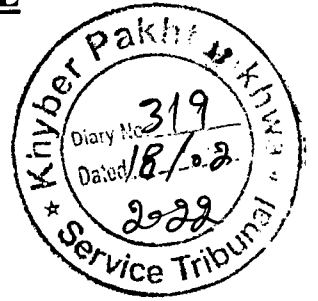


**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**



C.M No. 123 /2022 ~~2021~~ 2022  
in  
Appeal No 7917/2021.

Engg Imtiaz Khan.

(Applicants)

Put up to the court with relevant appeal.

**VERSUS**

Government of KPK and Others.

(Respondents)

18/2/2022

Deadu

**APPLICATION FOR IMPLEADMENT OF**

1. **SAIF ULLAH S/O ABDULLAH KHAN (DEPUTY DIRECTOR (OPS) P&C SMALL DAMS PESHAWAR,**
2. **AMAN ULLAH S/O HAMISH GUL (EXECUTIVE ENGINEER(OPS) TUBE WELL DIVISION PESHAWAR.**
3. **NIAZ BADSHAH S/O SAEED BADSHAH (SUB DIVISIONAL OFFICER) CHARSADDA IRRIGATION SUB DIVISION CHARSADDA.**  
**IN THE PENAL OF RESPONDENTS IN THE ABOVE NOTED SERVICE APPEAL**

**Respectfully Submitted:-**

1. That the above noted service appeal is pending in this Honorable Tribunal, in which next date of hearing is 25/02/2022.
2. That the applicants are performing their duties as Assistant Engineer BPS-17 in the respondent department and performing their duties with great zeal and devotion to the entire satisfaction of their superiors without any complaint whatsoever regarding their performance.
3. That there was no promotion quota for the B.Tech degree holders and (DAE) diploma holders in the department who were performing

their duties in a capacity of Assistant Engineers BPS-17 to Executive Engineers BPS-18 as they have no future prospects of promotion from BPS-17 to BPS-18.

4. That the Assistant Engineers BPs-17 submitted representation /application for reservation of promotion quota for B.Tech Degree holders and (DAE) Diploma Holders in the light of judgment dated 03.10.2018 of the Honourable Supreme Court of Pakistan in case titled Maula Bux vs Govt of Sindh and also on the analogy of different department of Sindh and Punjab Government. ***(Copy of the representation and judgment dated 3.10.2018 are attached as annexure A & B).***
5. That Standing Service Rules Committee recommended the promotion to the higher grade by awarding 20% quota for promotion from BPS-17 to BPs-18 by giving future prospects of Promotion as 12% were reserved for B.Tech Degree holders and 8% reserved for Diploma Holders.
6. That in the light of the above recommendation and approval of the competent authority in accordance with law, rules and procedure the amendment was made and notified by the secretary irrigation in consultation with the establishment and finance department vide notification dated 24.08.2021. ***(Copy of the notification dated 24.08.2021 is attached as annexure C).***
7. That in light of the minutes of the SSRC and approval of the same by the competent authority, further to add duly notified by the competent authority and published in the official gazette, the department in the light of such amendments prepared separate seniority list of Degree holders, B.Tech (Hons) Degree and Diploma Holders, the present applicants are B.Tech (Hons) Degree holders to whom a separate initially tentative seniority list was issued which after lapsing of statutory period followed by Final seniority list. ***(Copy of the gazette notification and tentative seniority list are attached as annexure D & E)***
8. That the applicants being proper and necessary parties in the panel of the respondents for just and legal disposal of the writ petition being valuable rights attached.
9. That there is no legal impediment in the impleadment of the impleaded respondent, rather the interest of justice would be served in case the impleaded respondent is impleaded.

10. That the impleadment of the impleaded respondent is necessary as without their impleadment no effective order could be passed.

It is therefore, prayed that on acceptance of this application the impleaded respondents may please be impleaded as respondents in the penal of respondents.

Applicants

Through:

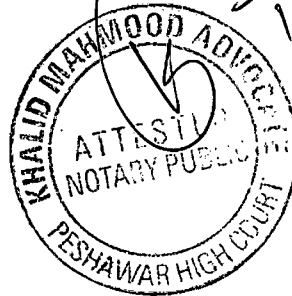
*Zartaj Anwar*

ZARTAJ ANWAR

Advocate Peshawar

**AFFIDAVIT**

I, Saif Ullah S/o Abdullah R/O House no E 8, Civil Colony Warsak Road Kababyan Peshawar, do hereby solemnly affirm and declare on oath that the contents of the above appeal are true and correct and that nothing has been kept back or concealed from this Honourable Tribunal.



Deponent

4

ANNEX A.

To,

Psi/Ser. Irrigation

Diary No. 1882

Date: 25-2-2003

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

Subject: -

JOINT APPLICATION FOR RESERVATION OF PROMOTION QUOTA IN  
BS-18 AND ABOVE FOR B.TECH (HONS) DEGREE HOLDER SUB  
DIVISIONAL OFFICER'S / ASSISTANT ENGINEERS (BS-17) ON THE  
ANALOGY OF B.SC ENGINEERING DEGREE HOLDER SUB  
DIVISIONAL OFFICER'S.

Dear Sir

We the following B.Tech (Hons) degree holder Sub Divisional Officer's /Assistant Engineers (BS-17) invite your kind attention to the step mother treatment/injustice, done with us in the Irrigation Department by depriving the said Engineers from promotion in BS-18 and onward and other benefits which are enjoying by the Sub Divisional Officer's / Assistant Engineers, having B.Sc, Engineering / B-E degree. This attitude of the Provincial Government in works Department is not only in violation of article-25 of the Constitution of Islamic Republic of Pakistan but also tantamount to contempt of the apex court's order passed in Suo Moto Review Petition No.52 of 1993 dated 25-06-1995, whereby B.Tech (Hons) degree has held at par and competable to that of B.Sc Engineering / B.E degree for the purpose of pay, grade, promotion and other benefits (Annex-I). In this context necessary steps taken by the Federal Government and Provincial Governments as well are reproduced below for perusal of your good-self and sympathetic consideration please:-

- i. That pursuant to the Supreme Court of Pakistan judgment dated 25-06-1995, the Government of Pakistan, Ministry of Education, Islamabad vide Office Memorandum No.F.8-1/94-Polytechnic dated 17-04-1996 declared that B.Tech (Hons) degree shall be treated at par to B.Sc Engineering / B-E degree (Annex-II). Moreover, the Cabinet Secretariat Establishment Division Government of Pakistan vide its letter dated 01-04-1996 has withdrawn the condition of registration with Pakistan Engineering Council in Government Departments (Annex-III). Furthermore, Lahore High Court, Peshawar High Court, Sindh High Court, Hyderabad Bench, Apex Court and Service Tribunal, Islamabad etc in their respective judgments have admitted stance of the B.Tech (Hons) degree holder Engineers and have allowed them for further promotion in BS-18 and above alongwith other benefits on the basis of equality with B.Sc Engineering degree holder Engineers (Annexures-IV-VII).

