

STATEMENT SHOWING DETAIL OF SUB ENGINEERS
WORKING AS SUB DIVISIONAL OFFICERS (OPS)

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ANNEX R0/2

S.No	NAME OF SDO (OPS)	PRESENT PLACE OF POSTING	DATE FROM WHICH POSTED AS SDO
1.	Mr. Bahadur Khan Kundi	Flood Irr; S/ Divn DI Khan	25-06-2010
2.	Mr. Haroon Rashid	Bunair Irr; S/Divn;	21-06-2010
3.	Muhammad Younas	Shangla Irr; S/Divn;	24-03-2010
4.	Mr. Sabir Hussain	Hazara Irr; Divn;	01-09-2010
5.	Mr. Farmanullah	Small Dams Pesh;	01-03-2006 ✓
6.	Mr. Asadullah Jan	Flood Divn; DI Khan	06-01-2012
7.	Mohammad Yaqoob	Small Dams Pesh;	01-02-2011
8.	Mr. Daud Khan	Charsadda S/Divn;	14-04-2011
9.	Mr. Ismail Khan	Head works S/Divn;	02-09-2009 ✓
10.	Mr. Javed Khattak	Small Dams Pesh;	12-07-2011
11.	Mr. Kifayatullah	Drainage S/Divn; Mardan	14-12-2010
12.	Mr. Sher Akbar	Pabbi S/Divn; T/well	12-03-2012
13.	Muhammad Ashraf	Rod Kohi S/Divn; DI Khan	04-07-2009 ✓
14.	Mohammad Tufail Anwar	Small Dams Kohat	05-01-2011
15.	Shiekh Ijaz ud Din	Rehabilitation Project	12-10-2011
16.	Mr. Amanullah ✓	Irr; S/ Divn; Dir	03-01-2006 ✓
17.	Mr. Saifullah ✗	S/ Divn; Civil Canal	28-09-2010
18.	Mr. Saifullah ✓	KRC S/Divn; Pesh;	12-09-2012 ✓
19.	Mr. Niaz Bad Shah ✓	Flood Divn; Pesh;	27-11-2012 ✓
20.	Muhammad Hayat	Rehabilitation project	12-05-2010
21.			
22.			
23.			

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Handwritten numbers: 20, 20, 27.

these are Jemicmat and some are holiday some 2006/2009 15%

Handwritten calculations: 21, 15, 100, 20, 7.

Investigation
 Date: 11/11/11

CONFIDENTIAL

K.P.K PUBLIC SERVICE COMMISSION
 Chief Road, Peshawar Cantt. (Near Governor House)
 Peshawar-251001
 Tel: 011-2511225



No. K.P.K-PSC-SR-VI

Dated: 21/11/11

Handwritten notes: 7, 22, 11/11/11, 113 app, 2 due

To: The Secretary to Govt of Khyber Pakhtunkhwa,
 Irrigation Department
 Peshawar

RECRUITMENT OF 13 POSTS OF ASSISTANT ENGINEER CIVIL (BPS-17) IN IRRIGATION DEPARTMENT (ADVT. NO. 01/2011.S.NO.24)

Dear Sir,

I am directed to refer to our letter No. K.P.K-PSC-SR-VI/054906 Dated 22/10/2011 on the subject noted above and to state that the Commission recommends the following to the Government for appointment against the subject noted post:

1st Block

Vacancy Position	Allocation	Merit Order	Name with Father's Name	Domicile/Zone	Adjust:
14 th	Zone-5	10	Qamar Shahzad/Hussain Shah S/O Riaz Hussain Shah	Abbottabad/5	Own Quota
20 th	Zone-5	24	Rabia Abbasi D/O Abdul Qayyum Abbasi	Manshera/5	Own Quota
23 rd	Zone-2	32	Syed Ahmad Amin Shah S/O Syed Muhammad Shah	Peshawar/2	Own Quota
24 th	Zone-3	11	Syed Suliman S/O Sayed Salar	Swat/3	Own Quota

2nd Block

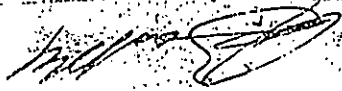
Vacancy Position	Allocation	Merit Order	Name with Father's Name	Domicile/Zone	Adjust:
1 st	Merit	01	Anwar Ullah Khan S/O Wazir Ullah Khan	N.W. Agency/3	Merit Quota
2 nd	Zone-1	05	Mustafa Ali S/O Murtaza Hussain	Kuzram Agency/1	Own Quota
3 rd	Zone-2	03	Mamraiz Khan S/O Ibadat Gul	Peshawar/2	Own Quota
4 th	Zone-3	12	Rajab Ali S/O Habib Khan	Swat/3	Own Quota
5 th	Merit	04	Ayisha Amin D/O Amir Ali	Peshawar/2	Merit Quota
6 th	Zone-4	06	Mazhar Hussain S/O Sadiq Hussain	Kohat/4	Own Quota
7 th	Zone-5	38	Arshad Shafeer S/O Abdul Qadeer Qureshi	Abbottabad/5	Own Quota
8 th	Zone-1	09	Shahin Khan S/O Hassan Khan	Mohmand Agency/1	Own Quota

RJ/3

7.5 = ⑧ 1.1 = 16-13 = 20

15

31.12.2011
DIRECTOR GENERAL
(AZAD BHADSHAH)



Yours faithfully,

Original applications (with enclosures) of the above recommendees are sent here-with for your record. Please acknowledgment receipt.

Copy 1 to the Medical Director.

Recommendation in favour of the recommendees is provisional

⑧
⑩

OFFICE OF THE CHIEF ENGINEER (SOUTH)
IRRIGATION DEPARTMENT KHYBER PAKHTUNKHWA PESHAWAR
 Phone No. 091-9212118 Fax No. 091-9212652

No. 2516-17/IB/A/3

Dated Peshawar the 18/7/2011

To
 The Secretary to Government of
 Khyber Pakhtunkhwa Irrigation
 Department Peshawar.

Subject:- MEETING OF DEPARTMENTAL PROMOTION COMMITTEE TO EXAMINE SUITABILITY OF IN SERVICE GRADUATE / DIPLOMA HOLDER SUB ENGINEERS BS-11 TO THE RANK OF ASSISTANT ENGINEERS/ SDOs BS-17

Reference:- Your letter No. SO(E) IRR:/ 4-3/DPC/91 dated 5-7-2011 and No. SO (E) IRR:/4-3/DPC/91 dated 4-7-2011.

I am directed to invite your kind attention to para 4 of the Working Paper for promotion of in Service Graduate Sub Engineer BS-11 to the rank of Assistant Engineer BS-17 where in detail of various share quota of Sub Engineers has shown as under:-

Sl. NO	CATEGORY	SHARE QUOTA	PRESENT WORKING STRENGTH	SHORT FALL	REMARKS
a	65% by initial recruitment	48.75	49	-	-
b	10% quota for in-service graduate Sub Engineers	7.5	7	1	-
c	10% quota for direct graduate Sub Engineer	7.5	12	-	5 Nos excess due to court decision.
d	15% quota for diploma holders	1.25 (say 11)	01	10	To be filled through promotion

In this connection it is clarified that the above position of Share Quota is a part of the old rules 1979 while the DPC is schedule under the Irrigation Department (Appointment, promotion and transfer) Rules 2011 notified vide your letter No. SO(E) IRR:/23-5/73 dated 17-2-2011 vide which the position of share quota of the post of Assistant Engineer is tabulated as under:-

Sl. NO	CATEGORY	SHARE QUOTA	PRESENT WORKING STRENGTH	SHORT FALL	REMARKS
a	65% by initial recruitment	48.75 (say 49)	47	2	-
b	10% quota for in-service graduate Sub Engineers	7.5 (say 7)	7	0	-
c	5% quota for direct graduate Sub Engineer	3.75 (say 4)	12	0	Excess 8;
d	20% quota for diploma holders	15	0	15	-

Process done 20/

P-19 Regender

RJ/4

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Keeping in view of the position there seems no vacant post under share quota of in service Graduate therefore this agenda item may kindly be re-considered / dropped for the present.

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Beside the above the Law Department Khyber Pakhtunkhwa in a meeting held on 9-7-2011 under the Chairmanship of Additional Advocate General decided that the case is fit for filing CPLA alongwith an application for suspension of proceeding if any before the Supreme Court of Pakistan vide letter No. Lit/LD/1-9. (50)Irr/2011/0913-15 dated 13-7-2011 addressed to Advocate General with copy to Secretary Irrigation as well as this office and legal notice from Mr. Abdur Rehman Siddiqui (copy enclosed) may also be taken into consideration while discussing the case of diploma holder Sub Engineer to the rank of Assistant Engineer BS-17 please.

Encl: As above

SUPERINTENDING ENGINEER
(HEADQUARTER)



AMERKUNCI

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GOVERNMENT OF N.W.F.P.,
IRRIGATION DEPARTMENT.

NO. SO(E) I&PHE/4-6/73/126-30.
Dated Peshawar the 1-1-1994.

11

NOTIFICATION.

Consequent upon the recommendations of Departmental Promotion Committee, the Governor, NWFP has been pleased to promote the following Graduate Sub Engineers of the Irrigation Department to the rank of Assistant Engineers (BFS-17), with immediate effect, in the public interest.

- 1/ Mr. Misal Khan.
- 2/ Mr. Samiullah.
- 3/ Mr. Mohammad Aqeel Azhar.

Meharwal

On their promotion as Assistant Engineer the following posting/transfer amongst the SDOs of the Irrigation Department are hereby ordered with immediate effect in the public interest.

SL: NO.	NAME OF OFFICERS.	FROM	TO
1/	Mr. Misal Khan.	Already working as SDO CRBIP Consultants in his own pay and scale.	On promotion as SDO posted as SDO CRBIP Consultants, D.I. Khan.
2/	Mr. Samiullah.	Sub Engineer Pabbi Tubewell Sub Division.	On promotion as SDO posted as SDO ISRP, Peshawar against the vacant post.
3/	Mr. Mohammad Aqeel Azhar.	Already posted as SDO CREC in his own pay & scale.	On promotion as SDO posted as SDO CRBIP Consultants, D.I. Khan.

