

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR

In Resp: of Service Appeal No. \_\_\_\_\_/2022

Engr. Imtiaz .....Appellant

V/S

Chief Secretary Khyber Pakhtunkhwa & others  
..... Respondents

Reply of contesting respondent  
NiazBadshah sub-division officer  
irrigation,charsadda who has been  
impleaded by this Honourable tribunal vide  
order sheet dated: 22/4/2022.

*Respectfully Sheweth,*

Respondent humbly submits as under:

Preliminary Objections

1. That the instant service appeal is barred by Khyber Pakhtunkhwa Service Tribunal 1974 section 4(b) (i). Thus this Honourable tribunal has no jurisdiction to take the cognizance of this service appeal of the applicant.
2. That the appellant has no cause of action and locus standi.

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3. That no fundamental right of the appellant has ever been slightly violated by the respondent. Nor the appeal relates to the term and conditions of the services of the appellant.
4. That the appellant term and conditions are intact none of that are even not in danger but he is unnecessarily dragging the respondents for ulterior motives and has filed this service appeal just to grind his own as per his wish list.
5. That there is a question of eligibility, promotion or holding of a post in the Irrigation Department is involved, in this service appeal for which the service tribunal is not an appropriate forum, as it is a policy matter. It is further added that no court interferes in the policy matters as per the constitution of the Islamic Republic of Pakistan 1973.
6. That the service appeal is bad for misjoinder and non-joinder of necessary parties.
7. That the service appeal is not maintainable in the eye of law.
8. That the appellant has not come to the august Tribunal with clean hands and has concealed material, as well as legal facts.
9. That matter involves material facts to be determined by the relevant forum as per law of the state.
10. That according to the verdicts of the Apex Supreme Court of Pakistan and Higher Education Commission of Pakistan Islamabad B-Tech (Hons) degrees in the relevant fields are at par with the BE / BSc Engg. For the purpose of pay grade, promotion and appointment.
11. That in the instant service appeal, question of delegated legislation has been challenged by the appellant, which is the sole prerogatives and legitimate legislative powers of the Govt. Departments / the official departments to amend the service rules as enshrined under the Article 240, 241 of the Islamic Republic of Pakistan 1973, read with the civil servant Act 1973 of Pakistan and appointment promotion rule of KPK 1989. Hence delegated legislation is not challengeable in the worthy service tribunal.
12. That once an employee acquires the minimum qualification for the post then he shall have to be considered in that line of category for promotion ladder of his own cadre and filed services.
13. That the appellant himself is not a professional engineer as per Pakistan Engineering Council Acts 1976, Section: 2 Subsection (Xiii) because he has not passed that examination and this is why he has not produced the certificate to the honorable tribunal.
14. That the post of Executive Engineer is not a post of Professional Engineer in Irrigation Department in fields but it is a managerial administrative and financial control post beside the execution and supervision of routine works in the hierarchy of executor and designer for top to bottom which is legally permissible.
15. That promotion is not a legal right but a privilege and a public servant can't claim that privileges as a right through court of laws.

16. That B-Tech (Hons) degree were introduced under an international treaty known as Sydney Accord, and the state of Pakistan is bound by the international and national law to provide all perk and privileges, as recognized internationally, mentioned the accord.

**ON FACTS**

1. That para no.1 has no concern with the replying impleaded respondent, however the same functions are carried out by the replying contesting respondent to the entire satisfaction of his superior since appointment date 12-12-1990.
2. That para no.2 is admitted to the extent that the appellant may be a Civil Engineer, but not a Professional Engineer. While Mechanical Engineer has no concern with the Jobs of Civil Engineers. Mechanical Engineer has no relevancy with the profession of Civil Engineers because both the disciplines of engineering are all together diverse and distinctive at 180 degree, except a compulsory subject Islamiyat and Pak Study is common in their curriculum. While the impleaded responded possess B-Tech (Honor) in Civil Engineering and technology discipline, from a recognized university duly attested by the Higher Education Commission Islamabad, Pakistan (**Copies are annexed as a annexes A and B**) and have served more than the required service length, besides already passing of all departmental professional engineering and revenue examinations under the prescribed rules. It is further added that the job of Executive Engineer is not a post of professional Engineer in Irrigation department in fields, but it is a managerial administrative and financial control post besides the execution and supervision of routine works in the hierarchy of executor and designer from top to bottom. Execution and supervision of works is the sole job of B-Tech (Hons) degree holders as explained itself by Pakistan Engineering Council Engr. Dr. Nasir Mehmood Khan in writ petition No 2609/2020 of Islamabad High Court

**Titled Muhammad Khurshheed VS Federation of Pakistan and PEC etc, in paraH. which is reproduced as under:**

*“Insofar as equivalence of B-Tech (Hons) and B.E/B.Sc (Engineering) is concerned, please note that both disciplines are distinct in their nature as well as require different set of preparatory course (i.e.F.Sc and DAE). Main stream of DAEs being the real seedling for Technology Programs and thus should be the eligibility for admission. Whereas, F.Sc/A-Levels are more focused on basic science (i.e Physics, Math and Chemistry), Which is crucial/requisite for Engineering Programs. In addition, please note that B-Tech (Hons) and B.E/B.Sc (Engineering) degrees prepares aspirants for two distinguished job; the former focused on implementation while latter emphasis on the research and design. Moreover, engineers generally operate in conceptual design,*

*innovate solution and product development while technologists generally work in applied nature of jobs like testing, construction, field work, operation, etc"*

**Copy of the write petition at Annex C.**

3. The para-3 is incorrect hence denied, it is clarified that as per National Technology Council Pakistan and Higher Education Commission Act 2002, the B-Tech (Hons) Degree is at par with the B-F/ B.ScEngg, for the propose of pay grad promotion and appointment. Notification of Higher Education Islamabad as "**Annex D**". It was also recognized by the Apex Supreme Court of Pakistan in PLD 1995 page 701 S.C, SCMR 2015 page 269 & P.H.C Abtabbad Bench in W.P.No. 328/2013 St: 325 of 2013, which are referred for reliance. That the quota of 12 % created for B-Tech (Honn) degree holders is very less and needs to be proportioned as per the work load in the Irrigation Department i.e designing and execution department. Neither the quota created for B-Tech (Honn) Holder is illegal, unconditional, nor it is volatile of the Pakistan Engineering Council Act 1976. neither the post of Executive engineer in the Irrigation Department in field is as a post of professional Engineer as defined in the Pakistan Engineering Council Act 1976, because B-Tech (Honn) Degree holders have got recognition for the post of Assistant Engineer BPS-17 in the Irrigation Department. Especially the job of Assistant Engineer BPS-17 is identical with the job of executive engineer BPS-18 except some managerial duties.
4. That para No.4 is denied to the hilt, because according to the original APR rules 1979, every Assistant Engineer BPS-17 in Irrigation Department was an eligible officer for promotion for the post of Executive Engineer BPS-18. But to deprive them from the opportunity to the post of Executive Engineer BPS-18 was illegally emended with mala fides intentions by a group of engineers, taking the advantage of their slots and being were judges in their own cause. Thus the word "**possession of B.E/BSc Mechanical Engineering form a recognized University was incorporated**" in the core basic rule. It is astonishing that Mechanical Engineers are holding highest lucrative slots of Civil Engineers in field in the Irrigation Department for which they do not have even the basic Alpha & Beta of Civil Engineering. While B-Tech (Honn) degree holders have studied the same curriculum and same subjects of engineering at graduation level for more crated hours then the B.E / BSc Engineering which is explained form their curriculum. Copy of the compatibility of the both the disciplines according the University of Engineering and Technology Lahore is an "**Annex F**". Moreover it is also submitted that D.A.E. is equal to FScPre-Engineering in all respect, not in all Pakistan but in the entire world.
5. That it has no relevance with the replying responded but may be responded reverent quarters.

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6. That the appellant has no legal rights to file the service appeal against the delegated legislation nor the rules are termed against the law neither term and conditions of his services are violated or altered. The appellant is making hill of knoll.

### On Grounds

1. That it is incorrect, hence denied, rather the committee has given favor to the B.E/BSc engineering degree holders registered with P.E.C because they have to only design, the execution of work is the job of B-Tech (Hons) degree holder.
2. That is incorrect hence denied, the appellant as well as his cedar and Mechanical Engineers are getting undue share of promotion. They were exploiting the rights executor of Civil Engineering works i.e B-Tech (Hons) degree holders since the inception of this degree. There is no discrimination either according to the law or The constitution of Islamic Republic of Pakistan 1973 and justices.
3. That ground 3 is denied vehemently. The Executive Engineer post in Irrigation Department is of a professional Engineer. In this Department when a Mechanical Engineer or of other Engineering disciplines, Engineers can execute supervise, the civil works at the dint of their Registration only with the Pakistan Engineering Council Islamabad. How it is difficult for B-Tech (Hons) degree holder in civil Engineering Technology, who had studied all that subjects, which are in the course of B.E/BSc civil Engineering. Hence the appellant admits that the post of Executive Engineering, is not of a professional Engineer. But is of managerial nature and an experienced B-Tech (Hons) degree holder could serve the department to supervise execute the civil works in every good and appropriate way then a Mechanical Engineer being registered only with Pakistan Engineering Council.
4. That it is incorrect and denied in all aspect, In fact the qualification suitability is the sole right of the service rules committees, and it has considered, both the disciplines, i.e B.E/BSc Engineering and B-Tech (Hons) being identical and compatible with each other Hence no element of qualification aquiline ignorance exists while making delegated legislation and in that capacity the rules framed is not challengeable nor is volitive of any right. The matter is much more explained by the H.E.C and accreditation committee that B-Tech (Hons) is at par with B.E/BSc engineering for the purpose of pay grade, promotion & recruitment vide notification dated 03-12-2021 copy already attached as "Annexure D".
5. That it has no binding force it is only a recommendation and once the rules are framed according to the law. It is not challengeable before the honorable Service Tribunal as it is a matter of policy even a single element of the appellant legal right is not ignored. While legislating the rules according to the law by the competent forum.

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6. That ground 6 is totally against the law & circumstances. It is a past & closed transaction once the issue is finalized by the Apex Supreme Court of Pakistan in case titled the chief Secretary of KPK etc v/s, Mohammad Javed etc. 2015 SCMR page 269 in which the impleaded respondent was also an appellant before the Supreme Court of Pakistan. The review against the decision of the Supreme Court was dismissed also. Copies are annexed as "**Annexure E & F**".

The proposition of Medical Profession i.e Doctors and Nurses cannot be analogized with the profession of an Engineer because in that profession there is no logical relevance either of curriculums & vicissitude, here compatibility of homogeneity is of a warrior who fight for his cause how high or low he is in rank and position. In the field of Engineering everyone has to work in the accomplishment of their project as per the drawings, design and specification. This is why that the both two disciplines i.e B.E /BSc Engineering & B-Tech (Hons) have almost identical curriculum in every aspect. The accreditation committee and the Supreme Court of Pakistan as well as by other Court has considered as at par with each other.

7. That ground 7 is incorrect baseless and illogical. The secretary Irrigation and other standing service rule committee has acted in accordance with the law keeping in view the courses studied by the Engineers and B-Tech (Hons) degree holders. the superior judiciary as well as in all the sister departments not only in KPK but in the entire Pakistan they runs parallel being the same nature of job of both the cadres.

8. That ground 8 prove the high handedness of the Engineers Mafia, to approach the chief Secretary of KPK in this regard through an ex-president of Supreme Court Bar Association while on ground no violation has ever been made an posting promotion of other Engineering cadre employs by the standing services rules committee of Irrigation department the appellant himself has not produced iota of evidence of its violation or proof of being a professional supervisor.

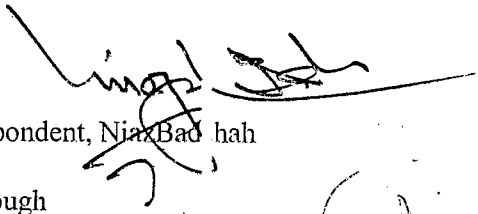
9. That is incorrect to say, that Pakistan engineering council is a sole authority to decide certain qualification for a post in works department. So far as engagement of professional Engineers their services are hired in the capacity of consultants to work with either cadre. In this regards the matter has already been resolved by the Supreme Court of Pakistan reported in PLD 1995 Page 701 which annexed as "**Annexure G**". It is further added the under delegated legislation standing service rules committee has to decide the qualification of eligibility to hold a post. The respondents are responsible to the Government of KPK not to the Pakistan Engineering Council. How come a Mechanical Engineer is eligible for the post of Executive Engineer of Irrigation division and B-Tech (Hons) Engineering technologist in civil is not qualified as such. It means sighting of wood for trees.

10. That ground 10 is also denied. Legislation cannot be made according to the wishes of the appellant. The state of Pakistan hires the services of Professional Engineers, subject to the demand & nature of job. The appellant cadre engineers having no such professional qualification and has also been hired in the services of professional engineers in heavy project.
11. That ground 11 is a misinterpretation of the judgment of Supreme Court of Pakistan rendered in C.P. No 78 K of 2015. In fact in this case the appeal of the appellant was dismissed by the august Supreme Court of Pakistan and has kept intact the quote which was reserved for D.A.E / B-Tech (Hons) and the same is still in practice in the province of Sind, Punjab and certain department of KPK. Once the apex Supreme Court of Pakistan did not grant a relief to an Engineer having B.E/B.Sc. Engineers registered with P.E.C Pakistan.. A judgment has to be executed and read as a whole, not partially.
12. That it is denied vehemently if anyone is aggrieved from any posting he may challenge that according to the lex fori of the state. The appellant when he was working under an Electronic Engineer, for which there is no post in the Irrigation department. Why he had not challenged that, it means that engineers mafia believe in accreditation only and P.E.C registration has been made by then the criteria for the job of the exudative Engineers on accreditator and P.E.C Registries irrespective of his compatibility with the jobs.
13. That it is not relevant here nor the state has acted against its law.
14. That as explained above partial execution and interpretation according to one wish list is not acceptable in eyes of laws nor the state of Pakistan permitted them to do so.
15. That it is also incorrect and is denied. Not a single provision of the P.E.C Act has been violated. The P.E.C relates to Engineers, personal business. Every public servant is bound by the law in vogue in the department. Each and every department has the right to facilitate its employs and fix criteria for a post. This right has been granted to the public Work Departments under Article: 240, 241 of the constitution of the Islamic republic of Pakistan 1973, Pakistan civil Servant Act 1973, Section 26 read with appointment, promotion rules in 1989 KPK.
16. That it is regretted and denied. The state of Pakistan and its federation units knows better public interest at large & doing it as per Law. Mis interpretation without reference to the contexts will give way to one according to his wishes to articulate.
17. That it has not relevance with the case, hence needs no reply.
18. That it has no relevance with the instant case, so far as concerned to (KPAGE) it is biased of the B-Tech (Hons) Engineering Technologists. The organization has vested interest and ulterior motive. It is a war of have and have not the P.E.C Engineers had done huge exploitation, of the B-Tech (Hons) degree holders cadre and still it is adamant to illegal captures the jobs and rights of qualified B-Tech (Hons) Engineering Technologist, being equipped with new trends of Science and Technology.

