

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal No. 953/2018

Date of Institution ... 02.08.2018

Date of Decision ... 07.10.2021

Mr. Awais-ur-Rehman Sub Engineer, Building FATA Division,
Khyber Agency. _____ (Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa through Chief
Secretary, Civil Secretariat Peshawar and two others.
_____ (Respondents)

Present.

Mr. Muhammad Amin Ayub,
Advocate.

... For appellant.

Mr. Muhammad Adeel Butt,
Addl. Advocate General

... For respondents.

MR. AHMAD SULTAN TAREEN
MR. MIAN MUHAMMAD

... CHAIRMAN
... MEMBER(E)

JUDGEMENT


AHMAD SULTAN TAREEN, CHAIRMAN:- Through the above titled appeal described in the heading and six other appeals as enclosed in brackets-(Appeals No. 954/2018, 955/2018, 956/2018, 957/2018, 958/2018, 959/2018), the jurisdiction of this Tribunal has been invoked by the appellants with the prayer as copied below:-

"On acceptance of the instant appeal, the impugned Notification dated 26.03.2018 may graciously be modified to the extent of joint promotion quota for B.Tech (Hons) Degree holder Sub-Engineers by separating the same from those Sub-Engineers who were in possession of B.Tech (Hons) Degree at the time of joining service and for those who had

acquired the same qualification during service on the analogy of B.E/B.Sc. Engineer Degree Holder with all back benefits."

2. This single judgement shall stand to dispose of all the seven appeals in one place as they all are verbatim in facts and grounds giving rise to common questions of facts and law.

3. The factual account given in Service Appeal No. 953/2018 and copies of supporting documents annexed therewith would reveal that all the appellants are incumbents of the post of Sub Engineer in the Respondent Department. Their case in nutshell is that the Provincial Government vide Notification dated 13.01.1980 reserved 10% quota for promotion to the post of Assistant Engineer from amongst the holders of the post of Sub-Engineer possessing the degree as higher qualification. May be, due to vagueness of expression "degree" simply used in the previous notification, need was felt to specify the name of degree and vide Notification dated 18.10.1986, 10% separate promotion quota reserved for those Sub-Engineers who held a degree was restricted by naming degree being in Engineering and also the mode of determination of inter-se seniority was prescribed by the same amendment. This practice remained in field till 1992 when through amendments vide Notification dated 12.04.1992, 05% separate quota was reserved for promotion of those Sub Engineers who acquired Degree before joining the service and for those who acquired the requisite qualification during service. Vide Notification dated 12.01.1999, 05% promotion quota was also reserved for Sub Engineers who had joined the Service as Engineering Graduates and those who had acquired the same Degree during service. Vide Notification dated 16.12.2011, 20% promotion quota was reserved for promotion of Sub-Engineers holding Diploma (Civil/Mechanical/Electrical) and 08% promotion quota was reserved for those holding Degree of B.E/B.Sc. Engineering (Civil/Mechanical/Electrical) at the time of joining service and 07% quota for those who had acquired the Degree



during service. It was for the first time that through an amendment vide Notification dated 14.10.2014, the category of the appellants i.e. B.Tech (Hons) Degree holders, a quota of 03.5% promotion was reserved including both who acquired such degree before service or who got it during service. In light of the judgement of the Hon'ble Peshawar High Court and after observing all the codal formalities, recommendation was made for reservation of 10% quota for promotion to the post of SDO/Assistant Engineer (BS-17) in respect of B.Tech.(Hons) Degree holder Sub Engineers. There are two categories of B.Tech. (Hons) Degree Holder Sub Engineers i.e one those who have acquired B.Tech (Hons) Degree before joining service and the other is that who have obtained the said degree during service. Vide impugned notification dated 26.03.2018, a separate quotas has been notified for promotion of other cadre of Graduate Sub Engineers holding Degree of B.E/B.Sc. Engineering to the post of SDO/Assistant Engineer proportionately 05% by promotion, on the basis of seniority of the Sub Engineers who acquired/possessed Degree of B.E or B.Sc. Engineering (Civil, Mechanical or Electrical) at the time of their joining service; and 03.5% for Sub-Engineers who acquired similar Degree during service. On the other hand, vide the same Notification, a different yardstick has been used for promotion quota in respect of Sub Engineers who acquired B.Tech. (Hons) Degree during service and who were in possession of such degree before joining their service; and combined 10% quota was reserved for their promotion to the post of SDO/Assistant Engineer. The appellant being aggrieved of the Notification dated 26.03.2018 *ibid*, preferred Departmental Representation dated 16.04.2018 before the competent authority but the same was not responded within the statutory period of 90 days, and in follow up, they have preferred the instant appeals.

