

14.09.2022


Appellant present through counsel.

Kabir Ullah Khattak learned Additional Advocate General for respondents present. Private respondents present through counsel.

As identical nature case is pending and fixed for hearing on 17.11.2022, therefore, this case ^{was} also requested to be adjourned to the same date. Request is acceded to and file to come up for arguments on 17.11.2022 before D.B.



(Fareeha Paul)
Member (E)

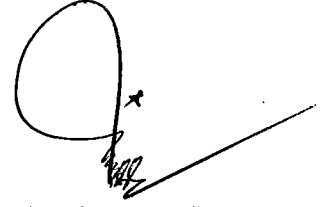


(Rozina Rehman)
Member (J)

18.07.2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for official respondents present. Counsel for private respondents No. 8 to 10 present. None present on behalf of private respondent No. 7.

Reply/comments on behalf of official respondents as well as private respondents No. 8 to 10 have already been submitted. Reply/comments on behalf of private respondent No. 7 is still awaited, therefore notice be issued to private respondent No. 7 for submission of reply/comments. Adjourned. To come up for reply/comments on 03.08.2022 before S.B.



(Mian Muhammad)
Member (E)

03.08.2022

Clerk of counsel for the appellant present.

Mr. Kabir Ullah Khattak, Additional Advocate General for official respondents present. Learned Counsel for private respondent No. 7 and counsel for private respondents No. 8 to 10 present.

Written reply/comments on behalf of respondents No. 1 to 6 and 8 to 10 have already been submitted. Learned counsel for private respondent No. 7 rely on reply of respondents 1 to 6. To come up for arguments on 14.9.2022 before D.B.



(Kalim Arshad Khan)
Chairman

14.09.2022

Appellant with counsel present.

Kabir Ullah Khattak learned Additional Advocate General for official respondents No.1 & 2 present. Nemo for private respondent No.3.

At the very outset an application for placing on file the contact number of private respondent No.3 namely Awais Zahid was submitted for purpose of service. It is the ground


propounded by all appellants of communication including his cell number, WhatsApp and Email as well as work mobile is difficult to

submit the same. It is submitted that the appellants have made every effort to contact the respondent but have failed to do so. It is requested that the court may direct the respondent to provide the contact details of the respondent.

23.05.2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Addl. AG alongwith Noor Sher Khan S.O for official respondents No. 1 to 6 present. Learned counsel for private respondent No. 7 and counsel for private respondents No. 8 to 10 present.

Written reply/comments on behalf of official respondents No. 1 to 6 as well as private respondents No. 8 to 10 submitted which is placed on file. Copy of the same is handed over to the learned counsel for the appellant. Learned counsel for private respondent No. 7 requested for time to submit written reply/comments. Granted. To come up for written reply/comments on 07.06.2022 before S.B.



(Mian Muhammad)
Member (E)

07.06.2022

Clerk of counsel for the appellant present.

Muhammad Riaz Khan Paindakheil learned Assistant Advocate General for official respondents No.1 to 6 present. Private respondent No.7 in person present.

Respondents No.1 to 6 and 8 to 10 have already submitted reply. Reply on behalf of private respondent No. 7 is still awaited. He made a request for adjournment in order to submit reply/comments. Last opportunity is granted. If the reply/comments are not submitted, right of respondent No.7 for submission of comments shall be deemed as struck off. To come up for reply/comments of private respondent No.7 on 18.07.2022 before S.B.


(Rozina Rehman)
Member (J)

Appeal No. 7917/2021
Imtiaz Khan vs Govt

22nd April, 2022

1. Learned counsel for the appellants present. Mr. Kabirullah Khattak, Addl. AG alongwith Zafrullah, Superintendent for the official respondents present. Mr. Afrasiab Gul, Advocate on behalf of applicant Niaz Badshah, submitted Wakalatnama which is placed on file.

2. Two applications, one by Mr. Adnan Aman, Advocate and another by Zartaj Anwar, Advocate have been submitted for impleadment of applicants Engr. Alamzeb Khan, Sub Divisional Officer Irrigation Department, Mardan Circle and Saifullah Khan, Deputy Director (OPS) P&C Small Dams Peshawar, Aman Ullah, Executive Engineer (OPS) Tube Well Division, Peshawar and Niaz Badshah, Sub Divisional Officer Charsadda Irrigation Sub Division, Charsadda respectively. Both the C.Ms be placed on file.

3. Learned counsel for the appellants and learned AAG for the respondents, while accepting the notice of this application have expressed no objection on impleadment of the applicants as contesting respondents. Learned counsel for the appellant states that there will be no need to amend the appeal even if the newly applicants are added as respondents. Names of the applicants be added in the panel of respondents and the relevant register with red ink. All the respondents i.e. contesting as well as official respondents shall file reply within two days before the date fixed. Copy of the same be provided to the appellants, who may file rejoinder on the date fixed.

4. There is an application for initiating Contempt of Court Proceedings filed by the appellants, which has been given a separate number. When confronted with the situation whether any contempt could be initiated against any of the respondents regarding violation of an order of the Tribunal when in fact the order was not communicated rather no notice regarding that order was issued to the respondents. Learned counsel for the appellant was very fair and frank to make submission that the C.O.C might be converted into Execution Petition for execution of initial order of the Court or an application for seeking suspension of the order of transfer dated 13.04.2022 issued after the order dated 31.01.2022 passed by the Tribunal whereby status quo was directed to be maintained. Learned counsel on behalf of private respondents as well as learned AAG accepted notice of the application and argued the application.

5. The learned counsel appearing on behalf of the appellants/applicants submitted that on 31.01.2022 the Tribunal had granted interim injunction in the shape of maintaining '*status quo*' till the date fixed i.e. 10.02.2022. It was argued that during the interim order the official respondents issued Notification No.SO(E)/IRR/4-9/77/Vol-IV dated 13.04.2022 whereby posting/transfer order of some officers, was made, which was violation of the order dated 31.01.2022 passed by this Tribunal. It was also argued that the official respondents could not issue the above Notification when there was an injunction order in the field


2-2-03.22

passed by this Tribunal, therefore, the same was prayed to be suspended. He also prayed for extension of the interim order passed on 31.01.2022.

6. On the contrary the learned AAG for the official respondents and learned counsel for the private respondents refuted the arguments of the learned counsel for the appellants and submitted that the Notification, sought to be suspended, was just a posting/transfer order and not a promotion to the next grade, therefore, terming the application to be misconceived, they prayed for dismissal of the same.

7. It is observed that the Tribunal did not function since 02.02.2022 till 22.03.2022 due to the retirement of the then worthy Chairman on 02.02.2022. The Tribunal then started functioning on 22.03.2022 after appointment of the new Chairman. Therefore, the matter could not be placed before the Tribunal since 31.01.2022 till 20.04.2022, whereas the interim order in the shape of maintenance of '*status quo*' was till 10.02.2022. Be that as it may the interim order granted on 31.01.2022 was to the extent of maintenance of '*status quo*' i.e. to keep the situation as it was at the time of issuance of the order. The application on which the interim order was passed, was with the prayer to suspend the operation of the impugned Notification No.SO(E)/IRRI/23-5/73/Vol-VI: dated 24.08.2021, a notification making further amendments in the earlier Notification No.SO(E)IRR/23-5/73 dated 17.02.2011 pertaining to qualification/criteria and quota for promotions and issuance of


22/4/22

'status quo' by the Tribunal could, at the most, mean that promotion might not be made on the basis of the impugned Notification whereas vide Notification dated 13.04.2022, the department made posting/transfer of some officers, which is not yet challenged by the appellants by making any departmental representation or appeal etc nor the same could be termed a violation of the order of maintenance of *'status quo'* ordered by the Tribunal on 31.01.2022.

8. Even otherwise, the file reflects that the *'status quo'* order was not communicated to the official respondents as there is no copy of the notice or for that matter copy of any communication showing that the *'status quo'* order dated 31.01.2022, was served upon any of the respondents. Therefore, the application for initiating contempt proceedings or considering the same as temporary injunction application or execution application is not worth consideration. The same is, therefore, dismissed. Copy of this order be placed in the COC file. Similarly, copy of the application (COC) be placed on this file, while the original application (COC) be consigned.

9. We have observed that the processes of the Tribunal are not being issued nor served/executed in accordance with the relevant provisions of Code of Civil Procedure, 1908, which provisions could be invoked by the Tribunal under section 9 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. This not only delays proceedings of the different matters before the Tribunal but also does not serve any purpose. Similarly, on the basis of such defective processes/service of the processes, there are difficulties in

22.05.22

execution/implementation of the interim injunctions granted by the Tribunal. The office is, therefore, directed to pass on directions to the process issuing and serving agency to properly issue and serve the processes of the Tribunal.

10. Regarding the suspension of the operation of the Notification, impugned in the main appeal, it is directed that let the same may not be acted upon till the date fixed.

11. To come up for reply/comments on 11.05.2022 before S.B.

12. *Pronounced in open court at Peshawar and given under my hand and seal of the Tribunal this 22nd day of April, 2022.*



(KALIM ARSHAD KHAN)
Chairman

SA 7917/2021

21th April, 2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Addl. AG for the official respondents present. Mr. Afrasiab Gul, Advocate on behalf of applicant Niaz Badshah, submitted Wakalatnama which is placed on file.

Two applications, one by Mr. Adnan Aman, Advocate and another by Zartaj Anwar, Advocate have been submitted for impleadment of applicants Engr. Alamzeb Khan, Sub Divisional Officer Irrigation Department, Mardan Circle and Saifullah Khan, Deputy Director (OPS) P&C Small Dams Peshawar, Aman Ullah, Executive Engineer (OPS) Tube Well Division, Peshawar and Niaz Badshah, Sub Divisional Officer Charsadda Irrigation Sub Division, Charsadda respectively. Both the C.Ms be placed on file. Arguments heard. To come up for consideration tomorrow on 22.04.2022 before this S.B.


Chairman

25.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 21.03.2022 for the same as before.


Reader.

21-03-2022

Due to retirement of the Honorable chairman the case is adjourned to come up for the same as before on 21-04-2022


Reader

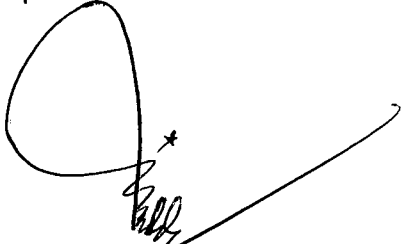
31.01.2022

Counsel for the appellant present. Preliminary arguments heard.