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19. That it is also dined vehemently, influential Engineers and their Mafia wishes to deprive eligible professional personals from their due rights. They are in fact guilty of victimization and grabbing the rights of other cadr just at the dint of their position. and slots in the department.
20. It is legal and needs no comments.

It is there for prayed that the appeal may graciously dismissed with cost.



Respondent, NiazBad hah

Through

Mian Afrasiab Gul Kakakhel

AHC

MAK

Law offices

Liberty Mall, University Road, Peshawar

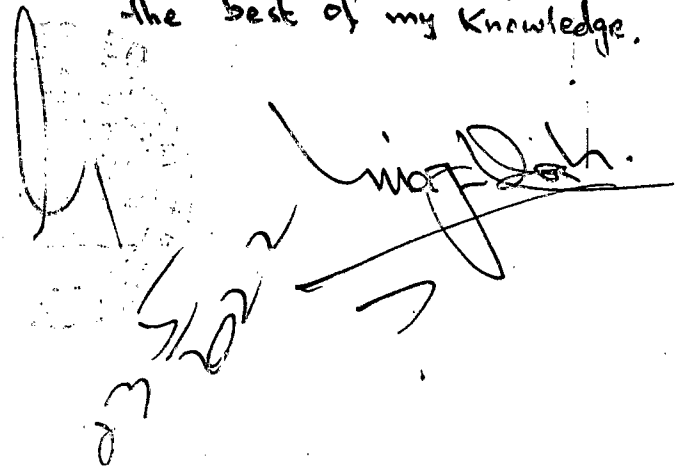
Mobile: 0333 9215562

Email: afrasy: ab.advocate@gmail.com

Dated: 15/05/2022

AFFIDAVIT:

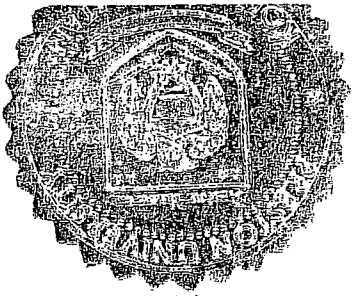
It is stated on oath that contents of the reply are correct and nothing has been concealed, to the best of my knowledge.





Registrar  
Amir Lod

Chancellor  
*[Signature]*



Mian Akbar Gul  
Kakakel  
Advocate  
HIGH COURT PESH.

In testimony whereof, this degree has been issued under authorized signatures and official seal of the University, on this fifteenth day of August 2011.

Bachelor of Technology (Honours)  
in Civil Technology

has satisfactorily and completely fulfilled all requirements for the prescribed studies and the examinations of the University, and has, therefore, been admitted to the degree of

Niaz Bad Shah  
this is to certify that

Kohat - Pakistan

Peshawar University

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Annex A  
*[Signature]*

*[Signature]*

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**PRESTON UNIVERSITY**



13

**OFFICIAL TRANSCRIPT**

Office of the Registrar:  
Old Govt Degree College No 2, KDA, Kohat - Pakistan  
Tel: (+92 922) 515081-4

471421

Study Campus: PESHAWAR, PAKISTAN

Name:	Niaz Bad Shah	Registration No:	17M2-209002
Program:	B-Tech (Hons)	Date of Birth:	January 30, 1965
Specialization:	Civil	Date of Registration:	August 03, 2009
Date of Issue:	August 02, 2011	Date of Completion:	July 30, 2011

	Credit Hours	Marks Obt	Grade	Remarks
<b>First Semester</b>				
Industrial Training	15	92	A	
	Total	92	Sem GPA	4.0
<b>Second Semester</b>				
Industrial Training	15	93	A	
	Total	93	Sem GPA	4.0
<b>Third Semester</b>				
Industrial Training	15	94	A	
	Total	94	Sem GPA	4.0
<b>Fourth Semester</b>				
Applied Mathematics-I	3	81	B	
Water Supply and Sanitary Engineering	3	80	B	
Design of Concrete Structures	3	75	C	
Soil Mechanics	3	80	B	
	Total	316	Sem GPA	2.8
<b>Fifth Semester</b>				
Engineering Management	3	95	A	
Steel Structures	3	76	C	
Foundation Engineering	3	90	A	
Hydrology	3	85	B	
	Total	346	Sem GPA	3.3
<b>Sixth Semester</b>				
Project Management	3	86	B	
Tunnel Engineering	3	84	B	
Road Engineering	3	93	A	
Project	3	85	B	
	Total	348	Sem GPA	3.3
	Grand Total	1289	Cum GPA	3.3

Number of Courses Passed 12  
 Number of Courses Exempted 0  
 Number of Courses Required for Degree 12  
 - Program Completed in Spring 2011 - Qualified for Degree

This document is not valid without signature and official seal.  
 The University reserves the right to correct any error or omission made inadvertently in the Transcript

*Aw B. Lock*  
 Registrar

Degree Requirement: Bachelors Program: Cumulative GPA= 2.0 Masters Program : Cumulative GPA= 2.2  
 Grade: A = 90-100%, B = 80-89%, C = 70-79%, D = 60-69%, F(Fail) = 0-59% T = Transfer Credit Granted. Each subject carries maximum 100 marks  
 Grade Points: A = 4.0, B = 3.0, C = 2.0, D = 1.0, F = 0.0

For verification of authenticity of Degree Transcripts, employers / relevant agencies are requested to contact  
 Assistant Registrar (Verification): 85, Street S. H-8/1, Islamabad, Pakistan Tel: +92-51-4230697 Fax: +92-51-4230698

Prepared by: *[Signature]*  
 D.P.O.  
 Checked by: *[Signature]*  
 Asstt. Registrar

Page 1 of 1

*Mian Afrasiab Gill*  
 Advocate  
 HIGH COURT PESHAWAR

Annex. B

# Heriot Watt University

Kohat - Pakistan

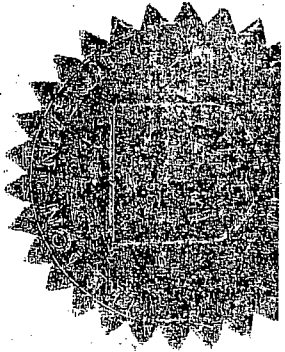
This is to Certify That

Niaz Bad Shah

has satisfactorily and completely fulfilled all requirements for the prescribed studies and the examinations of the University, and has, therefore, been admitted to the Degree of

Bachelor of Technology (Hons)  
in Civil Technology

In testimony whereof, this Degree has been issued under authorized signatures and official seal of the University, on this fifteenth day of July 2009.



A. B. Boel  
Registrar

Attest  
Mian Afrasiab  
Kakakhel Advoc  
HIGH COURT PESHAWAR

*[Signature]*

Registrar

(=)

12

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113

135



# PRESTON UNIVERSITY

## OFFICIAL TRANSCRIPT

Office of the Registrar:  
Old Govt Degree College No 2, KDA, Kohat - Pakistan  
Tel: (+92 922) 515081-4

35215

Name:	Niaz Bad Shah	Registration No:	17C2-208020
Program:	B-Tech (Pass)	Date of Birth:	January 30, 1965
Specialization:	Civil	Date of Registration:	June 25, 2007
Date of Issue:	July 02, 2009	Date of Completion:	June 30, 2009

	Credit Hours	Marks Obt.	Grade	Remarks
<b>First Semester</b>				
Industrial Training	15	92	A	
	Total	92	Sem GPA	4.0
<b>Second Semester</b>				
Industrial Training	15	94	A	
	Total	94	Sem GPA	4.0
<b>Third Semester</b>				
Industrial Training	15	97	A	
	Total	97	Sem GPA	4.0
<b>Fourth Semester</b>				
Foundation of Engineering-I	3	85	B	
Strength of Materials	3	80	B	
Surveying and Leveling	3	75	C	
Electrical Technology	3	76	C	
	Total	16	Sem GPA	2.5
<b>Fifth Semester</b>				
Foundation of Engineering-II	3	83	B	
Pakistan Studies	3	100	A	
Bridge Engineering	3	82	B	
Engineering Geology	3	86	B	
	Total	51	Sem GPA	3.3
<b>Sixth Semester</b>				
Islamic Studies	3	94	A	
Highway Engineering	3	91	A	
Concrete Structures	3	96	A	
Irrigation Engineering	3	90	A	
Project	3	90	A	
	Total	61	Sem GPA	4.0
	Grand Total	111	Cum GPA	3.4

Attested  
Mian Afraz Habib Gul  
Kakakhel Advocate  
HIGH COURT PESHAWAR

Number of Courses Passed 13  
Number of Courses Exempted 0  
Number of Courses Required for Degree 13  
Program Completed in Spring 2009 - Qualified for Degree

This document is not valid without signature and official seal.  
The University reserves the right to correct any error or omission made inadvertently in the Transcript.

*A. B. Baloch*  
Registrar

Degree Requirement: Bachelors Program: Cumulative GPA= 2.0 Masters Program: Cumulative C/A = 2.0  
Grade: A = 90-100%, B = 80-89%, C = 70-79%, D = 60-69%, F(Fail) = 0-59% T = Transfer Credit Granted. Each subject carries maximum 100 marks  
Grade Points: A = 4.0, B = 3.0, C = 2.0, D = 1.0, F = 0.0

For verification of authenticity of Degree / Transcripts, employers / relevant agencies are requested to contact:  
Assistant Registrar (Verification): 85, Street 3, H-8/1, Islamabad, Pakistan Tel: +92-51-4430597, Fax: +92-51-4430646.

Prepared by: *[Signature]* Checked by: *[Signature]*  
Asst Registrar

S. App. No. 2609/2020  
dt. annex - C. (13)

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**

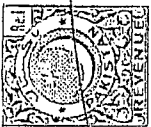
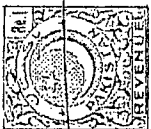
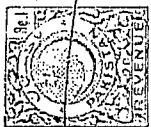
W.P. No. 2609 /2020

Muhammad Khursheed, Assistant Executive Engineer, BPS-17, Pakistan Public Works Department, G/9-1, Islamabad.

Petitioner

Versus

1. Federation of Pakistan through the Secretary, Ministry of Science and Technology, Islamabad.
2. Federation of Pakistan through the Secretary, Ministry of Housing and Works, Islamabad.
3. Higher Education Commission through its Chairman, H-8, Islamabad.
4. Pakistan Engineering Council through its Chairman, Ataturk Avenue (East), G/5-2, Islamabad.
5. National Technology Council through its Chairperson, Office of HEC, H-8, Islamabad.



15764  
S. I. M. S. A.  
Assistant Registrar (JUDL)

Respondents

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

**Prayer in Writ Petition:**

To accept writ petition on the basic principle of equity, justice and fair-play, to eliminate discrimination, partial and unjustified treatment, meted out with the petitioner who having B.tech (Honors) Engineering qualification at par with BSC Engineers qualification, are being treated differently and direct respondents to ensure implementation of the decisions of the Ministry of Science and Technology's high level committee taken in its meeting held on 01.03.2012, the minutes whereof issued vide letter dated 22.03.2012 (Annex-A) and distribute professional engineering works/jobs defined at Para 2 (XXV), PEC Act 1976 as per option No. 4 of the minutes, between two tiers of engineers i.e. BSC Engineers registered with PEC and B.tech (Honors) Engineers registered with NTC in accordance with their professional knowledge and skill, as one tier of the

petitioner cannot be treated discriminately under Article 25 & 27 as per letter dated 01-07-2019 ( Annex-B) received in response to representation dated 09-10-2018 ( Annex-C) and declare that petitioner is entitled to be treated in accordance with Pak PWD code and departmental rules, and that clause 1 & 2 of PEC Act 1976 is binding on employment of professional/consultant and not on employee petitioner in Govt service as per directives of superior courts.

**Respectfully Sheweth:**

**FACTS:**

1. That the petitioner is an employee of Pakistan Public Works Department (hereinafter called PPWD) working as Assistant Executive Engineer, BPS-17 and possessing B.tech (Honors) Engineering qualification who has been denied performance of Professional Engineering Works/his job as well as promotion to the next grade on his turn, on the pretext of wrong interpretation of Clause 1 & 2 of Section 27 of Pakistan Engineering Council Act 1976 (hereinafter called PEC Act), by violating the Pakistan Public Works departmental code and the rules of appointment, transfer and promotion, while the said provisions of the PEC Act is applicable merely on engagement/ employment of the professional engineers/consultants in practice and not on employees/petitioner in Government Services as has already been held by the Superior Courts in its reported judgments.
2. That due to the wrong application of PEC Act on the petitioner category, professional jealousy cropped up between two tiers of professional engineers i.e. BSC Engineers having education in Natural Science, registered with PEC and B.tech (Honors) Engineers having acquired technical education, registered with National Technology Council (NTC) and by the time PEC declined to register the petitioner category with PEC, the petitioner and his category are being meted with prejudiced, unlawful, unjustified and partial treatment, by refusing performance of Professional Engineering Works of the department as well as the promotion to the next higher grade on their turn.
3. That in order to eliminate partial treatment of the authorities and redress the grievance of the petitioner's category, a high-level meeting was held in Ministry of Science and Technology (hereinafter called MOST) on 01.03.2012 and decisive steps taken therein were conveyed to all concerned vide letter dated 22.03.2012 whereby Higher Education Commission was required to redress the grievance of the petitioner category in consultation with respondent No. 4 & 5. Higher Education Commission (hereinafter called HEC) held its last meeting dated 30.01.2020 (Annex - D) which has ended with no solution. It has only deliberated that the B.tech (Honors) Engineering qualification is at par with



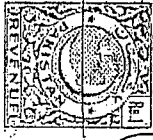
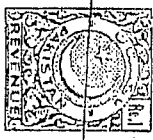
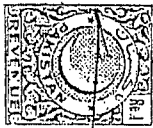
respondent No. 4 & 5. Higher Education Commission (hereinafter called HEC) held its last meeting dated 30.01.2020 (Annex – D) which has ended with no solution. It has only deliberated that the B.tech (Honors) Engineering qualification is at par with BSC Engineering qualification and has failed to redress the grievances in accordance with the four options enumerated in the MOST letter dated 22.03.2012; the option No. 4 clearly stipulates that jobs shall be categorized in the Government/public sector departments/organization in accordance with the qualification and skill. In this respect, the convener of B.tech committee has submitted a representation dated 05.03.2020 (Annex – E) and the same has not been responded so far.