All concerned

SECRETARY TO GOVT. OF NWFP
IRRIGATION DEPARTMENT

Endat: NO. and dated as above.

Copy forwarded for information and necessary action to the Chief Engineer, Irrigation Department, NWFP, Peshawar and others concerned.

SECTION OFFICER (ESTT.)
IRRIGATION DEPARTMENT.

4

Court decision

15

1-9-99

12

GOVERNMENT OF N.W.F.P.
IRRIGATION DEPARTMENT.

Dated Pesh: the 01-09/1999

ORDER

The Governor, NWFP, in consultation with the Departmental Promotion Committee, is pleased to appoint the following four (04) Graduate Sub Engineers (BPS-11) as Assistant Engineers (BPS-17), on acting charge basis, purely on temporary measures, with immediate effect, in accordance with Rule-9 of the NWFP Government Servants (Appointment & Promotion) Rules, 1979 and S&GAD circular letter No. SORL (S&GAD) /1-29/75/Volume-IV, dated 13-1-1999.

1. Mr. Mohammad Tahir.
2. Mr. Amir Muhammad.
3. Mr. Akbar Khan.
4. Mr. Hayatullah.

Consequent upon their appointment on acting charge basis as Assistant Engineer (BPS-17) they are hereby adjusted against the following positions noted against each, with immediate effect, in the public interest.

S. NO.	NAME OF OFFICERS	ADJUSTED AS:
1.	Mr. Mohammad Tahir.	Assistant Design Engineer, office of the Chief Engineer Irr:
2.	Mr. Amir Muhammad.	SDO Small Irr: Scheme Pesh:
3.	Mr. Akbar Khan.	SDO Mech: Irr: Sub Div: D.I. Khan
4.	Mr. Hayatullah.	SDO Janikhel Irr: Sub Div: Bannu

SECRETARY TO GOVT. OF NWFP,
IRRIGATION DEPARTMENT.

Endst: No. SO(E)IRR: /4-3/91, 11635-69

Dated Pesh: the 01/09/1999

Copy forwarded to the:

1. Accountant General, NWFP, Peshawar.
2. Chief Engineer (O&M) Irrigation Department.
3. Chief Engineer (Dev:) Irrigation Department.
4. P.S. to Minister Irrigation.
5. District Accounts Officers, D.I. Khan, Bannu.
6. Section Officer (R-IV) S&GAD.
7. Section Officer (SR-II) Finance Department.
8. officers concerned.
9. P.Fs of the officers.

SECTION OFFICER (S&GAD)



ہائر ایجوکیشن کمیشن

13

HIGHER EDUCATION COMMISSION

Sector H-9, Islamabad, (Pakistan), Phone: + 92-51-9257508, 9040708
Fax: + 92-51-9040713; URL: <http://www.hec.gov.pk>

MUHAMMAD JAVED KHAN
Director General (Attestation & Accreditation)
mjkh@hec.gov.pk

No.8-36/HEC/A&A/2007
May 21, 2007

Mr. Majid Rafi,
Block # 12-D, Flat # 02,
Cat-IV, I-9/4 Islamabad

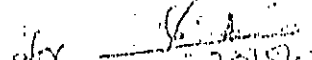
Subject: Equivalence of Bachelor of Technology (Hons) in Electrical
Technology degree awarded by the Preston University Kohat.

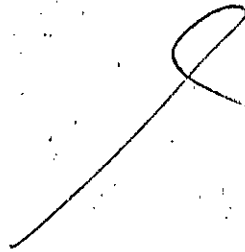
Dear Sir,

With reference to your application dated May 21, 2007 on the subject, the decision regarding equivalence of B.Tech (Hons) degree was taken in its 39th meeting of Equivalence Committee of erstwhile UGC held on 12.2.1998 had declared B.Tech (Hons) degree as compatible and at par to BE/B.Sc Engineering for purpose of employment. The decision of the Committee is reproduced below for your information:

"The degree of B.Tech (Hons) is not similar to B.E/B.Sc Engineering degree. Both the degrees of B.E/B.Sc Engineering and B.Tech (Hons) be considered as two distinct disciplines of knowledge in the field of Engineering and Technology and should run parallel to each other. However, B.Tech (Hons) may be treated at par and compatible with B.E/B.Sc. Engineering degree holders as far as grades, pay and promotions and other benefits are concerned.

Yours faithfully,


Muhammad Javed Khan



Most Immediate.

17

GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

14

No. SO(E)/Irr/4-1473/Vol II
Dated Peshawar the 1st July, 2012

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

Subject: NOTIFICATION

I am directed to refer to your letter No. 8630/IB/A//E(ii) dated 21.06.2012 on the subject noted above and to state that under Provincial Government Policy (copy attached) out of 13, three (FATA domiciled) newly recruited Assistant Engineers have been placed at the disposal of FATA Secretariat, while the remaining 10 Assistant Engineers have been placed at your disposal for adjustment against the vacant and leave reserve posts for the purpose of salary during the 04 months training.

Instead of reverting acting charge SIDOs, it would be appropriate to adjust the newly recruited Assistant Engineers against the vacant posts and the posts of SIDOs which have been occupied by Sub Engineers in OPS, if needed.

I am, therefore, directed to request to kindly take necessary steps and on successful completion of the 04 months training, proposals for proper posting of these Assistant Engineers may be furnished for approval of the Minister for Irrigation, please.

Enc: as above.

6-7-12
Misal Khan
Section Officer (ESII)

5007
5/9/12
MSK
✓



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

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

Dated Peshawar the 21/06/2012

PS/Secy Irrigation

No. 8630 /IB/A/7-E(ii)

Diary No. 4086

Date 21-6-12

The Secretary,
to Government of Khyber Pakhtunkhwa,
Irrigation Department Peshawar.

Subject: NOTIFICATION

Reference: Your Notification NO.SO(E)IRR;/4-14/73, dated 8-6-2012 and this office letter No.4814/IB/A/7-E(ii), dated 14-4-2012, and NO.7273/IB/A/7-E(ii), dated 31-5-2012.

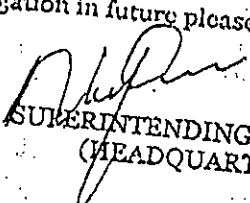
I am directed to invite your kind attention to the notification issued vide your office No, mentioned under reference vide which 13 Nos newly recruited Assistant Engineers have been posted against the vacant and leave reserve posts, but proper place of posting against which they are posted have not been mentioned. Besides against 13 Assistant Engineers there are only 6 Nos vacant posts available in the Department.

It is submitted that the newly recruited Assistant Engineers would undergo 4 months initial practical training in line with Para-1-18 of the B&R Manual of Order and on expiry of the training (during the last week training period) an examination would be held under the supervision of Chief Engineer (South) Irrigation Department and if the Assistant Engineers qualify the examination, would be considered fit for assigning the regular charge.

The Chief Engineer (South) Irrigation Department will arrange the training plan for the new selectees, keeping in view of the field training/accounts / administration, the Chief Engineer will further make attachment for their training with respective Executive Engineers who after successful training will furnish a certificate to the effect duly countersigned by the Chief Engineer that the newly selected Assistant Engineers have availed the practical training of the Irrigation Department in all respect successfully.

It is added that recently 22 Nos Sub Engineers were promoted on acting charge vide your office order No.SO(P)IRR;/4-5/2011/Vol:II, dated 31-1-2012 over and above the prescribed share quota. According to the instructions contained in S&GAD letter No.SOR-I(S&GAD)1-29/75/Vol:IV, dated 13-1-1999 the acting charge appointments are only admissible against the posts which are likely to fall vacant for a period of six months or more. It is added that further retention of acting charge appointees on these posts will create un-necessary litigation for the Department as already done in the case of Mr. Hayatullah and others.

It is requested that all the newly recruited Assistant Engineers including the Assistant Engineers at Sl: No.1,7 and 12 who were posted in FATA on deputation basis may kindly be directed to report to this office for obtaining training etc: and all the newly recruited Assistant Engineers may kindly be posted against the vacancies already occupied by the Sub Engineers on acting charge basis so as to avoid litigation in future please.


SUPERINTENDING ENGINEER
(HEADQUARTERS)

PS/Secy Irrigation

AS

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GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

16

Dated Peshawar the 11 Oct. 2011.

NOTIFICATION

NO.SO(EIRR)/4-5/74: Consequent upon the recommendations of the Departmental Promotion Committee, the competent authority is pleased to promote the following Diploma Holder Sub Engineers to the posts of Assistant Engineers (BS-17) in the Irrigation Department on regular basis, with immediate effect:

- 1 Mr. Shaukat Ali
- ✓ 2 Mr. Riaz Ahmad
- 3 Mr. Habib Ullah
- 4 Mr. Hidayat Ullah
- 5 Mr. Faizur Rehman
- 6 Mr. Waheed ur Rehman
- 7 Mr. Fazl e Khuda
- 8 Mr. Hassan Zulqarnain Haider
- 9 Mr. Alamzeb
- 10 Mr. Tahir Said
- 11 Mr. Nasrullah
- 12 Mr. Jamshid Ahmad Raees
- 13 Mr. Naseerud Din
- 14 Mr. Sherin Jan
- 15 Mr. Hazrat Hassan

2. The officers will remain on probation for a period of one year extendable for further one year in terms of Section 6(2) of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Section 15(1) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989.