*BS Khan*  
*Secretary Irrigation*  
*A.S.*  
*SOLE*

ii. That in light of the Apex Court orders and Sindh High Court, Hyderabad Bench judgment, Government of Sindh Works and Services Department, Irrigation

**ATTESTED**

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Department and Energy Department Karachi amended their respective service recruitment rules and provided suitable quota to B.Tech (Hons) degree holder Sub Divisional Officers / Assistant Engineers / Asstt. Directors (BS-17) for promotion to the rank of Executive Engineer (BS-18) and onward vide notifications dated 19-03-2014, 16-12-2013 and 11-01-2013 (Annexes-VIII-X). Similarly the Government of Khyber Pakhtunkhwa, Local Government & Rural Development Department made amendments in the existing recruitment rules and provided separate 20% quota to B.Tech (Hons) degree holder Sub Divisional Officers / Assistant Engineers (BS-17) for onward promotion vide notification dated 13-05-2016 (Annex-XI). Besides, the Public Health Engineering Department Khyber Pakhtunkhwa also allowed promotion in BS-18 and above to B.Tech (Hons) degree holder Engineers through Standing Service Rules Committee on 13-03-2017. Minutes of the SSRC are added (Annex-XII).

iii. That the C & W Department, Khyber Pakhtunkhwa, Peshawar while considering application of the B.Tech (Hons) degree holder Sub Divisional Officers / Assistant Engineers (BS-17), pertaining to the reservation of quota for promotion in BS-18, referred the case to the Law Department and Establishment Department for advice in light of the "note of caution" recorded by the apex court in its judgment dated 03-10-2018 in C.P No.78-K of 2015 (Annex-XIII). Both the Departments in their respective letters, tendered advice that as per rule 3 (2) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the case may be placed before the SSRC (Annex-XIV & XV).

iv. That back ground of the note of caution, referred to in pre-sub Para of the instant joint application is that aggrieved by the notification dated 19-03-2014 issued by the Works & Services Department Karachi, whereby 7% promotion quota was allowed for promotion in BS-18 and above to the B.Tech (Hons) degree holder Engineers, Moulana Bux Sheikh and others B.Sc. Engineering degree holder Sub Divisional Officers / Assistant Engineers (BS-17) of the W&S Department, Karachi, challenged in the Sindh Service Tribunal on the plea that the post of Executive Engineer (BS-18) is being that of purely professional Engineering work, could only be performed by a professional Engineer, holding accredited Engineering qualification, as provided in the Pakistan Engineering Council Act. The Tribunal did not agree with the stance and rejected the service appeal of the appellants. Later on they filed C.P No.78-K of 2015 in the Supreme Court of Pakistan against the decision of Sindh Service Tribunal. The apex court after examining all aspects of the case in light of the arguments of counsels of the parties, dismissed the CPLA with the clear directions that the application dated 19-03-2014 can not be validly or justifiably challenged on the ground that it impinges or infringes upon any of the provisions of the Pakistan Engineering Council Act, 1976 and thus would be ultravires. 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 Pakistan Engineering Council Act does not overreach or put an embargo upon the Government in the matter of prescribing of qualification and other conditions of services of civil servants / employees for their promotion to higher grade. Furthermore, the PEC Act as its preamble itself shows so also reading of the whole Act that it essentially deals

F/A

**ATTESTED**

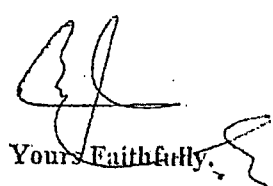
engineers and accrediting of engineering universities etc and not as a regulator of employment be that be of government service or in the private service. The reasons for it could be found that all sort of engineering work could not be and may not be a professional engineering work for performance of which professional engineers are required.

- v. That in order to remove confusion with regard to the note of caution, recorded by the apex court, referred to above, the Advocate General Sindh in his letter dated 18-6-2019 addressed to Secretary to Govt. of Sindh Law Department, has categorically clarified that "there is no embargo on the posting of B.Tech (Hons) degree holder as engineers in Government Departments, nor is there any embargo on their being promoted or their being assigned field posts provided the nature of the work to be performed by them etc.," (Annexure-XVI). The Law Department, Sindh has endorsed the Advocate General's letter to the Secretaries of W&S, Local Govt., School Education & Literacy, Agriculture, Industries, PHE and Irrigation Departments with the further clarification that advice of the Advocate General has addressed many points about admissibility of posting of B.Tech (Hons) degree holders as Engineers in the field and considering them for their subsequent promotions (Annex-XVII)
- vi. That Chairman, Pakistan B. Tech Engineers Council (Regd) in his letter dated 23-12-2020, addressed to Chief Secretary, Khyber Pakhtunkhwa has pointed out that promotion cases of Engineers possessing B.Tech (Hons) degree are pending since long relying upon mis-interpretation of Hon'able Supreme Court of Pakistan judgement dated 3-10-2018 in CP No. 78-K of 2015 made by Pakistan Engineering Council and its biased mind agents in the KPK engineering departments. Through going the contents of the said judgement it has been observed that there is nothing debaring/refusal or pending the promotion cases of B.Tech (Hons) degree holder Engineers and has requested to direct all the works departments of the KPK to consider/finalize promotion cases of all the Engineers having B.Tech (Hons) degree (Annex-XVIII).
- vii. That in the W.P No. 2609 of 2020 filed by Muhammad Khurshed v/s Federation of Pakistan and others, in the Islamabad High Court, the respondents in their comments has mentioned/recorded that B.Tech (Hons) and B.E/B.Sc.Engineering degrees prepares aspirants for two distinguished jobs, the former focuses on implementation while latter emphasis on the research and design. Moreover, engineers generally operate in conceptual design, innovato solution and product development while technologists generally work in applied nature of jobs like testing, construction, field works operations etc (Annexure-XIX).