4. That both tiers of professional engineers are employees of the same department i.e. PPWED and performing professional engineering works defined at Section 2 (XXV) of PEC Act 1976 (Annex – F) as under:  
 "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."

5. That PEC Act was revised in 2011 and since then B.tech (Honors) stream of engineers is not being regulated/accredited by PEC as noted at Serial No. 1 of PEC letter dated 17.02.2012 (Annex – G) addressed to the Ministry of Science and Technology, in response to the Ministry's reference dated 11.01.2012.

6. That PEC in its above noted letter, brief comments at Serial No. II has deliberated difference between two tiers that an engineer is a professional practitioner of engineering principles, knowledge, mathematics and ingenuity to develop solution for technical problems who design materials, structure and etc. while engineer technologist is a specialist devoted to the development and implementation of existing technology within the field of engineering. **Engineers generally operate in conceptual design, innovative solutions and product developments while technologists generally work in applied nature of jobs like testing, construction, field work, operation and etc. as per comments at last lines, degrees of the both tiers have been recognized at par by HEC, PEC and the superior courts.**

7. That for redressal of grievances of the B.tech (Honors) degree holders, a meeting was held in the Ministry of Science and Technology on 01.03.2012 under the chairmanship of the Secretary and its minutes were issued vide letter dated 22.03.2012 whereby a committee was constituted who vide Para 5 (e), accepted evaluation/compatibility of B.tech (Honors) and BSC as given by University Grant Commission (UGC)/HEC in 1998 whereby both tiers were considered as two distinct disciplines of knowledge in the field of engineers **which should run parallel to each other by treating them at par and compatible to each other. As regards job placement, it was decided that it is up to the employer to determine the type of qualification required for a particular job.**



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8. That vide option No. 4 of the minutes of committee meeting dated 01.03.2012 of MOST, under heading "**placement of technologist graduates in Government/public sector organizations**", the committee decided:

Para 8. PTC in consultation with PEC should categorize jobs in various Government/public sector organizations as under:

- a. Jobs tenable by engineers only.
- b. Jobs tenable by engineering technologists only.
- c. Jobs that can be filled by engineers as well as engineering technologists.

Para 9. Pakistan Technological Council in conjunction with PEC should work out ratio in which various jobs are to be filled by either stream of graduates.

Para 10. In case of any deadlock in evolving consensus in job distribution, the matter may be referred to HEC whose decision will be final and a binding on both the councils.

9. That deliberation on NTC have come forth by PEC reference dated 29.08.2016 (Annex - H) who conveyed its resolution to the HEC that PEC shall not regulate B.tech (Honors) stream of tier as well as HEC circular dated 30.01.2020 may be referred to whereby nothing has been done for distribution of jobs between two tiers and the HEC has failed to take any decisive steps on the task assigned by the MOST to distribute the jobs between the two tiers.



10. That in violation of Article 4, 25 and 27 of the Constitution of Islamic Republic of Pakistan 1973, professional jealousy and superiority complex is overwhelming in the department, all superior posts are held/occupied by BSC Engineers who are favoring their own class and denied all rights of performing the profession and right to aspire for career development. Such class discrimination has created frustration in petitioner's class and damaging the worth of the department while the Ministry of Science and Technology is achieving worldwide developments in the advancement of National Technology.

11. That since on direction of the MOST vide letter dated 11.01.2012, HEC has established National Technology Council (NTC) vide Gazette of Pakistan dated 02.10.2015 (Annex - I) to accredit and register B.tech (Honors) Engineers who has registered engineer technologists for the post of Field Engineers and the petitioner has also been registered as well (Annex - J) but the decision taken by the committee of the MOST vide Para 8, 9 & 10 detailed above, has not been implemented and the jobs/works have not been distributed between the two tiers. NTC (since called PTC), PEC and HEC have failed to act upon the directive/decision of the high-level committee of MOST and the MOST has also not got ensured its implementation, resultantly the petitioner and the whole tier of his colleagues, are suffering from hatred and prejudiced behavior, partial treatment of the departmental authorities by violating the law contained in



the Public Works Department Code, the rules of appointment, promotion and transfer and the dictates of the superior courts of the country.

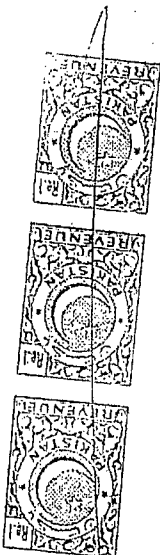
12. That in the light of deliberations on the professional qualification of both tiers of engineers, the engineering professional works might be divided as under:

- I. BSC Engineers registered with PEC, may be assigned jobs of designing, planning and research work.
- II. B.tech (Honors) Engineers registered with NTC, may be assigned jobs of implementation (construction) etc., operation, measurements, layout, inspection and supervision (operation and maintenance i.e. OM works).

13. That the convener of the Pakistan B.tech action Committee vide representation dated 05.03.2020 has requested to the respondent No. 1 for bifurcation of the Engineering works in between the two tiers of engineers but the respondent has not taken any steps/measures; hence the petitioner, having no efficacious and alternative remedy, has invoked constitutional jurisdiction of this honorable High Court on the following grounds amongst others:

#### GROUND:

- a. That the relief sought in the writ petition does not relate to the enforcement of the terms and conditions of service, rather it pertains to the enforcement of the principles of the policy decisions and as such, does not fall within the preview of Article 212 (3) of the Constitution of Islamic Republic of Pakistan; therefore, the constitutional jurisdiction of this honorable court has been invoked.
- b. That policy decision taken by the Ministry of Science and Technology's high level committee in its meeting dated 01.03.2012 to redress the grievances of the B.tech (Honors) Engineers/petitioner and its implementation task assigned to the respondent No. 3 to 5 is, in principle, binding upon the respondents as per the dictates of the superior courts in its various judgments.
- c. That it is a settled principle of law that object of good governance cannot be achieved by exercising discretionary powers unreasonably or arbitrarily and without application of mind but objective can be achieved by following the rules of justness, fairness and openness in consonance with the command of the Constitution enshrined in different Article including Articles 4 and 25. Once it is acceptance that the Constitution is the supreme law of the country, no room is left to allow any authority to make departure from any of its provisions or the law and the rules made thereunder. By virtue of Articles 4 and 5(2) of the Constitution, even the Chief Executive of the country is bound to obey the command of the Constitution and to act in accordance with law and decide the issues after application of mind with reasons as per law.



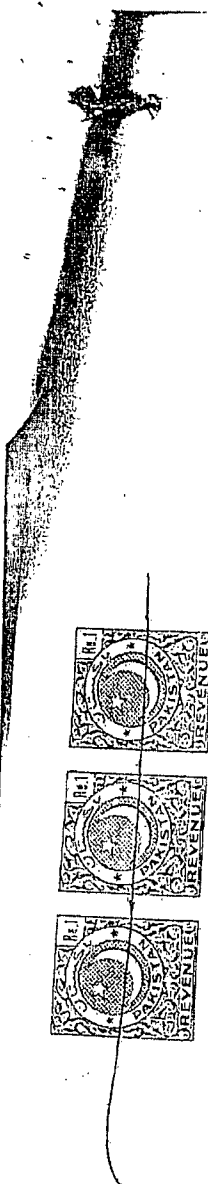
- d. That the whole edifice of governance of the society has its genesis in the Constitution and laws aimed at to establish an order, inter alia, ensuring the provision of socio-economic justice, so that the people may have guarantee and sense of being treated in accordance with law that they are not being deprived of their due rights. Provisions of Article 4 embodies the concept of equality before law and equal protection of law and save citizens from arbitrary/discriminatory law and actions by the Governmental authorities. Article 5(2) commands that everybody is bound to obey the command of the constitution
  - I. Every public functionary is supposed to function in good faith, honestly and within the precincts of its power so that persons concerned should be treated in accordance with law as guaranteed by Article 4 of the Constitution. It would include principles of natural justice, procedural fairness and procedural propriety
  - II. The action which is mala fide or colorable is not regarded as action in accordance with law. While discharging official functions efforts should be made to ensure that no one is prevented from earning his livelihood because of unfair and discriminatory act on their part.
- e. That discrimination against a group or an individual implies making an adverse distinction with regard to some benefit, advantage or facility. Discrimination thus involves an element of unfavorable bias and it is in that sense that the expression has to be understood to this extent. However, it becomes an act of discrimination only when it is improper or capricious exercise or abuse of discretionary authority and the person against whom that discretion is exercised faces certain appreciable disadvantages which he would not have faced otherwise. Under Article 25 of the Constitution, reasonable classification is not prohibited but it is required that all persons similarly placed should be treated alike.

**PRAYER:**

In fact and circumstances, it is most humbly and respectfully prayed that this honorable court may very graciously be pleased:

- I. To direct respondents to ensure implementation of the decisions of the Ministry of Science and Technology's high level committee taken in its meeting held on 01.03.2012, the minutes whereof issued vide letter dated 22.03.2012 and distribute professional engineering works/jobs defined at Para 2 (XXV), PEC Act 1976 as per option No. 4 of the minutes, between two tiers of engineers i.e. BSC Engineers registered with PEC and B.tech (Honors) Engineers registered with NTC in accordance with their professional knowledge and skill, as one tier of the petitioner cannot be treated discriminately under Article 25 & 27 and the petitioner has the right to be treated in accordance with Article 4 & 10-A of the Constitution of Islamic Republic of Pakistan 1973, read with Article 24-A of the General

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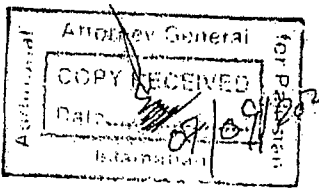
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Clause Act 1897, fair, justly and reasonably and the discretion vested to the respondents cannot be abused and petitioner cannot be meted out partial and prejudiced treatment.

- II. To declare that the provisions of PEC Act, Clause 1 & 2 of Section 27 applies to the professional engineers/consultants in practice and it is not applicable to the petitioner who is an employee in the Government service as has been held by the superior courts in its reported judgments.
- III. To direct necessary amendment in Clause 1 & 2 of Section 27 of the PEC Act and exempt B.tech (Honors) Engineers registered with the National Technology Council.
- IV. To direct respondent No. 2 to refrain from treating the petitioner discriminately and allow all professional opportunities in accordance with the rules in force and be restrained from taking any adverse action till final decision of the instant writ petition.
- V. To restrain the respondents from meeting any discriminatory treatment with the petitioner in violation of rules and law regarding future career opportunities.
- VI. Any other relief this honorable court deems fit and appropriate in the circumstances of the case, may also be awarded.

*[Signature]*  
Petitioner

Through; *Caqub*  
 Mohammad Yaqoob Javaid  
 Advocate High Court  
 Office No. 172, Street No. 2  
 S. Anwar Block, Distt. Courts  
 F-8 Markaz, Islamabad  
 Cell: 0300-5294796



**CERTIFICATE**

- 1. Certified that this is the 1<sup>st</sup> writ petition against the impugned attitude/action of the respondent, filed before this Honorable High Court.
- 2. Certified that no petition or appeal is pending or has been decided earlier on the same subject matter by this Honorable Court or Supreme Court of Pakistan.

*[Signature]*  
Petitioner

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

W.P.No.2609/2020

Muhammad Khurshid, Assistant Executive Engineer (Civil) (BS-17).

Petitioner

**VERSUS**

1. Federation of Pakistan through the Secretary Ministry of Science and Technology, Islamabad.
2. Federation of Pakistan through the Secretary Ministry of Housing & Works, Islamabad.
3. Higher Education Commission through its Chairman, H-8, Islamabad.
4. Pakistan Engineering Council through its Chairman, Ataturk Avenue (East), G-5/2, Islamabad.
5. National Technology Council through its Chairperson Office of HEC, H-8, Islamabad.

Respondents

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

PARA-WISE COMMENTS ON BEHALF OF RESPONDENT NO.2.

