of the Appendix.

Secretary to Government of the Khyber Pakhtunkhwa Province  
Irrigation Department.

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Printed and published by the Manager,  
Staty. & Ptg. Deptt., Khyber Pakhtunkhwa, Pesh.

APPENDIX

S#	Nomenclature of Post	Qualification for appointment	Age Limit	Method of recruitment
1	2	3	4	5
<b>PART-I-ENGINEERING STAFF</b>				
1.	Chief Engineer/ Director General (BPS-20)			By selection, on merit from amongst the Senior Superintending Engineers and Directors with at least seventeen years service in BPS-17 and above, possessing Degree in B.E/BSc Engineering (Civil) from a recognized University.
2.	Superintending Engineer/Director (BPS-19)			By promotion, on the basis of seniority-cum-fitness, from amongst the Executive Engineers/Deputy Directors with at least twelve years service in BPS-17 and above.
3.	Executive Engineer/ Deputy Director (BPS-18)			By promotion, on the basis of seniority cum fitness, from amongst the Sub Divisional Officers, Assistant Engineers and Assistant Directors possessing Degree in B.E/BSc Engineering (Civil or Mechanical) from a recognized University, with at least five years service as such, and have passed the Professional or Revenue Examination under the prescribed rules.
4.	Assistant Engineer/Sub Divisional Officer/ Assistant Director (BPS-17)	BE/BSc Degree in Civil/Mechanical Engineering from a recognized University	21 to 32 years	<p>a. Sixty five percent by initial recruitment.</p> <p>b. ten percent by promotion, on the basis of seniority cum fitness, from amongst the Sub Engineer's who has acquired during service degree in Civil or Mechanical Engineering from a recognize university.</p> <p>c. five percent by promotion, on the basis of seniority cum fitness, from amongst the Sub Engineer's who joined service as degree holders in Civil/Mechanical Engineering and</p> <p>d. twenty percent by promotion, on the basis of seniority-cum-fitness from amongst the Sub Engineer's, who hold a diploma of Civil, Mechanical, Electrical or Auto Technology and have passed Departmental Grade A examination with ten years service as such.</p> <p>Note: - Provided that where candidate under Clause (b) &amp; (c) above is not available for promotion, the vacancy shall be filled in by initial recruitment.</p>
5.	Sub Engineer (BPS-11)	Diploma of Associate Engineering in Civil/Mechanical/Auto/Electrical Technology from a recognized Institute.	18 to 30 years	<p>a. Eighty percent by initial recruitment; and</p> <p>b. twenty percent by promotion, on the basis of seniority-cum-fitness, from amongst the Canal Inspectors, Work Takers, Gauge Readers, Surveyors and other establishments having Diploma of Associate Engineering in Civil, Mechanical, Electrical or Auto Technology from a recognized institute or Board of Technical Education of Government with at least ten years service, and have passed the departmental Grade B and Grade A examination.</p>





**KHYBER PAKHTUNKHWA**

Published by Authority

PESHAWAR, MONDAY, 25TH JUNE, 2012.

**GOVERNMENT OF KHYBER PAKHTUNKHWA,  
IRRIGATION DEPARTMENT.**

**NOTIFICATION**

Dated: 25<sup>th</sup> 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,

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 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 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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.**

Printed and published by the Manager,  
Staty. & Ptg. Deptt., Khyber Pakhtunkhwa, Pesh.

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GOVERNMENT OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT

No. SO(E)/Irr/23-5/73/2012  
Dated Peshawar the 15<sup>th</sup> Jan, 2013

To:  
The Chief Engineer (South),  
Irrigation Department.