In light of the numerous orders of the different courts of law, declaration of the Government of Pakistan, Ministry of Education, Cabinet Secretariat, Establishment Division Islamabad pertaining to the bringing at par / compitable degree of B.Tech (Hons) to that of B.Sc

**ATTESTED**

Engineering / B.E degrees for the purpose of pay, grad, promotion and other benefits and rules amended by the different Departments of Sindh Government and Provincial Government of Khyber Pakhtunkhwa as well, it is humbly prayed that separate 20% quota for promotion to the rank of Executive Engineer (BS-18) and onward may be provided/reserved for the deprived category of B.Tech (Hons) degree holder Sub Divisional Officers / Assistant Engineers (BS-17) of Irrigation Department on the analogy of Local Government Department Khyber Pakhtunkhwa at the earliest please



Yours Faithfully,

By Director  
Jabba Dam project.

Amanullah Khan  
S.D.O Drainage  
Sub Divn Peshawar  
Dist Peshawar.

Niaz Hussain  
S.D.O. Charsada Sub Divn

~~ATTESTED~~

8 ANNEX B

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

**Present:**  
Mr. Justice Gulzar Ahmed  
Mr. Justice Qazi Faez Isa  
Mr. Justice Sardar Tariq Masood

**C.P.No.78-K of 2015**  
[On appeal against order dated 21.11.2014  
passed by the Sindh Service Tribunal,  
Karachi, in Appeal No.195 of 2014]

Maula Bux Shaikh & others Petitioner(s)

**VERSUS**

Chief Minister Sindh & others Respondent(s)

For Petitioner No.1 : Mr. Salah-ud-Din Ahmed, ASC  
For Petitioner Nos.2-3 : Mr. Rasheed A Rizvi, Sr. ASC  
For Respondent Nos.1-4 : Mr. Sabtain Mehmood, Asstt:A.G. Sindh  
For Respondent No.5 : Mr. Ghulam Halder Shaikh, ASC  
For Respondent Nos.6-7 & 9 : Nemo  
For Respondent Nos.8 & 12 : Dr. Muhammad Farough Naseem, ASC  
For Rspdnt Nos,10-11, 13-17 : Mr. M. Aqil Awan, Sr. ASC  
Date of Hearing : 24.04.2018

**JUDGMENT**

**GULZAR AHMED, J.** — Maula 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 circumstances 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 Works and Services Department, Government of Sindh, Karachi. He was

**ATTESTED**



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.

*is it applicable  
to professional  
work or not?*

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(WBS)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 & Coordination Department, Government of Sindh, and in partial modification of this Department's Notification No. FI(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 & Services Department, Government of Sindh mentioned in column-2 of the table below:-

**ATTESTED**

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TABLE

Name of the post with BS	METHOD OF APPOINTMENT
1	2
Executive Engineer (Civil/Mechanical & Electrical) (BPS-18)	<p>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 technology.</p> <p>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</p> <p>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.</p>

QAZI SHAHID PERVEZ  
SECRETARY TO GOVT. OF SINDH

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

ATTESTED

accredited Engineering Universities/Institutions in Pakistan and abroad.

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

*from service  
service exam*

"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.

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

~~ATTESTED~~

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;

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.

ATTESTED

(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 or title any words or letters representing that he is so registered, irrespective of whether any person is actually deceived by such pretence or representation or not, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

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

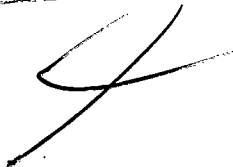
(5A) No person shall, unless registered as a registered engineer or professional engineer, hold any post in an engineering organization where he has to perform professional engineering work.

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

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

12. The main gist of the arguments of the learned ASC appearing for the petitioners is that the work of 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

ATTESTED



(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/s FEDERATION OF PAKISTAN THROUGH SECRETARY MINISTRY OF WATER & POWER, GOVERNMENT OF PAKISTAN, ISLAMABAD & 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

  
ATTESTED

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/S GOVERNMENT OF PAKISTAN THROUGH SECRETARY/ CHAIRMAN, MINISTRY OF RAILWAYS, AND 33 OTHERS (PLJ 1992 Karachi 1) = (1992 PLC(CS) 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."

**ATTESTED**

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 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 EIDA HUSSAIN V/S THE SECRETARY, KASHMIR AFFAIRS AND NORTHERN AFFAIRS DIVISION, ISLAMABAD & ANOTHER (PLD 1995 Supreme Court 701). In this case facts were that petitioner was appointed as Overseer/Sub-Engineer in northern area PWD in

  
ATTESTED



1971. The Federal Government, in order to encourage the diploma holders to improve their academic qualification resolved to prescribe courses namely B.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 Mian, J.) and Salduzzaman 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:--

  
**ATTESTED**

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 its 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.

*Power of Govt.:-  
authorized to designate  
its power to any other authority  
as discrimination.*

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/S PROVINCE OF SINDH THROUGH CHIEF SECRETARY, SINDH, KARACHI & 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:

  
ATTESTED

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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, 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 & 2 OTHERS V/S SYED ANWAR IOBAL & 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

ATTESTED

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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 15<sup>th</sup> 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 fulfill 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

**ATTESTED**



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 pronouncement 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 ultravires. No such finding can justifiably be recorded in that as it has been laid down quite emphatically that the government exercises its own power under the domain of law with regard to promotion of civil

ATTESTED

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servants/employees under Sindh Civil Servants Act, 1973 and Rules made thereunder while PEC Act does 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 & 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,

**ATTESTED**

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, <sup>etc</sup> 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.

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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 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.

APPROVED FOR SIGNATURE  
 APPROVED FOR SIGNATURE

JUDGE

JUDGE

Announced in open Court on 03-10-2018

ATTESTED



27 Annex C

Appendix H

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GOVERNMENT OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT

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

NOTIFICATION

No. SO(E)/IRRI/23-5/73/Vol-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 Department and Finance Department, hereby direct that in this Department's Notification No. SO(E)IRR/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:-

5	
(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) Technology from a recognized Board of Technical Education with at least five years service as such and have passed the Professional and Revenue Examination under the prescribed rules.
<b>Note:</b> 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	

**TESTED**

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

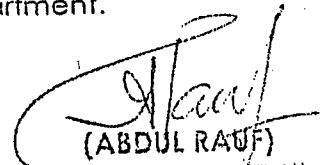
5	
"(a)	Seventy percent (70%) by promotion, on the basis of seniority-cum-fitness, from amongst the holders of the post of Tracer who have qualified the prescribed Examination of Draftsman with three years service as such; and
(b)	thirty percent (30%) by initial recruitment".