4. The respondents were put on notice after admission of the appeals for regular hearing. They joined the proceedings and submitted joint parawise

comments with legal as well as factual objections and prayed for dismissal of the appeal with cost.

5. It was argued on behalf of the appellant that the impugned Notification dated 26.03.2018 is in violation of Section 8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule 17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989; that the department discriminated the appellant on one hand vis-a-vis similarly placed persons while on the other hand, their colleagues acquiring B. Tech qualification during service were bestowed with double chance of the career progression both in terms of seniority and in terms of qualification due to introduction of the 10% combined promotion quota for B.Tech (Hons) Degree Holders including those who were possessing the said qualification at the time of joining the service and those who later on acquired such qualification during service; that discriminatory treatment meted out to the appellants is in conflict to the fundamental rights provided under Article 4 and 25 of the Constitution of Islamic Republic of Pakistan; that the respondents in the same impugned rules set a precedent of providing separate 05% promotion quota for those Sub Engineers who possessed the degree of B.E or B.Sc. Engineering (Civil, Mechanical or Electrical) at the time of joining their service, and separate 03.5% quota for those Sub Engineers who acquired the Degree of B.E or B.Sc. Engineer (Civil/Mechanical/Electrical) during service; and despite the said precedent was brought into practice in case of Sub Engineers possessing the qualification of B.E or B.Sc. Engineering was not followed in the case of appellants who having possessed the Degree of B.Tech (Hons) at the time of joining the service were at par for reservation of quota with those Sub Engineer who possessed B.E or B.Sc. Engineering at the time of joining the service. The learned counsel for the appellant concluded his arguments with the submission that 10% quota reserved collectively for holders of the Degree of B.Tech

(Honors) in the category of Sub Engineers is liable to bifurcation in line with the separate quota in other categories of Sub Engineers possessing the Degree of B.E or B.Sc. Engineering and prayed for issuance of appropriate direction for separation of 10% quota fixed under Clause (e) of the Appendix to the impugned rules in relation to Degree holders of B. Tech. (Honors).

6. Conversely, it was argued on behalf of the respondents that there is no final order in case of the appellants making their appeals not maintainable under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. It was the argument on factual side that Sub Engineers having B.Tech. (Honors), Degree submitted a joint application for reservation of quota for their promotion to the post of SDO BS-17. In this connection a Committee was constituted to submit recommendations. The committee proposed 03.5% share for Sub Engineers having B. Tech (Hons) on the basis of seniority-cum-fitness by curtailing 07% share quota reserved for Sub Engineer who acquired Degree of B.Sc. Engineering (Civil/Mechanical/Electrical) during service. The Establishment Department placed the case before the SSRC for consideration on 19.06.2013. As per Law Department advice the case was referred to Public Service Commission for requisite NOC who agreed with the proposed amendments for the post of Assistant Engineer/SDO/Junior Engineer/Assistant Research Officer BS-17. In view of SSRC recommendations, draft Notification was forwarded to Law Department for vetting before circulation. Law Department vetted the notification with the observations and advised for minute examination. Consequently, a note was submitted to the Chief Secretary for approval of the Notification regarding the said amendment in the existing service rules but the case was returned from the said quarter with direction to submit a revised working paper highlighting the observations of Law Department for placement before the SSRC for consideration/concurrence. It was in this background that the revised Working Paper was placed before the