Respectfully Sheweth:

RECEIVED  
 5756  
 13/11/2020  
 Date

PRELIMINARY OBJECTIONS

- i. The Petitioner has not come to the Hon'able Court with clean hands as he concealed the material from the court that he has filed appeal No.1139(R)CS/2019 before the FST, Islamabad on similar facts, which is pending adjudication before the said Tribunal. Hence, the instant petition is barred by the principal of **res-judicata**.
- ii. In terms of proviso to sub-section 22 of Civil Servants Act, 1973, read with second proviso to rule 4(1) (d) (ii) of Civil Servant (Appeal) Rule, 1977, no representation/appeal or review lies on matters relating to the determination of fitness of a person to hold a particular post or to be promoted to a higher post or grade.
- iii. The Departmental Promotion committee (DPC) in its meeting held on 05-10-2018 considered, among others, Muhammad Khalid Alim, Saleem Raza Kazmi, Rehan Ullah Bangash, Muhammad Iqbal, **Haji Shah Rizvi, Muhammad Khurshid Shinwari, Zia-ul-Islam Suri, Shahid Akhter, Irtiaz Hussain Memon, Muhammad Siddique Malik, Sabir Khaliq, Abdul Rashid** and Zafar Saleem B-Tech/ Diploma holder, Assistant Executive Engineers (Civil) (BS-17) for promotion to the post of Executive Engineer (Civil) (BS-18) in order of seniority and recommended them for **deferment for the following reasons that:-**  
 3(e) Previously, some B-Tech/ Diploma Holder Assistant Executive Engineers (Civil) (BS-17) were promoted as Executive Engineer (Civil) (BS-18). Following that the graduate Engineers of Pak. PWD filed Appeals no. 1213 & 1214 @CS/2016 titled Muhammad Javed and Muhammad Latif V/S Ministry of Housing & Works before the Hon' able Federal Service Tribunal, Islamabad against the promotion of B-Tech Degree Holders to the post of Executive Engineer (BS-18). The appeal is presently pending adjudication before the Hon' able FST Islamabad, as such, the matter is subjudice. Further, Section 27(1) & (2) of Pakistan engineering Council Act-1976 provides that the professional engineering works can only be assigned to a registered engineer or professional engineer registered with the Council and non-compliance of these Sections could attract penalties for both employer as well as for the incumbent. Furthermore, Section 27(5A) of PEC Act, 1976 provides 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 works"**

Further, the Hon' able supreme court of Pakistan vide their judgment dated 03-10-23018 passed in C.P. No. 78-K of 2015 held that the employers are liable to penalty under PEC Act, if they undertake or allow a person to undertake professional engineering work whose name is not borne on register under PEC Act. The operative para of the judgment is reproduced below:-

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 provides that 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 the employee and the 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 the Register under the PEC Act.

- iii. As per revised promotion policy issued by the Establishment Division, vide OM dated 24-10-2007, the conditions for deferment of the Civil Servants are as under:-
  - a. Not undergone the prescribed training or passed departmental examination.
  - b. Non submission of Part-I and Part-II of the PER by the concerned officer to his reporting officer in respect of his service in the present grade and the preceding grade.
  - c. When the Board considers the record as incomplete, or wants to further watch the performance of the officer or for any other reason to be recorded in writing.
  - d. Disciplinary or departmental proceedings are pending against the civil servant.
  - e. The civil servant is on deputation abroad to a foreign government, private organization or international agency.
  - f. The civil servant's inter-se-seniority is subjudice.
- vi. As such, DPC considered the cases for promotion of the appellant in accordance with the Law/ Rules and policy without any discrimination.

#### ON FACTS

1. Admitted to the extent that the appellant is working as Assistant Executive Engineer (BS-17) in Pak PWD. However, as far as his statement regarding non promotion as Executive Engineer (BS-18) is concerned, it is imperative to mention that the Hon'able Supreme Court of Pakistan vide judgement dated 03.10.2018 in C.P.No.78-K of 2015 clearly mentioned in para 23 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 register engineer or professional engineer under the PEC Act. The fact of the matter is that the petitioner is not registered as Engineer with the PEC, therefore, he does not merit promotion to the post of Executive Engineer (BS-18) which is a professional engineering post.
2. Denies. The petitioner is trying to twist the fact. Para 23 of the judgment dated 13.10.2018 referred to above is speaking one and cannot be left in oblivion.
3. This para does not relate to the answering respondent, hence, no comments.
4. The petitioner is again trying to mislead the Hon'able Court, the fact remains that his name is not registered with the PEC as professional or registered engineer. Had he been a professional engineer, his name would have been registered with the PEC.
5. As stated against para 1 above

- 6. The judgement dated 03.10.2018 passed by the Apex Court is speaking one and cannot be ignored as it has now attained finality.
- 7. This para does not relate to the answering respondent, hence, no comments.
- 8. Irrelevant. No comments.
- 9. Not related to answering respondent, hence, no comments.
- 10. The petitioner is just beating about the bush. The answering respondent being Administrative Division of the Federal Government has to run its attached department through set procedure and rules. At present, the Supreme Court of Pakistan has settled the law that only those engineers could be promoted against the posts involving professional engineering works whose names are registered with the PEC. Whereas, the petitioner is not a registered engineer and cannot be promoted as Executive Engineer (BS-18)
- 11. This para does not relate to the answering respondent, hence, no comments.
- 12. This para is based on personal assumption of the petitioner and does not need comments, however, the answering respondent never objected on the promotion of B.Tech (Hons) holder to the post of Executive Engineer (BS-18). It is the mandate of the Federal Government to decide appropriate qualification for a particular post. Pak PWD is an attached department of Federal Government and the Department has its own set of recruitment rules duly notified by the Federal Government. The Recruitment Rules, for promotion to the post of Executive Engineer provide following criteria:-

Designation and BPS of the Post	Person Eligible	Conditions of Eligibility
Executive Engineer (Civil) (BS-18)	Assistant Executive Engineer (BS-17)	5 years service in BS-17 and person appointed initially must have passed departmental examination

But having said all above, the Supreme Court of Pakistan vide judgment dated 03.10.2018 gave a 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 register engineer or professional engineer under the PEC Act. Since the orders passed by the Hon'able Supreme Court of Pakistan are to be treated as Supreme Law of Land, therefore, the department has no other option but to act in accordance with the orders passed by the Supreme Court of Pakistan.

- 13. No comments.

**ON GROUNDS**

- a) The Petitioner is trying to mislead the Hon'able Court. He has already filed appeal No.1139(R)CS/2019 before the FST, Islamabad on similar facts, which is pending adjudication before the said Tribunal, whereas, he has not disclose this fact before the Hon'able Court.
- b). This para does not relate to answering responder t, as such, no comments.
- c) Denied. No discretionary power has been exercised by the answering respondent. The factual position has been elaborated in para 12 of facts.

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- d) Pak PWD is an attached department of Ministry of Housing & Works and has to abide by all the rules and regulations and has to implement all the orders passed by the Apex Court. The factual position has been elaborated in para 12 of facts.
- e) As stated against para-d above.

PRAYER

In view of the above stated factual as well as legal position, the Hon' able Court may very kindly be pleased to dismiss the petition.

ON BEHALF OF RESPONDENT NO. 2

*Muhammad Khabab Jaffar*  
 Section Officer  
 Ministry of Housing & Works  
 Government of Pakistan  
 Islamabad

Certified to be true

04 MAR 2021

Examiner  
 Copy Supply Section  
 High Court  
 Islamabad

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IN THE ISLAMABAD HIGH COURT, ISLAMABAD

In the matter of :

Writ Petition No. 2609 of 2020

Muhammad Khurshed

versus

Federation of Pakistan and others

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC  
REPUBLIC OF PAKISTAN

REPORT AND PARA-WISE COMMENTS FOR AND ON BEHALF OF PAKISTAN  
ENGINEERING COUNCIL (RESPONDENT NO. 4)

Respondent No. 4 makes the following submissions:

REPORT

A. In order to regulate engineering profession in Pakistan, Parliament enacted Pakistan Engineering Council Act, 1976 ("PEC Act") which received assent of the President of Islamic Republic of Pakistan on 10.01.1976 and it was published in the Gazette of Pakistan Extraordinary on 14.01.1976.

B. It is pertinent to look at the scheme of the PEC Act in order to gather legislative intent thereof and wisdom of legislature:

i. PEC Act defines 'accredited engineering qualification' in the following terms:

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

(ii) "accredited engineering qualification" means any of the qualification included in the First Schedule or the Second Schedule;"

Thus only the qualification included in the First Schedule and Second Schedule to the PEC Act is accredited engineering qualification.

ii. Furthermore, the term "registered engineer" has been assigned the following meaning:

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

(xxvii) "registered engineer" means a person who holds an accredited engineering qualification, whether working privately or in the employment of an engineering public organization and is registered as such by the Council. Registered Engineer shall perform all professional engineering works except independently signing design;"



iii. PEC Act assigns the following definition to the term "professional engineer":

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

(xxiii) "professional engineer" means a person who holds an accredited engineering qualification and after obtaining a professional experience of five years, whether working privately or in the employment of an engineering public organization, has passed the prescribed engineering practice examination and is registered as such by the Council;"

iv. Moreover, "professional engineering work" has been defined as follows:

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

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

(a) railways, aerodromes, bridges, tunnels and metalled roads;

(b) dams, canals, harbours, light houses;

(c) works of an electrical, mechanical, hydraulic, communication, aeronautical power engineering, geological or mining character;

(d) waterworks, sewers, filtration, purification and incinerator works;

(e) residential and non-residential buildings, including foundations framework and electrical and mechanical systems thereof;

(f) structures accessory to engineering works and intended to house them;

(g) imparting or promotion of engineering education, training and planning, designing, development construction, commissioning, operation, maintenance and management of engineering works in respect of computer engineering, environmental engineering, chemical engineering, structural engineering, industrial engineering, production engineering, marine engineering and naval architecture, petroleum and gas engineering, metallurgical engineering, agricultural engineering, telecommunication engineering, avionics and space engineering, transportation engineering, air-conditioning ventilation, cold storage works, system engineering, electronics, radio and television engineering, civil engineering, electrical engineering, mechanical engineering and biomedical engineering etc;

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

(i) preparing standard bidding or contract documents, construction cost data, conciliation and arbitration procedures; guidelines for bid evaluation, prequalification and price adjustments for construction and consultancy contracts; and

CERTIFICATE TO THE  
06 MAR 2021

(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;"

- v. S. 27 of the PEC Act provides for penalties for a person who undertakes any professional engineering work if he does not possess an accredited engineering qualification from an accredited engineering institution and is not registered as a 'registered engineer' or 'professional engineer'.
- vi. Furthermore, s. 27 of the PEC Act also provides a penalty for an employer who employs for any professional engineering work any person who does not possess accredited engineering qualification from an accredited engineering institution and is not registered as a 'registered engineer' or 'professional engineer' under the PEC Act. For sake of convenience, s. 27 is reproduced as follows:

*"27. Penalties and procedure.—*

- (1) After such date as the Federal Government may, after consultation with the Council, by notification in the official Gazette, appoint in this behalf, whoever undertakes any professional engineering work shall, if his name is not for the time being borne on the Register, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both, and, in the case of a continuing offence, with a further fine which may extend to two hundred rupees for every day after the first during which the offence continues.
- (2) After the date appointed as aforesaid, whoever employs for any professional engineering work any person whose name is not for the time being borne on the Register shall be punishable, on first conviction, with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both, and on a second or subsequent conviction, with imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both.
- (3) Whoever willfully procures or attempts to procure himself or itself to be registered under this Act as a registered engineer, professional engineer, consulting engineer, constructor or operator by making or producing or causing to be made or produced any false or fraudulent representation or declaration, either orally or in writing, and any person who assists him therein shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.
- (4) Whoever falsely pretends to be registered under this Act, or not being registered under this Act, uses with his name of title any words or letters representing that he is so registered, irrespective of whether any person is actually deceived by such pretence or representation or not, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.
- (5) No person undertaking any professional engineering work shall, unless he is registered under this Act, be entitled to recover before any court or other authority any sum of money for services rendered in such work.

(5A) No person shall, unless registered as a registered engineer or professional engineer, hold any post in an engineering or 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." [emphasis added]

vii. Therefore, a bare look at the scheme of PEC Act brings to light the legislative wisdom thereof to the effect that where a post requires an incumbent to perform professional engineering work as defined in PEC Act, such a post must only be filled by a person who:

- i. possesses accredited engineering qualification from an accredited engineering institution; and
- ii. is registered as a "registered engineer" or "professional engineer" under the PEC Act.

C. It is necessary to mention that the august Supreme Court of Pakistan has vide its judgement dated 03.10.2018 in *Maula Bux Shaikh and others v. Chief Minister, Sindh and other*, reported as 2018 SCMR 2098, held:

"...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." [Emphasis Added]

D. Furthermore, in the judgement rendered by the august Supreme Court *supra*, it has also been held that:

"It is common ground that neither Diploma nor B.Tech (Hons) Degree are accredited engineering qualification for the reason that there is no reference to the Diploma and B.Tech (Hons) Degree in the accredited engineering qualification provided in the first and second schedule of the PEC Act." [Emphasis Added]

Certified to Be True

E. In the case of *Muhammad Younus Aarin v. Province of Sindh and others* reported as 2007 SCMR 134, the honourable Supreme Court of Pakistan has held that:

"...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." [Emphasis added]

F. The august Supreme Court has, while interpreting the PEC Act, in *Pakistan Diploma Engineers Federation (Regd.) v. Federation of Pakistan* reported as 994 SCMR 1807 held that:

"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." [Emphasis added]

06 MAR 2021

G. It may be noted that the honourable Islamabad High Court has in the case of Muhammad Asghar Zardari v. Capital Development Authority, reported as 2008 PLC (C.S) 1219, passed a direction to the effect of restraining employers not to consider Diploma-holders and those who possess B.Tech (Hons.) degree for promotion against posts which require its incumbents to carry out professional engineering work. The relevant excerpt from the judgement is reproduced for the sake of convenience as follows:

*"... the respondent No. 1 is directed not to consider Diploma-holders/B. Tech(Hons.) for promotion against the post specified for professional engineers...." [Emphasis Added]*

H. Insofar as equivalence of B. Tech (Hons) and B.E/B.Sc (Engineering) is concerned, please note that both disciplines are distinct in their nature as well as require different set of preparatory courses (i.e. F.Sc and DAE). Main-stream of DAEs being the real seedling for Technology Programs and thus should be the eligibility for admission. Whereas, F.Sc/A-levels are more focused on basic sciences (i.e. Physics, Math and Chemistry), which is crucial/requisite for Engineering Programs. In addition, please note 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, innovate solution and product development while technologists generally work in applied nature of jobs like testing, construction, field work, operations, etc.

FACTS:

1. As to paragraphs 1 and 2, its contents are denied. It is contended that where a post requires an incumbent to perform professional engineering work as defined in PEC Act, such a post must only be filled by a person who possesses accredited engineering qualification from an accredited engineering institution and is registered as a "registered engineer" or "professional engineer" under the PEC Act. It is pertinent to mention that B. Tech (Hons) is not recognized as an accredited engineering qualification under the purview of PEC Act. Thus, B. Tech (Hons) degree holders can neither be considered for promotion, nor possess any post, that requires performing professional engineering work. The same has also been upheld by the apex courts of Pakistan. Report may kindly be read as an integral part of comments to paragraphs 1 and 2 of the captioned petition.