Secretary to Govt. of Khyber Pakhtunkhwa  
Irrigation Department

Endst: No and date even

Copy of the above is forwarded:-

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

  
(ABDUL RAUF)  
Section Officer (Estt)  
24/8/21

  
ATTESTER

29

45



GOVERNMENT OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT

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

**NOTIFICATION**

No. SO(E)/IRRI/23-5/73/Vol-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 Department and Finance Department, hereby direct that in this Department's Notification No. SO(E)IRR/23-5/73 dated 20.12.2006, the following further amendments shall be made namely:-

**AMENDMENTS**

In the PROFORMA:-

- (a) against Serial No. 39:-  
(i) In Column No. 3, for the work "Subdedar", the words "Junior Commission Officer" shall be substituted; and  
(ii) In Column No. 4, for the existing entry, the following shall be substituted, namely:

"30-45 years", and

- (b) Against Serial No. 60, in Column No. 5, for the existing entries, the following shall be substituted, namely:

5	
"(a)	Fifty percent (50%) by promotion, on the basis of seniority-cum-fitness, from amongst the holders of the posts of Mate, Regulation Eeldar, Beldar and Field Chowkidar having Secondary School Certificate or its equivalent qualification from a recognized Board with ten years service in the Circle; and
(b)	Fifty percent (50%) by initial recruitment".

Secretary to Govt. of Khyber Pakhtunkhwa  
Irrigation Department

**ATTESTED**

Endst: No and date even

Copy of the above is forwarded:-

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

  
(ABDUL RAUF)  
Section Officer (Estt)

**ATTACHED**

EXTRAORDINARY  
GOVERNMENT



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Attested:- D  
REGISTERED NO. PIII  
G A Z E T T E

## **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)IRR/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.

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**ATTESTED**

161 B

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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

EXTRAORDINARY  
GOVERNMENT



6 33  
REGISTERED NO. P.III  
G A Z E T T E

## **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 20.12.2006, the following further amendments shall be made namely:-

#### **AMENDMENTS**

In the PROFORMA,-

- (a) against Serial No. 39:-
- (i) In Column No. 3, for the work "Subdedar", the words "Junior Commission Officer" shall be substituted; and
- (ii) In Column No. 4, for the existing entry, the following shall be substituted, namely:
- "30-45 years", and
- (b) Against Serial No. 60, in Column No. 5, for the existing entries, the following shall be substituted, namely:

5	
(a)	Fifty percent (50%) by promotion, on the basis of seniority-cum-fitness, from amongst the holders of the posts of Male, Regulation Beldar, Beldar and Field Chowkidar having Secondary School Certificate or its equivalent qualification from a recognized Board with ten years service in the Circle; and
(b)	Fifty percent (50%) by initial recruitment".

Secretary to Govt. of Khyber Pakhtunkhwa  
Irrigation Department.

161 C

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

**ATTESTED**

ATTESTED

SIGNATURE

(must be indicated)


Name  
BPS  
Designation  
Dated  
Qualification

1.  
2.

The following discrepancies are also brought in to the notice:-

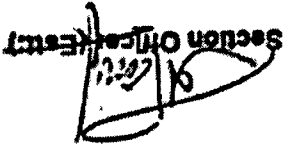
S. No.	Column No.	Present entry	To be replaced by	Remarks

It is certified that I have gone through my particulars mentioned at Sr. No. \_\_\_\_\_ of the tentative seniority list of BS-\_\_\_\_\_ of the Irrigation Department and found them correct, except at the following columns:-

**TENTATIVE SENIORITY LIST OF (BS- ) IRRIGATION DEPARTMENT.**

Subject -

Section Officer (Engr)



have been found correct.

In view of the above, it is requested to kindly direct all the Irrigation officers working under your kind control, to download the same from above mentioned website and thoroughly examine their particulars and return certificate given below duly signed, indicating error/ omission, if any, for the purpose of rectification along with attested supporting documents up-to 03.02.2022.

In case of receipt of no response by the due date, it would be considered that particulars of the subject noted above and to inform that tentative seniority lists of Superintending Engineers (BS-19), Executive Engineers (BS-18), Canal Collector (BS-18), Assistant Engineer (BS-17), Deputy Collector (BS-17) and Administrative Officer (BS-17) of Irrigation Department with the request that the certificate given below has been uploaded on official website of Irrigation Department (<http://irrigation.gkp.pk/>).

Dear Sir,

**TENTATIVE SENIORITY LISTS OF SUPERINTENDING ENGINEERS (BS-19), EXECUTIVE ENGINEERS (BS-18), CANAL COLLECTOR (BS-18), ASSISTANT ENGINEERS (BS-17), DEPUTY COLLECTOR (BS-17) AND ADMINISTRATIVE OFFICER (BS-17) OF IRRIGATION DEPARTMENT.**

Subject:

1. The Chief Engineer (North/South), Irrigation Department.
2. The Chief Engineer (Merged Areas), Irrigation Department.
3. The Director General, (Small Dams/ Jabba Dam), Irrigation Department.
4. All the Project Directors, Irrigation Department.