SSRC on 16.04.2014 which decided that the seniority in all cadres shall be determined from the date of initial appointment, therefore, the Department again submitted a note to the Chief Secretary for proper approval of the notification which was approved and after completion of all codal formalities, the notification dated 14.10.2014 was issued with necessary amendments duly recommended by SSRC and approved by the Chief Secretary. It was further pointed out on behalf of the respondents that Writ Petition No. 1320-P/2017 was filed seeking enhancement of the share for promotion as Assistant Engineers/SDOs in BS-17 in which direction was issued though for instant notice to Addl. AG who was present in the Court accepted the same without consultation of the department; but in pursuance to the direction of the Hon'ble Court to consider the grievance of the petitioner, the quota fixed as 03.5% earlier was enhanced to 10% vide notification dated 26.03.2018 as impugned before this Tribunal. So, it was argued that the appellants are stopped by their conduct to seek further changes *inter-se* in quota reserved in pursuance to direction of Hon'ble Peshawar High Court vide the impugned notification. While concluding the arguments, learned AAG submitted that the Government is empowered to frame or amend the service rules of the department and in case of the appellant was nothing beyond the authority of the government and the rules were rightly amended by reservation of the 10% quota which the appellants have impugned without any justification. He submitted that the appeals are liable to dismissal with costs.

7. Having heard the arguments on behalf of the parties and perused the record in light of pro and contra arguments, we deem it appropriate to dilate upon the method of appointment of the post of Assistant Engineer. According to the Communication & Works Department (Recruitment and Appointment) Rules, 1979 notified on 13.01.1980, besides the conditions prescribed in other columns of Schedule I of the said rules, proportion of quota for initial

recruitment and for proportion was also prescribed in the last column of said schedule. Accordingly, 75% quota was reserved for initial recruitment, 10% by selection on merit with due regard to seniority from amongst Sub Engineers of the Department who hold a degree; and 20% by selection on merit with due regard to seniority from amongst Senior Scale Sub Engineers of the Department, who hold a Diploma and have passed Departmental Professional Examination. As discussed in the factual part herein above, the basic quota reserved for promotion of In-service Sub Engineers was altered time and again through different amendments in the entries in the last column meant to prescribe quota relating to the post of Assistant Engineer at Serial No. 4 of Appendix to the basic rules. However, all the amendments in the appendix relating to said post were to provide variation in ratio of quota for promotion including quota for graduate engineers holding the post of Sub Engineer. In the series of amendments, in one made vide notification dated 16.12.2011, besides certain other additions it was also prescribed that the higher qualification for the purpose of promotion against particular quota will be the B.E/B.Sc. Engineering(Civil/Mechanical/Electrical). Before the amendment made vide notification dated 14.10.2014 whereby 03.5% quota was provided for promotion of Sub Engineers having Degree of B.Tech (Hons), the quota as reserved previously pertained only for graduate Sub Engineers in possession of Engineering degree. Lastly, 03.5% quota as reserved vide entry in clause (e) in column No. 5 against Serial No. 4 in the Appendix in 2014, was enhanced upto 10% by promotion keeping the other conditions intact. The prayer of the appellants in plain terms reveals that they claim the modification in clause (e) pertaining to 10% quota exclusively reserved for B-Tech (Hons) Degree holders seeking its separation into two sub categories of the Sub Engineers, one comprising those who were in possession of B-Tech (Hons) degree at the time of joining service and the other who acquired the same qualification during

service, on analogy of B.E/B.Sc. Engineering Degree Holders, with all back benefits.