875 15/10/2011

✓

3- Upon their promotion on regular basis (BS-17), 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: -

17

Sr. No.	Name of the Officer	From	To	Remarks
1	Mr Shaukat Ali	Assistant Director (OPS), Bazai Irrigation Project, Mardan	Assistant Director, Bazai Irrigation Project, Mardan.	On promotion he is allowed to continue against his present posting.
2	Mr. Riaz Ahmad	Sub Engineer, Kohat Irrigation Division Kohat	Sub Divisional Officer, Project Irrigation Division, Kohat.	Against the vacant post.
3	Mr. Habib Ullah	Sub Divisional Officer (OPS), Dargai Irrigation Sub Division, Dargai	Sub Divisional Officer, Dargai Irrigation Sub Division, Dargai	
4	Mr. Hidayat Ullah	Sub Divisional Officer (OPS), Flood Sub Division No. I, D. I. Khan	Sub Divisional Officer, Flood Sub Division No. I, D. I. Khan	
5	Mr. Faizur Rehman	Sub Divisional Officer (OPS), Chitral Irrigation Sub Division, Chitral	Sub Divisional Officer, Chitral Irrigation Sub Division Chitral	
6	Mr. Wahced ur Rehman	Sub Divisional Officer (OPS), Warsak Gravity Canal Sub Division, Peshawar.	Sub Divisional Officer, Warsak Gravity Canal Sub Division, Peshawar.	
7	Mr. Fazl e Khuda	Sub Divisional Officer (OPS), Dir Irrigation Sub Division at Chakdara, Dir (Lower).	Sub Divisional Officer, Dir Irrigation Sub Division at Chakdara, Dir (Lower).	
8	Mr. Hassan Zulfarnain Haider	Sub Divisional Officer (OPS), Pharpur Irrigation Sub Division D. I. Khan.	Sub Divisional Officer, Pharpur Irrigation Sub Division D. I. Khan.	On their promotion in BS-17, they are allowed to continue their present postings.
9	Mr. Alamzob	Sub Divisional Officer (OPS), Mardan Irrigation Sub Division Mardan.	Sub Divisional Officer, Mardan Irrigation Sub-Division Mardan.	
10	Mr. Tahir Said	Sub Divisional Officer (OPS), Dir Irrigation Sub Division, Dir (Upper).	Sub Divisional Officer, Dir Irrigation Sub Division, Dir (Upper).	
11	Mr. Nasrullah	Sub Divisional Officer (OPS), Workshop Sub Division, Peshawar.	Sub Divisional Officer, Workshop Sub Division, Peshawar.	
12	Mr. Jamshid Ahmad Raees	Sub Divisional Officer (OPS), Drainage Sub Division D. I. Khan.	Sub Divisional Officer, Drainage Sub Division D. I. Khan.	
13	Mr. Naseerud Din	Sub Engineer, Swabi Irrigation Division, Swabi.	Assistant Director (Design), Office of the Chief Engineer (North), Irrigation Department.	Against the vacant post.
14	Mr. Sherin Jan	Assistant Director (OPS), Leave Reserve Peshawar Canal Division, Peshawar	Assistant Director, Leave Reserve Peshawar Canal Division, Peshawar	On his promotion in BS-17, the officer is allowed to continue as Assistant Director, FDRD.
	Mr. Hazrat Hassan	Sub Engineer, Tube Well Irrigation Division, Peshawar.	Assistant Director (Design), Office of the Chief Engineer (South), Irrigation Department.	Against the vacant post.

NB: be

Promotion of the above named diploma holder Sub Engineers will subject to the final outcome of the court proceedings.

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

1812

1979 RULES

Direct Recruitment
70 %

Graduate Sub Engineer
10 %

Diploma Holder Sub Engineer
20 %

RULES 1994 1ST AMENDMENT

70 %

In Service Graduate Sub Engineer
5 %

Pre-service Graduates Sub Engineers
5 %

20 %

RULES 1999 2nd AMENDMENT

Direct Recruitment
65 %

Graduate in Service Sub Engineer
10 %

Graduate Pre-Service Sub Engineer
10 %

Diploma Holder
15 %

2011 RULES

65 % Initial Recruitment

10 % Graduate in Service Sub Engineer

5 % Graduate Pre Service Sub Engineer

20 % Diploma Holder Sub Engineer

2012 RULES

65 % Initial Recruitment

12 % Graduate in/ Pre-Service Sub Engineer

8 % B.Tech (Hon) Sub Engineer

15 % Diploma Holder Sub Engineer

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1389 /2014

Asif Khan..... Appellant

Versus

The Govt. and others.....Respondents

Reply on behalf of the appellant in response to application for impleadment.

Respectfully Sheweth,

Preliminary Objections:

- I. That the applicants have got not cause to seek their impleadment in the instant appeal. The applicants are neither necessary nor proper parties for the disposal of the instant appeal inas much as no relief has been claimed against them. The application is misplaced and hence needs outright rejection.
- II. That under the rules, the applicants have got their separate quota of 08% in the promotion to BPS-17 post whereas the appellant's cadre has got a distinct quota of 20%, therefore, both set of employees are separately maintained for the purpose of promotion to the next higher grade and there is no dispute between both the cadres at the time.
- III. That the applicants have already been promoted to the next higher grade on regular basis. Their promotions have not been called in question, therefore, the instant application is misconceived.

Reply to Facts:

1. Para-1 of the application is correct to the extent of writ petition. As a matter of fact in the said petition, the appellant and his other colleagues obtained a stay order on the promotion of the applicants, subsequently, the applicants were promoted after the vacation of stay order and the said matter had been finalized now. The applicants were arrayed as Respondents in the writ petition because their promotion was stayed, as soon as the applicants were promoted on regular basis they are no more necessary parties having no concern with the instant appeal.
2. Para-2 of the application is correct.
3. Para-3 of the application is misconceived. As earlier stated that only the promotion of the applicant was blocked in the writ petition and to that extent they were added as party alongwith others. After promotion they are no more necessary parties.
4. Para-4 of the application is misconceived. The cases of Muhammad Javed and others were altogether distinguishable facts and grounds having no concern with the instant case.

5. Para-5 of the application is correct to the extent of decision by the Hon'ble Apex Court but having no relevance with the issue in the instant appeal.
6. Para-6 of the application is incorrect. The applicants are neither necessary nor proper parties.

It is therefore humbly prayed that the application for impleadment being misplaced may be rejected.

Through

Appellant

Khaled Rahman,
Advocate, Peshawar.

Dated: 30 / 08 / 2016

Verification

Verified as per the instructions that the contents of this reply are true and correct to the best of my knowledge and nothing has been concealed from the Hon'ble Tribunal.

Advocate

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.1389/2014

Asif Khan.....VS.....Govt: of Khyber Pakhtunkhwa etc.

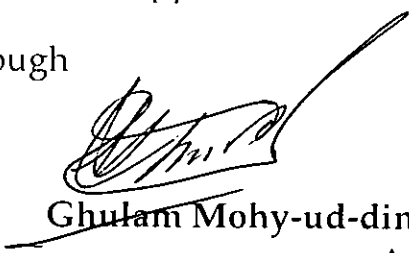
INDEX

S.No	Description of documents	Annex	Pages
1.	Application with Affidavit		1-4
2.	Copy of grounds Writ Petition No.3388-P/2012	A	5-12
3.	Copy of Rules 2012	B	13-14
4.	Copy of Judgement dated 26.02.2014 of this Hon'ble Tribunal	C	15-24
5.	Copy of Supreme Court Judgement	C/1	25-32
6.	Wakalatnama		33

Dated: 11.05.2016

Applicants

Through


Ghulam Mohy-ud-din Malik,
Advocate,
Supreme Court of Pakistan.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.1389/2014

Asif Khan.....VS.....Govt: of Khyber Pakhtunkhwa etc.

APPLICATION FOR IMPLEADMENT OF
APPLICANTS IN THE PENAL OF
RESPONDENTS.

Respectfully Sheweth,

1. That earlier Writ Petition No.3388-P/2012 at page-28 to 35 of Service Appeal No.1389/2014 title as above was pending disposal before Hon'ble High Court, the applicants on their application were added as Respondents vide order dated 28.02.2013 and placed as Respondents No.5 to 7. **(Copy of Writ Petition is attached as Annexure-A)**
2. That the Hon'ble High Court while disposing of the Writ Petition No.3388-P/2012 along with Writ Petition No.2440-P/2012 and Writ Petition No.3595-P/2012 vide order dated 04.09.2014 in para-4, page-58 of the title appeal, observed as under:-

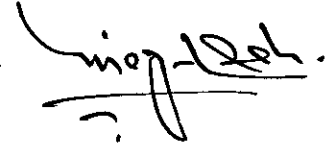
" Direct the office to retain copies of memo of Writ Petitions bearing No.2440-P and 3388-P/2012 and transmit the same to the Khyber Pakhtunkhwa Service Tribunal for decision in accordance

with law. Parties are directed to appear before the Service Tribunal on 10th October, 2014.

3. That in view of the above, it is clear that the applicants were party even at the time of final judgement of High Court, therefore, their association and assistance to the Hon'ble Court would be necessary to get at the truth and also they would be in a position to protect their rights.
4. That earlier identical Service Appeals No. 1175 to 1184/2012 were filed by Muhammad Javed & 9 others against the applicants before this Hon'ble Service Tribunal KPK which were allowed and the cases were remanded to the Provincial Government vide order dated 26.02.2014. **(Copy Judgement is attached as Annexure-B)**
5. That feeling aggrieved, the applicants filed Civil Appeals No. 796 to 805 of 2014 before apex Supreme Court of Pakistan which were heard and accepted by setting aside the judgment and order of remand and consequently the applicants were declared entitled to promotion on the basis of their separate cadre and quota allotted per rules dated 25.06.2012. The Judgement of apex Court has been reported in 2015 SCMR page-269. **(Copy of the rules 2012 and Supreme Court Judgement are attached as Annexure-C & C/1)**
6. That in view of all the attending facts and circumstances, the applicants are necessary and proper party to protect their rights before this Hon'ble Court but malafidely they have been omitted from the penal of Respondents and that if they are not impleaded, as such, they apprehend infringement of their rights in their absence.

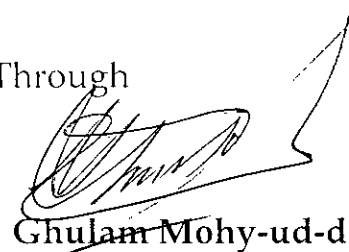
It is, therefore, prayed that the applicants may graciously be impleaded as party in the penal of Respondents, enabling them to protect their rights.