Learned counsel for the appellant contended that the appellant is degree holder Engineer and serving as Deputy Director (PSU), Small Dam Directorate of the respondent-department. He is aggrieved of the minutes of SSRC meeting dated 29.04.2021 whereby earlier Service Rules/notification dated 17.02.2011 was amended vide notification dated 24.08.2021. Through Agenda item No.4 of SSRC, the 100% quota earlier reserved for promotion, was now bifurcated and distributed in three categories (a) 80% for promotion to the BE/B.Sc degree holders, (b) 12% for degree holders B.Tec (Honors) and (c) 8% for Diploma Holders. Learned counsel for appellant further argued and assailed the constitution of SSRC because it did not include Additional Secretary (Regulation) E&A Department and Additional Secretary Law department as it members as per requirement under E&A Department circular dated 29.01.2005. To strengthen his arguments he relied on the judgement of Peshawar High Court, dated 03.11.2020 when the notification based on an inappropriately constituted/composed SSRC, was declared as illegal, void ab-initio and set aside. The appellant submitted departmental appeal on 07.09.2021 but no written order was passed within the statutory period and resultantly the instant service appeal was instituted under Section-4 of the Khyber Pakhtunkhwa Service Tribunal 1974 on 21.12.2021. Learned counsel for the appellant was asked to indicate the original notification dated 17.02.2011 (now amended) to have not been submitted with the memorandum of service appeal. He admitted that the same is not included with the attached documents and will be provided as rejoinder.


The appeal is admitted to regular hearing subject to all just legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to respondents for submission of reply/comments. To come up for reply/comments on 10.02.2022 before S.B.

An application for suspension of impugned order dated 24.08.2021 is also submitted with the memorandum of appeal which shall be served on the respondents to submit reply thereon. Status-quo be maintained till the date fixed.


(Mian Muhammad)
Member(E)

10.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 25.02.2022 for the same as before.

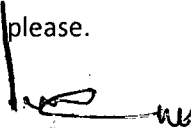


Reader

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 7917/2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	23/12/2021	<p>The appeal of Engr. Imtiaz Khan resubmitted today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-		<p>This case is entrusted to S. Bench at Peshawar for preliminary hearing to be put there on <u>14/02/22</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

31.01.2022

Counsel for the appellant present. Preliminary arguments heard:

Learned counsel for the appellant contended that the appellant is degree holder Engineer and serving as Deputy Director (PSU), Small Dam Directorate of the respondent-department. He is aggrieved of the minutes of SSRC meeting dated 29.04.2021 whereby earlier Service Rules notification dated 17.02.2011 was amended vide notification dated 24.08.2021. Through Agenda item No.4 of SSRC, the 100% quota earlier reserved for promotion, was now bifurcated and distributed in three categories (a) 80% for promotion to the BE/B.Sc degree holders, (b) 12% for degree holders B.Tec (Honors) and (c) 8% for Diploma Holders. Learned counsel for appellant further argued and assailed the constitution of SSRC because it did not include Additional Secretary (Regulation) E&A Department and Additional Secretary Law department as its members. To strengthen his arguments he relied on the judgement of Peshawar High Court, dated 03.11.2020 when the notification based on an appropriate SSRC constitution, was declared as illegal, void ab-initio and set aside. The appellant submitted departmental appeal on 07.09.2021 but no written order was passed within the statutory period and resultantly the instant service appeal was instituted under Section-4 of the Khyber Pakhtunkhwa Service Tribunal 1974 on 21.12.2021. Learned counsel for the appellant was asked to indicate the original notification dated 17.02.2011 (now amended) to have not been submitted with the memorandum of service appeal. He admitted that the same is not included with the attached documents and will be provided as rejoinder.

The appeal is admitted to regular hearing subject to all just legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to respondents for submission of reply/comments. To come up for reply/comments on 11.02.2022 before S.B.

An application for suspension of impugned order dated 24.08.2021 is also submitted with the memorandum of appeal which shall also be served on the respondents to submit reply thereon. Status-quo be maintained till the date fixed.

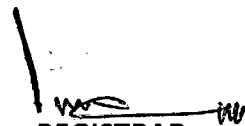
(Mian Muhammad)
Member(E)

The appeal of Engineer Imtiaz Khan, Deputy Director (PSU), O/O Small Dam Directorate Irrigation Department, KP , Peshawar received today i.e. on 22.12.2021 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- ✓ 1. Annexures of the appeal may be attested.
2. Copy of Appointment order annexed as Annexure A is not attached with the appeal which may be placed on it.
- ✓ 3. Transfer order attached is not related to appellant.
- ✓ 4. One more copy/set of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 2526 /S.T,

Dt. 21/12 /2021


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Noor Muhammad Khattak Adv. Pesh.

R/sheneth

Resubmitted after Completion.

Haider Ali

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. 7917 /2021

IMTIAZ KHAN

V/S

IRRIGATION DEPTT:

I N D E X

S.NO	DOCUMENTS	ANNEXURE	PAGE
1	Memo of appeal	1-7
2	Affidavit	8
3	Stay application	9
4	service record/appointment order	A	10-11
5	rules	B	12-13
6	impugned minutes,	C	14-17
7	Pakistan Engineering Council Act, 1976,	D	18-39
8	Notification and judgment	E & F	40-46
9	impugned Notification	G	47-48
10	Departmental appeal	H	49-55
11	Constitution of Standing Service Rules committee,	I	56-57
12	Notification No. SO(E)/Irr/23-5/73/Vol-IV (S. Rules) dated 06.04.2018	J	58-60
13	Irrigation Department Notification No. SO(E)/IRR/23-5/2010-11 dated 25 June 2012	K	61
14	Secretary Irrigation Department vide notification No. SO(E)/IRR/4-10/77/Vol-VI: dated 18-12-2020	L	62-65
15	Legal Notice dated 06 April, 2021	M	63-65
16	PEC Act 1976.	N	66-67.
17	C.P No.78-K of 2015 announced on 03/10/2018	O	68-77
18	Honorable Supreme Court vide order dated, 05/03/2019.	P	78-80
19	Wakalat Nama	81

DATED: ____ .12.2021

APPELLANT

Through:

NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO. _____/2021

Engineer Imtiaz Khan, Deputy Director (PSU),
O/O Small Dam directorate Irrigation Department,
Khyber Pakhtunkhwa, Peshawar.

..... **APPELLANT**

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary Irrigation Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The Secretary Law & Parliamentary Affairs Department, Khyber Pakhtunkhwa, Peshawar.
- 5- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 6- The Chief Engineer (South) Irrigation Department, Khyber Pakhtunkhwa, Peshawar.

..... **RESPONDENTS**

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED AGENDA ITEM NO.4 OF THE SSRC MINUTES DATED 29.4.2021 AND NOTIFICATION DATED 24.8.2021 WHEREBY UNJUSTIFIED 20% PROMOTION QUOTA IN BPS-18 (EXECUTIVE ENGINEER) TO B-TECH/DIPLOMA HOLDERS FOR WORKING AGAINST THE PROFESSIONAL ENGINEERING WORKS POSTS HAS BEEN CREATED BY THE RESPONDENTS AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

RESPECTFULLY SHEWETH:

FACTS:

Brief facts giving rise to the present writ petition is as

under:

1. That the appellant is the employee of respondent Department and is performing duty quite efficiently and up to the entire satisfaction of his superiors. Copy of the service record/appointment order is attached as annexure **A.**
2. That the appellant is highly qualified Civil/Mechanical Engineer and registered with Pakistan Engineering Council and having command and experience over the services in respect of Professional Engineering Work. That under the existing rules of the respondent

Department the appellant has better prospects of promotion/ciser progression. That according to the rules ibid the post of Executive Engineer/Deputy Director/Technical Officer (BPS-18) has to be filled up **"by promotion, on the basis of seniority cum fitness from amongst the sub Divisional Officer, Assistant Engineers and Assistant Directors possessing Degree in B.E/B.Sc Engineering (Civil or Mechanical) from a recognized University, With at least five years service as such, and have passed the professional or Revenue Examination under the prescribed rules"**. Copy of the rules is attached as annexure

- **B.**
3. That recently through agenda item No.4 of the impugned minutes dated 29.4.2021 passed/issued by the standing service rules committee not comprised in accordance with Notification of the Establishment Department dated 29.1.2005 and judgment of the august Peshawar High Court, Peshawar passed in W.P No. 4378/17 Titled Manzoor Ahmad VS Govt: of KPK and other dated 11-3-2021 unfortunately due to some mala fide intentions or knowingly misinterpreted the settled law of the land, non-qualified/ non-engineers of B-Tech technology / diploma holder persons have been granted illegal benefits in shape of assigning Professional Engineering Works (PEW) and also benefiting them by awarding promotion to the Grade-17 once and now once again a 20% quota has been proposed for promotion to Grade-18 (Executive Engineer) post and will be performing professional engineering works which is against the Pakistan Engineering Council Act 1976. Copies of the impugned minutes, Pakistan Engineering Council Act, 1976, Notification and judgment is attached as annexure

- **C, D, E and F.**
4. That in light of the ibid SSRC minutes dated 29.4.2021 the respondents issued the impugned Notification dated 24.8.2021 whereby amendments have been made in the service rules of the respondent Department dated 17.2.2011 whereby non-qualified/ non-engineers of B-Tech technology / diploma holder persons have been granted illegal benefits in shape of assigning Professional Engineering Works (PEW) and also benefiting them by awarding promotion to the Grade-17 once and now once again a 20% quota has been proposed for promotion to Grade-18 (Executive Engineer) post and will be performing professional engineering works which is against the Pakistan Engineering Council Act 1976. Copy of the impugned Notification is attached as annexure

- **G.**
5. That appellant feeling aggrieved from the impugned minutes of the standing service rules committee passed/issued on 29.4.2021 and impugned Notification dated 24.8.2021 filed Departmental appeal before the respondent No.1 but no response has been received so far. Copy of the Departmental appeal is attached as annexure

..... **H.**

6. Hence the present appeal on the following grounds amongst the others.

GROUND:

1. That agenda item No.4 passed by the standing service rules committee dated 29.4.2021 is against the law, facts, Norms of natural justice and materials on the record hence not tenable and liable to be set aside.
2. That the appellant have not been treated in accordance with law and rules and as such the respondents violated Article 4 & 25 of the Constitution of Pakistan, 1973.
3. That Executive Engineer (BPS-18) in Irrigation Department is a Professional Engineering post and the person who holds the said post has to look into the matters which is related to the professional engineering works with human resource having professional BE/BSc Civil and Mechanical Engineering degrees duly registered with the Pakistan Engineering Council. At present in Irrigation Dept, all the Executive Engineer/Deputy Director (BPS-18) posts is professional engineering posts whose job requirement involves professional engineering works, allowed only to BE/BSc Civil / Mechanical Engineering degree holders registered with Pakistan Engineering Council.
4. That according to Esta Code of Khyber Pakhtunkhwa, Constitution of Standing Service Rules committee, page 257 (***Annexure-I***), Framing of Service Rules/Recruitment Rules point No. 2 which is reproduced, "***while sending proposals for framing of new Service Rules and making amendments in the existing rules, the qualifications proposed for appointment to posts should suit the requirement of the job***". Which in the present case has been completely ignored by SSRC in its meeting dated 29.04.2021, as neither change has occurred in set Job description of Executive Engineers (BPS-18) nor they have changed the requirement of the job since last SSRC and still allotted 20% quota to B-Tech/Diploma holders whose qualification does not meet the present requirement for the job. By doing so, it violates the Pakistan Engineer Council Act requirement to perform against the BPS-18 Executive Engineer Post performing professional engineering works.
5. That a committee was constituted vide Secretary Irrigation Department Notification No. SO(E)/Irr/23-5/73/Vol-IV (S. Rules) dated 06.04.2018 (***Annexure-J***) having members from Irrigation Department, C&W, LGE&RDD, Peshawar Development Authority, Public health Engineering Department and Pakhtunkhwa Energy and Development Organization. The committee was tasked to examine the position of B-Tech (Hons) degree visa viz B.Sc. / BE Engineering in light of decision of Pakistan Engineering Council (PEC), Supreme court of Pakistan, High Court Peshawar and Khyber Pakhtunkhwa