To

No. SO(E)/Im-2-1/2006/Seniority/Vol-VII  
Dated Peshawar the 20<sup>th</sup> January, 2021

GOVERNMENT OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT



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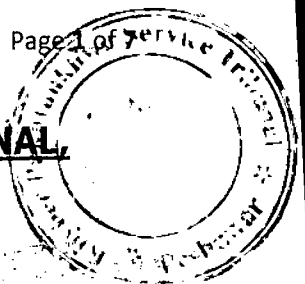
GOVERNMENT OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT  
(ESTABLISHMENT SECTION)

Dated Peshawar the 20th January, 2022

**TENTATIVE SENIORITY LIST OF ASSISTANT ENGINEER (BS-17) (B.TECH HONS), IRRIGATION DEPARTMENT KHYBER PAKHTUNKHWA.**

S.No.	Name of officer and Education Qualification	Date of birth with Domicile	Date of entry into Govt Service on regular basis.	First Regular Appointment to the Service/Cadre			Remarks
				Date	BPS	Method of recruitment	
1		2	3	4	5	6	7
1.	Mr. Aman Ullah, B. Tech (Hons) Degree	01.04.1962 Swat	04.08.1987	22.11.2012	17	By promotion	Working as XEN Tubewell (OPS)
2.	Mr. Niaz Badshah, B. Tech (Hons) Degree	30.01.1965 Lalddi Marwat	12.12.1990	22.11.2012	17	By promotion	Working as SDO Charsadda.
3.	Mr. Saifullah, B. Tech (Hons) Degree	09.04.1970 Bannu	24.03.1992	22.11.2012	17	By promotion	Working as D.D Small Dams (OPS)
4.	Mr. Muhammad Younas, B.Tech (Hons) Degree	02.04.1964 Malakand	01.11.1986	21.09.2017	17	By promotion	A.D RWCS, Peshawar.
5.	Mr. Jahan Zeb, B. Tech (Hons) Degree	05.02.1965 Swat	19.03.1992	21.09.2017	17	By promotion	Working as SDO Tube Well, Pabbi.
6.	Mr. Javed Ahmad, B. Tech (Hons) Degree	01.04.1965 Haripur	16.08.1992	21.09.2017	17	By promotion	Working as SDO Gohati, Swabi.
7.	Mr. Khurshid Ahmad, B. Tech (Hons) Degree	10.04.1973 Haripur	04.03.1996	31.08.2021	17	By promotion	Working as AD Small Dams Abbottabad.
8.	Muhammad Shoaib, B. Tech (Hons) Degree	01.01.1973 Haripur	04.03.1996	31.08.2021	17	By promotion	Working as SDO Haripur.

ATTESTED



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

**APPEAL NO. 7917 /2021**

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

8084  
Date: 21-12-2021

**..... APPELLANT**

**VERSUS**

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

**..... RESPONDENTS**

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

**RESPECTFULLY SHEWETH:**

**FACTS:**

**Brief facts giving rise to the present writ petition is as under:**

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

*Handwritten notes and signatures on the left margin:*  
7/12/2021  
Respectfully  
25/12

31.01.2022

Counsel for the appellant present. Preliminary arguments heard.

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

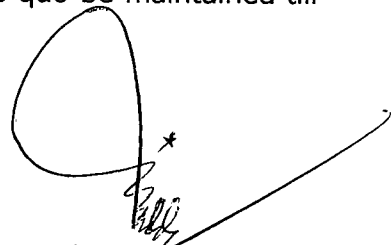
The appeal is admitted to regular hearing, subject to all just legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to respondents for submission of reply/comments. To come up for reply/comments on 10.02.2022 before S.B.

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

Appellant Deposited Security & Process Fee

04/02/22

Date of presentation of notification 11/2/22  
 Amount of Security Fee 800  
 Amount of Process Fee 10  
 Amount of Stamp Duty 4  
 Amount of Court Fee 14  
 Date of receipt of copy 11/2/22  
 Date of delivery of copy 11/2/22



(Mian Muhammad)  
Member(E)

10.02.2022

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

Certified to be true copy  
 EXAMINER  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar

Reader

**POWER OF ATTORNEY**

In the Court of Khyber Pakhtun Khwa Sesiwi Takmil Rishwa

Eng. Imtaz Khan

} For  
} Plaintiff  
} Appellant  
} Petitioner  
} Complainant

**VERSUS**

Grant of legal aid

} Defendant  
} Respondent ✓  
} Accused  
}

Appeal/Revision/Suit/Application/Petition/Case No. \_\_\_\_\_ of \_\_\_\_\_  
Fixed for \_\_\_\_\_

I/W, the undersigned, do hereby nominate and appoint

**ZARTAJ ANWAR & IMRAN KHAN ADVOCATES**, my true and lawful attorney, for me in my same and on my behalf to appear at \_\_\_\_\_ to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits. Compromises or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc, and to apply for and issue summons and other writs or subpoena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

**AND** to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

**AND** I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

**PROVIDED** always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

**IN WITNESS** whereof I/we have hereto signed at \_\_\_\_\_  
the \_\_\_\_\_ day to \_\_\_\_\_ the year \_\_\_\_\_  
Executant/Executants \_\_\_\_\_  
Accepted subject to the terms regarding fee \_\_\_\_\_

Imran Khan  
**IMRAN KHAN**  
Advocate High Court  
Mob: 0345-9090648

Zartaj Anwar  
**ZARTAJ ANWAR**  
Advocate High Courts  
ADVOCATES, LEGAL ADVISORS, SERVICE & LABOUR LAW CONSULTANT  
FR-3, Fourth Floor, Bilqar Plaza, Saddar Road, Peshawar Cantt  
Mobile-0331-9399185  
BC-10-9851  
CNIC: 17301-1610454-5  
Amanullah

**BEFORE THE HON'BLE SERVICE TRIBUNAL**  
**PESHAWAR**

Service Appeal No.7917/2021

Engr. Imtiaz Khan

.....Appellant

**VERSUS**

Chief Secretary to Government of KPK & Others


.....Respondents


**INDEX**

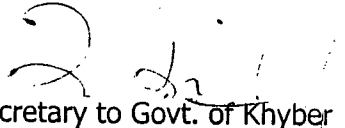
<b>S#</b>	<b>Description of Documents</b>	<b>Pages</b>
1.	Parawise Comments	1-2
2.	Affidavit	3
3.	Annexure I	4-10
4.	Annexure II	11-15
5.	Annexure III	16-34


6. **Correct.** The Service Rules of Irrigation Department were amended and 12% share quota for Sub Engineers having B-Tech Honor Degree and 8% quota for Diploma Holders Sub Engineers was reserved on 25.06.2012 (Annex-III).
7. **Incorrect.** As per amended service rules of Irrigation Department dated 24.08.2021, the B-Tech Degree Holder and Diploma Holder SDOs are eligible to be posted against BS-18 post.
8. **Incorrect.** Para-7 above is reiterated.
9. **Incorrect.** The Civil Servants are governed under Civil Servant Act, 1973 and not under PEC Act, 1976.
10. **Incorrect.** Para-9 above is reiterated.
11. **Incorrect.** The Hon'ble Supreme Court of Pakistan in its decision in CP No. 78-K/2015 announced on 03.10.2018 has allowed 13% quota for B-Tech Degree Holder and 7% for Diploma Holder SDOs for promotion to the post of BS-18 (Annex-IV).
12. **Incorrect.** Para-7 above is reiterated.
13. **Incorrect.** Para-9 above is reiterated.
14. **Incorrect.** Para-9 above is reiterated.
15. **Incorrect.** Para-9 above is reiterated.
16. **Incorrect.** Para-9 above is reiterated.
17. **Pertains to record.**
18. **Incorrect.** Para-9 above is reiterated.
19. **Incorrect.** Hence, denied.
20. That any other grounds will be raised at the time of arguments with the prior permission of this Hon'ble Service Tribunal.