Applicants



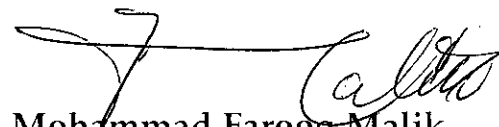
1. Niaz Badshah, Sub Division Officer, Civil Canals, Peshawar Division.
2. Saifullah Khan, Sub Division Officer, Kabul River Canals, Peshawar.
3. Aman Ullah, Sub Division Officer, Charsadda Irrigation Division, Charsadda

Through



Ghulam Mohy-ud-din Malik,
Advocate,
Supreme Court of Pakistan.

&



Mohammad Farooq Malik,
Advocate
High Court Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.1389/2014

Asif Khan.....VS.....Govt: of Khyber Pakhtunkhwa etc.

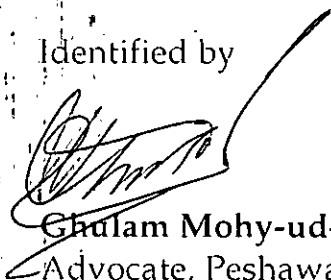
AFFIDAVIT

I, Saifullah Khan, Sub Division Officer, Kabul River Canals, Peshawar do hereby solemnly declare that the accompanying Application is true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

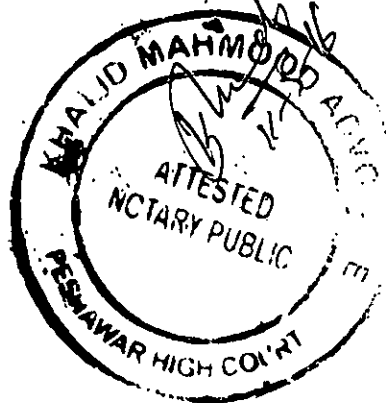


DEPONENT

Identified by



Ghulam Mohy-ud-Din Malik
Advocate, Peshawar



IN THE PESHAWAR HIGH COURT PESHAWAR

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

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 of 22/11/12
the following have been impleaded
in the panel of Respondents*

- (5) Anamullah, Sub Divisional Officer
(OPS) Swat Irrigation Division, Swat
- (6) Niaz Barchak, Sub Divisional Officer
(OPS) Flood Division Warsak Road Peshawar
- (7) Saigullah, Sub Divisional Officer
(OPS) Kabul River Canal Warsak
Road, Peshawar.

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

Respectfully Sheweth,

(21)

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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:

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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) & (c) above is not available for promotion, the vacancy shall be filled in by initial recruitment.</p>

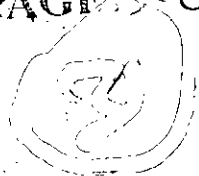
Before framing of rules ibid, Petitioners have submitted a departmental Representation on 14.07.2010 (Annex:-D) to the competent authority thereby bringing the grievances of Petitioners in his notice and requesting for not reducing the quota of Petitioners but their request bore no fruitful result and 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:-

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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.

PAGE 8


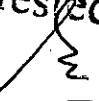
3. That during this period meeting of the Departmental Promotion Committee was held wherein Petitioners being eligible as well as seniors, were duly recommended for promotion to the next higher grade and accordingly they were promoted vide Notification dated 13.12.2011 (*Annex:-H*) to the posts of Assistant 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>Not.e.</u> For the purpose of Clause (b) a joint seniority list of the Sub-Engineers having Degrees in Civil Engineering or Mechanical</p>

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31 DEC 2012

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

PAGE: 2

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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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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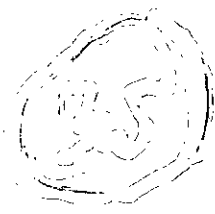
B. That Petitioners were granted promotion to next higher grade in view their long standing seniority, eligibility and fitness for promotion after observing all codal formalities including due consideration by properly constituted Departmental Promotion committee but instead of regular promotion they 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

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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.

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
Khaleel Rahman
Advocate Peshawar.

Dated: 1 / 10 / 2012

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2012



KEYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, MONDAY, 25TH JUNE, 2012.

GOVERNMENT OF KHYBER PAKHTUNKHWA, IRRIGATION DEPARTMENT.

NOTIFICATION

Dated: 25th June, 2012.

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

AMENDMENTS

In the Appendix,

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

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

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

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

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

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

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

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

ii. against serial No. 5, in column No. 5, for the existing entries in clause (b), the following shall be substituted, namely:

"(b) fifteen percent by promotion, on the basis of seniority-cum-fitness, from amongst the Canal Inspectors, Work Takers, Gauge Readers, Surveyors, having Diploma of Associate Engineering in Civil, Mechanical, Electrical or Auto-Technology from a recognized Board of Technical Education, having passed the departmental Grade-B and Grade-A examination, with at-least seven years service as such; and

(c) five percent by promotion, on the basis of seniority-cum-fitness, from amongst the Canal Inspectors, Work Takers, Work Munshi, Surveyors, and work superintendent, having passed the departmental Grade-B examination with at-least ten years service as such;

iii. Against serial No. 7, in column No. 5, for the words "three years" the words "one year" shall be substituted;

iv. against serial No. 9, in column No. 3, for the existing entry the following shall be substituted, namely:

- a. Bachelor Degree or equivalent qualification from a recognized University; and
- b. A speed of 80 words per minute in short hand in English and 40 words per minute in English typing; and

v. against serial No. 13, in column No. 5, in clause (b), the words and figures "and are under 45 years of age" shall be deleted.

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT.

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

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BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

SERVICE APPEAL NO. 1175/2012

Date of institution 25.10.2012

Date of judgment 26.02.2014



Muhammad Javed Sub Engineer B-11 Assistant Director
(OPS) Small Dam Division, Peshawar.

.. (Appellant)

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Chief Secretary
Khyber Pakhtunkhwa Civil Secretariat Peshawar.
2. Secretary to Govt. of Khyber Pakhtunkhwa, Irrigation Department
Civil Secretariat, Peshawar.
3. Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department
Civil Secretariat, Peshawar.
4. Chief Engineer (South) Irrigation Department, KPK, Peshawar.
5. Niaz Badshah S/o Saeed Badshah, Sub-Engineer,
Office of the Executive Engineer, Peshawar Canal Division,
Warsak Road, Peshawar and 6 others. .. (Respondents)

Appeal under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the Notification No. SOE/IRR/2-3-5-2010-11 dated 25.6.2012 whereby amendment has been introduced curtailing the promotion quota of the appellant to 15% against the existing quota of 20% thus seriously prejudicing and affecting the promotions rights of the appellant against which the departmental appeal dated 02.07.2012 was not replied.

M/S Ijaz Anwar & Mohammad Asif Yousafzai,
Advocates
Mr. Muhammad Adeel Butt,
Addl: Advocate General.
M/S Saadullah Khan Marwat, Ghulam Mohy-ud-Din Malik,
Ghulam Nabi & Sardar Shaukat Hayat,
Advocates.

For appellant (s)
For official respondents
No.1 to 4
For private respondents
No.5 to 11

Mr. Qalandar Ali Khan
Mr. Muhammad Aamir Nazir,

Chairman
Member

JUDGMENT

QALANDAR ALI KHAN, CHAIRMAN: Since identical legal and factual questions have been raised in this appeal as well as in the connected appeals titled Mehmood Sultan-vs-Govt. of KPK through Chief Secretary etc. (Appeal No. 1176/2012), Syed Muhammad Younas-vs-Govt. of KPK through Chief Secretary etc. (Appeal No. 1177/2012), Muhammad Yaqoob vs-Govt. of KPK through Chief

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Secretary etc. (Appeal No. 1178/2012), Waqar Shah-vs-Govt. of KPK through Chief Secretary etc. (Appeal No. 1179/2012), Sabir Hussain-vs-Govt. of KPK through Chief Secretary etc. (Appeal No. 1180/2012), Riaz Muhammad-vs-Govt. of KPK through Chief Secretary etc. (Appeal No. 1181/2012), Haroon-ur-Rashid-vs-Govt. of KPK through Chief Secretary etc. (Appeal No. 1182/2012), Anayatullah-vs-Govt. of KPK through Chief Secretary etc. (Appeal No. 1183/2012) and Farid Gul-vs-Govt. of KPK through Chief Secretary etc. (Appeal No. 1184/2012), this single judgment will also dispose of the said connected appeals.

2. The appellants are Sub-Engineers (B-11) in the Irrigation Department of Khyber Pakhtunkhwa, and are aggrieved of Notification No. SOE/IRR/2-3-5-2010-11 dated 25.6.2012 whereby amendments have been introduced thereby curtailing the promotion quota of the appellants to 15% from existing quota of 20%. The appellants preferred departmental appeals against the impugned notification but to no avail, hence these

appeals

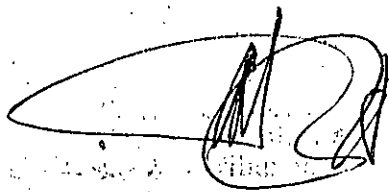
The appellants having joined the Irrigation Department as Sub-Engineers (BPS-11) while possessing the qualification of Diploma of Associate Engineering were enjoying 20% quota for promotion to the post of Assistant Engineer (BPS-17) ever since the provision incorporated to this effect in the Recruitment Rules, 1979; and subsequently retained in Recruitment Rules notified vide notification dated 17.2.2011. The case of the appellants is that the Diploma holder Sub-Engineers were large in number while having limited quota in promotion, therefore, they were posted against the post of Assistant Engineers (BPS-17) either on acting charge basis or in their own pay and scales despite having more than 20 years of service. They felt aggrieved when after years of waiting they reached the promotion zone, but their quota for promotion was abruptly curtailed from 20% to 15% vide the impugned notification, thereby seriously prejudicing and affecting prospects of their promotion. The appellants alleged that they submitted representations to the department prior to the promulgation of the rules and also preferred departmental appeals after the impugned amendments to the

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detriment of their vested rights, but neither any heed was paid to their representations prior to the promulgation of the amended rules nor they received any response to their departmental appeals within the statutory period prescribed for the purpose; and, instead, the amended rules were given retrospective effect thereby adversely affecting the right of promotion already accrued to the appellants under the un-amended rules. In this connection, the appellants initially lodged writ petition and then lodged these appeals.