Service Tribunal and to come up with well considerate proposal along with recommendation for allocation of uniform percentage quota for their promotion. The committee in its report submitted the following recommendations;

"That B-Tech (hons) qualification is not equivalent to BE/BSc Engineering. As basic qualification required for posting / appointment against the position of Assistant Engineer / Assistant Director / SDO etc. in BS-17 and above is BE/BSc Engineering in Civil / Mechanical / Electrical as per requirement of a department, there B-Tech (Hon) qualification holder may not be promoted and / or posted against such position(s) that involve performance of professional engineering works/services. However, such qualification (i.e., B-Tech) holders cannot be denied promotion to higher scale; provide no law/Rule is violated and for which non engineering positions (Technologists) may be created, if not already existing"

6. That the recommendation of the committee in para-3, makes the previously SSRC approved Irrigation Department Notification No. SO(E)/IRR/23-5/2010-11 dated 25 June 2012 (**Annexure-K**) not maintainable for creating quota at first place for promotion of non-engineers to BPS-17 and performing engineering works. **As a Corollary to this, in the Medical profession or health department, nurses acquire qualification of three years diploma after which they is allowed to enhance their qualification in their field even to the Master level but they is never considered as MBBS doctors nor is they posted to the professional positions or Medical Officers nor is they registered by Pakistan Medical and Dental Council (PMDC) as registered medical practitioners (Doctors).**
7. That the recommendation produced in Para-3 has been completely ignored by the department and non-professional engineers have been placed in various engineering positions and even elevated higher positions, not meeting the job criteria and equivalent qualification required for the post. One such unjustified order was issued by the Secretary Irrigation Department vide notification No. SO(E)/IRR/4-10/77/Vol-VI: dated 18-12-2020 (**Annexure-L**) by placing a B-Tech Diploma holder Sub Divisional Officer on higher position of Deputy Director Jabba Dam. The present action of creating 20% quota clearly indicates that the Secretary Irrigation Department office wants to regularize the unjustified action / notification / orders issued.
8. That the Irrigation Engineers represented by the Advocate A. Latif Afridi has already served two weeks Legal Notice dated 06 April, 2021 to Chief Secretary Office, Secretary Irrigation Office and Secretary Establishment office (**Annexure-M**) against for your inaction in removing non-engineer from engineering practicing posts.

9. That the competent authority envisage provision under Pakistan Engineering Council (PEC) Act 1976 for qualification, mannerism, mode and mechanics for granting promotion to registered Civil/Mechanical engineers registered with PEC while B-Tech degree holders, is not competent / qualified for any Professional Engineering Works (PEW) and promotion to such high grades involving engineering works, hence, the promotion and assigning the duties to non-professional like B-Tech / Diploma holders by the department is illegal, unjustified and in effective upon the rights of appellant and liable to be struck down/ reversed accordingly.
10. That PEC is a statutory body having been constituted under the PEC Act V 1976 enacted by the parliament and the competent authority allegedly on several occasion has promoted non-professional, non-registered and non-graduates having diploma and B. Tech certificate against the post, which were specified/ allocated only for professional engineers, furthermore, the grievance of the appellant is that BSC/BE Civil engineering is not at par with B. Tech (Hon) and that non-professional engineers (B-Tech) were promoted posted against the post of professional engineers which is against the law and settled realities hence this practice should require to be stopped forthwith and implement the PEC Rules Regulation. ***The explanation of all kind of PEWs is enacted in section 2 (xxv) of the PEC Act 1976. (Annexure-N).***
11. The recent historical & decisive judgment of the August Court of the Supreme Court of Pakistan in its decision on the C.P No.78-K of 2015 announced on 03/10/2018 (***copy enclosed as Annexure-***), upheld the provisions of the PEC Act 1976 in its detail judgment where in ***Para 21 & 23*** is worth reading. In operative part of the judgment Para 23, the Honorable Supreme Court contains that: -
"Government shall not allow or permit any person to perform professional engineering work as defined in the PEC Act who does not possess accredited engineering qualification from the accredited engineering institution and his name in not registered as a registered engineer or professional engineer under the PEC Act".
12. That the appellant is highly aggrieved of certain orders of competent authority which was passed in favor of the non-qualified / non registered B-Tech / diploma holders, because the people having lesser qualification were being alleviated and posted to higher posts without meeting the job criteria and which were specified for performing professional engineers work only, whereas the appellant having rightful superior education/ qualification and most importantly meeting the job criteria were put on idle positions desk jobs hence the competent authority have been committing violation of laws including the legislation of the PEC Act 1976 and the judgments of the Superior Court of the country.

13. That according to the PEC Act 1976 the management and supervision of the engineering works in respect of all engineering disciplines is "**Professional Engineering Works**" and that under **section 27** can only be undertaken/ executed by engineers who are registered with PEC hence the statutory provisions of PEC Act 1976 are frequently violated by the authorities which is bad in law and also punishable under the law, **as Section 27 (1) of PEC Act criminalizes the undertaking of engineering work by non-engineers making it an offence punishable with 6 months imprisonment or Rs.10,000 fine or both. Conversely, engaging a non-engineer for doing professional engineering work is also criminalized, being an offence punishable with 6 months imprisonment or Rs.5,000 fine or both.**
14. That Pakistan Engineering Council through various references kept on reminding Provincial Government of Khyber Pakhtunkhwa & other competent authorities about the limitation of the PEC Act 1976, its implementation / repercussion in case of violations & even reminded to implement the decision of the aforementioned judgment of Honorable Supreme Court C.P No.78-K of 2015, announced on 03/10/2018 but all in vain. (**Annexure-----O**).
15. That it is an admitted fact regarding clarification of B-Tech degree from HEC which is not qualified engineers and for this reason PEC unable to register them as engineers so promotion awarded and duties assigned to non-graduates, non-professional and non-registered by PEC by the competent authority on engineering works, this has caused a grave injustice and utter disregard of the mandatory statutory provision of the PEC Act 1976 hence the competent authority violated not only the provision of PEC Act 1976 but also its own rules and regulations besides being involved in contempt of court proceedings, if initiated.
16. That appointment of ineligible people to handle extremely technical works would be a disaster for the public at large and the role of the regulatory body is to ensure professionalism and trust for the public. Furthermore, the question of the qualification B-Tech being equivalent to BSc Engineering has already been decided by the superior court of the country. PLD 2003 SC 143, as well as in the aforementioned judgment of 03/10/2018. Once forever.
17. That most recently, review petitions have also been dismissed by the Honorable Supreme Court vide order dated, 05/03/2019. (**Annexure-----P**).
18. That the appellant through the forums of Khyber Pakhtunkhwa Association of Government Engineering (KPAGE) previously prayed the competent forums for redressal of their genuine demands regarding subject issues but no action has so far been taken and blue-eyed favors its B-Tech degree holder / diploma holder / non-engineers is still enjoying the perks & privileges of their illegal appointments / posting status against the Professional

Engineering Works (PEW) posts starting right from Assistant Engineer to high ones.

19. That the promotions awarded to B. Tech (Hon) employees and duties assigned to them against Professional Engineering Works (PEW) is the result of political victimization, illegal, injustice and also in effective upon the valid rights of the appellant.
20. That the appellant seek permission to advance other grounds and proofs at the time of hearing.

That on acceptance of this appeal the impugned agenda item No. 4 of the SSRC minutes dated 29.4.2021 and Notification dated 24.8.2021 whereby creation of unjustified 20% promotion quota in BPS-18 (Executive Engineer) to B-Tech/Diploma Holders for working against the professional engineering works posts may kindly be declared as illegal, unconstitutional and in effective upon the rights of appellant and may kindly be set aside. That the respondents may further please directed that not to issue/make promotions of B-Tech/Diploma holders against the post specified for professional engineers, in line with the provisions of the PEC Act, 1976 and in light of the judgments/decisions dated 3.10.2018 of the august Supreme Court of Pakistan in C.P No. 78-K/2015. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.

Dated: 15.12.2021


APPELLANT

THROUGH:


**NOOR MOHAMMAD KHATTAK,
ADVOCATE**

Flat No. 4, 2nd Floor, JUMA KHAN PLAZA,
WARSAK ROAD, Peshawar
0345-9383141

8

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. _____/2021

IMTIAZ KHAN

VS

IRRIGATION DEPTT:

AFFIDAVIT

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




DEPONENT

CERTIFICATE:

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


CERTIFICATION

9

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

C.M NO. _____/2021

IN
APPEAL No. _____/2021

IMTIAZ KHAN VS GOVT: OF KP

APPLICATION FOR SUSPENSION OF OPERATION OF
THE IMPUGNED NOTIFICATION DATED 24.08.2021
TILL THE DISPOSAL OF THE MAIN APPEAL

R/SHEWETH:

- 1- That the above mentioned appeal along with this application has been filed the appellant before this august Tribunal in which no date has been fixed so far.
- 2- That appellant filed the above mentioned appeal against the impugned notification dated 24.08.2021.
- 3- That all the three ingredients necessary for the stay is in favor of the appellant.
- 4- That the impugned notification dated 24.08.2021 had been issued by the respondents in utter disregard of law and prevailing Rules.

It is therefore, most humbly prayed that on acceptance of this application the operation of the impugned notification dated 24.08.2021 may very kindly be suspended till the disposal of the above mentioned service appeal.

Dated: 15.12.2021


APPLICANT

IMTIAZ KHAN

THROUGH:


NOOR MOHAMMAD KHATTAK

& 
KAMRAN KHAN
ADVOCATES



GOVERNMENT OF NWFP
IRRIGATION DEPARTMENT

Dated Peshawar the 27th January, 2010.