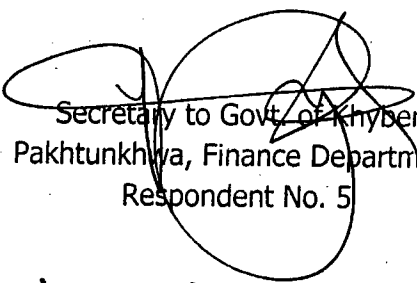
It is, therefore requested that the status quo may be lifted and service appeal being devoid of merits may be dismissed with cost, please.

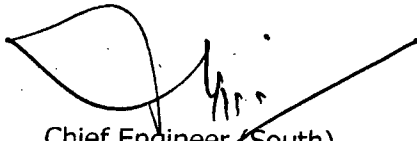
  
Chief Secretary, Khyber Pakhtunkhwa  
Respondent No. 01

  
Secretary to Govt. of Khyber  
Pakhtunkhwa, Irrigation Department  
Respondent No. 2

  
Secretary to Govt. of Khyber  
Pakhtunkhwa, Establishment  
Department Respondent No. 3

  
Secretary to Govt. of Khyber  
Pakhtunkhwa, Law, Parliamentary  
Affairs & Human Rights Department  
Respondent No. 4

  
Secretary to Govt. of Khyber  
Pakhtunkhwa, Finance Department  
Respondent No. 5

  
Chief Engineer (South)  
Irrigation Department  
Respondent No. 6



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**  
**SERVICE APPEAL NO.7917/2021**

**Engr. Imtiaz Khan**

**Petitioners**

**VERSUS**

**Govt. of Khyber Pakhtunkhwa & Others**

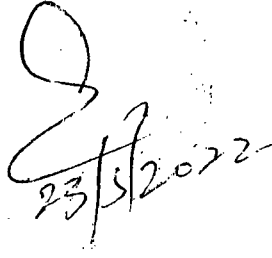
**Respondents**

**AFFIDAVIT**

I, Section Officer (Litigation), Irrigation Department on behalf of respondents (No 01 to 06) do hereby affirm and declare on oath that the contents of Para-wise comments are true and correct to the best of my knowledge and belief that nothing has been kept concealed from this Khyber Pakhtunkhwa Service Tribunal, Peshawar.

**Deponent**

  
Section Officer (Litigation)  
Irrigation Department

  
23/5/2022



**GOVERNMENT OF THE KHYBER PAKHTUNKHWA  
LAW, PARLIAMENTARY AFFAIRS AND  
HUMAN RIGHTS DEPARTMENT.**

158/188

S.O. Esstt: (P&D) No. ALD-III/4(7)71/ 26807-37  
Diary No. 151 Dated: 08.09.2016.  
To Date: 18/9/2016

Se: (P&D)  
Dir: 5493  
Date: 22-09-2016

The Secretary,  
Government of the Khyber Pakhtunkhwa,  
Establishment Department.

**SUBJECT: DELETION OF LAW DEPARTMENT FROM SSRC.**

Dear Sir,

I am directed to refer to the subject cited above and to state that Law Department has been declared as member of the SSRC through Establishment Department's Notification No. SOR-VI(E&AD)2-69/2008/Vol-I, dated: 04.02.2015. However, under sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, it is the mandate of the Administrative Department, in consultation with the Establishment Department and the Finance Department to specify the service rules for its employees, therefore, Law Department is not the member of the said meeting.

2. It is, further directed to inform you that Law Department under rule 12 of the Khyber Pakhtunkhwa Government Rules of Business, 1985 is already mandated for vetting and drafting of the rules, therefore, the Establishment Department while keeping in view the aforesaid situation may revise its Notification ibid by excluding the Law Department from the SSRC and it is further to inform you that, in future Representative of Law Department will not attend the said meeting.

Yours faithfully,

(FASEEH ULLAH)  
ASSISTANT LEGAL DRAFTER-III  
(LEGISLATION WING)

ENBT. No. & Date (As Above).

- Copy is forwarded for information to:
1. PS to all Administrative Secretaries of the Government of the Khyber Pakhtunkhwa.
  2. PS to Secretary to Government of the Khyber Pakhtunkhwa Law Department.
  3. PA to Legal Drafter, Law Department.

*[Signature]*  
Section Officer (Litigation),  
Irrigation Department, Peshawar.

*[Signature]*  
ASSISTANT LEGAL DRAFTER-III

H. note

*[Signature]*

D.S. (CA)

*[Signature]*  
9/9/11

*[Signature]*  
SO(E)



EXTRAORDINARY  
GOVERNMENT



59  
REGISTERED NO. P.III  
GAZETTE

## KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, SATURDAY, 2ND APRIL, 2011.

GOVERNMENT KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT,

### NOTIFICATION

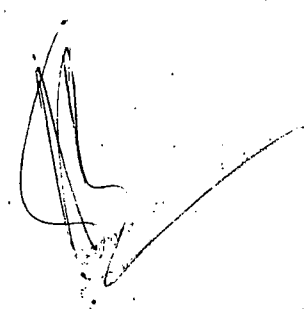
Dated Peshawar the 17<sup>th</sup> February, 2011

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

Secretary to Government of the Khyber Pakhtunkhwa Province  
Irrigation Department.

688

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



## APPENDIX

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

A. H. B. Bad  
10/04/2011

*[Handwritten signature]*

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

*Attested  
Accountant*

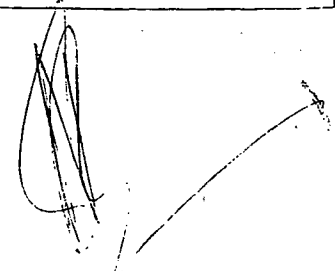
## KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 2ND APRIL, 2011.