4. The appellants have assailed the amendments in the rules through the impugned notification, inter-alia, on the grounds that they have not been treated in accordance with law and while amending the rules, the strength of Sub-Engineers of different categories has not been kept in view, as the total strength of in-service Engineering Graduates was about 13 while they have been allowed 12% quota in promotion, Sub-Engineers holding qualification of B.Tech(Hons) have been allowed 8% quota as against their total strength of 10; while Diploma holder Sub-Engineers (appellants) were 130 in number but their quota has been curtailed from 20% to 15%; that the Degree holders initially took the benefit of their B.Sc Engineering at the time of initial recruitment through Public Service Commission and then on the basis of the same degree they are allowed promotion, thus availing double benefit on the same qualification; that sudden curtailing of quota for promotion at the time when the appellants had already reached the promotion zone amounted to denying vested rights of promotion to the appellants and snatching the rights already accrued to them; that amended rules are against the service structure of the Sub-Engineers as they tend to create cadre within cadre without hearing the stake holders, hence against the principle of natural justice; that promotion on the basis of only higher qualification under the amended rules amount to out of turn promotion, which has consistently been deprecated by the superior courts; and that the appellants were fit and eligible for promotion to the rank of Assistant Engineers BPS-17 and failure on the part of the respondent-



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department to follow the law and make promotions is seriously affecting rights of the appellants.

5. The appeals have been vehemently resisted by the official, as well as private respondents, who joined the proceedings later on. In their separate written replies, they contested case of the appellants against amendments in the promotion rules, mainly, on the grounds that some of the B.Tech(Hons) Degree holder Sub-Engineers were also serving the department for the last 24 years, while at the same time admitting that some of the aggrieved civil servants had been appointed in the year 1987. They claimed that 20% quota for promotion of Diploma holder Sub-Engineers was fixed in the Recruitment Rules, 1979 as well as in the rules of 1994, but in the rules of 1999 the quota was fixed at 15% and later on in the rules of 2011 the quota was re-fixed at 20%. However, in the rules of 2012, the quota was re-fixed at 15% because B.Tech (Hons) Degree holder Sub-Engineers were merged in the quota of promotion for the post of Assistant Engineer (BS-17) as quota of Diploma holders for promotion at the ratio of 20% had already been utilized/exhausted. They disputed claim of the appellants that they were serving the department for longer period on the ground that some of the B.Tech (Hons) Degree holders were also serving the department for the past 24 years in BS-11. The respondents alleged that representations of the appellants have since been rejected. They maintained, that the amended rules have legal sanctity and cannot be questioned under any law and that cases of the appellants for promotion will be dealt with in accordance with law on the basis of seniority-cum-fitness. The respondents also defended the amended rules on the ground that the same were for the betterment of all categories of employees.

6. Arguments of learned counsel for the appellants, learned AAG and learned counsel for private respondents heard, and record perused.

7. The main thrust of the arguments of learned counsel for the appellants was that the act of the respondent-department to abruptly introduce amendment in the promotion

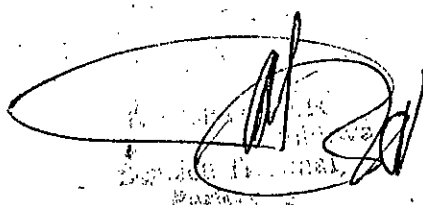
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 Service Manual
 2012

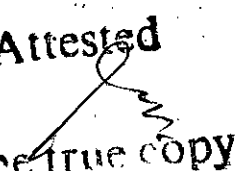
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rules thereby curtailing quota of Diploma holder Engineers and creating a distinct quota of 8%, though not commensurate with number of B.Tech (Hons) Degree holders, was tainted with malice, as neither the appellants were provided opportunity to defend their vested rights for promotion nor actual strength of different categories of Sub Engineers was taken into consideration at the time of amendments in the rules. It was alleged on behalf of the appellants that no sooner the private respondents acquired the qualification of B.Tech (Hons), they manoeuvred to ~~secure~~ ^{come} a distinct quota for themselves to secure out of turn promotion on the one hand and deprive the other eligible candidates for promotion at the time when they had reached the promotion zone after waiting since long, on the other. The appellants challenged the retrospective application of the amended rules on the ground that right of promotion had accrued to the appellants under the rules before amendments, therefore, the amended rules could not take away vested rights from the appellants.

8. The respondents, on the other hand, raised objection to the maintainability of appeals and jurisdiction of the Tribunal against rule making powers of the Government, and to entertain appeals for promotion to a higher grade/pay scale; and at the same time defended application of the amended rules to the case of the appellants on the grounds that, firstly, the Diploma holders had already secured promotions and had exhausted their quota under the rules before the impugned amendments and, secondly, the amendments were challenged by those Diploma holders who were not yet in the promotion zone, for instance, the appellant in the instant appeal stood at S.No.37 of the seniority list. It was urged on behalf of the respondents that the B.Tech (Hons) Degree was declared equivalent to B.Sc Engineering, hence need for creation of separate quota for B.Tech (Hons) Degree holders. The learned counsel for the respondents, on the basis of a number of judgments of the superior courts, contended that promotion was not a vested right and that the Government is always competent to prescribe or enhance educational qualification for the purpose of promotion against a particular post through amendment in relevant rules, which was not challengeable. The learned counsel further

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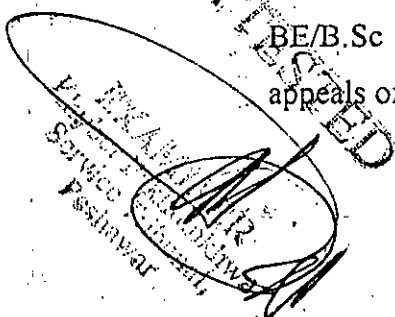
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contended that promotion on acting charge basis could not be equated to regular promotion and did not confer any right of regular promotion.

9. It would be appropriate to first deal with the objection of the respondents with regard to jurisdiction of the Service Tribunal and maintainability of appeals against amendment in rules and for the purpose of promotion. The question of jurisdiction of the Tribunal to entertain and adjudicate upon an appeal against rules/statute has been laid at rest by the august Supreme Court of Pakistan in the oft quoted judgment in the case of Muhammad Mubeen-us-Salam and others---Appellants-versus-Federation of Pakistan through Secretary, Ministry of Defence and others---Respondents, reported as PLD 2006 SC 602. When confronted with the dictum laid down by the august Supreme Court of Pakistan in the said judgment, the respondents could not controvert the principle of law established by the above referred judgment. As regards appeals for promotion, there are no two opinions that appeals for promotion simplicitor are not competent under section 4 (b) (i) of the NWFP (KPK) Service Tribunal Act, 1974; but these appeals have primarily been lodged against amendments in the rules, thereby, allegedly, seriously prejudicing and affecting the promotion right of the appellants; and relief of promotion has been sought so as to say as a 'consequential relief'.

10. The record would show that 'in order to examine and dispose of the appeals preferred by M/S Saifullah Khan and Amanullah Khan, Sub-Engineers, on merit basis', the Government of Khyber Pakhtunkhwa, Irrigation Department, constituted a committee comprising Engr. Sahibzada Muhammad Shabir, Superintending Engineer, Peshawar, Irrigation Circle, Peshawar, as Chairman and M/S Misal Khan, Section Officer(Establishment), Irrigation Department, and Javed Ali, Admn Officer, office of Chief Engineer (South), Irrigation Department, as Members, vide Notification dated 6th October 2011, with following terms of reference (TORs):

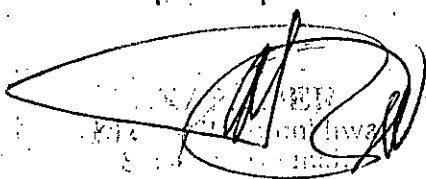
To examine equivalency of B.Tech (Hons) with that of BE/B.Sc Engineering in light of the references quoted in the appeals of the Sub Engineers.



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- To consult Irrigation Department, Govt. of Punjab, Lahore for obtaining legible copy of their notification of September, 2001 alongwith other connected documents, whereby B.Tech(Hons) Sub Engineers are considered for promotion to the posts of Assistant Engineers (BS-17).
- To give specific recommendation as to whether fixation of quota for B.Tech (Hons) degree holder Sub Engineers on the analogy of B.E/B.Sc degree holder Sub Engineers for promotion to the posts of Assistant Engineers (BS-17) is feasible for placing before the SSRC to amend the Service Recruitment Rules of Irrigation Department or otherwise.

In its report dated 19.11.2011, it was clearly stated that the committee was constituted 'in order to examine appeals of M/S Saifullah Khan and Amanullah Khan, B.Tech (Hons) Degree holder Sub Engineers, requesting therein to consider B.Tech (Hons) degree at par with the B.E/B.Sc Engineering Degree and include the same in the quota reserved for graduate Sub Engineers for promotion to the rank of Assistant Engineer'. It may be observed here that contrary to the ^{stated} object for which the committee was constituted, and itself explained by the committee in its report, the committee recommended creation of 8% separate quota for B.Tech (Hons) instead of including B.Tech(Hons) in quota reserved for graduate Sub Engineers. Needless to say that 8% separate quota for B.Tech (Hons) was created after curtailing the existing quota of Diploma holders from 20% to 15%. It appears from the report of the committee that the consideration of equivalency of B.Tech (Hons) with B.Sc Engineering for the purpose of grades, pay and promotions weighed heavily with the committee for recommending creation of a separate quota for B.Tech (Hons); but it may be remarked here that equivalency of B.Tech(Hons) to B.Sc Engineering for the purposes of the grades, pay and promotions, has never remained a bone of contention in the light of communication of the Higher Education Commission. However, the question is that whether equivalency of B.Tech(Hons) to B.Sc Engineering, per se, could be a ground for creation of a separate quota for B.Tech(Hons), without taking into consideration the entire



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service structure of the department, rights accrued to members of the service under the existing rules, and concerns of those employees who were likely to be adversely affected by the proposed amendments. To say the least, the committee, as its report shows, did not attend to any of the above necessary prerequisite for amendments in the existing rules.