2. As to paragraph 3, its contents are denied as misleading. Insofar as equivalence of Technology and Engineering Degrees is concerned, please note that this controversy is transpiring from last four decades. To gain complete insight into the issue, it is pertinent to direct the attention of the Hon'ble court to the following facts. University Grants Commission ("UGC") - predecessor of Respondent No. 3 - in the 39<sup>th</sup> Meeting of its Equivalence Committee held on 12.02.1998 concluded that: "the degree of B.Tech (Hons) is not similar to B.E/B.Sc Engineering degree. Both the degrees of B.E/B.Sc Engineering and B.Tech (Hons) be considered as two distinct disciplines of knowledge in the field of Engineering and Technology and should parallel to each other. However, B.Tech (Hons) may be treated at par and compatible with B.E/B.Sc Engineering degree holders as far as grades, pay and promotions and other benefits are concerned. The Committee further noted that it is up to the employer to determine the type of qualification required for a particular job." Note that Higher Education Commission's National Curriculum Revision Committee ("NCRC") had developed a curriculum for B.Tech (Hons) in the year 2010. The Committee also recommended that Letter issued by Respondent No. 3 regarding equivalency/compatibility of B.Tech (Hons) with B.Sc Engineering be withdrawn immediately since B.Tech (Hons) courses are implementation oriented while B.Sc

Engineering courses are design and research oriented. The recommendations of the NCRC were placed before Higher Education Commission's Committee of Experts on 11.03.2014. The Committee of Experts unanimously endorsed the recommendations of NCRC that "B.Tech (Hons.) is not equivalent to B.Sc (Engg.). Both the degrees of B.E/B.Sc Engineering and B.Tech (Hons.) be considered as two distinct disciplines of knowledge in the field of Engineering and Technology and should run parallel to each other." The Committee of Experts further held that "there is a need of further progression in the field of Technology in universities and holders of B.Tech (Hons.) should be given ample opportunities to undertake further study in their own field of specialization." In the Meeting of Equivalence & Accreditation Committee of Respondent No. 3 held on 02.12.2014, the recommendations made by the Committee of Experts in its Meeting dated 11.03.2014 were formally approved. In the light of above, it is established that B.Sc (Engg.) and B.Tech (Hons.) are not equal, and the same has been endorsed by UGC and the expert committees constituted by Respondent No. 3. Furthermore, it has been contended that there is a global consensus that technology is a parallel domain of knowledge, and stands equal to engineering education. Please note that such contention of Petitioner is misleading and lacks reasoning. No specific examples of global trend or empirical data has been furnished to support the Petitioner's contention. Report may kindly be read as an integral part of comments to this paragraph.

- 3. As to paragraph 4, its contents are denied. Report and comments on paragraphs 1 and 2 of the captioned writ petition may be read as an integral part of comments to this paragraph.
- 4. As to paragraph 5, its contents are correct.
- 5. As to paragraphs 6 and 7, its contents are denied as misleading. It is pertinent to mention that B.E/B.Sc Engineering and B. Tech (Hons) are two distinct disciplines of knowledge in the field of Engineering and Technology. The Petitioner has failed to understand that B.Tech (Hons) may be treated at par with B.E/B.Sc Engineering degree holders as far as grades, pay and promotions and other benefits are concerned. Report and comments on paragraph 3 of the captioned petition may kindly be read as an integral part of comments to these paragraphs.
- 6. As to paragraphs 8, its contents are denied. It may be noted that the PEC Act makes it clear that any post requiring incumbent of perform professional engineering work shall only be conducted by a person having accredited qualification and registered engineer with Respondent No. 4.
- 7. As to paragraph 9, its contents are correct to the extent of Respondent No. 4's deliberation on not regulating the technology regime as communicated in Respondent No. 4's letter dated 29.08.2016.
- 8. As to paragraph 10, its contents do not pertain to Respondent No. 4, hence, need no comments.
- 9. As to paragraph 11, its contents are denied as misleading. Report and comments on paragraphs 8 and 9 of the captioned writ petition may kindly be read as an integral part of comments to this paragraph.
- 10. As to paragraph 12, it may be noted that the legislature has defined the job description of an engineer as being someone qualified to perform professional engineering work. Thus, any work which falls under the purview of professional engineering work shall only and exclusively be performed by a professional engineer and registered engineer within the meaning of the PEC Act.

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11. As to paragraph 13, its contents do not pertain to Respondent No. 4, hence, need no comments.

GROUNDS:

- a. As to ground a, its contents are formal and needs no comment.
- b. As to ground b, its contents are denied as misleading. Report and comments on paragraph 8 and 9 of the captioned writ petition may kindly be read as an integral part of comments on this ground.
- c. As to grounds c, d and e, its contents are denied to the extent that the Petitioner has failed to provide anything substantial to illustrate Respondent No. 4 acting against the letter and spirit of PEC Act. In addition, Respondent No. 4 has only acted in accordance with law and decided matters with application of mind while providing reasons as per law. Report may kindly be read as an integral part of comments on this ground.


PRAYER:

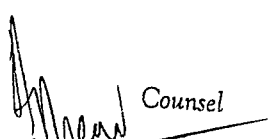
In view of the fore-going Report and para-wise comments, it is prayed that the captioned Writ Petition may be dismissed.

Any other relief that this honourable Court may deem just and appropriate may also be granted.

CONFIDENTIAL

U/S Mark Through

  
 Respondent No. 4  
 ENGR. DR. NASIR MAHMOOD KHAN  
 SECRETARY / REGISTRAR  
 PAKISTAN ENGINEERING COUNCIL

  
 Counsel  
 Armaghan Saqib Khan  
 Advocate High Court  
 CC# 00012

(21)

**IN THE ISLAMABAD HIGH COURT ISLAMABAD**

W.P NO. 2609/2020

**TITLE**

Muhammad Khursheed

HEAD RECEIVED  
Copy No. 668  
Date 22-1-21  
.....PETITIONER

**VERSUS**

Federation of Pakistan & Others.

.....RESPONDENTS

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

Statement on behalf of respondent No.1 for adoption of para-wise  
comments of respondent No. 4

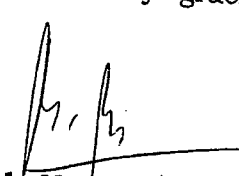
That the above writ petition is pending before this Hon'ble Court and respondents have been directed to submit report and para-wise comments.

That Pakistan Engineering Council (PEC) being respondent No.4 has already submitted its report and para-wise comments in the titled case with the prayer to dismiss the instant writ petition.

That respondent No.1 hereby adopt the para-wise comments of respondent No. 4 in toto.

**Prayer:-**

In view of the above statement it is humbly submitted that the application in hand may kindly be accepted and the instant writ petition may graciously be dismissed in the interest of justice.

  
On behalf of Respondent No. 1

M. AHMAD IQBAL  
Admin Officer (Legal)  
Government of Pakistan  
M/o Science & Technology  
Islamabad

2015 S C M R 269

[Supreme Court of Pakistan]

Present: Anwar Zaheer Jamali, Iqbal Hameedur Rahman and Qazi Faez isa, JJ

GOVERNMENT OF KHYBER PAKHTUNKHWA through Chief Secretary and others---  
Appellants

Versus

MUHAMMAD JAVED and others---Respondents

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

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

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

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

Dr. Alyas Qadeer Tahir v. Secretary M/o Education 2014 S C M R 997 ref.

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

6/1/2015

*A. Hester*  
Mijan Afrasiab Gul  
Kakakhel Advccale  
HIGH COURT PESHAWAR

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Annex-D (32)

ANNEXURB



**NATIONAL TECHNOLOGY COUNCIL (NTC)**

**ISLAMABAD**

Phone: +9251-90802780

H-8/1, Higher Education Commission, Islamabad



Ref: 796/179/680

Date: 17-11-2016

To The Honourable

1. Chief Secretaries All Provinces
2. Heads of All Organizations
3. Secretaries of Federal & Provincial Public Service Commission Pakistan.

Subject: **Appointment/Promotion of 4 years B.Tech(Hons)/B.Sc(Technology)  
/B.Sc(Engg) Technology Degree Holders In Grade 17 & Above**

Dear Sir/Madam,

It is brought to your kind notice that previously Engineer's recruitment Rules are prevailing as B.Sc(Engg) registered with Pakistan Engineering Council.

But now, subject mentioned degrees are being awarded by UET's/Private Sector Universities of which status is at par and compatible with B.Sc(Engg)/B.E degree. The purpose of this programme is to meet increasing Technology manpower instead of theory Engineers in Pakistan.

So, the Technology Education covers the same topics for Field engineers/Engg Technologists & their knowledge is more applied in nature as opposed to purely theoretical knowledge. The work of applied Engineers is usually focused on position of the technological spectrum closest to product improvement, manufacturing, construction, safety and Engineering operational functions.

Consequently, Govt. of Pakistan has established National Technology Council (NTC) to accredit and register these graduates vide gazette Notification No.19-3/HEC/HRM/2015/4721, dated:02-10-2015 (copies attached) instead of PEC which has started its function as website [www.ntc-hec.org.pk](http://www.ntc-hec.org.pk) NTC shall administer policies procedures and criteria for revision of the same.

“ It will be appreciated if Technology graduates be allowed to appear in Tests/Interviews for jobs in Grade 17 & above, amending service rules.

Technology graduates will perform better than Theory Engineers.”

With best regards.

Yours Faithfully,

M. Yaqoob Raza

Convener All Engineering Technologies  
National Technology Council, HEC

Contact: +92 333 8107794

D/A. as above

C.C.

1. Maj Gen (R) Akbar Saeed Awan  
Chairman NTC  
HEC-8/Islamabad

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(b) Civil service---

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

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

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

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

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

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

Zafar Iqbal v. Director, Secondary Education 2006 SCMR 1-27 ref.

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

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

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

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

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

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

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

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Mian Arshad Jan  
Kakakhel Advocate  
HIGH COURT PESHAWAR

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Judgement

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

As amended vide Notification dated 27th February, 1999:

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

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

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

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

- "(a) Sixty five percent by initial recruitment.
- (b) ten percent by promotion, on the basis of seniority cum fitness, from amongst the Sub-Engineer's who has acquired during service degree in Civil or Mechanical Engineering from a recognize university.
- (c) five percent by promotion, on the basis of seniority cum fitness, from amongst the Sub-Engineer's who joined service as degree holders in Civil/Mechanical Engineering and
- (d) twenty percent by promotion, on the basis of seniority-cum-fitness from amongst the Sub-Engineer's, who hold a diploma of Civil, Mechanical, Electrical or Auto Technology and have passed Departmental Grade A examination with ten years service as such.

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

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

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

Mian Aftab  
Kakker  
Advocate  
HIGH COURT PESHAWAR

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

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

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

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

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

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

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

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

- (1) That the Hon'ble Tribunal had no jurisdiction as the Rules were amended by the Government and not by any 'departmental authority' and in this regard reliance was placed upon section 4 read with section 7 of the Khyber Pakhtunkhwa Service Tribunals Act, 1971;
- (2) That the amendment was made to ensure that the higher positions are held by those who were competent and possessed the requisite qualifications;
- (3) That the diploma holders could also obtain degree in B.Tech. (Hons.) and then they too could also avail of the benefit of clause (c) as lastly amended;
- (4) That the amendment made in the Rules was not person specific nor had any element of mala fide;
- (5) That promotion or reserving a certain quota for promotion cannot be claimed as a vested right; and
- (6) That the matter was within the domain of policy and beyond the jurisdiction of the Tribunal.

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Mian Arshad Jan  
Kakakhel  
Advocate  
HIGH COURT  
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Reliance was also placed upon the following precedents:--

- Dr. Alyas Qadeer Tahir v. Secretary M/o Education (2014 SCMR 997)
- Executive District Officer, (Revenue) v. Ijaz Hussain (2012 PLC (C.S.) 917)
- Zafar Iqbal v. Director, Secondary Education (2006 SCMR 1-2)
- Fida Hussain v. The Secretary, Kashmir Affairs and Northern Affairs Division (PLD 1995 SC 701)

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

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

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

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

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

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

8. The Tribunal appears to have been impressed that there were one hundred and thirty diploma holders whereas there were only thirteen graduates having B.Tech. (Hons.) degrees, therefore, in the opinion of the Hon'ble Tribunal it was necessary to preserve the quota of the diploma holders. The concern of the Tribunal effectively meant that if there are many less qualified persons they should have

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Mian Afrasiab Gul  
Advocate  
HIGH COURT PESHAWAR

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greater prospects for advancement and those who had higher qualifications or who had improved their Qualifications should not have an advantage. The anxiety of the Tribunal in this regard was misplaced. In the reported case of Dr. Alyas Qadeer Tahir v. Secretary W/o Education (2014 SCMR 997), it was held:--

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

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

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

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

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

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

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

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

"The Government is always empowered to change the promotion policy and the domain of the

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Mian Afrasiab G.  
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HIGH COURT PESHAWAR

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...e Judgement

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

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

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

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

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

The aforesaid are the reasons for doing so.

MWA/G-7/SC

Appeal allowed.

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*A. Hest*  
Mian Afrasiah Gul  
Kakakhel Advocate  
HIGH COURT PESHAWAR

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IN THE SUPREME COURT OF PAKISTAN  
(REVIEW JURISDICTION)

Annex-F

**PRESENT:**

MR. JUSTICE IJAZ AHMED CHAUDHRY  
MR. JUSTICE DOST MUHAMMAD KHAN  
MR. JUSTICE QAZI FAEZ ISA

C.R.P. NOs. 495 TO 499 OF 2014 IN  
CIVIL APPEAL NOs. 796, 800, 801, 804 & 805 OF 2014  
(To review this Court's judgment dated 11.11.2014 passed in Civil Appeal  
Nos. 795 to 805/2014)

Muhammad Javed (In CRP 495/2014)  
Waqar Shah (In CRP 496/2014)  
Sabir Hussain (In CRP 497/2014)  
Anayat Ullah (In CRP 498/2014)  
Farid Gul (In CRP 499/2014)  
... Petitioners

**VERSUS**

Government of KPK through Chief Secretary etc (In all cases)  
... Respondents

For the Petitioners: Mr. Ijaz Anwar, ASC

For the Respondents: N.R.