NOTIFICATION

NO.SO(E)IRR/4-14/73 The Competent Authority in consultation with the NWFP Public Service Commission and in pursuance of the provisions contained in sub-section (2) of section 19 of the North-West Frontier Province Civil Servants Act, 1973 (NWFP Act No.XVIII of 1973), as amended by the North-West Frontier Province, Civil Servants (Amendment) Act, 2005 (N-W.F.P. Act No.IX of 2005) is pleased to order appointment of the following candidates as Assistant Engineers BS-17 (Rs.9850-740-24650) in the Irrigation Department, subject to the terms & conditions mentioned hereunder:

S.No.	Name of candidate	Present Address	Postal Address
1	Mr. Shahzad Ali Khan S/O Haji Khan Faraz.	Haji Abad, village & P.O. Ghundo, Katlang, Tehsil & District Mardan.	House No.130 Street No.3 Sector K-4, Phase-3 Hayatabad Peshawar.
2	Mr. Hafiz Muhammad Yasir S/O Gul Sher.	Village Gohi, P.O. Pakha Ghulam, Tehsil & District Peshawar.	village Gohi, P.O. Pakha Ghulam, Tehsil & District Peshawar.
3	Mr. Sullaman Daud S/O Daud Khan.	House No.1095/C Mohallah Hayatullah, Near GHS No.3 D.I.Khan.	House No.1095/C Mohallah Hayatullah, Near GHS No.3 D.I.Khan.
4	Mr. Muhammad Idris Khan S/O Abdur Rashid Khan.	House No.372/P-2, Street-11, Phase-4, Hayatabad, Peshawar.	House No.372/P2, Street-11, Phase-4, Hayatabad, Peshawar.
5	Mr. Muhammad Alam S/O Said Karim.	Village & PO D/Alladand Muhallah Haji Abad, Tehsil Balikhella District Malakand.	Village & PO D/Alladand Muhallah Haji Abad, Tehsil Balikhella District Malakand.
6	Mr. Imranullah Khan S/O Nawab Khan.	Phase-I Sector D-1, Street-64 House No.221, Hayatabad Peshawar.	Phase-I Sector D-1, Street-64 House No.221, Hayatabad Peshawar.
7	Mr. Masood Ahmad S/O Bashir Ahmad.	TSK ENGINEERING INTERNATIONAL 54-A, Small Industrial Estate, Jumrud Road, Peshawar.	TSK ENGINEERING INTERNATIONAL 54-A, Small Industrial Estate, Jumrud Road, Peshawar.
8	Mr. Sohail Khan S/O Sultan Sher,	House No.221, Sector L-2, Phase-3, Hayatabad, Peshawar.	House No.221, Sector L-2, Phase-3, Hayatabad, Peshawar.
9	Mr. Imtiaz Khan S/O Muhammad Gul.	Village Shah Baz Khel Darra Adam Khel FR Kohat.	Haji Abad No.1, Flat No.1, opposite Civil Colony Kohat Road Peshawar.
10	Mr. Ali Ahmad S/O Bashir Ahmad.	Village Singoor (Shahmirandeh), District Chitral.	C/O Dr. Nazir Hussain Shah, Flat No. 14, old Doctors Flat Khyber Teaching Hospital, Peshawar.
11	Tabinda Nousheen D/O Yahya Gul,	House No.10, Street No.20 Latif Abad Ring Road Peshawar.	House No.10, Street No.20 Latif Abad Ring Road Peshawar.
12	Mr. Taimoor Zahid S/O Muhammad Zahid,	Mohallah K.Khader Khan Khel, P.O. & village Maini Tehsil Topi District Swabi.	House No.3 F/9 Phase-6 Hayatabad Peshawar.

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- (b) under the heading "PART-V DRAWING ESTABLISHMENT", against Serial No. 26, in Column No. 5, for the existing entries, the following shall be substituted, namely:

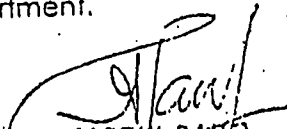
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(a)	Seventy percent (70%) by promotion, on the basis of seniority-cum-fitness, from amongst the holders of the post of Tracer who have qualified the prescribed Examination of Draftsman with three years service as such; and
(b)	thirty percent (30%) by initial recruitment".

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Endst: No and date even

Copy of the above is forwarded:-

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



(ABDUL RAUF)
Section Officer (Est)

24/8/21

ATTESTED

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ANNEX .. C



MINUTES OF THE STANDING SERVICE RULES COMMITTEE (SSRC) MEETING REGARDING AMENDMENTS IN THE EXISTING SERVICE RULES OF IRRIGATION DEPARTMENT HELD ON 29TH APRIL, 2021 UNDER THE CHAIRMANSHIP OF SECRETARY IRRIGATION

A meeting of the Standing Service Rules Committee (SSRC) was held on 29th April, 2021 at 11.30 A.M. under the chairmanship of Secretary Irrigation Department. The following attended the meeting:-

- | | |
|--|------------------|
| 1. Secretary Irrigation | Chairman |
| 2. Engr. Sahibzada Muhammad Shabir, C.E (South) | Member |
| 3. Muhammad Yousaf Khan, DS (R-III) Estt. Deptt. | Member |
| 4. Mr. Wasil Khan, Additional Secretary, Irrigation Deptt. | Secretary/Member |
| 5. Mr. Niamat Khan, SO(SR-III), Finance Department | Member |

2. The meeting started with recitation from the Holy Quran. The chair welcomed the participants. The following agenda items were placed before the committee for consideration:-

Agenda Item No. 01

AMENDMENTS IN THE SERVICE RULES OF DRAWING ESTABLISHMENT (DRAFTSMAN BS-11) IN IRRIGATION DEPARTMENT

Agenda Item No. 02

AMENDMENTS IN THE SERVICE RULES FOR PROMOTION OF FIELD CHOWKIDAR TO THE POST OF GAUGE RADER READER

Agenda Item No. 03

AMENDMENTS IN THE SERVICE RULES FOR RECRUITMENT OF SECURITY OFFICER

Agenda Item No. 04.

AMENDMENTS IN THE SERVICE RULES OF IRRIGATION DEPARTMENT FOR PROMOTION OF ASSISTANT ENGINEER (BS-17) TO THE POST OF EXECUTIVE ENGINEER (BS-18)

Agenda Item No. 1

The Chief Engineer (South) Irrigation Department presented the agenda item and submitted that the present service rules notified in 2011 for promotion of Draftsmen at Sr. No.26 (part-V) of appendix is as under:-

- 50% by initial recruitment.
- 25% by promotion, on the basis of seniority-cum-fitness, from amongst the Tracers having certificate of Civil Draftsman course of two years duration from a recognized Board of Technical Education with three years' service as such and
- 25% by promotion on the basis of seniority-cum-fitness, from amongst the tracer who have qualified the prescribed Departmental Examination of Draftsman and having three years service as such.

Note:- If no suitable candidate is available for promotion against the quota at (b) then the vacancy shall be filled-in by the way as prescribed at (c) and Vice Versa.

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He clarified that the fresh recruits, though having Civil Draftsman Course are not so capable to handle the related issues rather than the Tracers having practical experience in the department. After detailed discussion by the committee the following decision was taken:-

- a. 30% by initial recruitment.
- b. 70% by promotion on the basis of seniority-cum-fitness, from amongst the tracer who have qualified the prescribed Examination of Draftsman and having three years service as such.

Agenda Item No. 02

AMENDMENTS IN THE SERVICE RULES FOR PROMOTION OF FIELD CHOWKIDAR TO THE POST OF GAUGE READER

The Chief Engineer (South) Irrigation presented the Agenda Item No. 2 that Under Sr. No. 60 of Appendix to the notification No. SO(E)IRR/23-5/73, dated 20.12.2006 the recruitment criteria for Gauge Reader BS-7 in Irrigation Department is as under:-

- 1. Minimum Qualification SSC or equivalent qualification from recognized Institute or Board.
- 2. Age Limit 18-30 year.
- 3. Method of recruitment
 - i) 50% by initial recruitment.
 - ii) 50% by promotion on the basis of seniority cum fitness from amongst the male Regulation Beldar and Beldars having SSC qualification and ten years service in the Circle.

He clarified that Beldars, Chowkidars having SSC or higher qualification are also performing duties at various Gauge Station looking after the Gauges and assisting the Gauge Readers at sites and familiar with job but due to non existing of field Chowkidars promotion in the present Service Rules and requested the SSRC that the field Chowkidar may be included in the Service Rules for promotion of Gauge Reader. The committee unanimously recommended the proposed amendment.

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Agenda Item No: 03

AMENDMENTS IN THE SERVICE RULES FOR RECRUITMENT OF SECURITY OFFICER

The Chief Engineer (South) Irrigation has submitted that under Sr. No. 39 of Appendix to the notification No. SO(E)IRR/23-5/73, dated 20.12.2006 the appointment criteria for appointment of Security Officer is as under:

Security Officer	Retired Armed/Civil Armed Forces at least in the rank of Subedar with SSC qualification.	18-30 years	By Initial recruitment
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He requested the forum that at the age of 30 years no Subedar is retired from Armed/Civil Armed Forces and requested the SSRC to enhance the age for recruitment of Security Officer from 18-30 years to 30-45. The committee unanimously agreed with the proposal with the addition that the word subedar may be replaced with Junior Commission Officer (JCO).

Agenda Item No. 04.

AMENDMENTS IN THE SERVICE RULES OF IRRIGATION DEPARTMENT FOR PROMOTION OF ASSISTANT ENGINEER (BS-17) TO THE POST OF EXECUTIVE ENGINEER (BS-18)

The Section Officer (Estt) Irrigation Department has submitted that following criteria is adopted for promotion of Assistant Engineers/Sub Divisional Officer/Assistant Directors (BS-17) to the post of Executive Engineer/Deputy Directors/Technical Officer (BS-18).

Executive Engineer/Deputy Director/Technical Officer (BS-18)	By promotion, on the basis of seniority-cum-fitness from amongst the Sub Divisional Officer, Assistant Engineers and Assistant Directors possessing Degree in B.E/BSc Engineering (Civil or Mechanical) from a recognized University, with at least five years service as such, and have passed the professional or Revenue Examination under the prescribed rules.
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The B. Tech (Hons) Degree Holder Sub Divisional Officers (BS-17) have submitted a joint application for reservation of 20% quota for promotion to the post of BS-18, as the present service rules does not allow them to be promoted to the post of Executive Engineer (BS-18).

He further informed the forum that the B.Tech (Hons) degree holders have also submitted a joint application to the Chief Secretary, Khyber Pakhtunkhwa Establishment Department has examined their joint application and vide letter dated 21st April, 2021 advised the Irrigation Department to place the matter before the Standing Service Rules Committee (SSRC).

Therefore, the matter is placed before the SSRC to consider their request. The committee, after detailed discussion recommended the following amendments in the existing Service Rules:-

- i. 80% By promotion, on the basis of seniority-cum-fitness from amongst the Sub Divisional Officer, Assistant Engineers and Assistant Directors possessing Degree in B.E/BSc Engineering (Civil or Mechanical) from a recognized University, with at least five years service as such, and have passed the professional or Revenue Examination under the prescribed rules.
- ii. 12 % By promotion, on the basis of seniority-cum-fitness from amongst the Sub Divisional Officer, Assistant Engineers and Assistant Directors possessing Degree in B. Tech (Hons) from a recognized University, with at least five years service as such, and have passed the professional or Revenue Examination under the prescribed rules.

