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EXTRAORDINARY  
GOVERNMENT



REGISTERED NO. P.III  
GAZETTE

**KHYBER PAKHTUNKHWA**

Published by Authority

PESHAWAR, TUESDAY, 24<sup>TH</sup> AUGUST, 2021.

**GOVERNMENT OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT**

**NOTIFICATION**

Dated Peshawar the 24<sup>th</sup> August, 2021

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

**AMENDMENTS**

In the APPENDIX,-

(a) Under the heading "PART-I ENGINEERING STAFF", against Serial No. 3, in Column No. 5, for the existing entries, the following shall be substituted, namely:-

- |     |  |
|-----|--|
| (a) | Eighty percent (80%) by promotion, on the basis of seniority-cum-fitness, from amongst the holders of the post of Assistant Engineer, Sub Divisional Officer and Assistant Director 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;                |
| (b) | twelve percent (12%) by promotion, on the basis of seniority-cum-fitness, from amongst the holders of the post of Assistant Engineer, Sub Divisional Officer and Assistant Director possessing Degree in B. Tech (Hons) from a recognized University with at least five years service as such and have passed the Professional and Revenue Examination under the prescribed rules; and                                       |
| (c) | eight percent (08%) by promotion, on the basis of seniority-cum-fitness, from amongst the holders of the post of Assistant Engineer, Sub Divisional Officer and Assistant Director possessing Diploma of Associate Engineering in (Civil, Mechanical, Auto and Electrical) Technical Education with at least five years service as such and have passed the Professional and Revenue Examination under the prescribed rules. |

*[Signature]*  
**ATTESTED**

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KHYBER PAKHTUNKWHA GOVT: GAZETTE, EXTRAORDINARY, 24<sup>TH</sup> AUGUST, 2021

Note:- A separate seniority list of all the three categories of the Assistant Engineers, Sub Divisional Officers and Assistant Directors shall be maintained for the purpose of promotion"; and

(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:

- "(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.

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

ATTESTED

To

The Chief Secretary  
Irrigation Department  
Khyber Pakhtunkhwa, Peshawar.

Subject: APPEAL AGAINST CREATION OF 20% QUOTA IN BPS-18 FOR NON-REGISTERED PROFESSIONAL ENGINEERS ON PROFESSIONAL ENGINEERING WORKS POSTS

Reference: Government of Khyber Pakhtunkhwa Irrigation Department Notification No. SO(E)/IRRI/23-5/73/VOI-VI dated 24 August 2021

Respectfully Sheweth;

1. That the under signed has the privilege of being citizens of Islamic Republic of Pakistan. I am engineer by profession within the meaning of Pakistan Engineering Council Act, 1976, and is duly registered as such with the Pakistan Engineering Council.
2. The appellant was directly appointed as Assistant Engineer (BPS-17) through Public Service commission vide notification No SOE/IRR:/4-14/73 dated 27 January 2010 in accordance with the Khyber Pakhtunkhwa Civil Servants Act 1973. (Copy enclosed Annexure-A)
3. That the appellant is holding MSc Engineering degree in Water Resources from UET Peshawar. The Appellant did his graduation in Civil/Mechanical Engineering from NUST/UET/Etc. It is pertinent to point out here that there are very few officers who have such a higher qualification in the department.
4. That the appellant during the course of his service performed his duties with zeal and dedication. He remained upright, have a clean service record. He remained posted at different stations and on different posts as and when assigned any responsibilities, he complied with the posting orders considering it to be in the exigencies of service.
5. That Executive Engineer (BPS-18) in Irrigation Department is a Professional Engineering works post and the person who holds the said post has to look into the matters which are 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.
6. At present in Irrigation Dept, all the Executive Engineer/Deputy Director (BPS-18) posts are 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.

7. 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 created for promotion to Grade-18 (Executive Engineer) post and will be performing professional engineering works which is against the Pakistan Engineering Council Act 1976. Hence being aggrieved from the illegal, unjustified and against the law behavior of the competent authority the appellants made a departmental representation/appeal inter alia on the following grounds to your good self please;

a. 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-B) 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, the 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"*

b. In MAULA BUX SHAIKH and others---Petitioners C.P. No. 78-K of 2015, decided on 03.10.2018 (Annex-I) at Para 5 it is reiterated that "It is common ground that neither Diploma nor B. Tech (Hons.) Degree are accredited



engineering qualification for the reason that there is no reference to the Diploma and B. Tech (Hons.) Degree in the accredited engineering qualification provided in the first and second schedule of the PEC Act. Thus, accredited engineering qualification is ascribed to those who hold Bachelor Degree in Engineering from accredited Engineering Universities/Institutions in Pakistan and abroad”.

- c. In MAULA BUX SHAIKH and others---Petitioners C.P. No. 78-K of 2015, decided on 03/10/2018 it has been clarified at para 23 that “With note of caution that government shall not allow or permit any person to perform professional engineering works as defined in the PEC Act, who does not possess accredited engineering qualification from the accredited engineering institution and his name is not registered as a registered engineer or professional engineer under the PEC Act”.
- d. The works executed by Sub Divisional Officer/Assistant Engineers (SDO/AE BPS-17) and Executive Engineer (BPS-18) falls under professional engineering works as envisaged under PEC Act 1976 section 2(XXV) and as reiterated in C.P. No. 78-K of 2015 at Para 7.
- e. Professional Engineer is defined in section 2(xxiii) of Pakistan Engineering Council Act 1976 and reproduced at para 6 of MAULA BUX SHAIKH and others---Petitioners C.P. No. 78-K of 2015 which is as follows:  
"Professional Engineers" 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.
- f. Please refer to Statutory Notifications, (S. R. O.) Government of Pakistan Ministry of Water and Power Notification Islamabad, the 20th November, 1985 S.R.O. 1142(I)/85;
- (i) A candidate who has passed the Diploma of Associate Engineer (DAE) Examination, securing at least 60% aggregate marks shall be eligible for applying in admission against [02%] reserved seats in relevant discipline of Engineering in which he or she has passed the DAE examination;
- (ii) A candidate possessing [B. Tech (Hons)/B. S/B.Sc./Bachelor of Technology (with relevant discipline)] or equivalent qualification duly recognized by HEC seeking admission towards the relevant engineering discipline against 02% reserved seats of [B. Tech Hons)/B. S/B.Sc./Bachelor of Technology (with relevant discipline)], shall be considered for admission in 2015 and after, with one year of exemption:
- g. Also, please refer to Deputy Director Accreditation & Attestation, Higher Education Commission letter no. 8-61/A&A/2017/HEC/3811 dated May 4, 2017 states in first para 4<sup>th</sup> line, “The degree of B. Tech (Hons) is not similar to BE/BSc Engineering Degree.” Annex-III
- h. Irrigation Department along with Establishment Department, Finance Department, Law Department and Chief Secretary Khyber Pakhtunkhwa office has signed comments and submitted before the *Khyber Pakhtunkhwa Service Tribunal Peshawar in Service Appeal No 1431/2019 filed by Niaz Badshah Vs Government of Khyber Pakhtunkhwa through Chief Secretary and others* that non engineers cannot be promoted to post of Executive

Engineer, citing reason of PEC Act & nonequivalence of B-Tech to that of BSc Engineering.

8. Sub Engineers in Irrigation Department with the basic qualification of **Diploma in Associate Engineering (DAE)** and having BPS Grade-11, a small group among these sub engineers, during service obtained B. Tech (Hons) degree.
9. Through this additional B. Tech degree, in 2012, the Sub Engineers first took benefit by bifurcating the seniority list of Sub Engineers into two categories i.e., for employees having Diploma in Associate Engineering (DAE) Holders and B. Tech (Hons) degree separate seniority lists were maintained. For B. Tech holder separate quota in BPS-17 was allowed and thus elevated to the posts of Sub Divisional Officers. Through this Quota System, few B. Tech (Hons) whom were in BPS grade-16 were promoted to Grade-17 (even though lower in seniority) and some promoted from BPS Grade-11 to Grade-17 (Two steps promotion despite lower in their commission seniority list) while the Public Service Commission seniority was completely ignored.
10. Despite once got undue promotion by B. Tech holder in BPS-17 they are influencing the Government functionaries to obtain further promotion quota in the post of Professional Engineer (BPS-18) in Irrigation Department. Despite this fact and other grounds so submitted herein before, the SSRC of Irrigation Department without adverting to this fact and other legal issues lurking in the matter has approved in their favor 20% quota against the Executive Engineer (BPS Grade-18 posts), which are purely professional Engineering Works Posts as stated above.
11. No such practice of double quota (based on single degree) exists in various services group of Pakistan and Provincial services group i.e., PAS, PMS and PPS
12. The B.Tech holder relying on **FIDA HUSSAIN V/S THE SECRETARY KASHMIR AFFAIRS AND NORTHERN AREAS DIVISION, ISLAMABAD AND ANOTHER (PLD 1995 SUPREME COURT 701)** that "PEC Act 1976 is not applicable and binding upon the Government", it is worth mentioning that the matter is clarified by the Supreme Court of Pakistan in *Maula Bux Sheikh v. Chief Secretary Sindh* reported in 2018 SCMR 2098 at Para 15 and Para 16 that if Government are performing professional Engineering Works, PEC Act 1976 shall be attracted and not otherwise.
13. As regard the main ground against the posting / transfer / appointment of non-registered professional engineers, the under signed is mainly resting his case on the unequivocal provisions of section 2 (ii) (xxiii) (xxv) (xxvii), section 11, 27 and other such provisions of the Pakistan Engineering Council Act, 1976 (*'the Act'*), with particular reference to section 27(5A) clearly providing that, "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".