11. The committee failed to take into consideration the existing strength of different categories and the quota reserved for their promotion. The record would show that initially 70% quota was reserved for initial recruitment, 10% for selection on merits with due regard to seniority from amongst Sub Engineers who hold a degree, and 20% for selection on merit with due regard to seniority from amongst officiating Assistant Engineers holding a diploma, vide notification dated 30th April 1979. In the year 2011, vide notification dated 17th February 2011, 65% quota was reserved for initial recruitment, 10% for promotion amongst Sub Engineers who acquired degree in Civil or Mechanical Engineering during service, 5% by promotion for Sub Engineers who joined service as degree holders in Civil/Mechanical Engineering, and 20% by promotion for diploma holder Engineers who passed departmental Grade-A examination with 10 years service as such. It was pointed out by the respondents that once before, in the rules of 1999, the quota for diploma holders was fixed at 15%; but the fact remains that before the impugned amendments, the quota for diploma holders was re-fixed at 20% in the rules of 2011.

12. The main grievance of the appellants is that curtailing their quota from 20% to 15% and creating 8% separate quota for B.Tech(Hons) will place them in a disadvantageous position as against holders of degree of B.Tech(Hons), who, according to the appellants, are 10 in number while there are around 130 diploma holders Sub Engineers in the department. In order to further augment their arguments, the appellants have brought on record documents showing holders of B.Tech(Hons) degree, who were initially diploma holders, to have acquired degree of B.Tech (Hons) afterwards during the year 2010 onwards, with the exception of Khurshid Ahmad, who acquired the

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degree on 5.12.2005, but has joined the appellants in filing his own appeal against the impugned amendments. It has been vehemently stressed on behalf of the appellants that they joined service much earlier than the degree holders of B.Tech (Hons) and thus ranked senior to them and most of them reached the promotion zone when the promotion rules were suddenly and unilaterally amended to their detriment, depriving them of their vested rights to promotion; and ^{also} to the unfair advantage of degree holders of B.Tech(Hons) who otherwise could not qualify for promotion being junior in the seniority list. They, allegedly, therefore, manoeuvred to carve a separate quota for promotion for themselves, detrimental to the interest of other senior employees in the department.

13. In the report, the committee concluded that 'considering the re-adjustment of Sub Engineers strength the committee recommends.....'. In other words, the committee was largely influenced by the re-adjustment of Sub-Engineers prior to the impugned amendments. The learned counsel for private respondents also urged that even otherwise the diploma holders had secured promotion and exhausted their erstwhile quota of 20%, therefore, they had no cause of action to challenge amendments in the rules, which were not going to affect their promotion rights which they had availed under 20% quota. The argument is, prima facie, far-fetched for the reason that the dispute is not with regard to who got how much share under the quota existing before the impugned amendments, rather the issue is whether amendments in the rules are in the interest of service and all the employees, and not to the detriment of any segment of the civil servants and to the unfair advantage of a particular class of government employees. The report of the committee speaks otherwise and reveals that no such considerations prevailed with the committee, which acted unilaterally, without affording a chance of putting forth their case to those employees who were likely to be affected by the impugned amendments.

14. Having said that, there can possibly be no cavil with the legal propositions that the Government has the authority to frame rules and also introduce amendments in the

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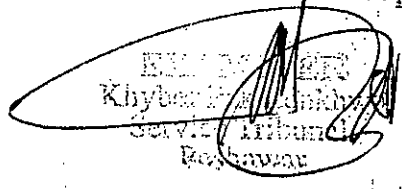
relevant rules to enhance qualification for a particular post; but the issue here is not that of amendments in the rules for enhancement of the qualification, rather dispute is with regard to unilaterally curtailing of quota of a particular class of employees to their detriment. One can also make no bones about the fact that jurisdiction of the Service Tribunal is barred in cases of promotion; but primarily the appeals have been lodged against amendments introduced in the service rules, which, according to the appellants, did not meet the ends of law and justice.

15. As a sequel to the foregoing discussion, on the partial acceptance of the appeals, the case of amendments in-question is referred to the competent authority i.e Secretary to Government of KPK, Irrigation Department (Respondent No.2) for reconsideration of the impugned amendments in the light of above discussion and observations made in the judgment for a just decision and further necessary action, under intimation to the Registrar of the Tribunal, within reasonable time. In order to avoid further legal complications and frustration of the spirit of this judgment, promotions under the amended rules be put on hold in the meantime. There shall, however, be no order as to costs.

Sd/- Balandaz Ali Khan
Chairman
Sd/- Muhammad Asim Sajid
Member

ANNOUNCED
26.02.2014 (M)

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Number of Pages: 4000
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ANNEXUR: C/1

[Supreme Court of Pakistan]

Present: Anwar Zaheer Jamali, Iqbal Hameedur Rahman and Qazi Faez Isa, JJ**GOVERNMENT OF KHYBER PAKHTUNKHWA through Chief Secretary and others---
Appellants****Versus****MUHAMMAD JAVED and others---Respondents**

Civil Appeals Nos.795 to 805 of 2014, decided on 24th November, 2014.

(On appeal from the judgment dated 26-2-2014 passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeals Nos.1175 to 1184 of 2012)

(a) Khyber Pakhtunkhwa Irrigation and Public Health Engineering Department (Recruitment and Appointment) Rules, 1979---

---Appendix---Khyber Pakhtunkhwa Service Tribunals Act (I of 1974), S. 3--- Promotion quota, reduction in---Provincial Government changing promotion criteria by prescribing higher education qualification--- Service Tribunal, jurisdiction of---Sub-Engineers (BPS-11) (respondents) were appointed in Irrigation Department on the basis of having a diploma in Associate Engineering and enjoyed 20% reserved quota for promotion to the post of Assistant Engineer (BPS-17) as provided in the Khyber Pakhtunkhwa Irrigation and Public Health Engineering Department (Recruitment and Appointment) Rules, 1979---Said Rules were amended and stipulated promotion quota of appellants was reduced to 15% and a new category (for promotion) was created for those Sub-Engineers who possessed a degree in B.Tech. (Hons.) and who had passed Grade A and Grade B examinations with a minimum service of five years---Appellants contended that carving out of such new 'category' of degree holders had reduced the promotion prospects of diploma holders---Service Tribunal directed the Provincial Government to reconsider the amendments made to the Rules and in the meantime put on hold promotions under the amended Rules---Legality---Amendment made to the Rules in question was not with a view to accommodate specific individuals or for any other ulterior motive---Service Tribunal appeared to have been impressed by the fact that there were one hundred and thirty diploma holders whereas there were only thirteen graduates having B.Tech (Hons.) degrees, therefore, in the opinion of the Tribunal it was necessary to preserve the quota of the diploma holders---Concern of the Tribunal effectively meant that if there were many less qualified persons they should have greater prospects for advancement and those who had higher qualifications or who had improved their qualifications should not have an advantage---Such anxiety and concern of the Tribunal was misplaced---Amendment made to the Rules in question was a policy matter and the Government was empowered to reduce the promotion quota of Sub-Engineers holding diploma, and also to create a separate promotion quota for those holding B.Tech (Hons.) degree; the same was also not justiceable---Service Tribunal had clearly exceeded its jurisdiction in issuing directions to Provincial Government for reconsideration of the impugned amendment and by putting on hold the promotions under the amended Rules---Appeal was allowed accordingly and judgment of Service Tribunal was set aside.

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Dr. Alyas Qadeer Tahir v. Secretary M/o Education 2014 SCMR 997 ref.

(b) Civil service---

---Promotion, criteria for---Educational qualification---Government changing promotion criteria by prescribing higher educational qualification---Effect---When talent, skill and capability was rewarded, it provided opportunity to ambitious employees, and if those amongst them who were better qualified received a differential focus it benefited the department and the people of the country, as all civil servants were there to serve the people---Similarly, if the bar to aspire to higher positions (i.e. promotion) was raised, it encouraged and motivated employees to take ownership of their careers and personal development---Moreover, when higher educational qualification and talent was appreciated it made for a more transparent system of advancement and may also help to retain talented individuals in an organization.

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

---S. 3---Constitution of Pakistan, Art. 212(1)(a)---Service Tribunal, jurisdiction of--- Civil service--- Promotion criteria--- Educational qualification---Government changing promotion criteria by prescribing higher educational qualification---Policy matter---Where the Government, as a policy matter, wanted to restrict promotion to those having degrees, or create another category of such persons, it was not ultra vires of any law nor was it unreasonable---Such matter fell within the exclusive domain of the Government, which, in the absence of demonstrable mala fides could, not be assailed.

Executive District Officer (Revenue) v. Ijaz Hussain and another 2012 PLC (C.S.) 917 and Fida Hussain v. The Secretary, Kashmir Affairs and Northern Affairs Division PLD 1995 SC 701 ref.

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

---S. 3---Constitution of Pakistan, Art. 212(1)(a)---Civil service---Promotion, right of---Promotion criteria---Justiciability---Neither promotion nor the criteria set out to aspire for promotion could be categorized as a 'right' that could be justiceable.

Zafar Iqbal v. Director, Secondary Education 2006 SCMR 1427 ref.

Mian Arshad Jan, Additional A.-G., Khyber Pakhtunkhwa for Appellants (in Civil Appeal No.795 of 2014).

Ghulam Mohy-ud-Din Malik, Advocate Supreme Court for Respondents Nos. 2 - 4 (in Civil Appeal No.795 of 2014).

Nemo for Respondents Nos.1, 5 - 8 (in Civil Appeal No.795 of 2014).

Ghulam Mohy-ud-Din Malik, Advocate Supreme Court for Appellants (in Civil Appeals Nos.796, 797, 799 - 801, 804 and 805 of 2014).

Mian Arshad Jan, Additional A.-G., Kyber Pakhtunkhwa for Respondents Nos.1 - 4 (in Civil Appeals Nos.796, 797, 799 - 801, 804 and 805 of 2014).