Date of Hearing: 12.01.2015

**ORDER**

IJAZ AHMED CHAUDHRY, J.- Learned counsel for the petitioners has failed to point out any error apparent on the face of record in the judgment under review and instead tried to reargue the case, which cannot be allowed in review jurisdiction. These review petitions are dismissed.

Sd/- Ijaz Ahmed Chaudhry, J  
Sd/- Dost Muhammad Khan, J  
Sd/- Qazi Faez Isa, J



Islamabad, the  
12<sup>th</sup> of January, 2015  
Not Approved For Reporting  
[Signature]

Certified to be True Copy

[Signature]  
Superintendent  
Supreme Court of Pakistan  
Islamabad

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to be true copy

Attested  
Mishra Prasad Gul  
Kakakhal Advocate  
HIGH COURT PESHAWAR



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Annexure-#

BEFORE PESHAWAR HIGH COURT PESHAWAR

W.P No. 21611P / 2018

1. Niaz Badshah S/o Saeed Badshah SDO BPS-17 Irrigation Department posted at Mardan Irrigation Sub Division Mardan
2. Saifullah Khan S/o Abdullah Khan posted at drainage irrigation Sub Division Warsak Road Peshawar
3. Amanullah Khan S/o Hamaish Gul SDO BPS-17 posted at Charsadda Irrigation Sub Division Charsadda.
4. Muhammad Zeeshan Zaheer s/o Jalat Khan Zaheer Sub Engineer BPS-12 posted at Civil Canal Sub Division Warask Road Peshawar

.....Petitioners

VERSUS

1. Govt of KPK through Chief Secretary Civil Secretariat Peshawar
2. Secretary Irrigation to the Govt of K.P.K Civil Secretariat Peshawar
3. Secretary Establishment to Govt of KPK Civil Secretariat Peshawar
4. Secretary Law and Parliamentary Affairs KPK, Civil Secretariat Peshawar
5. Secretary Finance to Govt of KPK Civil Secretariat Peshawar

.....Respondents

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

Respectfully Sheweth

1. That the petitioners No. 1 to 3 are Sub Divisional Officers / Assistant Engineers in BPS-17, serving in the irrigation Department while petitioner No 4 is Sub Engineer BPS-12 in the irrigation Department.

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HIGH COURT

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2. That petitioners are B Tech (Hons) Degree Holders which is equivalent to B.E / B.Sc Engineering duly attested and recognized by Higher Education Commission Islamabad.
3. That due to misunderstanding & ambiguity or misinterpretation of word, "Promotion" in the amended service Rules 2012, the petitioners have not been allocated any quota for their promotion to higher grade on the basis of their qualification, by the irrigation Department.
4. That the Provincial Government by amending 1989 Appointment and Promotion Rules Of Irrigation Department Of KPK in June 2012 creating 8 percent quota or appropriate ratio as per strength of SDOs/ XENs for the promotion of the B Tech (Hons) Degree Holders (Petitioners) for next higher grade BPS-17 as Sub Divisional Officers / Assistant Engineers, but unfortunately this ratio is not been considered for further promotion to next higher grade BPS-18 & 19 etc. (Copy of Notification dated 25<sup>th</sup> June 2012 is annexed as annexure A at Page 11-17)
5. That Muhammad Javed and Others from Diploma Holders cadre filed appeal before KPK Service Tribunal against the creation of promotion quota for the petitioners cadre, the Service Tribunal after hearing appeal remanded the matter to the Provincial Govt for reconsideration and redressal of the grievances of M Javed and Others appellants before Service Tribunal vide judgment and order dated 26.02.2014. (Judgment and Order of Service Tribunal is annexed as A/1 at Page 18-27)
6. That the provincial Government and petitioners feeling aggrieved, impugned the judgment and order of Learned Service Tribunal before the Apex Court through Appeal Nos. 795 to 805 of 2014. The Worthy Supreme Court of Pakistan accepted the appeal and set aside the judgment and order of Learned Service Tribunal and restored the quota meant for the petitioners through Judgment and Order dated 24-11-2014 reported in 2015 SCMR page 269 titled as Govt of KPK through Chief Secretary and Others Vs Muhammad Javed and Others, the relevant citation of the judgment reads as under:- Citation (b) head note  
(b) Civil Service---

---Promotion criteria for---Educational  
 qualification---Government changing promotion

Attorney  
 Mian Afrasid Gul  
 Kakakhel Advocate  
 HIGH COURT PESHAWAR

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

(Copy of Judgment attached as annexure 'B' at Page 28-36)

- 7. That consequent upon the decision of the Apex Court the quota created in the rules for the petitioners was restored and they were given the right to be promoted to grade BPS-17 and naturally upward.
- 8. That despite the long litigations and final decision of Apex Court which is binding u/a 187 r/w article 19 of the Constitution of Pakistan 1973, on all other courts in Pakistan and authorities performing their duties in the provinces within the limits and territories of Pakistan. It is interesting to note that the rules for promotion of the petitioners earlier framed by Govt of KPK and duly confirmed by the Apex Court in the judgment ibid have been restored by the Govt Respondents but provision for further promotion to the higher grade / position in the department is not being followed, consequently the posts available for promotion in the senior grade BPS-18 and above, they are being ignored for no good reason at all.
- 9. That the amendments introduced in the rules regarding promotion of the petitioners in BPS-17 & above are not being followed in letter and spirit in the light of judgment of Supreme Court of Pakistan because the true import of judgment of the Supreme Court of Pakistan is that the petitioners could be promoted from BPS-17 to the next higher grades, on the basis of seniority cum fitness but unfortunately, the

M. A. Rasheed  
Kakakhel  
HIGH COURT PESHAWAR

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department is creating ambiguity in the meaning of "Promotion" creating uncertainty to true positions of Petitioners.

- 10. That in other provinces of the Pakistan similarly placed B Tech (Hons) Degree holders filed petitions which were decided in their favour holding them entitled for further promotion from BPS-17 to next Higher grade BPS-18 and upward, for example in a case, Meher Ali Dayo and others Vs Province of Sindh in CF No.694-K/2013 decided on 15-08-2014 the apex court hold and approved the promotion of B Tech (Hons) Degree Holders to next higher grade BPS-18 likewise the provinces of Sindh and Baluchistan and KPK Local Govt Department in their rules have provided chance of further promotion to B Tech (Hons) BPS-17, 18 and above. (Copy of Judgment of Supreme Court Dated 15.08.2014, letter dated 13.05.2016 and notification dated 19.03.2014 are annexed as Annexure C to C-2 at Page 37-40)
- 11. That needless to say that the HEC of Pakistan in letter No. 8-36/HEC/A&A/2007/1088, Dated 21 May 2007 in line with the judgment of Supreme Court of Pakistan in another case reported in PLD 1995 SC 701 has given status of equivalency to B Tech (Hons) degree holder with B.E / B.Sc Engineering. (Copy of HEC Letter dated 21.05.2007 and Judgment (PLD 1995 SC 701) are annexed D & D-1 at Page 41-50)
- 12. That in these circumstance petitioners were waiting that one day a follow good sense would prevail and the respondents themselves would the rules, making provisions for further promotion of the petitioners but up till now they could not make necessary and requisite amendments in the rules so under compelling circumstances petitioners filed representation to the authority for redressal of their grievances but so far no visible steps seem to have been taken in the matter
- 13. That It would not be out of place to mention that in the same circumstances Sub Divisional Officers/ Assistant Engineers of the C&W department filed representation to the authority for redressal of their grievances for further promotion to BPS-18 and above, the department favourably considered the demands of those Sub Divisional Officers/ Assistant Engineers of C & W department, forwarded the summary with recommendation to Law Department for legal opinion the law department acceded to their request being genuine and opined that the department should place their case

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Kakakhel  
HIGH COURT PESHAWAR

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(6) (418) (2)

18 That the petitioners finding no other adequate, efficacious, prompt and proper remedy elsewhere, invoke the constitutional jurisdiction of this Hon'able Court inter alia on the following grounds:

GROUND

- a. That the impugned act and actions of the respondents by misinterpreting the word "Promotion", by confining the word to BPS-17 only is misconstrued, interpreted erroneously and understood incorrectly, which act and decision of the respondents is unlawful, illegal, without lawful authority and a fallacious act.
- b. That the petitioners in view of the judgment of the Supreme Court of Pakistan have become entitled for promotion to the next higher grade as the judgment of the Supreme Court of Pakistan under article 189 of the constitution of Pakistan, is binding on all authorities as well High Court for its implementation.
- c. That almost all the departments and High Courts of other provinces have recognized the status of B Tech (Hons) equivalent to BE/ B.Sc Engineering degree as far as grades, pay and promotion and other benefits are concerned and to this effect F.E.C vide letter No.8-36/HEC/A&A/2007/1088 dated 21<sup>st</sup> Mar, 2007 has issued equivalence certificate for information and compliance to all concerned. (Already annexed as annexure D).

It is therefore prayed that by accepting this Writ Petition the respondents may graciously be directed to perform their function in connection with affairs of the petitioner as required by law

Secondly the act done and proceedings taken so far with regard to requisition of meeting or promotion of SDO from BPS-17 to BPS-18 from parallel cadre may be declared illegal, without lawful authority and of no legal effect

Thirdly the Respondents may graciously be directed to make necessary amendments in the rules, create 20 percent quota

Attested  
Mian Afrasiab  
Kakakhel Ady  
HIGH COURT PESH

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for promotion against the post of XEN BPS -18 and upward on the analogy of other provincial Governments as mentioned above, which have been acted upon by the concerned department or any other remedy which deemed proper to meet the ends of justice may also be granted.

Petitioners:  
Through Ghulam Mohy-ud-Din Malik, Advocate, Supreme Court of Pakistan,  
And Muhammad Farooq Malik, Advocate High Court Peshawar.

INTERIM RELIEF

May it please your lordship,

Pending final decision of Writ petition the proceedings of Promotion Selection Board (PSB) may graciously be suspended / stayed scheduled for 26-04-2018

Petitioners  
Through Ghulam Mohy-ud Din Malik, Advocate, Supreme Court of Pakistan,  
And Muhammad Farooq Malik, Advocate High Court Peshawar.

CERTIFICATE

Certified that no such Writ Petition has earlier been filed in this Hon'ble Court on behalf of the petitioners.

LIST OF BOOKS

- 1 Constitution of Islamic Republic Of Pakistan, 1973.
- 2 Any other law as per need.

*[Signature]*  
ADVOCATE

*[Signature]*  
Mian Afrasheen Gul  
Kakral Advocate  
HIGH COURT PESHAWAR

**Annex - E** 48

**ENGINEERING TECHNOLOGY Vs ENGINEERING**



**ENGINEERING TECHNOLOGY**

**ENGINEERING**

**MATRIC**

**MATRIC**

**D.A.E  
(03 Years)**

**F.Sc.  
(02 Years)**

Pure Engineering Subjects

Theory/Allied Subjects

**B.Sc. Engineering Technology  
(04 Years)**

**BE / B.Sc. Engineering  
(04 Years)**

**64 Pure Engineering Subjects  
(18 DAE + 38 B.Sc. Technology)**

**37 Pure Engineering Subjects  
(B.Sc.=37, F.Sc.=Nil)**

Practical 53% Theory 47%

Practical 26% Theory 74%

**17 Years Education**

**16 Years Education**

**STATUS OF TWO DEGREES OF UET LAHORE**



This is to certify that  
 Mr. Sajid Ali Khan, who  
 was the student of the  
 Government College of Technology, Board  
 of Technical Education, Lahore  
 has completed all the requirements for the award of  
 B.Sc. Degree in Civil Engineering Technology  
 on 11th August 2010 according to  
 the provisions of the Act of 1974  
 and has accordingly been admitted to the Degree of  
 Bachelor of Science  
 in  
 Civil Engineering Technology



Civil Engineering Technology

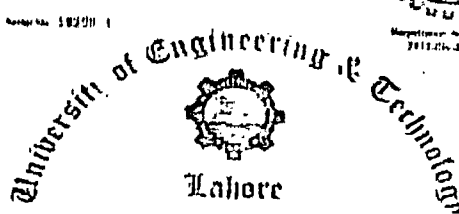
*[Signature]*

Chairman

*[Signature]*  
Chairman

11 AUG 2010

**B.S.C. ENGINEERING TECHNOLOGY**



This is to certify that  
 Mr. Amir Usman,  
 son of Mr. Imtiaz Mahmood Gilani  
 has completed all the requirements for the award of  
 B.Sc. Degree in Civil Engineering  
 on 11th August 2010 according to  
 the provisions of the Act of 1974  
 and has accordingly been admitted to the Degree of  
 Bachelor of Science  
 in  
 Civil Engineering



Civil Engineering  
in B.S. Honours

*[Signature]*

Chairman

11 AUG 2010

**B.S.C. ENGINEERING**

2015 S C M R 269

[Supreme Court of Pakistan]

Present: Anwar Zaheer Jamali, Iqbal Hameedur Rahman and Qazi Faiz Isa, JJ

GOVERNMENT OF KHYBER PAKHTUNKHWA through Chief Secretary and others---  
Appellants

Versus

MUHAMMAD JAVED and others---Respondents

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

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

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

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

Dr. Alyas Qadcer Tahir v. Secretary M/o Education 2014 SCMF 997 ref.

*M. H. Hestee*  
Mian Afrasiah Gul  
Kakakhel Advocate  
HIGH COURT PESHAWAR

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(b) Civil service---

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

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

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

Executive District Officer (Revenue) v. Ijaz Hussain and another 2011 PLC (C.S.) 917 and Fida Hussain v. The Secretary, Kashmir Affairs and Northern Affairs Division PLE 1995 SC 701 ref.