14. Please note that the afore-quoted provisions of sub-section (5A) *ibid* are mandatory in nature because not only that they are couched in a negative expression, but their non-compliance is also dealt with by providing penal consequences as mentioned in section 27 of the Act *supra*.
15. Even in Chapter 1, Rule 2 (J) of the Khyber Pakhtunkhwa Public Procurement Regulatory Authority Rules 2014 formulated and notified under the KPPA Act, 2012 the definition of "Professional Engineering work" has been given in line with the PEC Act, 1976.
16. Under article 143 of the Islamic Republic of Pakistan "If the law of Provincial Government is repugnant to the Act of Parliament, then the Act of Parliament (law of the state) shall prevail. Hence SSRC constituted under Civil Servant Act and APT rules of the province can't overrule Act of the Parliament i.e., PEC Act 1976 while amending service rules of engineering public organization"
17. In support of this very contention and ground of challenge, the undersigned is fortified by the case-law on the subject developed from time to time, according to which the legal position has since been examined and clarified to the effect the holders of B-Tech degree as well as diploma holders are not held to be professional engineers within the meaning of section 2(xxiii) of the Act having not acquired engineering qualification<sup>1</sup> and, therefore, they had been consistently held not entitled to hold any engineering post and to undertake any professional engineering work as defined and described in section 2(xxv) of the Act *supra*.
18. It hardly needs to reiterate here at this juncture that the issue, of whether or not holders of B-Tech or diploma qualification should or should not be equated with or considered as professional engineers at par with B.Sc. Engineers, has long been dilated upon and debated a lot both at the level of PEC as well as in the superior courts of the country. In all, there appears an unanimity of opinion to the effect that (i) neither B. Tech degree holders or diploma holders in any field whatsoever are professional engineers within the meaning of the Act and (ii) nor could they hold any post meant for professional engineering work in any engineering organization.
19. It goes without saying that the indifference of the officials i.e., the Secretary office and respective Chief Engineers and Director General offices is adversely affecting

<sup>1</sup> Section 10(1) of the Act provides that, 'the engineering qualifications granted by the engineering institutions in Pakistan which are included in the First Schedule shall be the accredited engineering qualifications for the purposes of this Act.'

upon the service carrier and progression of the under signed (and those who are similarly placed) in particular cadre, because a great number of engineering posts meant for purely professional engineering work has and will be occupied by non-engineer and non-professional persons which has and will result in stagnation and blockade of normal promotion and progression of the professional engineers serving in the department.

20. As regard PEC level and various provincial as well as Federal govt., there had been exchange of correspondences and discussion over the issue, whereby the former had clearly opined and ruled that holders of such non-engineering degree(s) were not qualified or entitled to work against any engineering post(s) and to undertake any engineering work as such.

21. Recently Pakistan Engineer council has obtained the Washington Accord which is an International Agreement between bodies responsible for Accrediting Engineering Degree Programs. The Washington Accord is specifically focused on academic programs which deal with the practice of engineering at the professional level. The Accord acknowledges that accreditation of engineering academic programs is a key foundation for the practice of engineering at the professional level in each of the countries or territories covered by the Accord. **Annexure.**

22. B. Tech is accredited by the Sydney Accord. The Sydney Accord is specifically focused on academic programmes dealing with engineering technology. It recognizes the importance of the roles engineering technologists as part of a wider engineering team. Diploma is accredited by the Dublin Accord. The Dublin Accord is specifically focused on the mutual recognition of academic programmes/qualifications that underpin the educational base for Engineering Technicians. It recognizes the importance of the roles engineering technicians play as part of a wider engineering team. **Annexure.**

23. Approval of Design i.e., PC-1 Government of Pakistan Planning Commission Proforma for Development Projects (Infrastructure Sectors). The PC-1 signed by Executive Engineer which include technical background data, engineering designs, calculation, technology in line with Pakistan Engineering Council Act 1976 section 2 (xxv) Professional Engineers works to be carried out by the registered engineer.

24. "Technical Sanction" implies the scrutiny of the estimates from the technical point of view and denotes that the estimates sanctioned are technically in order and correct. Such sanction will be accorded by the officer of the Public Works Department authorized to do so as per the delegation of Financial Power Rules. Technical Sanction of Professional Engineering Works as defined in Pakistan Engineering Council Act 1976 has to be carried out by the Registered Engineer.



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25. Interim Payment Certification: Primarily the Divisional Officer is the responsible disbursing officer of the division. Subject to such instructions, as may be issued by the local Administration in consultation with the Accountant General, detailing the authorities competent to prepare or examine contractors' bills or other demands for payment, and the authorities empowered to make payments thereon, the Divisional Officer may authorize a Sub-divisional Officer to make payments chargeable against the general sanctions of competent authority to expenditure on works. Professional Engineering Works as defined in Pakistan Engineering Council Act 1976 has to be verified by the Registered Engineer.

Prayer: -

It is, therefore, prayed that on acceptance of this appeal/representation, your office may be pleased to;

- A. **Set aside** the aforesaid Notification No. SO(E)/IRRI/23-5/73/VOI-VI dated 24 August 2021 to respectfully avoid from posting / appointing of any non-engineering degree holder against any such post which is meant for purely professional engineering work / undertaking, regulated under the PEC Act 1976, and
- B. **Grant** relief to under signed which is considered just and appropriate in the given circumstances please.

Engr IMTIAZ KHAN  
Executive Engineer  
(BPS-17)  
Irrigation Department Peshawar.

### 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 12<sup>th</sup> September, 2001, the Standing Service Rules Committee with the following composition:-

- |    |   |                  |
|----|---|------------------|
| 1. | Administrative Secretary concerned                      | Chairman         |
| 2. | Additional Secretary (Regulation)<br>E&A Department     | Member           |
| 3. | Additional Secretary (Regulation)<br>Finance Department | Member           |
| 4. | Additional Secretary<br>Law Department                  | Member           |
| 5. | Head of the attached Department concerned               | Member           |
| 6. | Deputy Secretary(Admn) of the<br>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 13<sup>th</sup> October, 1990.

(Authority: Notification No.SOR.VI(E&AD)2-69/2003. dated 29<sup>th</sup> 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)

**GOVERNMENT OF KHYBER PAKHTUNKHWA**  
**IRRIGATION DEPARTMENT**  
Dated 6.4.2018

**NOTIFICATION**

**No. SO(E):/Irr /23-5/73NoIvol-IV (s.rule)**

in pursuance of the decision taken in the meeting held on 3.4.2018 in irrigation department with heads of C&W, Local government & public health engineer departments, the following committee is constituted.

1. Engr. Muhammad mujahid saeed, chief engineer (north ) irrigation department (convener)
2. Engr. Arbab zulfiqar khan project director remodeling of warsak canal system irrigation department Peshawar.
3. Engr. Muhammad uzair chief engineer (norh) C&W department.
4. Engr. Muhammad ayub, chief engineer C&W Department.
5. Engr. Azghar khan, local govt: & rural department.
6. Engr. Ijaz afza khan director (PDA ) LR&RDD.
7. Engr. Bahramand khan chief engineer public health engineering department.
8. Engr. Zainullah shah, Pakhtunkhwa energy development organization (PEDO)

2. the committee shall examine the position of B-TECH (hons) degree visa viz B.Sc B engineering in light of the decision of Pakistan engineering council supreme court of pakistna Peshawar high court Peshawar and Khyber Pakhtunkhwa service tribunal and to come up with well considered proposals alongwith recommendations for allocation of uniform percentage quota for their promotion to the post of assistant engineers.

3. the committee will submit its report/recommendations with in 10 days.



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NOTIFICATION

No. SO (E)/ Irr /23-5/73/Vol-IV (S.Rules)

In pursuance of the decision taken in the meeting held on 03.04.2018 in Irrigation Department with Heads of C&W, Local Government & Public Health Engineering Departments, the following committee is constituted:-

1. Engr. Muhammad Mujahid Saeed, Chief Engineer (North) Irrigation Department (Convener)
2. Engr. Arbab Zulfiqar Khan, Project Director Remodelling of Warsak Canal System Irrigation Department Peshawar.
3. Engr. Muhammad Uzair Chief Engineer (North) C&W Department.
4. Engr. Muhammad Ayub, Chief Engineer C&W Department.
5. Engr. Azghar Khan, Local Govt. & Rural Dev. Department.
6. Engr. Ijaz Afzal Khan Director (PDA), LR&RDD.
7. Engr. Bahramand Khan, Chief Engineer, Public Health Engineering Department.
8. Engr. Zainullah Shah, Pakhtunkhwa Energy Development Organization (PEDO)

2. The Committee shall examine the position of B-Tech (Hons) degree visa viz B.Sc /B Engineering in light of the decisions of Pakistan Engineering Council, Supreme Court of Pakistan, Peshawar High Court Peshawar and Khyber Pakhtunkhwa Service Tribunal and to come up with well-considered proposals alongwith recommendations for allocation of uniform percentage quota for their promotion to the post of Assistant Engineers.