Subject: **APPEAL AGAINST THE AMENDMENTS IN SERVICE RULES NOTIFIED  
ON 25.06.2012**

I am directed to refer to the subject noted above and to state that the following Graduate Sub Engineers have made a joint appeal/representation with the request that the condition of Grade B&A examination may be withdrawn from the Service Rules and according to 12% share quota 9 number Graduate Sub Engineers may be promoted to the post of Assistant Engineers (BS-17):-

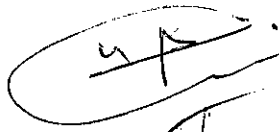
- i. Mr. Shoukat Badshah
- ii. Mr. Bakhtyar
- iii. Mr. Asif Khan

It is pointed out that earlier Mr. Khurshid Ahmad B. Tech (Hons) Sub Engineer was preferred a departmental representation for exemption from Grade B&A examination and reckoning his seniority from the date of acquiring B. Tech (Hons) degree. The Establishment Department vide letter dated 11.09.2012 did not accede to the request of the official and regretted his appeal, being not entertainable under the rules (**copy attached**).

In view of the above, the joint appeal of the graduate Sub Engineers is not entertainable because the graduate Sub Engineers have already exceeded their share in promotion to the post of Assistant Engineer (BS-17).

I am, therefore directed to request you to please inform the above named graduate Sub Engineers accordingly under intimation to this department, please.

**Encl: as above**

  
16/1

  
(MISAL KHAN)  
Section Officer (Estt.)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1389 /2014

Asif Khan.....Appellant

VERSUS

The Govt. and others.....Respondents

INDEX

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2.	Notification showing availability of vacancies	12.10.2012	Rj/1	0-5
3.	Schedule showing vacancies		Rj/2	0-6
4.	Letter issued by the Public Service Commission	02.01.2012	Rj/3	7-8
5.	Misc: documents		Rj/4	9-19

Through

Appellant

  
KHALED RAHMAN

Advocate

Supreme Court of Pakistan

3-D, Haroon Mansion

Khyber Bazar, Peshawar

Off: Tel: 091-2592458

Cell # 0345-9337312

Dated: 05 /07/2015

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR****Service Appeal No. 1389 /2014**

Asif Khan.....Appellant

Versus

The Govt. and others.....Respondents

---

**REJOINDER ON BEHALF OF APPELLANT IN RESPONSE  
TO REPLY FILED BY RESPONDENTS.**

---

Respectfully Sheweth,

**Preliminary Objections:**

Preliminary objections raised by answering respondents are erroneous and frivolous, the detailed replies thereof are as under:-

- I. That valuable rights of the appellant have been infringed due to the acts and actions of Respondents which have been challenged through the instant appeal under the law, therefore, appellant has got a strong cause of action and for that matter locus standi to file the instant appeal.
- II. That successive amendments within a short span of time to favour one set of employees at the cost of others is against the public interest, discriminatory and therefore, not sustainable.
- III. That the issue in the instant appeal has once been raised before the Hon'ble Peshawar High Court, Peshawar which was referred to this Hon'ble Tribunal for decision in accordance with law.
- IV. That if the amendments are discriminatory, malafide, partisan then can be challenged under the law and can also be brushed aside.

- V. That promotion of the appellant to the next higher grade was in accordance with law on the basis of seniority and eligibility.
- VI. That appellant has challenged the impugned order within the meaning of Section-4 of the Khyber Pakhtunkhwa Service Tribunal Acts, 1974. It is a settled principle that estoppel does not operate against the law.
- VII. That all necessary and proper parties have been arrayed as Respondents in the instant appeal, hence the question of mis-joinder and non-joinder is misconceived.

**Facts:**

1. Para No.1 of the appeal being admitted needs no further discussion.
2. Incorrect hence denied. The Rules though were framed/ amended from time to time as referred to in the para but it is denied that it was for the betterment of the whole Department. The category of pre-service Graduate Engineers has been bitterly discriminated by reducing their share quota each time inspite of their raising genuine grievances. The Representation of the appellant was processed and a Working Paper was also prepared for consideration of SSRC but then the matter could not move ahead.
3. Incorrect hence denied. The appointment of the appellant was a promotion on acting charge basis on the basis of the seniority-cum-fitness and recommendation of the Departmental Promotion Committee. Moreover, there are as many as 27 vacancies lying vacant as would be evident from the Notification dated 12.10.2012 (*Annex:-Rj/1*) in Schedule (*Annex:-Rj/2*). As per the Schedule as many as 20 junior-most Sub-Engineers are holding BPS-17 in their own pay scales since long while 07 Assistant Engineers (BPS-17) have been promoted as XENs in their own pay and scales. It is further pertinent to mention that the answering Respondents have appointed 13 Assistant Engineers (BPS-17) on the recommendation of the Khyber Pakhtunkhwa Public Service Commission against 02 due vacancies in the quota of initial

recruitment as would be evident from the letter dated 02.01.2012 (*Annex:-Rj/3*).