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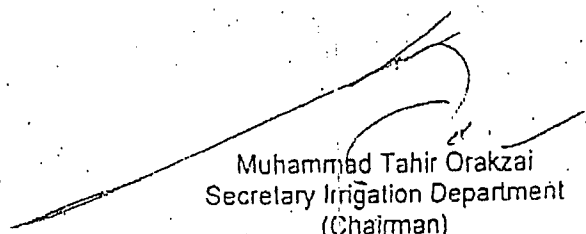
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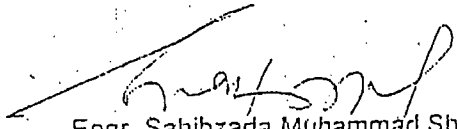
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- iii. 08% By promotion, on the basis of seniority-cum-fitness from amongst the Sub Divisional Officer, Assistant Engineers and Assistant Director possessing Diploma of Associate Engineering from a recognized Board, with at least five years service as such, and have passed the professional or Revenue Examination under the prescribed rules.

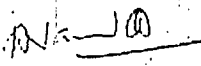
Note: Separate seniority lists of all the three categories of the Sub Divisional Officer/Assistant Engineers and Assistant Directors shall be maintained.

The meeting ended with a vote of thank from and to the chair.


 Muhammad Tahir Orakzai
 Secretary Irrigation Department
 (Chairman)


 Engr. Sahibzada Muhammad Shabir
 Chief Engineer (South) Irrigation
 (Member)


 Mr. M. Yousaf Khan
 Deputy Secretary (R-III) Estt Deptt
 (Member)


 Mr. Niamat Khan
 Section Officer (SR-III), Finance Department
 (Member)

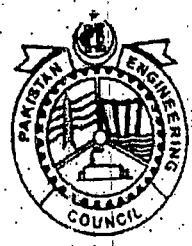
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ANNEX - D

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PAKISTAN
ENGINEERING COUNCIL



PEC ACT, 1976

[Published in the Gazette of Pakistan
Extraordinary dated the 14th January, 1976]
Amended upto 24th January, 2011

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The Gazette  of Pakistan

EXTRAORDINARY
PUBLISHED BY AUTHORITY

ISLAMABAD, WEDNESDAY, JANUARY 14, 1976

PART I

Acts, Ordinances, President's Orders and Regulations

NATIONAL ASSEMBLY OF PAKISTAN

Islamabad, the 14th January, 1976

The following Acts of Parliament received the assent of the President on the 10th January, 1976, and are hereby published for general information:-

ACT No. V OF 1976

An Act to make provision for the regulation of the engineering profession

WHEREAS it is expedient to make provision for regulation of the engineering profession and for that purpose to constitute an Engineering Council;

WHEREAS the Council shall regulate the engineering profession with the vision that the engineering profession shall function as a key driving force for achieving rapid and sustainable growth in all national, economic and social fields;

WHEREAS the Council shall as its mission set and maintain realistic and internationally relevant standards of professional competence and ethics for engineers, and licence engineers, and engineering institutions to competently and professionally promote and uphold the standards;

AND WHEREAS, the Council, covering the entire spectrum of engineering disciplines, shall function as an apex body to encourage and promote the pursuit of excellence in engineering profession and to regulate the quality of engineering education and the practice of engineering and thereby promote rapid growth in economic and social fields in Pakistan.

It is hereby enacted as follows:-

1. *Short title, extent and commencement.*- (1) This Act may be called the Pakistan Engineering Council Act, 1975.

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- (2) It extends to the whole of Pakistan.
- (3) It shall come into force at once.

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2. **Definitions.** - In this Act, unless there is anything repugnant in the subject or the context,-

- (i) "Accreditation Committee" means the Accreditation Committee constituted under sub-section (1) of section 14;
- (ii) "accredited engineering qualification" means any of the qualifications included in the First Schedule or the Second Schedule;
- (iii) "bye-laws" means bye-laws made under this Act;
- (iv) "Chairman" means the Chairman of the Council;
- (v) "constructor" means any person, partnership, corporate body or any other legal entity which or who is engaged in the business of construction and is licensed and registered as such;
- (vi) "consulting engineer" means any person, partnership, corporate body or any other legal entity which independently performs study, prepared reports, makes design, supervises construction or undertakes any other similar advisory activities in engineering disciplines and is registered as such by the Council;
- (vii) "continued professional development" means the systematic maintenance, improvement and broadening of knowledge, understanding and skill, and the development of personal qualities necessary for the execution of professional and technical duties throughout the individual's working life;
- (viii) "Council" means the Pakistan Engineering Council constituted under section 3;
- (ix) "creativity" means innovation, invention, hypothesis, theories and such other actions in the realm of engineering profession contributory to development;
- (x) "engineering institution" means an institution within or without Pakistan which grants degree, diploma and certificate in engineering and related education and is accredited as such by the Council;
- (xi) "engineering products" means the products as a result of or the outcome of professional engineering works or engineering profession or both;

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- (xii) "engineering profession" means engineering education and practices of engineering and technology;
- (xiii) "engineering public organization" means a department of the Federal Government or a Provincial Government, a Public Corporation, autonomous or semi-autonomous body, cantonment board, municipality, improvement trust or other local authority;
- (xiv) "engineering services" means services relating to study, preparation of reports, design, supervision, estimation, documentation, evaluation and advising in matters of engineering profession and engineering works;
- (xv) "engineering university" means a degree awarding university or institution as has more than fifty per cent of their undergraduate and postgraduate programmes as well as student population pertaining to engineering and are recognized as such;
- (xvi) "enrolment committee" means the enrolment committee referred to in sub-section (1) of section 17;
- (xvii) "Governing Body" means the Governing Body of the Council;
- (xviii) "learned societies" means institutions and associations for promotion of knowledge and excellence in engineering and technology;
- (xix) "Management Committee" means the Management Committee of the Council;
- (xx) "member" means a member of the Council and includes the Chairman, Senior Vice-Chairman, Vice-Chairman, professional engineers and registered engineers;
- (xxi) "operator" means any person, partnership, corporate body or any other legal entity which is engaged in the business of operating construction work and is licensed and registered as such;
- (xxii) "prescribed" means prescribed by bye-laws;
- (xxiii) "professional engineer" means a person who holds an accredited engineering qualification and after obtaining a professional experience of five years, whether working privately or in the employment of an engineering public organization, has passed the prescribed engineering practice examination and is registered as such by the Council;
- (xxiv) "professional engineering bodies" means professional engineering institutes, associations and such other bodies registered as such by the Council;

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(xxv) "professional engineering work" means the giving of professional advice and opinions, the making of measurements and layouts, the preparation of reports, computations, designs, drawings, plans and specifications and the construction, inspection and supervision of engineering works, in respect of -

- (a) railways, aerodromes, bridges, tunnels and metalled roads;
- (b) dams, canals, harbours, light houses;
- (c) works of an electrical, mechanical, hydraulic, communication, aeronautical power engineering, geological or mining character;
- (d) waterworks, sewers, filtration, purification and incinerator works;
- (e) residential and non-residential buildings, including foundations, framework and electrical and mechanical systems thereof;
- (f) structures accessory to engineering works and intended to house them;
- (g) imparting or promotion of engineering education, training and planning, designing, development construction, commissioning, operation, maintenance and management of engineering works in respect of computer engineering, environmental engineering, chemical engineering, structural engineering, industrial engineering, production engineering, marine engineering and naval architecture, petroleum and gas engineering, metallurgical engineering, agricultural engineering, telecommunication engineering, avionics and space engineering, transportation engineering, air-conditioning ventilation, cold storage works, system engineering, electronics, radio and television engineering, civil engineering, electrical engineering, mechanical engineering and biomedical engineering etc;
- (h) organizing, managing and conducting the teaching and training in engineering universities, colleges, institutions, Government colleges of technology, polytechnic institutions and technical training institutions;
- (i) preparing standard bidding or contract documents, construction cost data, conciliation and arbitration procedures; guidelines for bid evaluation, prequalification and price adjustments for construction and consultancy contracts; and.

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- (j) any other work which the Council may, by notification in the official Gazette, declare to be an engineering work for the purposes of this Act;
- (xxvi) "Register" means the Register maintained under section 16;
- (xxvii) "registered engineer" means a person who holds an accredited engineering qualification, whether working privately or in the employment of an engineering public organization and is registered as such by the Council. Registered Engineer shall perform all professional engineering works except independently signing design;
- (xxviii) "registered" means registered under this Act;
- (xxix) "Registrar" means the Registrar of the Council;
- (xxx) "Senior Vice-Chairman" means the Senior Vice-Chairman of the Council;
- (xxxi) "Think Tank" means a creative and innovative body to advise on engineering and national development plans;
- (xxxii) "Think Tank Committees" means bodies of eminent engineers constituted by the Council to assist in formulation of relevant policies relating to national development;
- (xxxiii) "university" means a University established by law in Pakistan and having an engineering faculty; and
- (xxxiv) "Subsidiary" means a body formed by the Governing body of the Council to operate under its control and to perform its delegated functions.

3. Constitution and incorporation of Engineering Council.- (1) There shall be constituted in accordance with the provisions of this Act an Engineering Council to be known as the Pakistan Engineering Council.

(2) The Council constituted under sub-section (1) shall be a body corporate having perpetual succession and a common seal, with power to acquire and hold property, both movable and immovable, and to contract, and shall by the name by which it is known sue and be sued.

(3) The Council shall be composed of all persons whose names may hereafter be entered in the Register, so long as they continue to have their names borne on the Register.

(4) Notwithstanding anything contained in sub-section (3), the Council shall, upon its first constitution, be composed of -

- (a) a Chairman, being an engineer with not less than twenty years' standing to be nominated by the Federal Government;
- (b) ten members, being engineers, of whom two each shall be nominated by the Federal Government and a Provincial Government; and
- (c) one member, being an engineer, to be nominated by each University.

(5) The headquarters of the Council shall be at Islamabad or at such other place as the Federal Government may appoint.

3A. Executive powers of the Council.- (1) The general direction and administration of the Council and its affairs shall vest in the Governing Body which may exercise all powers and do all acts and things that may be exercised or done by the Council:

(2) Subject to the provisions of this Act, the bye-laws and the general or special delegation of powers by the Governing Body and the Management Committee, the Chairman shall be the Chief Executive of the Council and shall also be empowered to -

- (a) take any action or step in emergency which in his opinion requires immediate action as he may consider necessary, subject to ratification by the Governing Body in its meeting immediately held thereafter; and
- (b) exercise the powers of the Council in the matters relating to its administration and the staff of the Council, who may delegate such powers to the Registrar subject to such conditions as he may specify in this regard.

(3) The Council shall be funded through an initial grant by the Government and thereafter continuous financial support shall be provided besides that accrue from registrations for running the affairs of the Council.

4. Chairman, Senior Vice-Chairman and Vice-Chairmen.- (1) There shall be a Chairman, Senior Vice-Chairman and four Vice-Chairmen of the Council who shall be eminent professional engineers of known integrity, competence, standing and stature with a minimum of twenty-five years of standing.

(2) The Chairman and Senior Vice-Chairman shall be elected by members from amongst themselves in such manner as may be prescribed.

(3) Four Vice-Chairmen shall be elected one from each Province by the votes registered in the respective Province.

(4) The Chairman, Senior Vice-Chairman and Vice-Chairmen shall hold office for a term of three years but no person shall hold office for more than two consecutive terms.