3. The committee will submit its report/recommendation within 10 days:

Secretary to Govt. of Khyber Pakhtunkhwa  
Irrigation Department

Endst: of Even No. & Date

Copy is forwarded for information to:

1. The Secretary to Govt. of Khyber Pakhtunkhwa LG & RD Department.
2. The Secretary to Govt. of Khyber Pakhtunkhwa C&W Department.
3. The Secretary to Govt. of Khyber Pakhtunkhwa PHE Department.
4. The Secretary to Govt. of Khyber Pakhtunkhwa Energy & Power Department.
5. The PSD to Chief Minister, Khyber Pakhtunkhwa.
6. The PSD to Chief Secretary, Khyber Pakhtunkhwa.
7. The Director General, PDA Peshawar.
8. The Private Secretaries to Provincial Ministers Irrigation, C&W, PHE & Local Govt. Khyber Pakhtunkhwa.
9. All committee members.
10. PS to Secretary Irrigation, Khyber Pakhtunkhwa.
11. PA to Additional Secretary Irrigation Department.

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(Engr. Anwar Kamal)  
Section Officer (Estt)

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Section 5(A), Section 27(1) & (2) of PEC Act is punishable with imprisonment and/or fine for both, employer as well as for the incumbent. Therefore, a B.Tech (Hons) qualification holder should not be posted against an engineering position where he has to perform professional engineering works/services.

v. The quota already fixed for promotion to the positions involving performance of professional engineering work/engineering service is against the basic qualification requirement defined in the service rules and PEC Act 1976, thus, needs to be cancelled in light of Para 13 of the judgment dated 5<sup>th</sup> June 1995 of the Supreme Court of Pakistan, in the WP 52 of 1993; reproduced below;

*"We may again observe that it is exclusively within the domain of the government to decide whether a particular qualification will be considered sufficient for promotion from a particular grade to a higher grade and it is also within the domain of the government to change the above policy from time to time as nobody can claim any vested right in policy. However, it cannot abdicate its powers to decide the above question in favour of a corporate body which is not in its control nor it can act in a manner which may be violative of Article 25 of the Constitution on account of being discriminatory. It is still open to the government for future to provide that academic qualification of B.Tech (Hons) will not be considered sufficient for promotion from BPS-16 to BPS-17 if the same does not violate the above principle."*

vi. Service Rules framed erroneously can be reframed according to the statutory provisions as observed by the Supreme Court of Pakistan already explained in above mentioned paras (i.e. It is still open to the government for future to provide that academic qualification of B.Tech (Hons) will not be considered sufficient for promotion from BPS-16 to BPS-17 if the same does not violate the above principle.)

#### E. RECOMMENDATIONS

As sequel to the above, it is unanimously recommended that B. Tech (Hon) qualification is not equivalent to the BE/ B.Sc 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/ B.Sc Engineering in Civil/Mechanical/Electrical as per requirement of a department, therefore, B. Tech (Hon) qualification holder may not be promoted and/or

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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 a higher scale, provided no Law/Rule is violated and for which non engineering positions (Technologists) may be created, if not already existing.

*(Signature)*  
Engr. Syed Mujahid Saeed  
Chief Engineer (North) Irrigation  
Department Peshawar (Chairman)

*(Signature)*  
Engr. Arbab Zulfiqar Khan  
Project Director, RWCS,  
Irrigation Deptt:

*(Signature)*  
Engr. Muhammad Uzair  
Chief Engineer, C&W  
Department

*(Signature)*  
Engr. Muhammad Ayub,  
Chief Engineer, C&W  
Department

Engr. Asghar Khan  
Local Govt. & Rural Dev.  
Department

*(Signature)*  
Engr. Ijaz Afzal Khan  
Director (PDA), LG&RDD

*(Signature)*  
Engr. Bahramand Khan  
Chief Engineer (North), PHE  
Department

Engr. Zainullah Shah,  
Representative of Pakhtunkhwa  
Energy Dev. Organization (PEDO)

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**KHYBER PAKHTUNKHWA**

**Published by authority**

**Peshawar, Monday, 25<sup>th</sup> June 2012**

**GOVERNMENT OF KHYBER PAKHTUNKHWA,**

**IRRIGATION DEPARTMENT.**

**NOTIFICATION**

**Dated 25<sup>th</sup> June 2012**

No. SOE-IRRI-23-5/2010-11—in pursuance of the provision contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa, civil servants (Appointment, promotion and transfer), Rules, 1989 the irrigation department in consultation with the establishment department and the finance department, hereby directs that in this department notification No. SO(E)irr/23-5/79 dated 17.02.2011, the following amendments shall be made namely:

**AMENDMENT**

In the appendix,

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

(b) Twelve percent of promotion on the basis of seniority-cum-fitness, from amongst the sub engineers, having degree in Civil Engineering of mechanical Engineering from a recognized university and have passed departmental grade B&A examination with five year service of such.

Note: for the purpose of clause (b) a joint seniority list of the sub engineers having degree in civil engineering or mechanical engineering shall be maintained and their seniority is to be reckoned from the date of their 1<sup>st</sup> appointment as sub engineer.

(c). Eight percent by promotion on the basis of seniority cum fitness from amongst the sub engineers having degree in B.Tech (Hones) and have passed departmental grade B & A examination with five years' service as such and

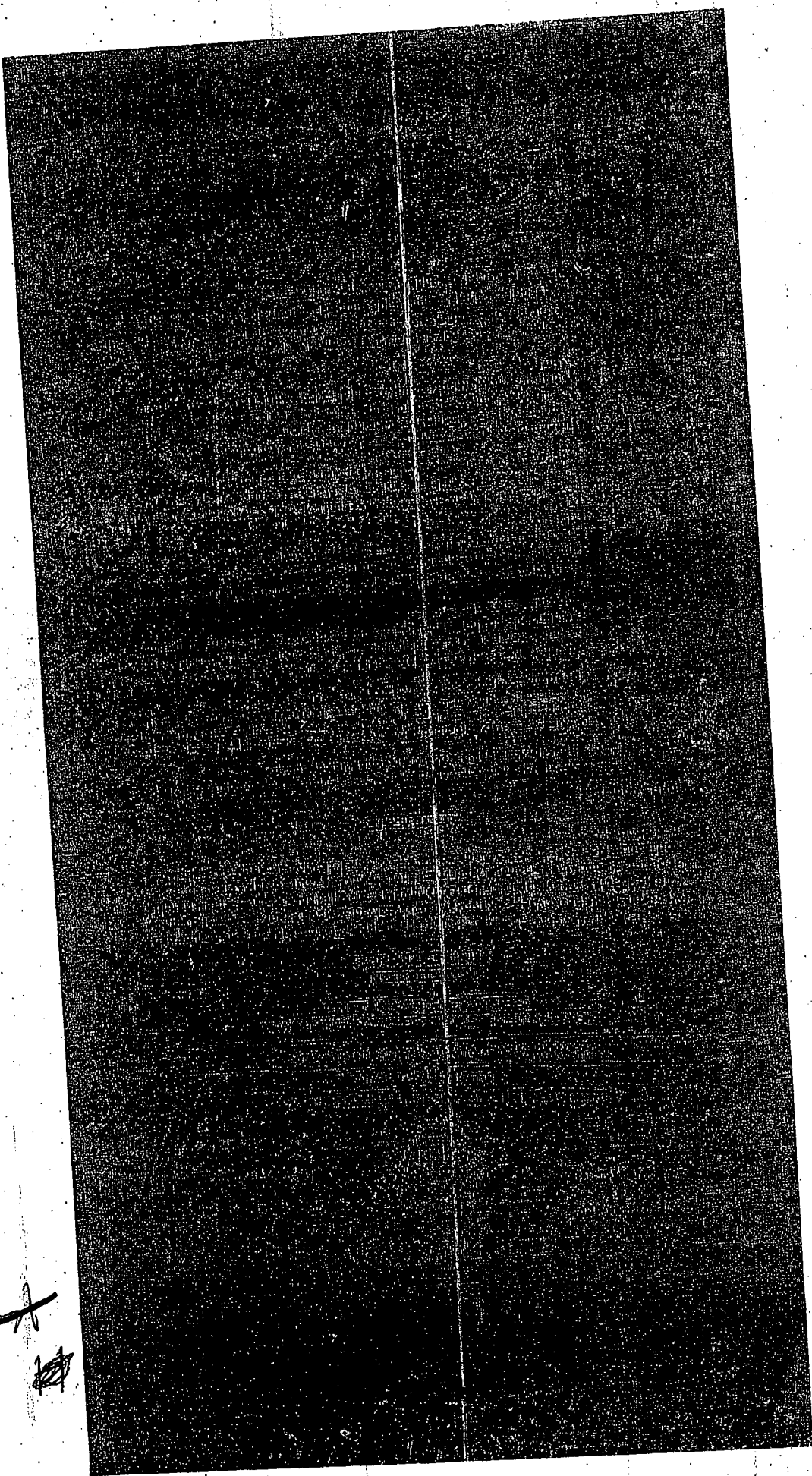
Note: for the purpose of clause (b) a joint seniority list of the sub engineers having degree in civil engineering or mechanical engineering shall be maintained and their seniority is to be reckoned from the date of their 1<sup>st</sup> appointment as sub engineer.

(d). Eight percent by promotion on the basis of seniority cum fitness from amongst the sub engineers having degree in B.Tech (Hones) and have passed departmental grade B & A examination with five years' service as such and

Note: for the purpose of clause (b) a joint seniority list of the sub engineers having degree in civil engineering or mechanical engineering shall be maintained and their seniority is to be reckoned from the date of their 1<sup>st</sup> appointment as sub engineer.



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ANNEX K (61)

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**GOVERNMENT OF KHYBER PAKHTUNKHWA**  
IRRIGATION DEPARTMENT  
Establishment section

Dated 18<sup>th</sup> December 2020

**NOTIFICATION**

**NO.SO(E)/IRR/4-10/Vol- VI:**

the competent authority is pleased to transfer Mr. saifullah khan sub divisional officer irrigation sub division, Charsadda and post him as deputy director. Jabba dam, district Khyber against the vacant post in his own pay and scale with immediate effect in the public interest.