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

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

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

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

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

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

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

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

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

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

*M. Arshad Jan*  
Mian Arshad Jan  
Kakakhel Advocate  
HIGH COURT PESHAWAR

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

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

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

Date of hearing: 11th November, 2014.

JUDGMENT

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

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

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

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

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

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

"(a) Seventy per cent by initial recruitment and

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

6/1/2015

Attested  
Mian Afrasiab Gul  
Kakakhel Advocate  
HIGH COURT PESHAWAR

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(52)

Judgment

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Page 4 of 8

(15)

(b) Ten per cent by selection on merit with due regard to seniority from amongst sub-engineers of the Deptt: concerned in which the vacancy occurs, who hold a degree: and

(c) Twenty per cent by selection on merit with due regard to seniority from amongst officiating Assistant Engineers of the vacancy occurs, who hold a diploma."

As amended vide Notification dated 27th February, 1999:

"(a) Sixty five percent of the total posts by initial recruitment;

(b) Ten percent of the total posts by promotion, on the basis of seniority-cum-fitness from amongst the Sub-Engineers possessing Diploma at the time of their induction into service but acquired degree in Engineering during service;

(c) Ten percent of the total posts by Promotion, on the basis of seniority-cum-fitness, from amongst the Sub-Engineers who joined service as Degree holders in Engineering; and

(d) Fifteen percent of the total posts by selection on merit with due regard to seniority, from amongst the officiating Assistant Engineers/Senior Scale Sub-Engineers, the [sic] who hold a Diploma in Engineering and have passed Departmental Examination;

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

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

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

"(a) Sixty five percent by initial recruitment.

(b) ten percent by promotion, on the basis of seniority cum fitness from amongst the Sub-Engineer's who has acquired during service degree in Civil or Mechanical Engineering from a recognize university.

(c) five percent by promotion, on the basis of seniority cum fitness, from amongst the Sub-Engineer's who joined service as degree holders in Civil/Mechanical Engineering and

(d) twenty percent by promotion, on the basis of seniority-cum-fitness from amongst the Sub-Engineer's, who hold a diploma of Civil, Mechanical, Electrical or Auto Technology and have passed Departmental Grade A examination with ten years service as such.

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

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

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

Mian Akbar  
Kakakhel  
HIGH COURT PESHAWAR

Attested

15/06/2015

Judgement

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

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

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

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

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

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

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

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

- (1) That the Hon'ble Tribunal had no jurisdiction as the Rules were amended by the Government and not by any 'departmental authority' and in this regard reliance was placed upon section 4 read with section 7 of the Khyber Pakhtunkhwa Service Tribunals Act, 1974;
- (2) That the amendment was made to ensure that the higher positions are held by those who were competent and possessed the requisite qualifications;
- (3) That the diploma holders could also obtain degree in B.Tech (Hons.) and then they too could also avail of the benefit of clause (c) as lastly amended;
- (4) That the amendment made in the Rules was not person specific nor had any element of malafide;
- (5) That promotion or reserving a certain quota for promotion cannot be claimed as a vested right; and
- (6) That the matter was within the domain of policy and hence, not within the jurisdiction of the Tribunal.

Attested  
Mian Aftab  
Kakakhel  
Advocate  
HIGH COURT PESHAWAR  
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Judgement

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Reliance was also placed upon the following precedents:--

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

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

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

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

5. That Mr. Ijaz Anwar, learned counsel appearing for the respondents (appellants before the Service Tribunal), urged that the Tribunal had jurisdiction to decide the matter as the amendment to the Rules had affected their terms and conditions of service and in this regard placed reliance upon the cases of Muhammad Mubeen-us-Salam v. Federation of Pakistan (PLD 2006 SC 502) and I. A. Sharwani v. Government of Pakistan (1991 SCMR 1041).

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

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

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

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

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

8. The Tribunal appears to have been impressed that there were one hundred and thirty diploma holders whereas there were only thirteen graduates having B.Tech. (Hons.) degrees, therefore, in the opinion of the Hon'ble Tribunal it was necessary to preserve the quota of the diploma holders. The concern of the Tribunal effectively meant that if there are many less qualified persons they should have

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Mian Afraziab Gul  
Advocate  
HIGH COURT PESHAWAR

greater prospects for advancement and those who had higher qualifications or who had improved their Qualifications should not have an advantage. The anxiety of the Tribunal in this regard was misplaced. In the reported case of Dr. Alyas Qadeer Tahir v. Secretary M/o Education (2014 SCMR 997), it was held:--

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

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

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

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

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

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

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

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

"The Government is always empowered to change the promotion policy and the domain of the

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Mian Afrasiab C.  
Advocate  
HIGH COURT PESHAWAR

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Judgement

Page 8 of 8

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

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

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

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

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

The aforesaid are the reasons for doing so.

MWA/G-7/SC

Appeal allowed.

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Mian Afrasiab Gul  
Kakakhel Advocate  
HIGH COURT PESHAWAR

P L D 1995 Supreme Court 701 .

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Present: Sajjad Ali Shah, C.J., Ajmal Mian, Manzoor Hussain Sial, Muhammad Munir Khan and Mir Hazar Khan Khoso, JJ

FIDA HUSSAIN--- Petitioner

versus

**THE SECRETARY, KASHMIR AFFAIRS AND NORTHERN AFFAIRS DIVISION, ISLAMABAD** and another- Respondents

Suo Motu Review Petition No .52 of 1993, decided on 5th June, 1995.

(On review froze the judgment dated 5-12-1992 of the Supreme Court of Pakistan passed in Civil Appeal No. 216 of 1991;

(a) Pakistan Engineering Council Act (V of 1975)---

---S. 8- Constitutions of Pakistan (1973); Arts. 25 & 212- --Promotion of civil servant from any particular grade to higher grade Authority competent to order such promotion- --Government has the exclusive domain to decide whether any particular qualification would be considered sufficient for; promotion from any particular grade to higher grade and Government is; vested with exclusive domain to change such policy from time to time, for no body could claim any vested right in that policy- --Pakistan Engineering Council, however, has exclusive domain to decide, as to whether any particular qualification could be equated with another academic qualification but would have no power to say that civil servant/employee holding particular academic. qualification could not be promoted from a particular grade to higher grade- --Government cannot abdicate its power to decide such question in favour of a corporate body which is not in its control nor it can act in a manner which might be violative of Art. 25 of the Constitution on account of being discriminatory.

Muhammad Siddique Nasim v. Secretary, Government of the Punjab, Irrigation and Power Department, Lahore 1987 SCMR 302; Muhammad Azim Jamali and 11 others v. Government of Pakistan through Secretary/Chairman, Ministry of Railways and 33 others 1992 PLC (C.S.) 637 and Pakistan Diploma Engineers Federation (Registered) through its Chairman v. Federation of Pakistan through Secretary, Ministry of Water and Power, Government of Pakistan, Islamabad and 9 others 1994 SCMR 1807 ref.

(b) Pakistan Engineering Council Act (V of 1975)---

---Ss. 2 & 8- --Pakistan Engineering Council- --Functions- -Pakistan Engineering Council is vested with functions to regulate persons qualified to practise as professional engineers and consulting engineers and not persons who were employed in the Government or semi-Government organizations- -Where Government had employed any professional engineer, for performing professional engineering work as envisaged in cl. (k) of S.2 of the Act, provisions of the Act would be attracted and not otherwise.

(c) Civil service..

---Pakistan Engineering Council Act (V of 1975), Ss. 2 & 8-- Constitution of Pakistan (1973), Arts. 25, 212 & 188- Supreme Court Rules, 1980, O.XXVI, R.1- --Review of judgment of Supreme Court-- Civil servant- Right to promotion on basis of improvement of qualifications- Government had initiated two degree courses for diploma-holders in Engineering i.e. B. Tech. (Pass) and B. Tech (Honours), petitioner passed both such examinations and claimed promotion on basis of his improved qualifications Petitioner was not promoted on the ground that Pakistan Engineering Council did not recognize B. Tech. (Honours) as equivalent to B.Sc. Engineering degree- --Petitioner's departmental appeal and appeal before Service Tribunal did not succeed-Supreme Court dismissed petitioner's appeal on the ground that decision of Service Tribunal was based on judgment of Supreme Court in Muhammad Siddique Nasim's case (1987 SCMR 302)--- Review- --Petitioner having improved his qualifications on the undertaking of Government that diploma holder engineers would be provided facility of improving their qualifications by introducing B. Tech. (Pass) and B. Tech. (Honours) degree course, and that latter degree would be considered equivalent to B.Sc. Engineering degree was entitled to be considered for promotion to B-17 Grade- --Important aspect of the case which escaped notice of Supreme Court in its judgment under review was that some other civil servants/employees placed in the same position as petitioner had been considered for promotion to B-17 Grade and in fact were promoted whereas petitioner was denied such benefit which amounted to violation of Art. 25 of the Constitution-- --Judgment under review was, thus, liable to be recalled for having proceeded on wrong premises- --Petitioner's appeal was allowed and judgment of Service Tribunal was set aside- --Authority was



directed to consider petitioner's case for promotion to B-17 Grade.

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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 and I. A. Sharwari and others v. Government of Pakistan through Secretary, Finance Division, Islamabad and others 1991 SCMR 1041 re.

(d) Civil service---

---Promotion- --Administrative decision- --Promotion of civil servant relating to specific qualifications- --Government can exercise its discretion for future to provide that academic qualification of B. Tech. (Honours) would not be considered sufficient for promotion from B-16 to B-17 Grade if the same did not violate the principles of equality before law- --Constitution of Pakistan (1973), Art.25.

Petitioner in person.

Raja Muhammad Bashir, Deputy Attorney-General of Pakistan with Bashir Ahmed Sheikh, Registrar, Pakistan Engineering Council for Respondents.

Date of hearing: 5th June, 1995.

#### JUDGMENT

AJMAL MIAN, J.-- The above suo motu review petition has been initiated by this Court to consider, whether the judgment rendered by the Court on 5-12-1992 in Civil Appeal No. 216 of 1991 is liable to be recalled.

2. The brief facts are that the petitioner was appointed as an Overseer/Sub-Engineer in Northern Area P.W.D. in 1971. It appears that 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 latter was treated equivalent to B.Sc (Engineering) and Bachelor of Engineering, respectively, for the purpose of promotion. In this behalf, the then Minister of Education and Provincial

"From:

Mr. Abdul Hafeez Pirzada, Minister for Education and Provincial Coordination.

My Dear Governor,

As you may be aware the Polytechnic Diploma Holders had been agitating for a long time for provision of facilities for higher education. In order to resolve this issue in consultation with the Provincial Governments various Associations of the Polytechnic Diploma Holders, I convened a meeting on the 20th October, 1973 of the Chairman/Directors for Technical Education in the Provinces, Principals of Polytechnics, Representatives of Engineering Universities/Colleges and Representatives of various Associations of the Polytechnic Diploma Holders. It was decided that steps should be taken to introduce the degree programs for the polytechnic diploma holders without further delay.

2. As envisaged in the new Education Policy, the following programme was adopted. There will be two degree courses for diploma holders (i) B. Tech. (Pass) and (ii) B. Tech. (Honours).

3. Admission to the B. Tech. (Pass) course shall be subject to the candidates fulfilling the following minimum requirements:

- (i) Three years diploma from a Polytechnic institute in first Division.
- (ii) Two years, industrial training/experience. Candidates without industrial experience shall be required to undergo one year's supervised/guided practical training in industry to be arranged by the institution concerned.
- (iii) Performance in the admission test.

4. B. Tech. (Pass) course will consist of a year's programme of studies at the institution. The degree of B.Tech. (Pass) shall be treated at par with a Bachelor's degree in Science.

5. Candidates having successfully completed B. Tech. (Pass) degree course shall be eligible for admission to a two years B. Tech. (Honours) course. The first year of this course will comprise supervised/guided industrial training during which the students shall be assigned specific projects relevant to their fields of study. The second year will consist of intensive study at the institution. B. Tech.

(59)

(Honours) shall be treated at par with B. Sc. (Engineering)/B.E. Degree.

It was also decided that so long as necessary facilities do not exist in Balochistan and N.-W.F.P. and other backward areas, Federal Government will arrange placement of students from these areas in other Provinces.

You are requested to kindly direct the relevant authorities of your Province to implement these decisions urgently, With regards,

Yours sincerely,

(Sd.)

(Abdul Hafeez Pirzada):"

3. Pursuant to the above policy, the aforesaid proposed courses of B.Tech. (Pass) and B. Tech. (Honours) were initiated. It is the case of the petitioner that he passed B. Tech. (Pass) course in 1977 and B. Tech.(Honours) course in March, 1981, from N.E.D. University, Karachi. After

improving this academic qualifications the petitioner resumed his duties in March, 1981, in the Northern Areas P.W.D. It is an admitted position that a number of employees who cleared B. Tech. (Pass) and B. Tech. (Honours) were promoted to BPS-17 by the authorities concerned. The petitioner was not promoted, the Administrator, Northern Areas, Gilgit, was informed by the Chief Engineer, Northern Areas P.W.D., that the petitioner could not be promoted as the Pakistan Engineering Council did not recognise B. Tech. (Honours) as equivalent to B.Sc. (Engineering) degree. Thereupon, the petitioner filed a department appeal on 2G-1-1989, which was rejected on 11-2-1990. Then he approached the Federal Service Tribunal through Appeal No.83(R) of 19(10) but the same was dismissed for the following reasons:--

"10. We have considered the arguments advanced by both sides as well as the objections submitted by Pakistan Engineering Council. In our view the letter of Minister for Education and Provincial Coordination dated 26-10-1973 was a letter laying down a policy, effect to which was to be given by issue of notifications by the Federal Government and the Provincial Governments. It appears that only the Government of Punjab issued a notification dated 1-2-1981 but withdrew it on 5-3-1985. Any notification to give effect to this policy decision was not issued by the Federal Government. The Pakistan Engineering Council which is the appropriate body to give opinion clearly stated in their letter dated 24-2-1982 to the Ministry of Education that B. Tech. (Hons.) was not equivalent to B.Sc. (Engineering) Degree. We are, therefore, of the view that the appellants appeal have no merit and are dismissed."