(5) When the Chairman by reason of absence from Pakistan or any other cause is unable to perform his functions, the Senior Vice-Chairman for the time being shall perform the functions of Chairman until the Chairman returns to Pakistan or, as the case may be, resumes his functions.

5. Annual general meeting of the Council.- (1) An annual general meeting of the Council shall be held at the headquarters of the Council or at a provincial capital by rotation at such time as may be appointed by the Governing Body.

(2) The following business may be transacted at the annual general meeting namely:-

- (a) presentation of annual report;
- (b) presentation of audited accounts;
- (c) presentation of annual budget;
- (d) appointment of auditors; and
- (e) such other business as may be placed before the meeting by the Governing Body or as the meeting may decide.

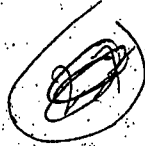
6. Extraordinary general meeting of the Council.- (1) An extraordinary general meeting of the Council shall be called by the Chairman at the headquarters of the Council -

- (a) within fourteen days of the receipt by him of a requisition signed by not less than one hundred members and stating the business proposed to be transacted at the meeting; or
- (b) at any time, if the holding of such meeting for the consideration of any urgent matter is in his opinion necessary.

(2) At a meeting called in pursuance of clause (a) of sub section (1), no business other than the business stated in the requisition referred to in that clause shall be transacted.

7. General provisions relating to meetings of Council.- (1) An annual or extraordinary general meeting of the Council shall be held and conducted in accordance with the bye-laws.

(2) To constitute a quorum at an annual or extraordinary general meeting of the Council, the presence of not less than one hundred members shall be necessary.



Provided that, in respect of the Council as constituted under sub section (4) of section 3, this sub section shall have effect as if, for the words "one hundred" therein the word "six" were substituted.

(3) All decisions of the Council at an annual or extraordinary general meeting shall be taken by majority of the members present and voting.

8. **Functions of the Council.**- The following shall be the functions of the Council, namely:-

- (a) maintenance of a Register of persons qualified to work as registered engineers, professional engineers, consulting engineers, constructors and operators;
- (b) accreditation of engineering qualifications for the purpose of registration of registered engineers, professional engineers;
- (c) removal of names from the Register and restoration to the Register of names which have been removed;
- (d) laying down of standards of conduct for the members;
- (e) safeguarding the interests of the members;
- (f) promotion of reforms in the engineering profession;
- (g) management of the funds and properties of the Council;
- (h) promotion of engineering education and review of courses of studies in consultation with the Universities;
- (i) levy and collection of fees from applicants for registration or temporary licences and members;
- (j) exercise of such disciplinary powers over the members and servants of the Council as may be prescribed;
- (k) formation of such committees and subsidiaries as may be prescribed;
- (l) assistance to the Federal Government as a Think Tank;
- (m) promotion of engineering profession in totality;
- (n) encouragement, facilitation and regulation of working of professional engineering bodies for creativity and as custodian of engineering under the umbrella of the Council;
- (o) ensuring and managing of continued professional development through engineering academies and professional bodies;
- (p) establishing standards for engineering contracts, cost and services;

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- (q) facilitating engineering sector industries;
- (r) coordinating between various engineering forums and Federal Government;
- (s) providing forum for arbitrations, pertaining to disputes in construction and consultancy contracts, and
- (t) performance of all other functions connected with, or ancillary or incidental to, the aforesaid functions.

9. Governing Body.- (1) There shall be a Governing Body which shall be the principal executive authority of the Council for supervising and governing the affairs and functions assigned to the Council by or under this Act and bye-laws.

(2) The Governing Body, besides Registrar, shall be composed of the following sixty-five professional engineers registered with the Council with a minimum twenty years standing, namely:-

- (a) the Chairman, Senior Vice-Chairman and four Vice-Chairmen one from each Province who shall also be the Chairman, Senior Vice-Chairman and Vice-Chairmen of the Governing Body;
- (b) the Registrar;
- (c) two distinguished professional engineers to be nominated by the Federal Government one member each from Azad Jamu and Kashmir and Gilgit-Baltistan;
- (d) one distinguished professional engineer to be nominated by each Provincial Government;
- (e) five Vice-Chancellors of engineering universities (one nominated by each Provincial and one by the Federal Government);
- (f) President or Chairman Association of Consulting Engineers (Pakistan);
- (g) President or Chairman All Pakistan Contractors Association or their nominee;
- (h) Elected President of the Institution of Engineers Pakistan;
- (i) Forty members to be elected in the prescribed manner in proportion to the number of engineers registered in each Province, by the valid professional and registered engineers whose names are borne on the Register on the thirtieth June of the year in which elections to the Governing Body are to be held, physical balloting will be held and no proxy voting to be permitted;

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(j) Elected President of Pakistan Engineering Congress;
and

(k) One nominee from the following Ministry or organizations of the Federal Government, not below the BPS-20, namely: -

- (i) Planning Commission;
- (ii) Ministry of Science and Technology;
- (iii) Higher Education Commission;

(3) The members of the Governing Body, other than the Registrar, shall hold office for a term of three years and no person shall hold office for more than two consecutive terms.

(4) The members of the Governing Body shall be nominated or, as the case may be, elected not less than fifteen days before the term of the outgoing members is due to expire.

(5) The Governing Body shall hold at least three meetings per year, the quorum for which shall be thirty per cent of the total membership of the Governing Body.

(6) The election of members of the Governing Body under clause (i) of sub-section (2) shall be held so as to conclude not less than fifteen days before the term of the outgoing members is due to expire.

9A. Management Committee.- (1) There shall be a Management Committee, to oversee working of the Secretariat to run the affairs of the Council in accordance with the provisions of this Act and bye-laws.

(2) The Management Committee shall be composed of the following, namely:-

- (a) Chairman;
- (b) Senior Vice-Chairman; and
- (c) Four Vice-Chairmen;

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(3) The tenure of the Management Committee shall be the same as that of the Governing Body. The Management Committee shall hold meetings at least once in a quarter, the quorum for which shall be three.

10. Accreditation of engineering qualifications granted by institutions in Pakistan.- (1) The engineering qualifications granted by engineering institutions



in Pakistan which are included in the First Schedule shall be the accredited engineering qualifications for the purposes of this Act.

(2) Any engineering institution in Pakistan which grants an engineering qualification not included in the First Schedule may apply to the Council to have such qualification accredited and the Council may, by notification in the official Gazette, amend the First Schedule so as to include such qualification therein.

11. *Accreditation of foreign engineering qualifications.*- (1) The engineering qualifications granted by engineering institutions outside Pakistan which are included in the Second Schedule shall be accredited engineering qualifications for the purposes of this Act.

(2) Any engineering qualification granted by an engineering institution outside Pakistan not included in the Second Schedule may be accredited by the Council, and the Council may, by notification in the official Gazette, amend the Second Schedule so as to include such qualification therein.

12. *Grant of temporary licences.*- (1) The Enrolment Committee may grant to any person, domiciled outside Pakistan who does not hold an accredited engineering qualification but who holds an engineering degree or who is a corporate member of an engineering body, society, institute or association accredited by the Council of respective country, a temporary license for a specific project to work as an associate of a professional engineer; the professional engineer shall sign and seal the plans and specifications for the project.

(2) The Enrolment Committee may, if it feels that such action is warranted by special circumstances, grant to a person referred to in sub-section (1) a temporary licence to work as the engineer in charge of a specific project for so long as he is assisted by a professional engineer.

(3) The Enrolment Committee may, for works to be carried out at the discretion of an engineering public organization, grant a temporary licence to any person on the recommendation of such organization.

(4) Any person to whom a temporary licence has been granted shall, during the period for which the licence is valid, be subject to the provisions of this Act and the bye-laws.

13. *Power to require information as to courses of study and examination.*- Every engineering institution in Pakistan which grants a accredited engineering qualification shall furnish such information as the Council may, from time to time, require as to the courses of study and examination to be undergone in order to obtain such qualification.

14. *Accreditation of engineering institutions.*- (1) The Council shall constitute an Accreditation Committee for organizing and carrying out a comprehensive program of accreditation of engineering universities, colleges and

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institutions etc. according to the criteria approved by the Governing Body in consultation with Higher Education Commission.

(2) The curricula of courses of studies in various disciplines of engineering and minimum level and standard of such courses including lectures, laboratory, design, drawing and field work shall be examined and scrutinized by the Accreditation Committee who shall submit its report to the Governing Body for approval.

15. Withdrawal of accreditation.- (1) When upon report by the Accreditation Committee, it appears to the Council that the courses of study and examination to be gone through in any engineering institution in Pakistan in order to obtain an accredited engineering qualification or the standards of proficiency required from candidates in any examination held for the purpose of granting such qualification are not such to secure to person holding such qualification the knowledge and skill requisite for the efficient practice of engineering, the Council shall forward the report to the engineering institution concerned with an intimation of the period within which it may submit its explanation to the Council;

(2) On receipt of the explanation or, where no explanation is submitted within the specified period, on the expiry of that period, the Council, after making such further inquiry, if any, as it may think fit, may, by notification in the official Gazette, direct that an entry shall be made in the First Schedule against the engineering qualification to which the explanation relates declaring that it shall be a accredited engineering qualification only when granted before a specified date.

16. Maintenance of Register, etc.- (1) The Council shall maintain in the prescribed manner a Register in which shall be entered the names and other particulars of persons possessing accredited engineering qualifications whose application for registration as registered engineers, professional engineers, consulting engineers, constructors and operators are, from time to time, granted by the Council.

(2) Every application for registration under this Act shall be made to the Council in the prescribed form and be accompanied by the prescribed fee.

(3) Every registered engineer, professional engineer, consulting engineer registered under this Act shall be entitled to receive a certificate of registration under the hand of the Registrar.

(4) A certificate of registration issued under sub section (3), shall, subject to the provisions of this Act, remain in force until the thirty first day of December of the year in which it is issued and shall thereafter be renewable for any number of years not exceeding three at a time upon payment of the prescribed fee.

(5) Every constructor and operator registered under this Act shall be entitled to receive a licence under the hand of the Registrar.

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17. Registration and removal of names from Register.- (1) Every application for registration and every case of removal of a name from the Register shall be considered by an enrolment committee consisting of the Chairman, Senior Vice-Chairman and Vice-Chairmen and three other members, being engineers of not less than twenty years' standing, nominated by the Governing Body.

(2) The enrolment committee in its discretion may refuse to permit the registration of any person or direct the removal altogether or for a specified period from the Register of the name of any registered engineer, professional engineer, consulting engineer, constructor or operator who has been convicted of any such offence as implies in the opinion of the committee a defect of character after providing such person an opportunity of being heard, and shall record reasons for action under this section.

(3) The enrolment committee may direct that any name removed from the Register under sub section (2) shall be restored.

18. Appeal against removal of name from Register.- (1) Any registered engineer, professional engineer, consulting engineer, constructor or operator aggrieved by an order under sub section (1) of section 17 for the removal of his or its name from the Register may, within thirty days of the communication of the order, prefer an appeal to the Governing Body.