SECRETARY TO GOVT: OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT

by  
T.C

ANNEX "L" (62)

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GOVERNMENT OF PUNJAB, PAKISTAN  
IRRIGATION DEPARTMENT  
(Establishment Section)

Date: Peshawar, 18 December 1950

**NOTIFICATION**  
The Government of Punjab, Pakistan, in pursuance of the provisions of the Punjab Irrigation Act, 1947, hereby appoints Mr. [Name] as Deputy Director, Irrigation, Peshawar, with effect from the date of his appointment. The Government of Punjab, Pakistan, is pleased to announce the appointment of Mr. [Name] as Deputy Director, Irrigation, Peshawar, with effect from the date of his appointment. The Government of Punjab, Pakistan, is pleased to announce the appointment of Mr. [Name] as Deputy Director, Irrigation, Peshawar, with effect from the date of his appointment.

Secretary to Govt. of Punjab, Peshawar  
Irrigation Department

Encl. No. & Date as above

Copy of the above is forwarded to:

- 1. The Accountant General, Peshawar
- 2. The Chief Engineer (North South), Irrigation Department, Peshawar
- 3. The Chief Engineer (Water Area), Irrigation Department, Peshawar
- 4. The Director General, Peshawar
- 5. The Director General, Peshawar
- 6. The Director General, Peshawar
- 7. The Director General, Peshawar
- 8. The Director General, Peshawar
- 9. The Director General, Peshawar
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- 15. The Director General, Peshawar
- 16. The Director General, Peshawar
- 17. The Director General, Peshawar
- 18. The Director General, Peshawar
- 19. The Director General, Peshawar
- 20. The Director General, Peshawar

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A. Lateef Afridi

Advocate

Supreme Court of Pakistan And High Courts

Off 091-2572888

Mob: 0333-9107287 Email: lateefafриди@yahoo.com

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Ref. No. LN/01/4-2621

Dated: 6<sup>th</sup> April 2021

Sub: LEGAL NOTICE

1. Worthy Chief Secretary Khyber Pakhtunkhwa Civil Secretariat, Peshawar.
2. Secretary Irrigation Khyber Pakhtunkhwa Civil Secretariat, Peshawar.
3. Secretary Establishment Khyber Pakhtunkhwa Civil Secretariat, Peshawar,

Dear Sirs!

I have been duly authorized and instructed by officers Engineers serving in Irrigation Department (hereinafter may clients) to serve upon you the following notice

1. That my clients are registered/professional engineers having obtained their respective degrees from accredited institutions which are duly accredited courses under the Pakistan Engineering Council Act, 1976, and are aggrieved of the appointment of non-engineers against the posts which essentially pertains to engineering works. The said appointments of non-engineers not only adversely affect professional careers of my clients and manifestly affects my clients terms and conditions of service, Besides, this practice is against the public policy.
2. That the governing law and rules on the subject are clear and have attained affirmative judicial sanction through authoritative interpretation by the superior Courts including the honorable Supreme Court of Pakistan.
3. That the posts of Executive Engineers, Deputy Directors, Superintending Engineers, Chief Engineers and/or under any other nomenclature, are essentially engineering works, Reference is made to the relevant provisions for convenience. (xxiii) of Section 2 provides comprehensive definition of professional engineer "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;

Similarly Section 10011 of the Act provides that

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ANNEX M

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A. Lateef Afridi  
Advocate  
Supreme Court of Pakistan And High Courts  
Off 091-2572888  
Mob: 0333-9107287 Email: lateefafriidi@yahoo.com

Ref. No. LN/01/4-2621

Dated: 6<sup>th</sup> April 2021

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.

While Section 11(1) provides that

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.

As stated herein above the job descriptions and duties of the posts are essentially professional engineering works and under the governing regime as provided in the PEC Act, 1976 non-engineers/persons not borne on the register as engineers are prohibited to perform professional Engineering works rather provides for penalties and punishment against persons performing such duties and functions if their names are not bore on the list of the Council as register maintained by the Pakistan Engineering Council

4. That the legal position as mentioned in the preceding paras has been fully explained and conclusively interpreted by the Apex Court of the country while rendering judgment in case reported as 2018 SCMR 2098. The apex Court was pleased to pass the following directions governments that:

"23. --- government shall not allow or permit any person to perform professional engineering work as defined in PEC Act, who does not possess accredited engineering qualification from accredited engineering institution and his name is not registered as registered engineer or professional engineer."

The honorable Apex Court has also observed that

"5. --- it is common ground that neither Diploma nor B.Tech (Hons) degree are accredited engineering qualification for the reason that there is no reference to the Diploma and B.Tech (Hons). degree in the accredited engineering qualification provided in the first and second schedule of the PEC Act Thus, accredited engineering qualification is ascribed to those who hold bachelor degree in engineering from accredited Engineering Universities/Institutions in Pakistan and abroad."

5. That under Article 190 of the Constitution of Pakistan, 1973 it is obligatory upon the governments, both federal and provincial to act in aid of the Supreme Court of

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Handwritten text in a two-column layout, appearing to be a ledger or account book. The text is extremely faint and illegible due to the quality of the scan. The columns are separated by a vertical line, and there are several horizontal lines suggesting rows of entries. Some faint markings and numbers are visible, but they cannot be transcribed accurately.

65

A. Lateef Afridi

Advocate

Supreme Court of Pakistan And High Courts

Off 091-2572888

Mob: 0333-9107287 Email: lateefafриди@yahoo.com

Better copy (S)

Ref. No. LN/01/4-2621

Dated: 6<sup>th</sup> April 2021

Pakistan as all executive and judicial authorities are obliged to act in this manner. Needless to overemphasize that disregard and violation of the Orders and directions passed by the honorable Apex Court is a serious contempt under the Article 204 of the Constitution and the Contempt of Court Ordinance, 2003.

6. That the provincial government has so far conveniently ignored the governing laws and the directions contained in the judgment passed by the Honorable Supreme Court of Pakistan as well as the requests of the Pakistan Engineering Council in this regard are not heeded.

You are, therefore, called upon through this Notice to Immediately comply with the governing law and directions of the apex Court within two weeks positively else my clients will be constrained to initiate contempt proceedings as well as file petitions before the Courts of competent jurisdiction against for your inactions also file writs of quarranto against the non-engineers so posted.

Looking forward to your prompt action please.

Sincerely yours,

A. Latif Afridi  
Advocate  
Supreme Court of Pakistan.

NOTE:

Copy of this Notice is retained in my office for future reference and further action if need be.

Office: 17-G & B-7 Haroon Mansion Khyber Bazar, Peshawar





(66)

(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;

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- (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
  - (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 15;
  - (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;
  - (xxxj) "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;

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ANNEX "O"

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<http://www.plsbeta.com/LawOnline/law/casedescription.asp?cased...>

Judgement

2018 S C M R 2098

[Supreme Court of Pakistan]

Present: Gulzar Ahmed, Qazi Faez Isa and Sardar Tariq Masood, JJ

MAULA BUX SHAIKH and others---Petitioners

Versus

CHIEF MINISTER SINDH and others---Respondents

C.P. No. 78-K of 2015, decided on 3rd October, 2018.

(On appeal against order dated 21.11.2014 passed by the Sindh Service Tribunal, Karachi, in Appeal No. 195 of 2014)

Pakistan Engineering Council Act, 1975 (V of 1976)---

---Ss. 2(ii), 2(xxiii), 2(xxv), 2(xxvii) & 10(1) & First and Second Sched.---Sindh Civil Servants (Appointment, Promotion and Transfer) Rules 1974, R. 3(2)---Promotion---Criteria/education qualification for promotion to next grade---Domain of Executive---Notification for promotion to post of Executive Engineer (BS-18)---Said notification provided 13% promotion quota to Diploma holders and 7% promotion quota to B.Tech (Hons.) degree holders---Plea of petitioner/Assistant Engineer (BS-17) that work of Executive Engineer BS-18. was strictly that of a Professional Engineer, who had an engineering degree from an Accredited Engineering Institution in the country or abroad as included in the First and Second Schedule of the Pakistan Engineering Council Act, 1975, and that Diploma holders and B.Tech (Hons.) degree holders were not professional engineers and could not perform work of a Professional Engineer---Validity---Deciding whether a particular academic qualification of a civil servant/employee was sufficient for promotion from one grade to another higher grade fell under the domain of the Government, whereas it is in the domain of the Pakistan Engineering Council to decide whether a particular academic qualification could be equated with another academic qualification but it had no power to say that a civil servant/employee holding particular academic qualification could not be promoted from a particular grade to a higher grade---Impugned notification could not be validly or justifiably challenged on the ground that it impinged or infringed upon any of the provisions of the Pakistan Engineering Council Act, 1975, and thus would be ultra vires---Provisions of said Act nor the rules and regulations made under it would operate as bar on Government to prescribe for qualification and other conditions of service of civil servants/employees for promotion to higher grade---Supreme Court dismissed the petition and refused leave with the direction that the Government shall not allow or permit any person to perform professional engineering work as defined in the Pakistan Engineering Council Act, 1975, who did not possess accredited engineering qualification from the accredited engineering institution and his name was not registered as a registered engineer or professional engineer under the said Act.