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

**KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 2ND APRIL, 2011. 692**

15	Data Entry Operator/Key Punch Operator (BPS-12).	Intermediate with one year Diploma in computer science from a recognize institute with speed of 10000 key depression per hour.	18 to 30 years	By initial recruitment.
<b>PART-IV REVENUE ESTABLISHMENT</b>				
16	Canal Collector (BPS-18)			By promotion, on the basis of seniority cum fitness, from amongst the Deputy Collectors and Assistant Land Reclamation Officers with five years service as such.
17	Deputy Collector / Assistant Land Reclamation officer (BPS-17)			By promotion, on the basis of seniority-cum-fitness, from amongst Zilladars with atleast five years service as such.
18	Zilladar (BPS-14)	Bachelor's degree or equivalent qualification from a recognized University.	21 to 30 years	(a) Seventy percent by initial recruitment; and (b) thirty percent by promotion, on the basis of seniority-cum-fitness, from amongst the Head Vernacular Clerks with six years experience and Vernacular Clerk/Revenue Inspector with ten years service and having passed Secondary School Certificate Examination from recognized Board.  Note: Promotion of Head Vernacular Clerks (BPS-7) to the post of Zilladar (BPS-14) shall be considered only in the circle where no post of Head Vernacular Clerk (BPS-10) exist
19	Revenue Inspector (BPS-10)	Intermediate or equivalent qualification from a recognized Board.	18 to 30 years	By initial recruitment.
20	Head Vernacular Clerk (BPS-10)			By promotion, on the basis of seniority-cum-fitness, from amongst the Vernacular clerks in the circle where the vacancies occur.
21	Vernacular Clerk (BPS-7)	Secondary School Certificate, from a recognized Board.		By promotion, on the basis of seniority-cum-fitness, from amongst the Patwaris having five years service as such in the Circle where the vacancies occur.
22	Patwari (BPS-5)	Secondary School Certificate from a recognized Board with one year Patwar training in Irrigation Department and have passed Irrigation Patwar Examination.	18 to 35 years	By initial recruitment
<b>PART-V DRAWING ESTABLISHMENT.</b>				
23	Chief Draftsman (BPS-17)			By promotion, on the basis of seniority-cum-fitness, from amongst the Circle Head Draftsman with three years service as such.

*AH Zaidi*  
*Karim Jang*



24	Circle Head Draftsman (BPS-16) (BPS-16)			By promotion, on the basis of seniority-cum-fitness, from amongst the Divisional Head Draftsman with three years service as such.
25	Divisional Head Draftsman (BPS-13)			By promotion, on the basis of seniority-cum-fitness, from amongst the Draftsman, who have passed the prescribed departmental examination for appointment as Head Draftsman with three years service as such.
26	Draftsman (BPS-10)	(a). Secondary School Certificate from a recognized Board; and  (b). Two years Certificate course in Civil Draftsmanship from a recognized institute/Board of Technical Education.	18 to 30 years.	a. Fifty percent by initial recruitment;  b. twenty five percent by promotion, on the basis of seniority-cum-fitness; from amongst the Tracers having Certificate of Civil Draftsman course of two years duration from a recognized Board of Technical Education with three years service as such; and  c. twenty five percent by promotion, on the basis of seniority-cum-fitness, from amongst the Tracers who have qualified the prescribed Departmental Examination of Draftsman and having three years service as such.  Note: - If no suitable candidate is available for promotion against the quota at (b) then the vacancy shall be filled-in by the way as prescribed at (c) and Vice Versa.
27	Tracer (BPS-5)	(a) Secondary School Certificate from recognized Board; and (b) Tracer Course of at least six months duration from a recognized Institute or Board of Technical Education.	18 to 30 years	By Initial Recruitment.

EXTRAORDINARY  
GOVERNMENT



REGISTERED NO. PIII  
GAZETTE

## KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, MONDAY, 25TH JUNE, 2012.

### GOVERNMENT OF KHYBER PAKHTUNKHWA, IRRIGATION DEPARTMENT.

#### NOTIFICATION

Dated: 25<sup>th</sup> June, 2012.

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

#### AMENDMENTS

In the Appendix.

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

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

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

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

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

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

Section Officer (Irrigation)  
Irrigation Department Peshawar

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

- ii against serial No. 5, in column No. 5, for the existing entries in clause (b), the following shall be substituted, namely:
- (b) fifteen percent by promotion, on the basis of seniority-cum-fitness, from amongst the Canal Inspectors, Work Takers, Gauge Readers, Surveyors, having Diploma of Associate Engineering in Civil, Mechanical, Electrical or Auto Technology from a recognized Board of Technical Education, having passed the departmental Grade-B and Grade-A examination, with at-least seven years service as such; and
- (c) five percent by promotion, on the basis of seniority-cum-fitness, from amongst the Canal Inspectors, Work Takers, Work Munshi, Surveyors, and work superintendent, having passed the departmental Grade-B examination with at-least ten years service as such;
- iii. Against serial No. 7, in column No. 5, for the words "three years" the words "one year" shall be substituted;
- iv. against serial No. 9, in column No. 3, for the existing entry the following shall be substituted, namely
- a. Bachelor Degree or equivalent qualification from a recognized University; and
- b. A speed of 80 words per minute in short hand in English and 40 words per minute in English typing; and
- v. against serial No. 13, in column No. 5, in clause (b), the words and figures "and are under 45 years of age" shall be deleted

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT.





**GOVERNMENT OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT**

Dated Peshawar the 22<sup>nd</sup> December, 2017

**NOTIFICATION**

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

**AMENDMENTS**

In the appendix:-


- (i). against serial No. 1 to 27, in Column No. 2, the basic pay scales mentioned after nomenclature of post, shall respectively be deleted.
- (ii). against serial No. 1, in column No. 2, after the word "University", the words "and have successfully completed the Senior Management Course" shall be added.
- (iii). against serial No. 16, in column No. 5, the words "and Assistant Land Reclamation Officers" shall be deleted; and
- (iv). against serial No. 17, in column No. 2, the oblique and words "/Assistant Land Reclamation Officer" shall be deleted.