(2) Upon the receipt of an appeal under sub section (1), the Governing Body may, after holding such inquiry as it may consider necessary and giving the appellant an opportunity of being heard in person or through an advocate, pass such order as it may deem fit.

19. Revision of Register.- (1) The Registrar shall remove from the Register the name of any registered engineer, professional engineer, consulting engineer, constructor or operator.-

- (a) who has died or, as the case may be, which has ceased to exist;
- (b) who or which has failed to have his or its certificate of registration renewed within one year of the date of its expiry; or
- (c) whose name has been directed under sub section (2) of section 17 or sub section (7) of section 22 to be removed from the Register.

(2) The Registrar shall restore to the Register the name of any registered engineer, professional engineer, consulting engineer, constructor or operator whose name has been removed from the Register under clause (b) of sub-section (1) if such registered engineer, professional engineer, consulting engineer, constructor or operator applies for such restoration and pays the prescribed fee.

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(3) The Council may, in its discretion, after the expiry of not less than one year following the removal from the register of the name of any registered engineer, professional engineer, consulting engineer, constructor or operator grant registration to such registered engineer, professional engineer, consulting engineer, constructor or operator if he or it applies for registration.

20. Complaints against professional engineers, etc.- (1) A complaint made against any registered engineer, professional engineer, consulting engineer, constructors or operators as to work or conduct shall be considered by the enrolment committee and, if that committee is of the opinion that there are sufficient reasons to proceed against the person to whom the complaint relates, it may either proceed to inquire into the complaint itself or refer the complaint to a Tribunal of Inquiry.

(2) Where the enrolment committee decides to proceed with the complaint itself, it shall follow the same procedure as has been prescribed for the Tribunal of Inquiry and may pass such order as it is competent to pass under sub section (7) of section 22.

(3) For the purpose of any inquiry, the enrolment committee shall be deemed to be a court within the meaning of the Qanun-e-Shahadat, 1984 (P.O. No. 10 of 1984), and shall exercise all the powers of a civil court for summoning witnesses, for compelling the production of documents and for issuing commissions.

(4) The Enrolment Committee may also take *suo moto* notice of a professional misconduct by registered engineer, professional engineer, consulting engineer, constructor or operator or an engineering organizations whether in the public or in private sector; and shall follow the same procedure as provided in sub-sections (1) and (2).

21. Tribunals of Inquiry.- (1) For holding inquiries into the professional conduct of registered engineers, professional engineers, consulting engineers, constructors and operators, the Governing Body may constitute as many Tribunals of Inquiry as it may consider necessary.

(2) A Tribunal shall consist of three members appointed by the Governing Body out of a panel of members of the Council maintained by the Committee who have professional standing of not less than ten years and who hold, or have held high engineering assignments.

(3) The Governing Body shall appoint one of the members of a Tribunal to be the Chairman thereof.

22. Procedure in inquiries, etc.- (1) In inquiries relating to the professional conduct of registered engineer, professional engineer, consulting engineer, constructors or operator, the Tribunal shall, except as hereinafter provided, follow such procedure as may be prescribed.

(2) The Tribunal shall fix a date for the hearing of the case and shall cause notice of the day so fixed to be given to the complainant and the registered engineer, professional engineer, consulting engineer, constructors or operator concerned, hereafter in this section referred to as the respondent, and shall afford to the complainant and the respondent an opportunity of leading evidence, if any, and of being heard before recommendations are made in the case.

(3) The Chairman of the Tribunal may empower a member of the Tribunal to consider and decide preliminary issues and to record evidence.

(4) On completion of the inquiry, the Tribunal may recommend to the Enrolment Committee:-

- (a) dismissal of the complaint;
- (b) imposition of any of the following penalties on the respondent namely:-
 - (i) reprimand;
 - (ii) removal of name from the Register for a period not exceeding five years.
 - (iii) removal of name from the Register altogether; or
- (c) prosecution of the respondent for the offence constituted by his or its conduct.

(5) The Tribunal may make such recommendation to the Enrolment Committee as to the cost of the proceedings before it as it may deem fit; and, where the Tribunal is of the opinion that a complaint made against a respondent is false and vexatious, it may, in addition and without prejudice to any other remedy available to the respondent, recommend imposition upon the complainant of costs not exceeding a sum of ten thousand rupees and payment to the respondent of the whole or any part of the costs recovered from the complainant.

(6) In any case in which it has recommended the imposition of any penalty on, or the prosecution of the respondent, the Tribunal may also recommend that an amount not exceeding twice the amount of the fee received by the respondent from the complainant may be recovered from the respondent and paid to the complainant as compensation.

(7) The Enrolment Committee shall meet to consider the recommendations of the Tribunal within a period of six weeks from the date of receipt thereof and pass such orders as it may deem fit.

(7A) Any person aggrieved by an order under sub section (7) may, within thirty days of the communication of order to him, prefer an appeal to the Governing Body.

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(8) Any order of the Enrolment Committee as to the costs of the proceedings before the Tribunal or as to the recovery of any amount from a complainant or a respondent shall be executable as if it were an order of a District Judge.

(9) When any professional engineer or consulting engineer is reprimanded under this Act a record of the punishment shall be entered against his or its name in the Register.

23. Powers of the Tribunal.- (1) For the purpose of any such inquiry as aforesaid, a Tribunal shall have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (Act V of 1908), in respect of the following matters; namely:-

- (a) enforcing the attendance of any person,
- (b) compelling the production of documents, and
- (c) issuing commissions for the examination of witnesses.

(2) Every such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Pakistan Penal Code (Act XLV of 1860), and a Tribunal shall be deemed to be a civil court for the purpose of sections 480 and 482 of the Code of Criminal Procedure 1898 (Act V of 1898).

(3) For the purposes of enforcing the attendance of any person or of compelling the production of documents or issuing commissions-

- (a) the jurisdiction of a Tribunal shall extend to the whole of Pakistan; and
- (b) a tribunal may send to any civil court having jurisdiction in the place where the Tribunal is sitting any summons or other process for the attendance of a witness or the production of documents required by the Tribunal, or any commission which it desires to issue, and the civil court shall serve such process or issue such commission, as the case may be, and may enforce any such process as if it were a process for attendance or production before itself.

(4) Proceedings before a Tribunal in any such inquiry shall be deemed to be civil proceedings for the purposes of Articles 15 of the Qanun-e-Shahadat, 1984 (P.O. No. 10 of 1984) and the provisions of that section shall apply accordingly.

24. Fund of the Council, accounts and audit.- (1) All sums received by the Council as fees, grants donations or subscriptions shall form part of a fund which shall be managed, administered and utilized in such manner as may be prescribed.

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(2) The Governing Body shall cause to be maintained such books of account and other books in such form and manner as may be prescribed.

(3) The accounts of the Council shall be audited, before the thirtieth day of November each year, by an auditor appointed by the Council who is a chartered accountant within the meaning of the Chartered Accountants Ordinance, 1961 (X of 1961).

25. Bye-laws of the Council.- (1) The Governing Body may, with the previous sanction of the Federal Government, by notification in the official Gazette, make bye-laws for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such bye-laws may provide for all or any of the following matters, namely:-

- (a) the summoning and holding of meetings of the Council and Governing Body, the time and places where such meetings are to be held, the conduct of business and the number of members necessary to constitute a quorum at a meeting of the Governing Body;
- (b) the powers and duties of the Chairman, Vice-Chairman and Registrar;
- (c) the terms of office and powers and duties of the Registrar and other officers and servants of the Council;
- (d) the appointment, powers, duties and procedure of inspectors;
- (e) the procedure for maintenance and publication of the Register, the fees to be charged under this Act and establishment of sub offices or branches of the Council;
- (f) the management of the property of the Council and the maintenance and audit of its accounts;
- (g) the procedure at any inquiry held under sub section (2) of section 22; and
- (h) any other matter which is to be or may be prescribed.

25A. Power to make regulations.- The Governing Body may, in consultation with the committee of Vice-Chancellors of the Universities of Engineering and Technology of Pakistan set up by the Higher Education Commission, make regulations, not inconsistent with the provisions of the this Act and the bye-laws, to provide for-

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- (a) minimum standard of courses of study and practical training for obtaining graduate and post-graduate engineering qualifications to be included in the First and Second Schedules;
- (b) minimum requirement for the content and duration of courses of study as aforesaid;
- (c) minimum qualifications for admission to engineering institutions offering course of study and laying down minimum standard for holding admission examinations;
- (d) qualification and experience required of teachers for appointment in engineering universities, colleges and institutions;
- (e) minimum standards of examinations, and duration and standard of practical training, for securing accreditation of engineering qualifications under this Act; and
- (f) qualifications and experience required of examiners for professional examinations of accredited engineering qualifications.

26. Proof of membership, etc.- For the purposes of any action or proceeding under this Act, a certificate of the Registrar certifying under the seal of the Council that, on a specified date, the name of a person was or was not borne on the Register shall be proof of its contents and of the authenticity of his signature, until the contrary is proved.

27. Penalties and procedure.- (1) After such date as the Federal Government may, after consultation with the Council, by notification in the official Gazette, appoint in this behalf, whoever undertakes any professional engineering work shall, if his name is not for the time being borne on the Register, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both, and; in the case of a continuing offence, with a further fine which may extend to two hundred rupees for every day after the first during which the offence continues.

(2) After the date appointed as aforesaid, whoever employs for any professional engineering work any person whose name is not for the time being borne on the Register shall be punishable, on first conviction, with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both, and on a second or subsequent conviction, with imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both.

(3) Whoever willfully procures or attempts to procure himself or itself to be registered under this Act as a registered engineer, professional engineer, consulting engineer, constructor or operator by making or producing or causing to be made or produced any false or fraudulent representation or declaration, either orally or in writing, and any person who assists him therein shall be punishable

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with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(4) Whoever falsely pretends to be registered under this Act, or not being registered under this Act, uses with his name or title any words or letters representing that he is so registered, irrespective of whether any person is actually deceived by such pretence or representation or not, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(5) No person undertaking any professional engineering work shall, unless he is registered under this Act, be entitled to recover before any court or other authority any sum of money for services rendered in such work.

(5A) No person shall, unless registered as a registered engineer or professional engineer, hold any post in an engineering organization where he has to perform professional engineering work.

(6) No court shall take cognizance of any offence punishable under this Act save on complaint made by, or under the authority of, the Council.

(7) No court inferior to that of a Magistrate of the first class shall try any offence punishable under this Act.

28. *Saving.*- Nothing in this Act shall be deemed to-

- (a) affect the right of any person who was, immediately before the date specified in a notification issued under sub-section (1) of section 27, entitled to practise as an architect to continue such practice provided a professional engineering work is executed under the supervision of a professional engineer, or to prevent him from associating with a professional engineer;
- (b) affect the right of any person to execute or undertake any work for which he has been trained in an institution specified by the Council, by notification in the official Gazette, for the purposes of this clause;
- (c) affect the right of any person who was, immediately before the date specified in a notification issued under sub-section (1) of section 27, entitled to work as a land surveyor to continue such work, or
- (d) restrict the normal practice of his art or trade by an artisan or skilled workman; or
- (e) affect the rights of the members of the Governing Body constituted for the term commencing from the year 2008 and ending in 2010.