Pakistan Diploma Engineers Federation (Registered) through its Chairman v. Federation of Pakistan through Secretary Ministry of Water and Power, Government of Pakistan, Islamabad and 9 others 1994 SCMR 1807; Muhammad Azim Jamali and 11 others v. Government of Pakistan through Secretary/Chairman, Ministry of Railways and 33 others 1992 PLC (C.S.) 637; Fida Hussain v. The Secretary, Kashmir Affairs and Northern Affairs Division, Islamabad and another PLD 1995 SC 701; Muhammad Younus Aarain v. Province of Sindh through Chief Secretary, Sindh, Karachi and 10 others 2007 SCMR 134 and Nazir-ul-Hasan and 2 others v. Syed Anwar Iqbal and others 2014 SCMR 1827 ref.

Salah-ud-Din Ahmed, Advocate Supreme Court for Petitioner No. 1.

Rasheed A Rizvi, Senior Advocate Supreme Court for Petitioner Nos. 2 - 3.

Sabtain Mehmood, Assistant A.-G. Sindh for Respondent Nos. 1 - 4.

Ghulam Haider Shaikh, Advocate Supreme Court for Respondent No.5.

Nemo for Respondents Nos. 6, 7 and 9.

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Dr. Muhammad Farough Naseem, Advocate Supreme Court for Respondents Nos. 8 and 12.

M. Aqil Awan, Senior Advocate Supreme Court for Respondents Nos. 10, 11, 13 to 17.

Date of hearing: 24th April, 2018.

**JUDGMENT**

**GULZAR AHMED, J.**—Maulla Bux Shaikh, Petitioner No.1, (the Petitioner) had filed a Service Appeal before the Sindh Service Tribunal, Karachi, (the Tribunal) challenging Notification No.SOI(W&S)E/12-1/2005 dated 19.03.2014 to be ultra vires the Pakistan Engineering Council Act, 1976 (PEC Act). The circumstance under which the Service Appeal was filed by the Petitioner are that he was employed as Sub-Engineer BS-11 in the year 1985 in the Work and Services Department, Government of Sindh, Karachi. He was promoted as Assistant Engineer BS-17 in the year 1997 and since then has been serving in such post in his said department. The case of the Petitioner is that he is a qualified engineer holding degree of Bachelor of Engineering. He has unblemished service record and is eligible for promotion to the post of Executive Engineer BS-18 but on account of the notification, referred to above, his chance for promotion as Executive Engineer BS-18 has been gravely diminished for the reason that said notification has provided 13% promotion quota to Diploma holders and 7% promotion quota to B.Tech (Hons.) Degree holders for the post of Executive Engineer BS-18. The grievance of the Petitioner is that the post of Executive Engineer BS-18 being that of a purely professional engineering work could only be performed by a professional engineer holding accredited engineering qualification, as provided in the PEC Act.

2. We have heard learned ASCs for the parties at length and have gone through the record of the case. The learned ASCs for the parties have also filed their written note of arguments, which too have been perused by us.

3. The notification dated 19.03.2014 is as follows:

**"NOTIFICATION"**

No.SOI(W&S)E.W/12-1/2005: In pursuance of Sub-Rule (2) of Rule-3 of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules 1974 and in consultation with the Services, General Administration and Coordination Department, Government of Sindh, and in partial modification of this Department's Notification No. EI(C&W)1-34/81-84(86) dated 14.01.1987, the method, qualification and other conditions for appointment in respect of the post of Executive Engineer (BPS-18) (Civil/Mechanical/Electrical) in Works and Services Department, Government of Sindh mentioned in column-2 of the table below:-

**TABLE**

Name of the post with BS	METHOD OF APPOINTMENT
1 Executive Engineer (Civil/Mechanical and Electrical) (BPS-18)	2 i) Eighty percent by promotion from amongst the Assistant Engineers B.E. in Civil, Electrical or Mechanical Engineering with atleast five years service in BPS-17 on seniority-cum-fitness basis with their respective ii) Thirteen percent by promotion from amongst the Diploma holder Assistant Engineers having Diploma in Civil, Electrical or Mechanical Engineering with atleast five years service in BPS-17 on seniority-cum-fitness basis with their respective technology and iii) Seven percent by promotion from amongst the Assistant Engineers having B.Tech (Hons.) degree in Civil, Electrical or Mechanical Engineering with atleast five years service in BPS-17 on seniority-cum-fitness basis with their respective technology

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**QAZI SHAHID PERVEZ**

4. In order to regulate the engineering profession, the Parliament has passed PEC Act on 10.01.1976. Section 2(ii) of the PEC Act defines accredited engineering qualification, which is as follows:

"accredited engineering qualification" means any of the qualification included in the First Schedule or the Second Schedule."

5. It is common ground that neither Diploma nor B.Tech (Hons.) Degree are accredited engineering qualification for the reason that there is no reference to the Diploma and B.Tech (Hons.) Degree in the accredited engineering qualification provided in the first and second schedule of the PEC Act. Thus, accredited engineering qualification is ascribed to those who hold Bachelor Degree in Engineering from accredited Engineering Universities/Institutions in Pakistan and abroad.

6. Professional Engineer is defined in section 2(xxiii), which is as follows:

"professional engineers" 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.

7. Professional Engineering Work is defined in section 2(xxv) as follows:

"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

(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;"

Judgement

8. Registered Engineer is defined in section 2(xxvii) as follows:  
"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.
9. Section 10(1) of the PEC Act provides:  
"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."
10. While section 11(1) provides:  
"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."
11. Section 27 of the PEC Act provides for penalties and procedure, which is as follows:  
**"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 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 of 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."
12. The main gist of the arguments of the learned ASC appearing for the petitioners is that the work of

Case Judgement

Executive Engineer BS-18 is strictly that of a Professional Engineer and it can only be performed by a Professional Engineer, who has engineering degree from an Accredited Engineering Institution of Pakistan or abroad as included in the first and second schedule of the PEC Act, Diploma holders and B.Tech (Hons.) Degree holders are not professional engineers and cannot perform work of a Professional Engineer and that law specifically provides penalties to those who perform professional engineering work without possessing accredited engineering qualification and registered as Professional Engineer by the Pakistan Engineering Council (the Council).

13. On the other hand, learned ASC appearing for the respondents have contended that this very issue has come up before this Court number of times and this Court has dealt with it time and again and held that in the matter of employment and promotion etc, the Government Institutions are legally entitled to take decisions as a matter of policy to grant promotion to employees in Engineering Public Organization who are Diploma holders in engineering and B.Tech (Hons) Degree holders.

14. We have noted that the Tribunal in the impugned judgment has referred to number of judgments of this Court and the point in issue in those judgments substantially also deals with the present controversy before us. Thus before dilating upon the matter, it is essential that we examine the judgments, which this Court has already delivered and are also referred in the impugned judgment of the Tribunal. The first case in line is a judgment of three members bench of this Court in the cases of Pakistan Diploma Engineers Federation (Registered) through its Chairman v. Federation of Pakistan through Secretary Ministry of Water and Power, Government of Pakistan, Islamabad and 9 others (1994 SCMR 1807). In this case the question involved was whether the Diploma Engineers employed in Pakistan Railways can be debarred from promotion to Grade-18 on the ground that they are not registered as "professional engineers and consulting engineers" with Pakistan Engineering Council even though they were otherwise by reasons of their seniority etc eligible for promotion to Grade-18. While referring to the case of Muhammad Azim Jamali and 11 others v. Government of Pakistan through Secretary/Chairman, Ministry of Railways and 33 others (1992 PLC (C.S.) 637), where split decision was given by two Hon'ble Judges of Sindh High Court and ultimately it was referred to a Referee Judge for his opinion. This Court in dealing with the case before it relied upon the conclusion reached by the Referee Judge and quoted the same in the judgment as follows:

"16. The conclusion of the learned Chief Justice was expressed as follows:

"A careful reading of subsections (1) and (2) of section 27 of the Act will show that the penalties prescribed in the section are attracted only against those persons who are not registered under the Act but undertake any professional engineering work as defined in the Act. Similarly, the person who employs a person who is not registered under the Act, on a professional engineering work, is equally liable for punishment under the Act. The above provisions are wide enough to include the cases of those persons who may be employed in any private or Governmental organization and are called upon to undertake any professional engineering work. The provisions of the Act, regarding registration of professional engineer and consulting engineer, therefore, in my view, would not be applicable to the persons serving as engineer with the Railways, as in course, of their such employment they neither act as 'professional engineer' nor as 'consulting engineer'. However, if such persons undertake any professional engineering work as defined under the Act, then the provisions regarding registration under the Act will be attracted and they could also be punished in accordance with the provision of section 27 of the Act for violating the provision of the Act."

15. On the basis of such conclusion of the Referee Judge, this Court proceeded to make its own observation, which is as follows:

17: The above judgment of the High Court was not challenged either by the qualified engineers who held degrees from recognized Institutions of Pakistan nor by the diploma-holders but only by the Pakistan Engineering Council (which was one of the respondents in the Constitution Petition filed in the High Court). According to the Pakistan Engineering Council, the provisions of the Pakistan Engineering Council Act had not been correctly interpreted because the judgment of the majority in the High Court, it appeared to the Council had laid down that the Act applied to engineers engaged in professional engineering works in the private sector whereas the application of provisions of the Act according to them, could not be restricted only to the private practitioners alone.