8. Needless to say that holders of the post of Sub Engineers, as far as their original post is concerned, are required at the time of initial appointment to possess minimum qualification as prescribed in relevant column of the appendix but they after regular appointment are separately dealt for appointment through promotion and have been placed differently in the matter of quota reserved for promotion having regard to the minimum qualification and the higher relevant qualification. So, they from their origin were categorized in two main categories: "one comprising those who possess only basic qualification prescribed for the post and the second including those Sub Engineers who possess the degree of BE/BSc Engineering or they are holders of B.Tech (Hons) degree. The matter in issue before us relates to a part of second category covering the Sub Engineers who happen to have possessed the degree of B.Tech (Hons). Although there is no issue about part of the second category comprising Sub Engineers who happen to have possessed the degree of BE/BSc. Engineering but for the sake of understanding the grievance of appellants, it is useful to mention that this part of the second category has been further divided in to two sub categories: "one comprising those Sub Engineers who happened to have possessed the degree of BE/B.Sc. Engineering at the time of their initial recruitment and other comprising of those Sub Engineers who happened to have acquired such degree during service after their initial appointment. The appellants, making part of the second category in main categories discussed before, are aggrieved that when one sub category making part of the second main category has been divided further into two sub categories for proportional quota on subject of the BE/BSc. Engineering degree with reference to the timeline of its acquisition, the same treatment was befitting for the other part including holders of the B. Tech (Hons) degree. Contrarily, Sub

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Engineers possessing B.Tech (Hons) Degree have been kept combined for quota on the subject of their degree irrespective of the timeline of its acquisition. According to the impugned notification dated 26.03.2018 in respect of the amendment in the Appendix of the department Notification dated 25.03.2010, the Sub Engineers who possessed the B.E or B.SC. Engineering degree at the time of joining the service were separately dealt with for the purpose of quota while those who albeit have happened to possess the same degree but acquired later on during service have been dealt separately with a proportional quota in the same category. The substituted entries under Clause (b) and clause (c) against Serial No. 4 in Column No. 05 in the Appendix respectively provide 05 % quota for those Sub Engineers who happened to have possessed the B.E or B.Sc. Engineering degree at the time of appointment while 03.5 % for others in the same category who happened to have acquired such degree during service. However, by the substituted entry vide Clause (e) in the same Appendix against S.No. 4 in Column No. 05, the Sub Engineers possessing the Degree of B.Tech (Hons) were held entitled for 10% quota without making distinction between the Sub Engineers who were in possession of such degree at the time of joining the service and who acquired such degree during service. The appellants purport to have possessed the degree of B.Tech (Hons) at the time of their joining the service. The accumulation of the Sub Engineers having the Degree of B.Tech (Hons) in a single queue for 10% promotion quota, irrespective of distinction between holders of said qualification at the time of induction into service and the holders of the degree who acquired such degree after joining the service, is perceptibly not efficacious for the appellants; when they are always exposed to a risk of thumping from behind to leave place to one who comes forward from the sideways after acquiring B.Tech (Hon) Degree during service. Needless to say that the apportionment of quota between the Sub Engineers, who happened to have possessed the degree of BE or BSC Engineering at the time of appointment and who happened to have acquired the



same during service, has emboldened the appellants for the claim of apportionment of the 10% quota of their category in the similar manner as applied for the category of holders of the degree of BE or BSC Engineering. The claim of appellants for the treatment alike for bifurcation of quota within limits of 10% quota on the subject of degree of B.Tech (Hons) is not unreasonable when juxtaposed to bifurcation of quota on the subject of degree of BE/BSc. Engineering degree with reference to the timeline of its acquisition. If date of appointment of some Sub Engineers not in possession of B.Tech (Hons) degree is the same or earlier than the appellants but they i.e. the former happen to have acquired the relevant degree at any stage during service, there will always be a room for customization and readjustment of the seniority list of the competitors for 10% quota on the subject of B.Tech (Hons) degree because of difference in the order of their merit in one selection or difference in dates of their appointment. The date of regular appointment among other points is a significant factor for determination of seniority within the meaning of Rule 17 Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. The seniority of the appellants will remain fluctuating in case of the combined category of Sub Engineers for competition within limits of 10% quota on the subject of B.Tech (Hons) degree. It is not difficult to assume that if a Sub Engineer having been appointed on the basis of his original qualification earlier than the appellants, happens to have acquired the Degree of B.Tech (Hons) during service after appointment of the appellants, he will stand senior to them on the strength of prior date of appointment irrespective of the fact that he was not possessing such qualification when the appellants holding the same had joined the service. So, the appellants were entitled to be treated alike with the categories of Sub Engineers who were provided separate quota within their own category because of their possessing of B.E or B.Sc Engineer (Civil/Mechanical/Electrical) degree at the time of joining the service. A copy of the tentative seniority list of B.Tech Degree Holders Sub Engineers (BPS-16/12) of