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Ijaz Anwar, Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for Respondent No.5 (in Civil Appeals Nos.796, 797, 799 - 801, 804 and 805 of 2014).

Nemo for Respondents Nos.6 to 9 (in Civil Appeals Nos.796, 797, 799 - 801, 804 and 805 of 2014).

Ghulam Mohy-ud-Din Malik, Advocate Supreme Court for Appellants (in Civil Appeals Nos.798, 802 and 803 of 2014).

Mian Arshad Jan, Additional A.-G., Khyber Pakhtunkhwa for Respondents Nos.1 to 4 (in Civil Appeals Nos.798, 802 and 803 of 2014).

Nemo for Respondents Nos.5 to 9 (in Civil Appeals Nos.798, 802 and 803 of 2014).

Date of hearing: 11th November, 2014.

JUDGMENT

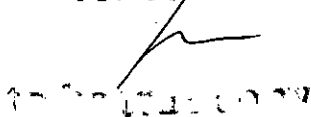
QAZI FAEZ ISA, J.---These appeals arise out of a judgment dated 26th February, 2014 of the Hon'ble Khyber Pakhtunkhwa. Service Tribunal ("Tribunal") whereby through a common judgment ten service appeals were disposed of in the following terms:--

"(14) Having said that, there can possibly be no cavil with the legal propositions that the Government has the authority to frame rules and also introduce amendments in the relevant rules to enhance qualification for a particular post; but the issue here is not that of amendments in the rules for enhancement of the qualification, rather dispute is with regard to unilaterally curtailing of quota of a particular class of employees to their detriment. One can also make no bones about the fact that jurisdiction of the Service Tribunal is barred in cases of promotion; but primarily the appeals have been lodged against amendments introduced in the service rules, which, according to the appellants, did not meet the ends of law and justice.

(15) As a sequel to the foregoing discussion, on the partial acceptance of the appeals, the case of amendments in question is referred to the competent authority i.e. Secretary to Government of Khyber Pakhtunkhwa, Irrigation Department (respondent No.2) for reconsideration of the impugned amendments in the light of above discussion and observations made in the judgment for a just decision and further necessary action, under intimation to the Registrar of the Tribunal, within reasonable time. In order to avoid further legal complications and frustration of the spirit of this judgment, promotions under the amended rules be put on hold in the meantime. There shall, however, be no order as to costs."

2. That in the appeals before the Tribunal it was contended that the appellants therein were working in the Irrigation Department as Sub-Engineers (BPS-11) and were appointed on the basis of having a diploma in Associate Engineering and enjoyed 20% reserved quota for promotion to the post of Assistant Engineer (BPS-17) as provided in the Khyber Pakhtunkhwa Irrigation and Public Health Engineering Department (Recruitment and Appointment) Rules, 1979 ("the Rules"), which were amended by reducing their stipulated quota as a new category was created for those Sub-Engineers who possessed a degree in B.Tech. (Hons.) and who had passed Grade A and Grade B examinations with a minimum service of five years. It is stated that carving out of this new 'category' of degree holders had reduced the promotion prospects of the appellants who were diploma holders.

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3. That with regard to the post of Assistant Engineers, both in respect of initial recruitment and promotion, it would be appropriate to reproduce the applicable requirements mentioned in the Appendix of the Rules as it originally stood and as it was amended from time to time, as under:--

As originally stood vide Notification dated 30th April, 1979:

- "(a) Seventy per cent by initial recruitment and
- (b) Ten per cent by selection on merit with due regard to seniority from amongst sub-engineers of the Deptt: concerned in which the vacancy occurs, who hold a degree: and
- (c) Twenty per cent by selection on merit with due regard to seniority from amongst officiating Assistant Engineers of the vacancy occurs, who hold a diploma."

As amended vide Notification dated 27th February, 1999:

- "(a) Sixty five 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, the [sic] who hold a Diploma in Engineering and have passed Departmental Examination;

Provided that where a candidate under clause (b) above is not available, the vacancy shall be filled from amongst Diploma holders Sub-Engineer;

Provided further that where a candidate under clause (c) above is not available, the vacancy shall be filled by initial recruitment."

As further amended by Notification dated 17th February, 2011:

- "(a) Sixty five percent by initial recruitment.
- (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.
- (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

(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.

Note: Provided that where candidate under Clauses (b) and (c) above is not available for promotion, the vacancy shall be filled in by initial recruitment."

As finally amended by Notification dated 25th June, 2012:

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

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

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

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

(d) fifteen per cent 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, within five years service as such.

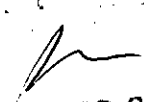
Note:- For the purpose of clause (d), a seniority list of Sub-Engineers having Diploma of Associate Engineering in Civil Mechanical, Electrical or Auto Technology shall be maintained and their seniority is to be reckoned from the date of their 1st appointment as Sub-Engineer.

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

The grievance of the appellants before the Tribunal was that their promotion quota had been curtailed from 20% to 15% vide clause (d) of the Notification dated 25th June, 2012. They had further prayed that the Government be restrained from processing the promotion cases on the basis of such Notification and in particular of those who had obtained the B.Tech. (Hons.) degree.

4. Mr. Arshad Jan, Additional Advocate-General, Khyber Pakhtunkhwa, and Mr. Ghulam Mohyud-Din Malik, Advocate Supreme Court (on behalf of private appellants, who possessed B.Tech. (Hons.) degree) have assailed the impugned judgment on the following grounds:--

(1) That the Hon'ble Tribunal had no jurisdiction as the Rules were amended by the Government and not by any 'departmental authority' and in this regard reliance was placed upon section 4 read with section 7 of the Khyber Pakhtunkhwa Service Tribunals Act, 1974;

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- (2) That the amendment was made to ensure that the higher positions are held by those who were competent and possessed the requisite qualifications;
- (3) That the diploma holders could also obtain degree in B.Tech. (Hons.) and then they too could also avail of the benefit of clause (c) as lastly amended;
- (4) That the amendment made in the Rules was not person specific nor had any element of mala fide;
- (5) That promotion or reserving a certain quota for promotion cannot be claimed as a vested right; and
- (6) That the matter was within the domain of policy and beyond the jurisdiction of the Tribunal.

Reliance was also placed upon the following precedents:--

Dr. Alyas Qadeer Tahir v. Secretary M/o Education (2014 SCMR 997)

Executive District Officer, (Revenue) v. Ijaz Hussain (2012 PLC (C.S.) 917)

Zafar Iqbal v. Director, Secondary Education (2006 SCMR 1427)

Fida Hussain v. The Secretary, Kashmir Affairs and Northern Affairs Division (PLD 1995 SC 701)

5. That Mr. Ijaz Anwar, learned counsel appearing for the respondents (appellants before the Service Tribunal), urged that the Tribunal had jurisdiction to decide the matter as the amendment to the Rules had affected their terms and conditions of service and in this regard placed reliance upon the cases of Muhammad Mubeen-us-Salam v. Federation of Pakistan (PLD 2006 SC 602) and I. A. Sharwani v. Government of Pakistan (1991 SCMR 1041).

He further stated that, at the time when the appellants before the Tribunal joined service the Rules prescribed a certain quota for promotion to the next higher grade of Assistant Engineer and such quota could not be reduced as it would adversely affect their prospects of advancement. It was lastly contended that there were a large number of diploma holder Sub-Engineers whereas only a few possessed B.Tech. (Hons.) degree.

6. That the appeal against the judgment of the Tribunal lies to this Court if it involves a substantial question of law of public importance (sub-article (3) of Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973) and if leave has been granted. In these cases leave was granted by this Court vide order dated 29th May, 2014, relevant portion whereof is reproduced hereunder:--

"Having heard the learned counsel for the petitioners in Civil Petitions Nos.592 to 601 of 2014 and learned Advocate-General, Khyber Pakhtunkhwa in Civil Petition No.230-P of 2014, leave to appeal is granted in all these petitions inter alia to consider whether the rules for promotion of Assistant Engineers (BS-17), Irrigation Department, could be subjected to judicial review before the Service Tribunal...."

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The question whether the Tribunal can impinge upon the right of the Government to make rules stipulating the criteria for promotion, and having done so the Government cannot change the same, is undoubtedly a substantial question of law of public importance.

7. With the help of the learned counsel we have examined the Appendix to the Rules and we have not been able to detect that the amendment finally made thereto was with a view to accommodate specific individuals or for any other ulterior motive. We have also gone through the contents of the service appeals wherein no allegation of mala fide was levelled. Therefore, the only questions for our consideration are, firstly, whether the Hon'ble Tribunal exceeded its jurisdiction and, secondly, whether the quota of any class of employees (diploma holders herein) could not be reduced, and to create from amongst them a separate quota of degree holders who would also be eligible for promotion as Assistant Engineers.

8. The Tribunal appears to have been impressed that there were one hundred and thirty diploma holders whereas there were only thirteen graduates having B.Tech. (Hons.) degrees, therefore, in the opinion of the Hon'ble Tribunal it was necessary to preserve the quota of the diploma holders. The concern of the Tribunal effectively meant that if there are many less qualified persons they should have greater prospects for advancement and those who had higher qualifications or who had improved their Qualifications should not have an advantage. The anxiety of the Tribunal in this regard was misplaced. In the reported case of Dr. Alyas Qadeer Tahir v. Secretary M/o Education (2014 SCMR 997), it was held:--

"Its right to improve and update its service structure to keep pace with modern age which is indisputably the age of specialization cannot be restrained or restricted on the ground that at the time of appointment of one or a few civil servants, such qualification was not a requirement for promotion. Higher qualification or a more specialized qualification for a post in a higher scale is a need of the hour which has to be taken care of. The vires of validity of Rules or amendments therein attending to such aspects, cannot, therefore, be looked askance at. The more so when there is absolutely nothing in the Rules to show that they are either person specific or an off shoot of mala fides."

9. That where talent, skill and capability is rewarded it provides opportunity to ambitious employees and if those amongst them who are better qualified receive a differential focus it benefits the department and the people of Pakistan, as all civil servants are there to serve the people. Similarly, if the bar to aspire to higher positions is raised it encourages and motivates employees to take ownership of their careers and personal development. Moreover, when higher educational qualification and talent is appreciated it makes for a more transparent system of advancement and may also help to retain talented individuals in an organization.