Secretary to Govt. of Khyber Pakhtunkhwa  
Irrigation Department

**Ends: To and date even**

Copy of the above is forwarded:-

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

  
(FAZAL ELAHI)  
Section Officer (Est)

Chief Engineer  
(Security)

405  
3917  
SK  
195  
29/12/17

28/12  
29/12/17

29/12



GOVERNMENT OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT

NOTIFICATION

Peshawar, dated the 12<sup>th</sup> September, 2019

NOTIFICATION

No. SO(E)/IRRI/23-5/73/Vol-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 Department and the Finance Department, hereby directs that in this Department's Notification No. SO(E)IRR/23-5/73/ dated 17.02.2011, the following further amendments shall be made, namely:-

AMENDMENTS

In the Appendix:-

- (i) against Serial No. 2, in Column No. 5, after the words "Deputy Directors" the slash and words "/Technical Officers" shall be inserted; and
- (ii) against Serial No. 3, in Column No. 2, after the words "Deputy Director" the slash and words "/Technical Officer" shall be added.

Secretary to Govt. of Khyber Pakhtunkhwa  
Irrigation Department

Endst: No and date even

Copy of the above is forwarded:-

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

(ABDUL RAUF)  
Section Officer (Estt)



GOVERNMENT OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT

Dated Peshawar the 10<sup>th</sup> July, 2020

**NOTIFICATION**

**No. SO(E)/IRRI/23-5/73/Vol-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 Department and Finance Department, hereby notifies that in this Department's Notifications No. SO(E)IRR/23-5/73 dated 17.02.2011 amended vide Notification No. SO(E)Ir/23-5/2010-11 dated 25.06.2012, the following further amendments shall be made namely:-

**AMENDMENTS**

In the Appendix:-

- (i) Against Sr. No. 04, in Column No. 5, in the Note, in clauses (b), and (c), after the words "as Sub Engineer", the words "or from the date of acquiring degree whichever is later" shall be inserted.

Secretary to Govt. of Khyber Pakhtunkhwa  
Irrigation Department

**Ends: No and date even**

Copy of the above is forwarded:-

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

(ABDUL RAUF)  
Section Officer (Estt)

GOVERNMENT OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT CIVIL SECRETARIAT.

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

**Present:**  
Mr. Justice Gulzar Ahmed  
Mr. Justice Qazi Faez Isa  
Mr. Justice Sardar Tariq Masood

**C.P.No.78-K of 2015**  
[On appeal against order dated 21.11.2014  
passed by the Sindh Service Tribunal,  
Karachi, in Appeal No.195 of 2014]

Maula Bux Shaikh & others **Petitioner(s)**

**VERSUS**

Chief Minister Sindh & others **Respondent(s)**

For Petitioner No.1 : Mr. Salah-ud-Din Ahmed, ASC  
For Petitioner Nos.2-3 : Mr. Rasheed A Rizvi, Sr. ASC  
For Respondent Nos.1-4 : Mr. Sabtain Mehmood, Asstt:A.G. Sindh  
For Respondent No.5 : Mr. Ghulam Haider Shaikh, ASC  
For Respondent Nos.6-7 & 9 : Nemo  
For Respondent Nos.8 & 12 : Dr. Muhammad Farough Naseem, ASC  
For Rspndt Nos.10-11, 13-17 : Mr. M. Aqil Awan, Sr. ASC  
Date of Hearing : 24.04.2018

**JUDGMENT**

**GULZAR AHMED, J.**— Maula 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 circumstances 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 Works and Services Department, Government of Sindh, Karachi. He was

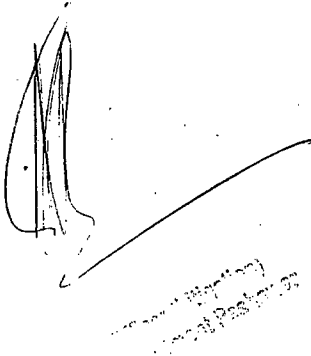
promoted as Assistant Engineer BS-17 in the year 1997 and since then has been serving in such post in his said department. The case of the Petitioner is that he is a qualified engineer holding degree of Bachelor of Engineering. He has unblemished service record and is eligible for promotion to the post 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 & Coordination Department, Government of Sindh, and in partial modification of this Department's Notification No. EI(C&W)1-34/81-84(B6) 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 & Services Department, Government of Sindh mentioned in column-2 of the table below:-



Handwritten signature and stamp, likely of the official responsible for the notification.

TABLE

Name of the post with BS	METHOD OF APPOINTMENT	
	1	2
Executive Engineer (Civil/Mechanical & Electrical) (BPS-18)		<p>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 technology.</p> <p>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</p> <p>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.</p>

QAZI SHAHID PERVEZ  
SECRETARY TO GOVT. OF SINDH

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 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.

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;

(ii) organizing, managing and conducting the teaching and training in engineering universities, colleges, institutions, Government colleges of technology, polytechnic institutions and technical training institutions;

(iii) 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

(iv) 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;"

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 or title any words or letters representing that he is so registered, irrespective of whether any person is actually deceived by such pretence or representation or not, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

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

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

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

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

12. The main gist of the arguments of the learned ASC appearing for the petitioners is that the work of 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/S FEDERATION OF PAKISTAN THROUGH SECRETARY MINISTRY OF WATER & POWER, GOVERNMENT OF PAKISTAN, ISLAMABAD & 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/S GOVERNMENT OF PAKISTAN, THROUGH SECRETARY/ CHAIRMAN, MINISTRY OF RAILWAYS, AND 33 OTHERS (PIJ 1992 Karachi 1) = (1992 PLC(CS) 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 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/S THE SECRETARY, KASHMIR AFFAIRS, AND NORTHERN AFFAIRS DIVISION, ISLAMABAD & 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 B.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 Mian, J.) and Saïduzzaman 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;
- (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 1<sup>st</sup> 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 1<sup>st</sup> 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 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 withdrawal 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 its 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/S PROVINCE OF SINDH THROUGH CHIEF SECRETARY, SINDH, KARACHI & 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, 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 & 2 OTHERS V/S SYED ANWAR IOBAL & 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. In 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 15<sup>th</sup> 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 fulfill 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 ultravires. No such finding can justifiably be recorded in that as it has been laid down quite emphatically 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 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 & 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 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.

JUDGE

Bench IV  
 Islamabad  
 Islamabad  
 Islamabad

JUDGE

Announced in open Court on 03.10.2018