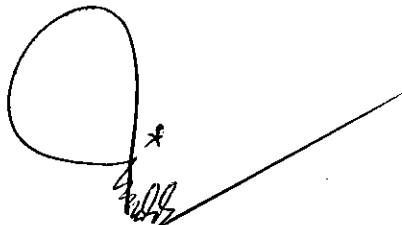
C&W Department Khyber Pakhtunkhwa as stood on 31.03.2021 was produced at the bar on behalf of the appellants. It was contended that according to the said seniority list, the B.Tech (Hons) Degree Holder Sub Engineers are 70 in number; and all among them except the appellants (07 in numbers) and some others if any, are those who acquired the qualification of B.Tech (Hons) after joining the service but having the date of their appointment prior in time to that of the appellants; and they have got senior number in the seniority list than the appellants.

9. In view of the foregoing discussion, if the appellant having possessed B.Tech Honors Degree at the time of joining their service, are not treated distinctively than those Sub Engineers possessing the similar qualification but having acquired the same during service, they i.e. appellants will always remain not only caught up in uncertainty in the matter of seniority but also prone to the risk of relegation in the seniority for the reason already discussed herein above.

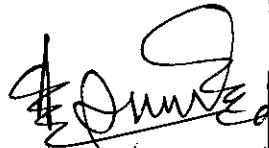
When a particular treatment has been meted out to a class of Sub Engineers by separation of their inter-se quota proportionately with reference to timeline of acquisition of BE/BSc. Engineering degree, the appellants for bifurcation of quota on the subject of their degree with reference to timeline of its acquisition are similarly placed. If the appellants are not treated in the said manner, the infringement of their fundamental rights of equality of the treatment with similarly placed persons will perpetuate. Certainly, the amendments made by the impugned notification for 10% quota on the subject of B.Tech(Hons)degree irrespective of the timeline as to acquisition of such qualification, has deprived the appellants from protection as granted to the Sub Engineers with separate quota who at the time of joining the service have held the Degree of B.E/B.Sc. Engineering (Civil/Mechanical/Electrical). Needless to say that the rules as impugned in the appeals have got the force of law and by virtue of sub article (1)of Article 25 of the Constitution of Islamic Republic of Pakistan, all citizens

are equal before law and are entitled to equal protection of law. So, we hold that the appellants have got a good case for the relief as prayed for.

10. For what has gone above, all the appeals enumerated above at the outset are accepted as prayed for. Consequently, the respondents are directed to proceed under due course for substitution of Clause (e) of the Appendix against Serial No. 4 in Column No. 5 to provide for separation of 10% quota with appropriate proportion having regard to the number of Sub Engineers who happened to have possessed the Degree of B.Tech (Hons) at the time of their joining the service and those who happened to have acquired such degree while in service after their appointment. There is no order as to cost. File be consigned to record room.

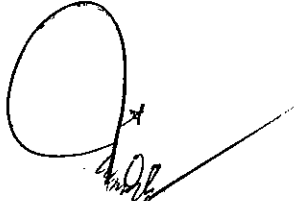
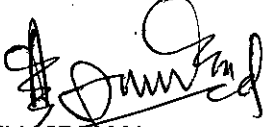


(MIAN MUHAMMAD)
Member(E)