10. That it was not a case of the appellants before the Tribunal that they were prevented from improving their qualifications, therefore, if the government, as a policy matter, wants to restrict promotion to those having degrees, or create another category of such persons it is not ultra vires of any law (even though no law was cited in this regard) nor is it unreasonable. The matter fell within the exclusive domain of the Government, which, in the absence of demonstrable mala fides could, not be assailed as held in the case of Executive District Officer (Revenue) v. Ijaz Hussain and another (2012 PLC (C.S.) 917), as under:--

"If the said power is exercised in a mala fide manner, it is the particular mala fide act which can be challenged and struck down."

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"The framing of the recruitment policy and the rules thereunder, admittedly, fall in the executive domain. The Constitution of Islamic Republic of Pakistan is based on the well known principle of trichotomy of powers where legislature is vested with the function of law making, the executive with its enforcement and judiciary of interpreting the law. The Court can neither assume the role of a policy maker or that of a law maker."

Similarly, in the case of Fida Hussain v. The Secretary, Kashmir Affairs and Northern Affairs Division (PLD 1995 SC 701), it was held, that:--

"It is exclusively within the domain of the government to decide whether a particular qualification will be considered sufficient for promotion from a particular Grade to a higher Grade and it is also within the domain of the Government to change the above policy from time to time as nobody can claim any vested right in the policy."

11. That neither promotion nor the criteria set out to aspire for promotion can be categorized as a 'right' that could be justiceable. In this regard reference may be made to Zafar Iqbal v. Director, Secondary Education (2006 SCMR 1427), wherein we had held, that:--

"The Government is always empowered to change the promotion policy and the domain of the Government to prescribe the qualification for a particular post through amendment in the relevant rules, is not challengeable. This is also a settled law that notwithstanding fulfillment of the requirement qualification and other conditions contained in the rules, the promotion cannot be claimed as a vested right."

12. The Tribunal had directed the Government, "for reconsideration of the impugned amendments" and further directed that, "promotions under the amended rules be put on hold in the meantime." The Hon'ble Tribunal had clearly exceeded its jurisdiction in issuing such directions.

13. In conclusion, since it was a policy matter the Government was empowered to reduce the said quota of diploma holder Sub-Engineers for promotion to the post of Assistant Engineers and also to create a separate quota of B.Tech. (Hons.) degree holders for promotion to the post of Assistant Engineers; the same was also not justiceable, and in directing the Government to reconsider the same and to hold in abeyance the promotions made in accordance with the Rules as finally amended the Tribunal exceeded its jurisdiction.

14. That we had allowed these appeals vide our short order dated 11th November, 2014 reproduced hereunder:--

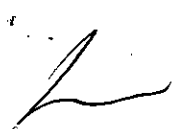
"We have heard the arguments of the learned ASCs representing different parties in these connected appeals. For the reasons to be recorded separately, these appeals are allowed, the judgment dated 26-2-2014 is set aside and consequently the service appeals filed by the respondents before the Service Tribunal are dismissed."

The aforesaid are the reasons for doing so.

MWA/G-7/SC

Appeal allowed.

<http://www.pakistanlawsite.com/LawOnline/law/content21.asp?Casesdes=2015S729>


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وکالت نامہ

بعدالت صہ۔ ضمیر مختار خواجہ سرور صاحب سروسز ٹریڈنگ کمپنی

مختار بنام حکومت خیبر پختونخواہ و نمبر

مجانہ Addl Respondent دعویٰ اجرم ریل نمبر 1390/014

تھانہ ایف آئی آر تاریخ

باعث تحریر آنکہ

مقدمہ مندرجہ بالا عنوان میں اپنی طرف سے واسطے پیروی و جوابدہی بمقام () کے لئے

غلام محی الدین ملک ایڈووکیٹ سپریم کورٹ آف پاکستان

اینڈ محمد فاروق ملک ایڈووکیٹ ہائی کورٹ کو بدین شرط وکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختار خاص رو بروعدالت حاضر ہوتا رہوں گا۔ اور بوقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دیکر حاضر عدالت کرونگا اگر پیشی پر من مظہر حاضر نہ ہوا اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور میرے برخلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام پکھری کے کسی اور جگہ یا پکھری کے مقررہ اوقات سے پہلے یا پیچھے یا بذریعہ تعطیل پیروی کرنے کے ذمہ دار نہ ہوں گے۔ اگر مقدمہ علاوہ صدر مقام پکھری کے کسی اور جگہ سماعت ہونے یا بروز تعطیل یا پکھری کے اوقات کے آگے پیچھے پیش ہونے پر من مظہر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختار نامہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پرداختہ صاحب موصوف مثل کردہ ذات خود منظور قبول ہوگا۔ اور صاحب موصوف کو عرضی دعویٰ و جواب دعویٰ اور درخواست اجراء ڈگری و نظر ثانی اپیل و نگرانی ہر قسم کی درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کے اجرا کرانے اور ہر قسم کاروبار وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور سپرد دہائی و رضی نامہ کو فیصلہ برخلاف کرنے، اقبال دعویٰ دینے کا بھی اختیار ہوگا۔ اور بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم امتناعی یا ترقی یا گرفتاری قبل از اجراء ڈگری بھی موصوف کو بشرط ادا ہنگی علیحدہ مختار نامہ پیروی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو بھی اختیار ہوگا یا مقدمہ مذکورہ یا اس کے کسی جزو کی کارروائی کے واسطے یا بصورت اپیل، اپیل کے واسطے کسی دوسرے وکیل یا بیرسٹر کو بجائے اپنے یا اپنے ہمراہ مقرر کریں۔ اور ایسے مشیر قانون کو ہر امر میں وہی اور ویسے ہی اختیارات حاصل ہوں گے۔ جیسے کہ صاحب موصوف کو حاصل ہیں اور دوران مقدمہ میں جو کچھ ہر جانہ التواء پڑے گا۔ وہ صاحب موصوف کا حق ہوگا۔ اگر وکیل صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا یہ مختار نامہ لکھ دیا کہ سندر ہے مورخہ 1/5/016 مضمون مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

ATTESTED & ACCEPTED:

Muhammad Farooq Malik

Advocate

Supreme Court of Pakistan.

Muhammad Farooq Malik
Advocate Peshawar.

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List of pre service Graduate already promoted to the Post of Sub Divisional Officer. and some of the promotion to the post of X En on regular basis.

1	2	3	4		5		6	7	8	9	10
	Name		By Initial Recruitment		Promoted to The post of SDO on Regular basis.		Year	Now promote d to the post of X EN	Regular/ O P S	Presently working as	Promotion date to the post of X Engr.
1	Sher Rahman Khan	BSc Civil Engg	Sub Engr	BPS-11	SDO	BPS-17	1992	X EN	BPS-18	X EN	Oct 2012.
2	Mas Li Huddin Khan	B Sc Mech Engg.	Sub Engr	BPS-11	SDO	do	1992	X EN	BPS-18	X EN	Oct 2012.
3	Inayat Ullah Khan.	BSc Civil Engg	Sub Engr	BPS-11	SDO	do	1992	X EN	OPS	Retired	2014
4	Misal Khan	B Sc Mech Engg.	Sub Engr	BPS-11	SDO	do	01-01-94	X EN	OPS	OPS	
5	Samiullah Khan	B Sc Mech Engg.	Sub Engr	BPS-11	SDO	do	01-01-94	X EN	OPS	OPS	
6	Mohd Aqeel Azhar.	B Sc Mech Engg.	Sub Engr	BPS-11	SDO	do	01-01-94	X EN	OPS	OPS	
7	Nisar Khan	B Sc Civil Engg	Sub Engr	BPS-11	SDO	do		X EN	OPS	OPS	
8	Waheedullah	B Sc Civil Engg	Sub Engr	BPS-11	SDO	do		X EN	OPS	OPS	
9	Mohd Tahir	B Sc Civil Engg	Sub Engr	BPS-11	SDO	do	1999	Serial No 9,10,11,12 were Promoted to the post of SDO on regular basis on the court decision.			
10	Amir Mohd	B Sc Civil Engg	Sub Engr	BPS-11	SDO	do	1999				
11	Akbar Khamn	B Sc Mech Engg.	Sub Engr	BPS-11	SDO	do	1999				
12	Hayatullah	B Sc Mech Engg.	Sub Engr	BPS-11	SDO	do	1999				

List of pre service Graduate Sub Engr. already been promoted to the Post of Sub Divisional Officer on acting charge basis in Dec 2011..

1	2	3	4		5		6	7	
	Name	Degree in Engineering.	By Initial Recruitment through public service commision.		Promoted to The post of SDO on acting Charge Basis basis.		Promotion date	Presently working.	Taking Promotion serial No 3, 5, 7 on the vacant post after promotion of the following S D O,s to the post of X Engr as being of our Cader.
1	Mohd Hayat	B SC (Civil Engg)	Sub Engr	BPS-11	SDO	BPS-11	13 Dec 2011.	OPS	
2	Roohul Amin	B SC (Civil Engg)	Sub Engr	BPS-11	SDO	BPS-17	14 Dec 2011.	Acting Charge Base	
3	Shaukat Badshah	M Sc (Civil Engg)	Sub Engr	BPS-11	SDO	Do	15 Dec 2011.	Acting Charge Base	Sher Rahman Khan
4	Saeedullah	B SC (Civil Engg)	Sub Engr	BPS-11	SDO	Do	16 Dec 2011.	Acting Charge Base	
5	Bakhtiar	B SC (Civil Engg)	Sub Engr	BPS-11	SDO	Do	17 Dec 2011.	Acting Charge Base	Mas Li Huddin Khan
6	Faridullah	B SC (Civil Engg)	Sub Engr	BPS-11	SDO	Do	18 Dec 2011.	Acting Charge Base	
7	Asif Khan	B SC (Civil Engg)	Sub Engr	BPS-11	SDO	Do	19 Dec 2011.	Acting Charge Base	Inaya Tullah Khan