After that, the petitioner filed a petition for leave to appeal in this Court which was granted to consider the various contentions raised by the learned counsel for the petitioner. The appeal was heard on 5-12-1992 and it was dismissed on the ground that the impugned judgment of the Tribunal was based on the judgment of this Court in the case of Muhammad Siddique Nasim v. secretary government of the Punjab, Irrigation and Power Department, Lahore (1987 SCMR 302). Then the petitioner filed a review petition, which was registered as a Suo Motu Review Petition.

4. We have heard the petitioner in person and Raja Muhammad Bashir, learned Deputy Attorney-General for the respondents. We have also perused the record. It appears to be an admitted position that pursuant to the above decision contained in the aforesaid letter dated 26-10-1973 of the Minister for Education and Provincial Coordination, two degree courses for diploma holders, namely, B. Tech. (Pass) and B. Tech. (Honours) had commenced. The employees who improved their academic qualification by passing the aforesaid examinations were given promotion by the Federal Government Departments as well as by the Government of Punjab. Upon a failure of the Government of Punjab, the Punjab Service tribunal had allowed a number of appeals filed by the aggrieved employees, copies of some of such decisions have been filed by the petitioner in the present proceedings. It seems to be also an admitted position that even in the petitioner department, certain employees who had passed B. Tech. (Honours) examination were given promotions to BPS-17. However, upon the receipt of communication from the Pakistan Engineering Council to the effect that B. Tech. (Honours) cannot be equated with B. Sc. (Engineering), the Punjab government as well as the federal Government stopped considering for promotion to BPS-17 the incumbents who had Passed B. Tech. (Honours). At this juncture, it may be pertinent to refer to the letter of the Registrar of the Pakistan Engineering Council dated 30-4-1983, addressed to one Mr. Sajid Ali, General Secretary, Sui Northern Gas Sub-Engg. Association in which the following statement of facts was made.

"The Council has approved B. Tech. (Hons) as equivalent to B. Sc. Engineering which a Diploma Holder can pass after 4 years of passing the final examination in diploma. The Council has also equated AMIL Examination equivalent to B. Sc. Engineering. These facilities have been provided to those who want to improve their qualification become equivalent to B. Sc. Engineering. You are advised to improve your qualifications if you are registered as a Professional Engineer with the Council."

4-A. We invited the attention of the learned Deputy Attorney-General to the above portion of the aforesaid letter.

He, after obtaining instructions from Mr. Bashir Ahmed Sheikh, Registrar of the Pakistan Engineering Council, stated that the words "The Council has approved B. Tech. (Hons.) as equivalent to B. Sc. Engineering" should be read as "The Government has approved B. Tech. (Hons.) as equivalent to B. Sc. Engineering". According to him, this was typographical error and the word "Council" has been used in place of the word "Government". We asked the Registrar of the Pakistan Engineering Council to produce any document to indicate that the above alleged typographical error was corrected. For that purpose, we adjourned the case till after tea break. The learned Deputy Attorney-General produced letter No.PEC/QEC/4-P dated 24-4-1984 of the Registrar, Pakistan Engineering Council addressed to the Director-General (Investigation-IV), Wafaqi Mohtasib (Ombudsman)'s Secretariat, Islamabad, wherein the following averment has been made:--

"We are extremely sorry to say that a small typographical error in writing the word 'Council' in place of 'Government' in the 5th para. of our letter dated 30-4-1981 has caused misunderstanding. It is confirmed that the course of B. Tech. (Hons.) has never been approved by the Pakistan Engineering Council. It was originally approved by the Government in 1973."

5. However, we are not impressed by the above explanation. A perusal of the above-quoted para. of the Pakistan Engineering Council's letter dated 30-4-1981 indicates that the words "The Council" which are used as the first two words of the aforesaid para. could not have been written on account of typographical error as in the fifth line of the above para. it has been stated that "The Council has also equated AMIL Examination equivalent to B.Sc. Engineering". The use of the word "also" in the above referred subsequent portion of the above-quoted para. leads to the conclusion that the words "The Council" in the beginning of above para. could not have been used on account of typographical error. It is, therefore, evident that initially the Pakistan Engineering Council had approved to treat B. Tech. (Honours) equivalent to B.Sc. Engineering. However, subsequently it changed its stand. It appears that the University of Engineering and Technology, Lahore, through its Registrar's letter dated 15-10-1980 addressed to the Secretary Education, Government of Punjab, Lahore, intimated to the latter that the Equivalence Committee on the basis of the opinion contained in the working paper and after discussing the entire issue with the complete background, recommended that B. Tech. (Honours) degree in particular specialization may be equated with that of corresponding B. Sc. Engineering degree with the above University for the job purposes as Field Engineers

6. We are, therefore, inclined to hold that factually the policy decision contained in the above-quoted letter of Minister of Education and Provincial Coordination dated 26-10-1973 was implemented. Even if we were to hold that the Pakistan Engineering Council had not approved the above equivalisation of the above academic degrees, it would not make any difference as the basic question in the present case which escaped notice of the learned Judges of the Bench of this Court which rendered the judgment involved is, as to whether the Pakistan Engineering Council is competent to decide the question, whether a particular academic degree should be accepted as sufficient academic qualification for promotion of civil servants and employees of the semi Government organizations from a particular lower grade to a particular higher grade or is it within the domain of the Government or the semi-Government organization concerned. At this juncture, it may be pertinent to refer to a judgment of the High Court of Sindh in the case of Muhammad Azim Jamali and 11 others v. Government of Pakistan through Secretary/Chairman, Ministry of Railways and 33 others (1992 PLC (C.S.) 637), in which the facts were that the petitioners, who were 12 in number, were holding post of Assistant Executive Engineers (Grade-17) in Pakistan Railways, hereinafter referred to as the Railway. Respondents Nos.4 to 10 were holding posts as Executive/Divisional Engineers (Grade-18), whereas respondents Nos.11 to 34 were holding posts of Assistant Executive Engineers (Grade-17) in the Railways and were claiming promotion to the posts of Executive/Divisional Engineers (Grade-18). The petitioners filed a Constitution petition, in which they averred that respondents Nos.4 to 34, who had diplomas from various institutions, were not professional Engineers in terms of clause (j) of section 2 of the Pakistan Engineering Council Act, 1975, hereinafter referred to as the Act, and, therefore, were not entitled to undertake any professional engineering work as defined in clause (k) of section 2 of the Act. It was further averred that in spite of the efforts on the part of the petitioners, the Government of Pakistan, the Chairman Railways Board and the General Manager, Pakistan Railways, Lahore (who were arrayed as respondents Nos.1, 2 and 3 respectively) and despite of the directive of respondent No.1, respondents Nos.4 to 34 continued to hold the office of professional engineers in violation of the provisions of the Act. On the basis of above averments, a number of declarations and directives were sought. The matter was heard by a Division Bench of the Sindh High Court. One of us, Ajmal Mian, J. (who was a member of the above Bench) after referring all the relevant provisions of the Act, came to the following conclusion:--

"30. Having referred to the various provisions of the Act, the question, which requires consideration is, as to whether the provisions of the Act are applicable only to professional Engineers and professional consultants, who are in practice or do they also apply to the persons working in the Government Departments, autonomous bodies, local authorities and private firms and companies or employed by the private persons as paid employees etc. I am inclined to hold that the provisions of the Act are applicable only to the professional Engineers and consulting Engineers, who are in practice. My reasons for holding so inter, alia are as follows:

- (i) That though preamble to an Act does not control the provisions of the Act, but reference can be made to it to ascertain the legislative intendment in case of any doubt/ambiguity. In the instant case the object of the Act given in

the preamble is 'to make provision for regulation of engineering profession'.

- (ii) That the definition of 'professional Engineer': as given in clause (g) of section 2 of the Act provides two preconditions, namely, (a) the person should hold a recognized engineering qualification, and (b) he should be registered as a professional engineer with the Council.
- The word engineer is prefixed by the word professional, which has a definite connotation and is used when a person is in practice of a particular profession.
- (iii) The term "professional engineering work" as defined in clause (k) of section 2 of the Act refers to the services/works which are normally rendered by a professional engineer, who is in practice, namely, giving of professional advice and opinions. The other services/works mentioned after the above two services/works are to be read in conjunction with them, otherwise it would lead to absurdity. I may give an illustration. Suppose A for his private residential building employs B a diploma holder in engineering to take weekly measurements of the work executed. The work, measurements and the residential building both have been mentioned in the above clause (k). If we were to read the words professional advice and opinion disjunctively with the word 'measurement', it must follow that A and B have rendered themselves liable to be prosecuted under subsections (1) and (2) of section 27 of the Act referred to hereinabove, which could not have been the intention of the law-maker.
- (iv) That section 8 of the Act, which defines the functions of the Council inter alia provides for the maintenance of a Register in terms of section 16 of the Act 'of persons qualified to practise as professional engineers and professional consultants and not persons in service'.
- (v) That section 12 of the Act empowers the Executive Committee to grant to any person domiciled outside Pakistan, who does not hold any recognized engineering qualification but, who holds a diploma in engineering, or a degree in applied sciences or an equivalent diploma from the institution recognized by the Council etc. a temporary licence for a specific project to work as an associate of a professional engineer but the latter will have to sign and seal the plans and specifications for the project.
- (vi) That section 16 provides for the maintenance of a register and for enrolment of professional engineers and professional consultants, whereas section 17 of the Act provides for removal of the name of a professional engineer or professional consultant and **re-enrolment**. It may be observed that subsection (2) of section 17 of the Act empowers the Enrolment Committee in its discretion to refuse to permit the registration of any person or to **direct the removal altogether or** for a specified period from the Register the name of any registered professional engineer or consulting engineer, who or which has been convicted for any such offence as implies in the opinion of the Committee a defect of character or who or which after an enquiry and of hearing has been held by the Committee as guilty of infamous conduct in any professional respect or who or which has shown himself or itself to be unfit to continue in practice on any ground including in the case of a professional engineer mental ill-health.
- (vii) That section 20 of the Act provides for lodging of a complaint against any professional engineer or consulting engineer, whereas section 21 contemplates constitution of Tribunals of Inquiry for inquiring into such complaints. Furthermore, subsection (6) of section 22 provides that in any case in which it (i.e. the Tribunal) has recommended the imposition of any penalty on or the prosecution of, the respondent; the Tribunal may also recommend that an amount not exceeding twice the amount of the fee recovered by the respondent from the complainant may be recovered from the respondent and be paid to the complainant as compensation.
- (viii) That subsection (5) of section 27 of the Act provides that no person undertaking any professional engineering work shall, unless he is registered under the Act, be entitled to recover before any Court or authority any sum of money for services rendered in such work:

However, a contrary view was taken by Qaiser Ahmad Hamidi, as under:-

"6. According to Pakistan Engineering Council Act, 1975, only registered professional and consulting engineers are authorised to undertake professional engineering works. The copy of letter sent by Chairman, Pakistan Engineering Council to Government of Punjab dated 2-6-1977, further makes it clear that the Federal Government had announced 30th June, 1977, to be the last date by which all Professional and Consulting engineers shall get themselves registered with the Pakistan Engineering Council. It appears that due to pressure of diploma holders who are not registered professional engineers, there has been flagrant violation of the provisions of the Act. Even in relating to the posts of Assistant Executive Engineers (B.P.S. 17) regarding which a decision was taken by the Government that diploma holders could be appointed against such posts, the same lacks the warrant of law and is in the nature of concession granted to unqualified persons. The appointment of the diploma holders against senior posts of Pakistan Railways in disregard of the provisions of the Act; is, therefore, illegal on the face of it. It may be noted that the responsibilities of the engineers in Pakistan Railways are more onerous. They relate to proper functioning of the railways and the construction, design, supervision and maintenance of engineering works which affect the safety of public at large."

The matter was referred to a third learned Judge and was heard by Saiduzzaman Siddiqui, C. J., (as he then was), who concluded as under:--

"7. From the above debates in the National Assembly, it would appear that the object of introducing the Engineering Council Bill of 1975 was to bring the engineering profession on the same line and make it subject to similar check and control as are applicable to the Medical and legal profession, by creating an Engineering Council in line with the Medical Council and the Bar Council. Ajmal Mian, C.J. (as he then was) in his judgment compared the provisions of the Act with the provisions of Legal Practitioners Act and observed that the provisions of the Legal Practitioners Act are applicable only to the practising advocates and are not extended to persons having legal qualification who are employed in Statutory Corporations, and other Departments though they may be tendering legal advises in course of their such employment. The observations of Ajmal Mian, C.J., appear to be in accord with the objects of the Act. I am, therefore, of the view that merely because a person possesses an engineering qualification and is employed on a job which requires engineering skill does not mean that he must be registered under the Act."

7. The above matter came up before this Court through appeals with the cave of this Court, which were inter alia filed by the Pakistan Engineering Council. The same were dismissed and the above majority view of the High court of Sindh was maintained.

8. However, - Raja -Muhammad Bashir, learned Deputy Attorney general, has submitted that the following portion of the judgment of this Court in the case of Pakistan Diploma Engineers Federation (Registered) through its Chairman v. Federation of Pakistan through Secretary, Ministry of Water and Power, Government of Pakistan, Islamabad and 9 others (1994 SCMR 1807) upports the plea of the respondents:--

"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 Organisation, if they are called upon to **undertake any professional engineering work**, as defined under the Act. In fact in the connected case CA 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."

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 A, 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 qualifications cannot be promoted from a particular Tirade to a higher Grade. The main object of the Act as pointed out by one of us (Ajmal Mian, J.) and Saiduzzaman Siddiqui, CJ. (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 qualifications 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 persons qualified to practise 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 interests of the members;

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 Registrars above letter dated L4-4-1984 stated that there was typographical error in the above-quoted portion of its Registrar's letter dated 30-4-1981.. 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 Aim jamatt (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 15 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.

14. The upshot of the above discussion is that the judgment under review is liable to be recalled as it proceeded on wrong premises. We would, therefore, allow the above Suo Motu Review Petition and recall the above judgment. In consequence thereof, petitioner's civil Appeal No.216 of 1991 is allowed and the judgment of the Tribunal is set aside and the respondents are directed to consider the petitioner's case for promotion to BPS-17,