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29. *Power to exempt.*- If the Council so recommends, the Federal Government may, by notification in the official Gazette, exempt any person or class of persons, or any professional engineering work or class of such works, from the operation of the provisions of section 27, subject to such conditions, if any, as may be specified in the notification.

30. *Commission of Inquiry.*- (1) Whenever it is made to appear to the Federal Government that the Council is not complying with any of the provisions of this Act, the Federal Government may refer the particulars of the complaint to a Commission of Inquiry consisting of-

- (a) a person who is, or has been, or is qualified to be, a Judge of a High Court, to be appointed by the Federal Government;
- (b) a professional engineer, to be nominated by the Federal Government; and
- (c) a professional engineer, to be nominated by the Council.

(2) The Commission shall proceed to inquire and report to the Federal Government as to the truth of the matters charged in the complaint and, in case of any charge of default or of improper action being found by the Commission to have been established, the Commission shall recommend remedies, if any, which are in its opinion necessary.

(3) The Federal Government may require the Council to adopt the remedies so recommended within such time as, having regard to the report of the Commission, it may think fit; and, if the Council fails to comply with any such requirement, the Federal Government may amend the bye-laws or make such provision or order or take such other steps as may seem necessary to give effect to the recommendations of the Commission.

(4) A Commission of Inquiry shall have power to administer oaths, to enforce the attendance of witnesses and the production of documents, and shall have all such other necessary powers for the purpose of any inquiry conducted by it as are exercised by a civil court under the Code of Civil Procedure, 1908 (Act V of 1908).

30A. *Indemnity.*- No suit, prosecution, or other legal proceedings shall lie against, the Council or any of its Committees, Officers or servants for anything which is in good faith done or intended to be done in pursuance of this Act or the bye-laws or regulations made thereunder.

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30B. Validation of actions, Act V of 1976.- Anything done, actions taken, orders passed, instruments made, proceedings initiated, process or communications issued, powers conferred, assumed, exercised by the Council or its officers and servants on or after the 15th January, 2008, and before the commencement of the Pakistan Engineering Council (Amendment) Act, 2011 shall be deemed to have been validly done, made, issued, taken, initiated, conferred, assumed and exercised shall have, and shall be deemed always to have had, effect accordingly.

Amended vide National Assembly Secretariat Notification No. F.22(28)/2009-Legis dated 24th January, 2011.

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Constitution of Standing Service Rules Committee

Under the provision of Rule 3(2) of the NWFP Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, the Provincial Government is pleased to constitute with immediate effect and in supersession of Services and General Administration Department Notification No.SOR.II (S&GAD)2(9)/97 dated 12th September, 2001, the Standing Service Rules Committee with the following composition:-

- | | | |
|----|---|------------------|
| 1. | Administrative Secretary concerned | Chairman |
| 2. | Additional Secretary (Regulation)
E&A Department | Member |
| 3. | Additional Secretary (Regulation)
Finance Department | Member |
| 4. | Additional Secretary
Law Department | Member |
| 5. | Head of the attached Department concerned | Member |
| 6. | Deputy Secretary(Admn) of the
Department concerned | Member/Secretary |

2. I am further directed to request that the Working Paper for the Standing Service Rules Committee should be prepared in light of instructions issued vide letter No.SOR-I (S&GAD) 1-206/74(A) dated 13th October, 1990.

(Authority: Notification No.SOR.VI(E&AD)2-69/2003. dated 29th Jan, 2005)

Framing of Service Rules/Recruitment Rules

I am directed to refer to this department letter No.SOR-I(S&GAD) 4-2/85, dated 4.12.1985, on the subject noted above and to enclose herewith revised proforma (Annexure 'I' and Annexure-'II') for initiating proposals for framing new Service/Recruitment Rules. The Administrative Departments are requested that all proposals for framing of new Service Rules and amendments in the existing rules should be accompanied by a working paper (six copies) explaining background and justification for the proposal, particularly where existing rules are required to be amended.

2. It is requested that while sending proposals for framing of new Service Rules and making amendments in the existing rules, the qualifications proposed for appointment to posts should suit the requirement of the job.

3. It has been decided that the Law Department/Public Service Commission and Finance Department would in no case delay vetting/ clearance/ concurrence of rules for more than one month.

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Annexure-I

NEW RULES

PROFORMA SHOWING PROPOSED METHOD OF RECRUITMENT APPLICABLE TO THE POSTS IN THE _____

S.No.	Nomenclature of the post.	Minimum qualification for appointment by initial recruitment or by transfer	Minimum qualification for appointment by promotion	Age limit	Method of recruitment
1	2	3	4	5	6

Annexure-II

PROFORMA SHOWING PROPOSED AMENDMENT IN THE EXISTING SERVICE RULES

Nomenclature of the post. (Existing) (Proposed) (Reasons)	Qualification		Age		Method of recruitment	
	(Existing)	(Proposed) (Reasons)	(Existing)	(Proposed) (Reasons)	(Existing)	(Proposed) (Reasons)
2	3		4		5	

Sanction of the post/posts by the Finance Deptt may also be quoted and enclosed.

(Authority; No.SOR-I(S&GAD) 1-206/74(A) Dated Peshawar 13.10.1990)

Framing of Service/Recruitment Rules.

I am directed to refer to this Department letter of even number dated 15.10.1998 on the subject noted above and to say that ever since the re-organization of the Standing Service Rules Committee, the Administrative Departments, fix schedule of the Standing Service Rules Committee meetings without consulting S&GAD and Finance Department. Needless to point out that representatives of those Departments do have other important official engagements/commitments.

2. Furthermore, the working papers/proposals for framing of service/ recruitment rules are forwarded to this Department shortly before the meeting. As such it becomes difficult to examine the proposals properly.

3. I am, therefore, directed to request you to kindly ensure that proposals/ working paper for framing/amending the rules shall be furnished to the S&GAD and Finance Department at least seven days, before the date of the meeting. The above instructions may be brought to the notice of all concerned for strict compliance.

(Authority S&GAD letter No.SORII(S&GAD)2(9)/98 dated 24.12.98)

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ANNEX F

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JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT)

WP No. 4378-P/2017

S.M. Assad Halimi and others

Vs

Chief Secretary to Govt. of KP and others



JUDGMENT.

Date of hearing: 11.03.2020

Petitioner (s): *G. m/s Abdul Latif Afridi - Subordinate S. Officer*

Respondent (s): *G. No. 5 High Dist. Officer*

WAQAR AHMAD SETH, CJ:- Petitioners,

through the instant Writ Petition, seeks issuance of an appropriate writ with the following prayer:-

"In view of the aforesaid submissions, it is humbly prayed that an appropriate writ may kindly be issued in favour of the petitioners in the following terms:-

- i. Declare that the impugned notification No. SOH(III)/HD/10-4/2017/DCPS is void ab initio, therefore the respondents may kindly be directed to withdraw the impugned notification as well as the posting/transfers orders made in pursuant to the impugned notification may kindly be withdrawn.
- ii. To reconsider the matter in light of the logic, rationale and requirements of the rules/relevant law in the matter.
- iii. The proportionate ratio of higher posts of B-18, B-19 and B-20 in the Drug Inspector cadre may be

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- equated to that of Drug Analysts and Pharmacists cadres as indicated in para-5 (table-2) above of the petitioner.
- iv. Direction be issued to respondents that in case the merger is required to be carried out, it be done in a rationale manner as per the prevailing procedure and renamed the so merged cadre with a new name and joint seniority of the employees of the so merged cadres be caused with reference to their respective dates of appointment or promotion to a particular post/grade. No cadre so merged should be dying cadre as this method is not applicable in the instant case.
- v. Grant any other relief which is deemed appropriate by this Hon'ble Court in the circumstances of the case".

2. Brief facts of the case are that the petitioners have been inducted in service of the Health Department through Khyber Pakhtunkhwa Public Service Commission as Drug Inspectors (BPS-17). According to the petitioners, Drug Inspectors, Pharmacists and Chemists and Drug Analysts are working in the Health Department Government of Khyber Pakhtunkhwa in separate cadres having same basic qualifications but with different job descriptions. The Provincial Government under the Agenda to improve the human resources management and to

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minimizing the transfer and posting problems face by the Health Department in other sub-cadres having minimum choice, proposed the merging of three cadres of Drug Inspectors, Pharmacists and Chemists and Drug Analysts and for this purpose, a meeting of "Standing Service Rules Committee" was held on 26.12.2016 wherein it was proposed to combine the three cadres into one as per structure given in para-ii of the minutes of the meeting and as such, the respondents have issued the impugned Notification No. SOH(III)/HD/10-4/2017/DCPS dated 08.09.2017, which reads as under:-

"Consequent to the recommendations of the SSRC and to improve the human resource management, the Chief Minister Khyber Pakhtunkhwa is pleased to approve the following arrangements for Pharmacists, Drug Inspectors, Chemists & Drug Analysts cadres of Health Department Khyber Pakhtunkhwa.

- 1) *These cadres are declared dying cadres with the existing incumbents to continue under the existing service rules, seniority and promotion prospects which shall stand protected for each cadre within their own lines of hierarchy till last incumbent is in service.*
- 2) *For the new recruitment at the initial stage, since basic qualifications of the above mentioned cadres are the same, therefore, all the three cadres are*

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hereby merged into a single cadre for which rules shall be framed as per procedures.

3) All the three cadres are hereby declared as pool posts for posting/transfer only".

3. Aggrieved from the aforesaid Notification, the petitioners have filed the instant Writ Petition.

4. Respondents have furnished their comments and opposed the writ of petitioners.

5. Arguments heard and record perused.

6. Admittedly, the impugned notification of merger of three cadres of Drug Inspectors, Pharmacists and Chemists and Drug Analysts have been issued on the recommendation of Standing Service Rules Committee ("SSRC") but while perusing minutes of the Committee, so constituted, the persons, who had attended the meeting, are not in accordance with the Notification No. SOR.VI(E&AD)2-69/2003 dated 29th January, 2005 produced by the learned counsel for the petitioners during the course of hearing, placed on file, vide which, the Committee would comprising of

Administrative Secretary concerned (Chairman),

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Additional Secretary (Regulation) E&A Department,
 Additional Secretary (Regulation) Finance Department,
 Additional Secretary Law Department, Head of the
 attached Department concerned and Deputy Secretary
 (Admn) of the Department concerned (Members); so,
 keeping in view the above fact, the impugned
 notification issued by the respondents is illegal, void ab-
 initio and the same is, thus, liable to be set aside.

7. In view of the above, the Writ Petition is
 allowed and the impugned Notification No.
 SOH(III)/HD/10-4/2017/DCPS dated 08.09.2017, is set
 aside.

ANNOUNCED.
 Dated: 11.03.2020

Chief Justice

Judge

No. 14364
 Date of Presentation of Application 27/10/2020
 No of Pages 127
 Copying fee 500
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 Peshawar High Court, Peshawar
 Authorised Under Article 87 of
 the Constitution of Pakistan
 27 OCT 2020