18. We on the other hand after hearing Mr. Abid Hassan Minto learned Advocate for the appellant at

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Judgement

considerable length consider that this is not a correct interpretation of the judgment of the High Court. The High Court has clearly stated that the provisions of the Act were wide enough to include cases of those persons engaged in professional engineering works whether employed in any private or Governmental organization, if they are called upon to undertake any professional engineering work, as defined under the Act. In fact in the connected case C.A. No.31 of 1992 a Committee of Secretaries constituted by the Punjab Government correctly summed up the true position obtaining in the Act as follows:--

"The Committee was of the view that the Government could appoint a non-graduate engineer to a post in any grade but if the post involved performance of professional engineering work such appointment would attract penalties prescribed in the Act.

The finding of the Referee Judge in this case is to the same effect and in our opinion this finding is quite correct."

16. The next case in line is a judgment of five member bench of this Court in the case of Fida Hussain v. The Secretary, Kashmir Affairs and Northern Affairs Division, Islamabad and another (PLD 1995 Supreme Court 701). In this case facts were that petitioner was appointed as Overseer/Sub-Engineer in northern area PWD in 1971. The Federal Government, in order to encourage the diploma holders to improve their academic qualification resolved to prescribe courses namely E.Tech (Pass) and B.Tech (Hons.), The later was treated as equivalent to B.Sc. (Engineering) and Bachelor of Engineering for the purpose of promotion. Petitioner having passed B.Tech (Pass) and B Tech (Hons.) was denied promotion in BPS-17 for the reasons that B.Tech (Hons.) was not recognized by Pakistan Engineering Council as equivalent to B.Sc. (Engineering) Degree. Petitioner filed Service Appeal, which was dismissed. The Appeal filed by the petitioner before this Court was also dismissed. The petitioner then applied for review, which was allowed and the judgment dismissing the Civil Appeal was recalled and his appeal was allowed with directions to consider the petitioner's case of promotion to BS-17. The Court while allowing relief to the petitioner observed as follows:

"9. In this regard, we may point out that it is the domain of the Government concerned to decide whether a particular academic qualification of a civil servant/employee is sufficient for promotion from one Grade to another higher Grade and whereas it is in the domain of the Pakistan Engineering Council to decide, as to whether a particular academic qualification can be equated with another academic qualification, but it has no power to say that the civil servants/employees holding particular academic qualification cannot be promoted from a particular Grade to a higher Grade. The main object of the Act as pointed out by one of us (Ajmal Kan, J.) and Saiduzzaman Siddiqui, C.J. (as he then was) in the above High Court judgment is to regulate the working of professional engineers and consulting engineers and not to regulate the qualification or the working of the engineers in the Government or semi-Government departments. The definitions of the terms "professional engineer" and "professional engineering work" given in clauses (j) and (k) of section 2 of the Act are to be read together and, therefore, as a corollary to the same, it must follow that the term "professional engineering work" as defined in clause (k) of section 2 of the Act is to be performed by a professional engineer as defined in clause (j) thereof, which is evident from section 8 of the Act, which defines the functions of the Pakistan Engineering Council as under:-

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

- (a) maintenance of a Register of person qualified to practice as professional engineers and consulting engineers;
- (b) recognition of engineering qualifications for the purpose of registration of professional engineers and consulting 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 interest of the members;
- (f) promotion of reforms in the engineering profession;

Judgement



- (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 as may be prescribed; and
- (l) performance of all other functions connected with, or ancillary or incidental to, the aforesaid functions."

A perusal of the above quoted section shows that the Pakistan Engineering Council is vested with the functions to regulate the persons qualified to practice as professional engineers and consulting engineers and not persons who are employed in the Government or semi-Government organisations. If the Government employs a professional engineer as defined in the Act for performing professional engineering work as envisaged by the Act in above clause (k) of section 2, the provisions of the Act would be attracted and not otherwise.

10. Reverting to the merits of the present case, as pointed out hereinabove, that the petitioner pursuant to the above decision of the Government of Pakistan dated 26.10.1973 passed his B.Tech (Pass) in 1977 and B.Tech (Honours) in March, 1981, from the NED University Karachi, and, therefore, acted upon the above representation of the Government. In this view of the matter, it is not just and fair not to consider the petitioner for promotion to BPS-17 keeping in view the admitted fact that a number of other civil servants/employees in the same department in the same position have been promoted by the departments/organisations concerned. In this behalf, it may be pertinent to refer to the case of Mukhtar Ahmad and 37 others v. Government of West Pakistan through the Secretary, Food and Agriculture, Civil Secretariat, Lahore and another (PLD 1971 SC 846). The fact of the above case were that the persons possessing the qualifications mentioned in Rule 7 of the West Pakistan Agricultural Engineering Service (Class II) Rules, 1963 were not available. The Government launched a scheme for training of Assistant Agricultural Engineers, whereunder 46 Graduates in B.Sc. Agriculture were to be selected for appointment as Assistant Agricultural Engineers after their successful completion of two years' diploma course at an Agricultural University. The above scheme was discussed by the government with the Public Service Commission. The candidates selected by the Public Service Commission, who were about to complete their training of two years, were informed by the government that they would have to appear again before the Public Service Commission to be selected for appointment to the posts of Assistant Agricultural Engineers (Class-II). The candidates asserted that after the completion of their training they were entitled to be appointed as Assistant Agricultural Engineers (Class-II) in terms of the offer made to them and they could not be required to appear again before the Public Service Commission for such appointment. On the other hand, the Government contended that the candidates did not possess the qualification prescribed by Rule 7 of the West Pakistan Agricultural Engineering Service (Class II) Rules, 1963, for appointment to such posts. The matter came up for hearing before this Court in the form of an appeal with the leave of this Court filed by the candidates against the judgment of a Division Bench of the erstwhile High Court of West Pakistan. The same was allowed and inter alia the following was concluded:-

"The offer of the Government and its acceptance by the appellants constituted a valid agreement and they Governor's order dated the 1st July, 1965 provided the authority for such an agreement. This agreement is capable of being enforced in law. The Government was both competent and obliged to implement that agreement. When the Governor's order, dated the 1st July, 1965, provided a special authority for recruitment to the 46 posts of Assistant Agricultural Engineers, rule 7 of the Recruitment Rules was not applicable in this case."

11. The above case supports the petitioner's stand. Another aspect which escaped notice of this Court in the judgment under review is that some of the other civil servants/employees placed in the same position as the petitioner was had been considered for promotion to BPS-17 and in fact were promoted, whereas

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Judgement

the petitioner was denied the above benefit which amounted to violation of inter alia Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973. In this regard, reference may be made to the case of I. A. Sherwani and others v. Government of Pakistan through Secretary, Finance Division, Islamabad and others (1991 SCMR 1041).

12. The judgment of this Court in the case of Muhammad Siddique Nasim (supra) relied upon by the Tribunal is distinguishable for more than one reason, firstly, in the above case the notification of the Government of Punjab dated 8.2.1961 equivalising B.Tech (Honours) with B.Sc Engineering degree was withdrawn on 15.03.1985, whereas the petitioner received degree of B.Tech (Honours) in June, 1985, i.e. after the withdrawn of the notification whereas in the present case, admittedly the petitioner passed his B.Tech (Honours) in March, 1981, before the Pakistan Engineering Council through its Registrar's above letter dated 24.4.1984 stated that there was typographical error in the above-quoted portion of Registrar's letter dated 30.04.1981. Secondly, in the judgment in the case of Pakistan Diploma Engineers Federation (Registered) through its Chairman (supra), this Court affirmed the majority view of the High Court of Sindh in the case of Muhammad Azim Jamali (supra), in which it has been held that the provisions of the Act are applicable only to professional engineers and consulting engineers who are in practice and not to the persons working in the Government departments, autonomous bodies, local authorities and private firms or companies.

13. We may again observe that it is exclusively within the domain of the Government, to decide whether a particular qualification will be considered sufficient for promotion from a particular Grade to a higher Grade and it is also within the domain of the Government to change the above policy from time to time as nobody can claim any vested right in the policy. However, it cannot abdicate its power to decide the above question in favour of a corporate body which is not in its control nor it can act in a manner which may be violative of Article 25 of the Constitution on account of being discriminatory. It is still open to the Government for future to provide that academic qualification of B.Tech (Honours) will not be considered sufficient for promotion from BPS-16 to BPS-17 if the same does not violate the above principle."

17. Next case is a judgment of two members bench of this Court in the case of Muhammad Younus Aarain v. Province of Sindh through Chief Secretary, Sindh, Karachi and 10 others (2007 SCMR 134). The case before the Court was of promotion to BS-20 by a Diploma holder employee. The Court dealt with the subject and observed as follows:


"7. The basic qualification for a professional engineer under the law is B.Sc. degree in engineering from a recognized institution in Pakistan and diploma in engineering is not a recognized qualification for a professional engineer in terms of PEC Act, 1976. The service rules governing the service of the petitioner (SCUG Service Rules, 1982) and the promotion policy of the Government of Sindh, would neither override the provisions of the above Act nor relax the requirement of basic qualification of professional engineer for a promotion to BPS-20 in the engineering branch of Government of Sindh. The relevant provision of SCUG Service Rules, 1982, is reproduced hereunder:--

"V-Engineering Branch.

1. Grade 20 By selection on merit from among the members of the service in Grade-19 of the Engineering Branch with at least 17 years experience as such in Grade-17 and above."