4. Incorrect. Twice the quota of the appellant's categories was taxed in two successive amendments in the Rules within a short span of one year. Firstly it was reduced from 20% to 15% and then from 15% to 12% thereby adversely affecting the rights of Graduate Sub-Engineers. Previously those senior Graduate Sub-Engineers were promoted to the post of Assistant Engineer (BPS-17) when the quota of Graduate Sub-Engineers was 20% but those who were promoted were either Mechanical Graduate Sub-Engineers or in-service Graduate Sub-Engineers. Since the policy of favoritism was adopted, therefore, pre-service Graduate Sub-Engineers were bitterly discriminated against.
5. Incorrect hence denied. As explained hereinabove vacancies do exist, appellant being the senior-most eligible employee was considered by the properly constituted Departmental Promotion Committee and on its recommendation was promoted to BPS-17 on acting charge basis instead of regular basis. Moreover, the B-Tech Degree holders whose promotions have been effected have acquired the Graduate qualification in the year 2010 and 2011 while the appellant and his other colleagues have acquired such qualification in the years 1988, 1989 and 1992.
6. Being admitted needs no comments.

**Grounds:**

- A. Incorrect. The appellant has not been treated according to law and policy on the subject matter.
- B. Incorrect. The appellant along with others were promoted on the recommendation of Departmental Promotion Committee on the basis of eligibility, seniority and fitness and as such are entitled for regular promotion. Numerous vacancies are available and it is wrong to assume and the vacancies held by appellant and others are temporary. The promotions earlier effected under the previous Rules cannot be counted towards the appellant.

- C. Incorrect. Successive amendments within a short span of time reflect considerations adverse to the public interest and rights of the appellant and others. The quota of direct Graduate Sub-Engineers has been repeatedly abridged affecting their chances of promotion. Appellant has served for long years without any substantial advancement in his service career.

D&E. Incorrect hence denied.

It is, therefore, humbly prayed that the reply of answering Respondents may graciously be rejected and the appeal as prayed for may graciously be accepted with costs.

Through

Appellant

Khaled Rahman  
Advocate Peshawar

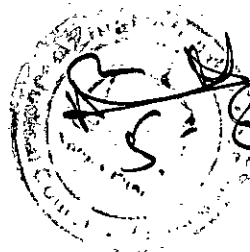
Dated: 05/08/2015

Affidavit

I, Asif Khan, Sub-Divisional Officer (Irrigation), Shahbaz Garhi, Mardan, do hereby affirm and declare on oath that the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Deponent

ATTESTED







GOVERNMENT OF PUNJAB  
IRRIGATION DEPARTMENT

ANNEX R/1

Dated Peshawar the 12<sup>th</sup> October, 2012

**NOTIFICATION**

**NO. SO(E)/IRR/4-3/DPC/PSB/2012:** The competent authority in consultation with Provincial Selection Board is pleased to promote the following Assistant Engineers (BS-17) to the post of Executive Engineers (BS-18) of Irrigation Department on regular basis with immediate effect: -

- i. Mr. Hayat-ud-Din.
- ii. Mr. Izzat Khan.
- iii. Mr. Abdur Rehman Badshah.
- iv. Mr. Musleh-ud-Din.
- v. Mr. Amjad Khan.
- vi. Mr. Sher Aman Khan.
- vii. Mr. Wilayat Khan.

Handwritten signature and date: 2012/10/12

2- The officers on promotion will remain on probation for one year extendable for further one year in terms of Section 6 (2) of NWFP Civil Servants Act, 1993 read with Rule 15 (1) of NWFP Civil Servants (Appointment, Promotion & Transfer) Rules, 1989.