8. The above rule envisages clearly that a person can be considered for promotion to BPS-20 in the Engineering Branch of Government of Sindh, subject to fulfilment of the condition of basic qualification of a professional engineer prescribed under Pakistan Engineering Council Act, 1976 and a diploma holder being not a professional engineer in terms of PEC Act, 1976 cannot hold a post carrying responsibilities of a qualified professional engineer. The eligibility of a person for promotion from BPS-19 to BPS-20 in the Engineering Department of Government of Sindh is subject to the fulfilment of the requirement of basic qualification with requisite experience as provided in SCUG Service Rules, 1982 in the relevant field therefore, neither any concession could be given to the petitioner in the matter of his eligibility to hold the post in BPS-20 nor the requirement of basic qualification could be relaxed by the Court or by Selection Board. The careful examination of rules on the basis of which petitioner asserted the claim of promotion to BPS-20 against the post carrying responsibilities of a professional engineer, would show that his claim was without any substance and that a diploma holder on the basis of his experience alone;

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would stand at par to a person registered as professional engineer with Pakistan Engineering Council." 

18. The other case is a judgment of three members bench of this Court in the case of Nazir-ul-Hasan and 2 others v. Syed Anwar Iqbal and others (2014 SCMR 1827). In this case, respondent No.1 was working as an Assistant Director BS-17. The petitioners were senior to him and were promoted to BS-18 despite the fact that petitioners were holding qualification of Diploma whereas respondent No.1 was Bachelor of Engineering (Electrical). The respondent No.1 challenged the promotions of petitioners in the High Court. The High Court set aside all promotions of petitioners on the ground that they did not hold valid engineering degree. This Court in the reported judgment has dealt with the matter and observed as follows:-

"6. Admittedly the petitioners were Assistant Directors in the respondent Authority with at least 5 years service in the relevant field and hence in our opinion they fulfill the requirement. It would be seen that when the petitioners were considered for promotion in 2012 the rules in force were the Pakistan Standards Institution Recruitment Rules for class one posts wherein per rule 5 the post of deputy Directors to be filled in by promotion could be done from amongst Assistant Directors category one with at least 5 years service in the Institution. Nowhere in the said rules was it provided that they would be professional engineers or for that matter even diploma holders. If fact such condition is prescribed in rule 6 which provides for direct appointments whereby per the schedule to the same an Assistant Director must hold a Master's Degree in Science, or Bachelors Degree in Engineering in the specified field from a recognized university with at least 3 years experience in that field etc. Admittedly, the petitioners were appointed by promotion and hence in our opinion no such condition can be placed upon them as in the case of a direct appointees. Insofar as the case of Muhammad Younus Aarain (supra) is concerned, the same is distinguishable on facts as therein it was found that under Sindh Council Unified Grades Services Rules the basic qualification for promotion to BS-20 was that the candidates should have B.Sc. Degree in Engineering. As observed above this is not the case in the present matter. It would further be seen that now per section 26 of the Pakistan Standards and Quality Control Authority Act, 1996 rules have been framed which have been notified in the official gazette on 15th May, 2013. Under Rule 5 promotion to the post in BS-1 to 19 shall be made on the basis of seniority-cum-fitness etc. and he or she should also fulfil the conditions contained in schedule to the rules according to which for promotion to the post of Deputy Director Technical the eligible person would be an Assistant Director Technical and he should have 5 years experience in BS-17 in technical matters. Nowhere has it been prescribed that he or she should be a qualified engineer.

7. In the circumstances, we find that the impugned order has unnecessarily been influenced by the comments of the Pakistan Engineering Council that no post carrying any Engineering responsibility could be entrusted to non-engineering graduates. In our opinion, it is for the department/institution itself to determine as to whether the persons in its service are fit to hold a particular position. In the present case it has been done by the authority and rules have been framed thereunder which have been followed by the promotes/petitioners. Consequently the impugned order is set aside and the promotion of the petitioners is upheld."

19. On examination of above case law, we note that nowhere in the judgments, the government power to prescribe for qualification and other conditions of service for promotion to a post has been assailed nor the judgments have put any sort of embargo on the government in prescribing the qualification and other conditions of service for a post for the purpose of promotion. Having said this, the judgments as discussed above, have rather focused on the government power in this regard to be unfettered to the extent that it is not in derogation of any law or provisions of the Constitution.

20. Further, the main principle that is deductible from the above judgments of this Court is that it is the domain of the Government to decide whether a particular academic qualification of a civil servant/ employee is sufficient for promotion from one grade to another higher grade and whereas it is in the domain of the Pakistan Engineering Council to decide whether a particular academic qualification can be equated with another academic qualification but it has no power to say that the civil servants/employees holding particular academic qualification cannot be promoted from a particular grade to a higher grade. Thus on the basis of above pronouncements of this Court, it is clear that the notification dated 19.03.2014 cannot be validly or justifiably challenged on the ground that it impinges or infringes upon any of the provisions of PEC Act, 1976 and thus would be ultra vires. No such finding can justifiably be recorded in that as it has been laid down quite empathetically that the government exercises its own power under the domain of law with regard to promotion of civil servants/employees under Sindh Civil Servants Act, 1973 and Rules made thereunder while PEC Act does

Judgement

not overreach or put an embargo upon the government in the matter of prescribing of qualification and other conditions of service of civil servants/employees for their-promotion to higher grade. Yet again, we note that although the vires of notification dated 19.03.2014 has been challenged but we observe that this very notification has been issued under sub-rule (2) of Rule 3 of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, which rules have been made under section 26 of Sindh Civil Servants Act, 1973. Neither rule 3(2) of said rules nor section 26 of the Act, 1973 have been challenged nor their vires called in question before us. Thus from this also it is quite apparent that the petitioner does not challenge the government power for prescribing qualification and conditions of service of civil servants/ employees for their promotion to higher grade. In any case, we note that the provisions of PEC Act nor the rules and regulations made under it will operate as bar on government to prescribe for qualification and other conditions of service of civil servants/employees for promotion to higher grade.

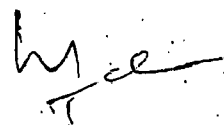
21. The PEC Act as its preamble itself shows so also reading of the whole Act shows that it essentially deals with regulations of engineering profession in it, inter alia, it prescribes for qualification of professional engineers, maintenance of register of professional engineers and accrediting of engineering universities etc and not as a regulator of employment be that be of government service or in the private service. The reasons for it could be found that all sort of engineering work could not be and may not be a professional engineering work for performance of which professional engineers are required. For example, technician, mechanic, draftsman, foreman, supervisor and overseer etc at best could be a skilled Workman who may work independently or under the supervision of professional engineer and for such technician, mechanic, draftsman, foreman, supervisor and overseer/ the employer may not require holding of professional engineering degree. However, if the person is required to perform any of professional engineering work as defined under the PEC Act, the provisions of this Act will come into operation for ensuring as the work of professional engineer can and only be performed by professional engineer as recognized by PEC Act. The professional engineering work has been clearly defined under section 2(xxv) of the PEC Act which has already been reproduced above and lays down in sufficient details the works which are noted to be as professional engineering works and such works as mandatorily required by the PEC Act to be performed by a professional engineer possessing accredited engineering qualification from accredited engineering institutions in Pakistan and abroad with experience and passing of test of the Council and no other person is allowed to perform professional engineering works be that be a diploma holder or B.Tech. degree holder. This aspect of the matter has been substantially addressed by the PEC Act itself when making provision of section 27(5A) that "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. "Thus professional engineering work can only be performed by a person who is registered as registered engineer or professional engineer and both registered engineer and professional engineer in terms of the PEC Act are by law required to possess accredited engineering qualification as prescribed by the PEC Act from accredited engineering institution.

22. We may further observe that section 27 of the PEC Act provides for penalty for a person who undertakes any professional engineering work if his name is not borne on the Register but it also makes the employer who employs for any professional engineering work any person whose name is not, for the time being, borne on the Register to perform professional engineering work, shall also be liable for penalty as prescribed in the PEC Act itself. Thus both civil servant/employee and their employer would be liable to penalty as provided under section 27 if they undertake or allow a person to undertake professional engineering work whose name is not borne on register under PEC Act.

23. The net result of above discussion is that this petition fails. It is dismissed and leave refused, however with note of caution 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 is not registered as a registered engineer or professional engineer under the PEC Act.

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Petition dismissed.



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**SUPREME COURT OF PAKISTAN**  
(Review Jurisdiction)

**PRESENT:**

Mr. Justice Gulzar Ahmed  
Mr. Justice Faisal Arab  
Mr. Justice Ijaz ul Ahsan

**CMA Nos. 10514, 10517, 10520, 10524, 10688, 10984 of 2018 AND CRP**  
**No.824 of 2018 & CrI.O.P.No.11 of 2019**

(For review of judgment dated 03.10.2018 passed by this Court in C.P.No.78-K of 2015)

Shaukat Ullah Shah  
Muhammad Farooq Azam  
Muhammad Ehsan  
Muhammad Farooq  
Muneer Ahmed & others  
Abid Ali & others  
Mushtaq Ahmed Mangi  
Syed Kashif Ali Shah & others

(in CMA 10514)  
(in CMA 10517)  
(in CMA 10520)  
(in CMA 10524)  
(in CMA 10688)  
(in CMA 10984)  
(in CRP 824)  
(in CrI.O.P 11)  
.....Petitioner(S)

**VERSUS**

Moula Bux Sheikh & others  
Chief Minister Sindh & others  
Qasim Samad Khan, Secretary Sindh  
Worker Welfare Fund, Islamabad

.....Respondent(s)

For the Applicant(s)

[in CMA: 10514)  
in CMA: 10517 & 10688)  
in CMA: 10520 & 10984]  
[in CMA: 10524]

: Nemo  
: Mr. Zulfiqar AKhalid Maluka, ASC  
: Mr. Mudassar Khalid Abbasi, ASC  
: In person