3- The Competent Authority in consultation with Provincial Selection Board is further pleased to appoint the following Assistant Engineers (BS-17) to the posts of Executive engineers (BS 18) of Irrigation Department on acting charge basis with immediate effect: -

- i. Mr. Zahoor Muhammad.
- ii. Mr. Rab Nawaz Khan.

(Retired)

4- Consequent upon their promotion on regular basis and appointment on acting charge basis as Executive Engineers (BS-18), the competent authority is further pleased to order the transfer / posting of the following officers of Irrigation Department with immediate effect, in the public interest: -

S.No	Name of Officer	From	To	Remarks
1	Engr: Hayat-ud-Din (BPS-18)	XEN Malakand Irrigation Division	Retained on his existing place of posting	
2	Engr: Izzat Khan (BPS-18)	Section Officer (Operation) Irrigation Department	XEN, Mechanical Irrigation Division, Peshawar	After actualization the officer will rejoin his present post.
3	Engr: Abdur Rehman Badshah (BS-18)	XEN Kohat Irrigation Division	XEN Chitral Irrigation Division	Vice No.10
4	Engr: Musleh-ud-Din (BS-18)	Deputy Director (Planning) o/a Chief Engineer (North)	Retained on his existing place of posting.	
5	Engr: Amjad Khan (BS-18)	Deputy Diector Remodeling of Wasak Canal System	Dy: Director (Design) Chief Engineer (North) Office.	After actualization the officer will rejoin his present post.

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Handwritten notes in Urdu

Handwritten signature

6	Engr: Sher Aman Khan (BS-18)	XEN Peshawar Canal Division.	Retained on his existing place of posting.	
7	Engr: Wilayat Khan (BS-18)	Deputy Director-II Bazai Irrigation Project Mardan.	Deputy Director (Planning) o/o Chief Engineer (South)	After actualization the officer will rejoin his present post
8	Engr: Zahoor Muhammad (BS-18)	XEN (acting charge) Hydrology Division Peshawar	Retained on his existing place of posting.	--
9	Engr: Rab Nawaz Khan (BS-18)	Assistant Director Leave Reserved O/O Chief Engineer (North) Irrigation.	Deputy Director (Design) acting charge o/o Chief Engineer (North) Irrigation	Against the vacant post
10	Engr. Aziz-ur-Rehman (BS-17)	XEN (OPS) Chitral Irrigation Division	Dy: Director (Design) Office of Chief Engineer (South) Irrigation.	Vicc No.11
11	Engr. Abdul Qatlan Khan (BS-17)	Dy: Director (Design) (OPS) Office of Chief Engineer (South) Irri.	XEN(OPS) Kohat Irrigation Division	Vicc No.3

Secretary to Govt. of Khyber Pakhtunkhwa  
Irrigation Department

Ends: No and date even.

Copy forwarded to:-

1. The Secretary to Governor, Khyber Pakhtunkhwa.
2. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. The Secretary, Coordination & Administration, FATA Secretariat, Peshawar.
4. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
5. The Chief Engineer (South) Irrigation Department.
6. The Chief Engineer (North) Irrigation Department.
7. The Project Director, Bazai Irrigation Project, Mardan
8. The Director (Tech) Planning & Monitoring Cell, Civil Sectt. Peshawar.
9. All Superintending Engineers of Irrigation Department.
10. Director Information, Khyber Pakhtunkhwa, Peshawar for publication in official gazette.
11. The Districts Accounts Officers, Swat, Kohat, Mardan & Chitral.
12. The Agency Accounts Officer, Malakandi.
13. PS to Minister for Irrigation, Khyber Pakhtunkhwa.
14. PS to Secretary to Govt. of Khyber Pakhtunkhwa, Establishment Deptt.
15. PS to Secretary to Govt. of Khyber Pakhtunkhwa, Irrigation Deptt., Peshawar.
16. Officers Concerned.
17. Manager, Govt. Printing & Stationary Department, for publication in the next official gazette.
18. Master File.
19. Personal Files.

  
(MISAL KHAN)  
Section Officer (Establishment)