For the Petitioner(s)  
in CRP.824  
in CrI.O.P.11]

: Malik Naeem Iqbal ASC  
: Mian Abdul Rauf, ASC

For the Respondent(s)

: N.R

Date of Hearing

: 05.03.2019

**ORDER**

**Gulzar Ahmed, J.-** It seems that out of six applications Four are time barred. As the applicants were not a party in the

ARRESTED

... out of six respondents

09/03/2019



Ministry of Labour and Social Security

... person  
... person  
... person

(Respondents)

In CMA 10984  
In CMA 10987  
In CMA 10988  
In CMA 10989  
In CMA 10990  
In CMA 10991  
In CMA 10992  
In CMA 10993  
In CMA 10994  
In CMA 10995  
In CMA 10996  
In CMA 10997  
In CMA 10998  
In CMA 10999  
In CMA 11000

(Petitioners)

In CMA 10984  
In CMA 10987  
In CMA 10988  
In CMA 10989  
In CMA 10990  
In CMA 10991  
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In CMA 10996  
In CMA 10997  
In CMA 10998  
In CMA 10999  
In CMA 11000

... passed by this Court in C.P. No. 78-K  
... of 2018, 10984, 10987, 10988, 10989, 10994 of 2018

BERGAMINI COURT OF APPEALS  
(Petitioners)

ANNEX - P (78)

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2. CMA Nos 10114-10517, 10520, 10524, 10688, 10944 of 2018 and CRPN: 824 of 2018 & Crl.O.P No. 11 of 2019

petition which has been decided by the judgment under review, this for reason mentioned in this application, the condonation applications are allowed.

2. We have heard learned counsel for the applicants. It seems that the issue is with regard to the interpretation of judgment sought to be reviewed and applicants claim that some action have been taken by their respective employers pursuant to the judgment under review. The counsel for the applicants' state that they have no cavil with the judgment itself but that the Pakistan Engineering Council Act, 1976 (the Act) applies only to the consultant engineers and there is no provision in the Act laying down its application to the government employees. The judgment under review has dealt with all the aspects of the matter including the previous judgments of this Court and quotations wherefrom have also been mentioned therein, and ultimately the Court reached to the conclusion that where government has to appoint the professional engineers for doing the professional engineering work (as defined in the Act), then it has to ensure that the person is a professional engineer (as defined in the Act). Such being the position and nothing having been shown to us on the basis of which the judgment under review can be reviewed, we find no reason to allowed the applicants to file these review petitions. The CMAS are, therefore, dismissed.

3 There is a written application for adjournment in CMA No.10514/2018, on the ground that Raja Muhammad Ibrahim Satti, Sr. ASC is not well and thus unable to appear before the Court: Adjourned.

C.R.P.No.824/2018.

4 We have heard learned counsel for the petitioner. He has referred to the provision of Section 28(b) of the Act, which provides for certain savings and under the said provision Notification dated 14.12.1977 has been issued by the Council. We note that the Notification referred to above does not pertain to any of the accredited institutions but it relates to some polytechnic institutions and pursuant to the letter of Chairman, Pakistan



ATTACHED

The attached copy of the report of the Commission on the activities of the Communist Party in the United States, dated 1951, is being furnished to you for your information. It has been prepared by the Commission and is being furnished to you for your information.

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2. CMA No1-10514-10517.10520, 10524, 10688.10984 of 2015 and CRP No 824 of 2018 CLO.P.No.11 of 2019

Engineering Council dated 04.01.1978, the Diploma Engineers possessing qualification from these institutions have been allowed to perform their work and duties notwithstanding the relevant provisions of the Act noted above. Neither the Notification nor the letter, mentioned above, deals with the qualification of professional engineers and thus apparently has no application to the case in hand, more particularly, the judgment under review. Consequently, no ground for review is made out. The review petition is, therefore, dismissed.

Criminal Original Petition No.11/2019.

5. After arguing the matter at some length, petitioner's counsel does not press this petition in order to avail remedy with law, Dismissed as not pressed.

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Sd/- J

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**BEFORE THE WORTHY KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL AT PESHAWAR**

C.M. No. \_\_\_\_\_/2022

In

Service Appeal No.7917/2021

Imtiaz Khan. . . . .Vs. . . . .Irrigation Department etc.

**APPLICATION UNDER ORDER-1 RULE-10  
C.P.C, 1908 FOR IMPLEADMENT OF  
APPLICANT, IN THE PANEL OF  
RESPONDENTS.**


**Respectfully Sheweth:**

1. That the titled service appeal is pending adjudication before this Hon'ble Tribunal, which is now fixed for 21.<sup>04</sup>2022.
2. That through the instant appeal, the appellant has assailed the notification dated 24.08.2021, vide which amendments were notified in the Service Rules of 2011.
3. That through the aforesaid amendment, 8% promotion quota was reserved for those BPS-17 officers, who possess qualification of Diploma of Associate Engineering.

4. That the applicant is also having qualification of Diploma of Associate Engineering and is on the top of the seniority list of BPS-17↑ <sup>(Diploma Holder)</sup> officers of the Irrigation Department.
5. That the applicant seeks his impleadment in the panel of respondents in order to provide a fair assistance, while adjudicating upon the case in hand. Furthermore, any order passed would adversely affect right of promotion of applicant to BPS-18.
6. That it is just, fair as well as in larger interest of justice that the applicant be impleaded as necessary party in the panel of respondents.

It is, therefore, prayed that by accepting this application, the applicant may please be impleaded in the panel of respondents, in the best interest of justice.

Applicant

  
**Engr. Alamzeb Khan**  
S/o Abdul Haleem  
Sub-Divisional Officer (BPS-17)  
Irrigation Department, Mardan Circle.

Through

  
**Adnan Aman**  
Advocate High Court(s)

Dated: 21.04.2022

**BEFORE THE WORTHY KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL AT PESHAWAR**

C.M. No. \_\_\_\_\_/2022

In

Service Appeal No.7917/2021

Imtiaz Khan. . . . .Vs. . . . .Irrigation Department etc.

**AFFIDAVIT**

I, Engr. Alamzeb Khan S/o Abdul Haleem, Sub-Divisional Officer (BPS-17), Irrigation Department, Mardan Circle, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Impleadment Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.


  
DEPONENT

CNIC: 16102-0546648-5  
Cell: 0342-9194990

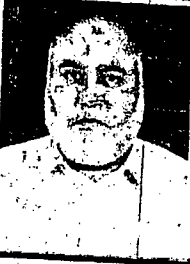
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**SERVICE CARD**  
**GOVT OF KHYBER PAKHTUNKHWA**  
**IRRIGATION DEPARTMENT**

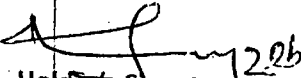


Name: Alamzeb Khan  
Design:- Sub Divisional Officer.  
Irrigation Deptt:



ADMINISTRATIVE OFFICER SOUTH  
IRRIGATION DEPARTMENT  
KHYBER PAKHTUNKHWA  
Issuing Authority PESHAWAR

Father's Name:- Abdul Haleem Khan  
CNIC Number: 16102-0546648-5  
Identification: Nil  
Address: - Vill:- Mian Essa Janga P.O  
Lundkhuwar Teh; Takht  
Bhai, Distt Mardan.  
Emergency Numbers:- 0315-9851299.  
0331-9630388

  
Holder's Signature.



5

GOVERNMENT OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT

Dated Peshawar the 11 Oct., 2011.

NOTIFICATION

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

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

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



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3- Upon their promotion on regular basis (BS-17), the competent authority is further pleased to order the transfer / posting of the following officers of Irrigation Department with immediate effect, in the public interest: -

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

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

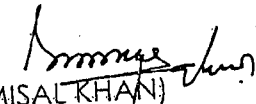
SECRETARY TO GOVT: OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT

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Endst: No. & date as above.

Copy of the above is forwarded to:

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

  
(MISAL KHAN)  
Section Officer (Establishment)

(8)

# W A K A L A T N A M A

## (Power Of Attorney)

Before the court of worthy Service Tribunal KP Peshawar

Intiaz Khan..... (Appellant)

**VERSUS**

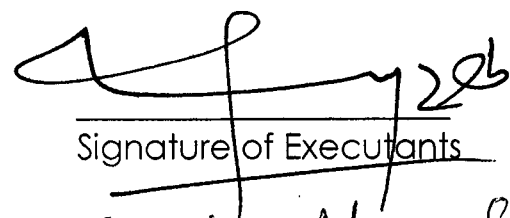
The Govt. of KP etc.....(Respondent)

I/we, the undersigned in the above noted Service appeal No 7917/2021, do hereby appoint **Mr. Adnan Aman, Advocate High Court(s)**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my /our counsel in the above noted case and with the authority to engage/ appoint any other Advocate/Counsel on my/our behalf in my/our case and that my/our counsel will not appear whenever a strike call is made by the PBA, PHCBA, KP Bar Council, Pakistan Bar Council or by any other representative body of the lawyers' community. Furthermore, my/our counsel shall not be liable for any acts on my/our behalf, if I/we have furnished an incorrect information or mis-statement and that my/our counsel shall not be liable for any disciplinary action in case of his default in the aforesaid delegated authority.

Attested & Accepted By.

  
**Adnan Aman**

Advocate High Court(s), Peshawar  
B-15, Haroon Mansion, Khyber Bazar,  
Peshawar Office: 091-2551553  
Cell: 0321-9853530

  
Signature of Executants

Engineer Alamzeb Khan

s/o Abdul Maleem