(AHMAD SULTAN TAREEN)
Chairman

ANNOUNCED
07.10.2021

S.No.	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	07.10.2021	<p><u>Present.</u></p> <p>Mr. Muhammad Amin Ayub, ... For appellant Advocate</p> <p>Mr. Muhammad Adeel Butt, Addl. Advocate General alongwith ... For respondents. Saleem Shah, Supdt.</p> <p>Vide our detailed judgment of today, this appeal is accepted as prayed for. Consequently, the respondents are directed to proceed under due course for substitution of Clause (e) of the Appendix against Serial No. 4 in Column No. 5 to provide for separation of 10% quota with appropriate proportion having regard to the number of Sub Engineers who happened to have possessed the Degree of B.Tech (Hons) at the time of their joining the service and those who happened to have acquired such degree while in service after their appointment. There is no order as to cost. File be consigned to record room.</p> <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="text-align: center;">  (MIAN MUHAMMAD) Member(E) </div> <div style="text-align: center;">  CHAIRMAN </div> </div> <p><u>ANNOUNCED</u> 07.10.2021</p>

13.04.2021

Due to demise of Hon'able Chairman, the Tribunal defunct, therefore, the case is adjourned to 13.07.2021 for the same.


Reader

13.07.2021

None for the appellant and Mr. Javed Ullah, Assistant Advocate General for respondents present.

Due to general strike of the Peshawar Bar Association, the case is adjourned to 24.11.2021 for the same before D.B.


(Rozina Rehman)
Member (Judicial)


Chairman

21.09.2021

Appellant alongwith counsel and Mr. Kabirullah Khattak, Addl. AG for the respondents present.


Learned AAG seeks short adjournment, for preparation and assistance. Case to come up on 07.10.2021 for arguments before the available D.B.


(Rozina Rehman)
Member(Judicial)


Chairman

01.01.2021

Due to summer vacation, case is adjourned to 13.04.2021 for the same as before.

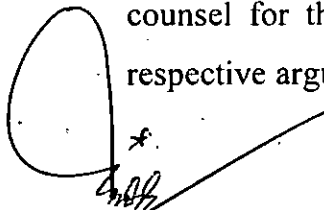

Reader

24.02.2021

Counsel for the appellant and Addl: AG for respondents present.

The record shows that hearing in the instant matter was accelerated from 13.04.2021 to a date in last week of February 2021 i.e today. Learned AAG however, states that notice for the accelerated date was not received by the respondents while the expenses for the same have been deposited.

In order to remove the anomaly and in view of nature of the case it is adjourned to 04.03.2021. The learned counsel for the parties are expected to conclude their respective arguments on the next date.

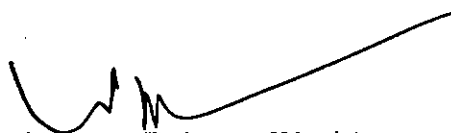

(Mian Muhammad)
Member (E)


Chairman

04.03.2021

Junior to counsel for the appellant and Addl. AG for the respondents present.

Due to general strike on the call of Khyber Pakhtunkhwa Bar Council, the matter is adjourned to 13.04.2021 for hearing before the D.B.


(Atiq-ur-Rehman Wazir)
Member(E)


Chairman

09.03.2020

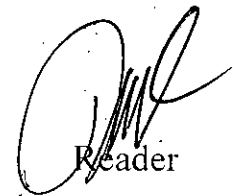
Junior to counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney present. Junior to counsel for the appellant seeks adjournment on the ground that learned senior counsel is busy before august Supreme Court of Pakistan. Adjourn. To come up for further proceedings on 11.05.2020 before D.B.


Member


Member

11.05.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 07.08.2020 before D.B.


Reader

07.08.2020


Due to summer vacation case to come up for the same on 27.10.2020 before D.B.


Reader

27.10.2020

Junior to counsel for the appellant and Addl. AG for the respondents present.

The Bar is observing general strike, therefore, the matter is adjourned to 01.01.2021 for hearing before the D.B.


(Atiq-ur-Rehman Wazir)
Member


Chairman

12.11.2019

Junior to counsel for the appellant present. Mr. Riaz Paindakheil learned Assistant Advocate General present.

It appeared that the impugned notification was issued as a result of decision in Writ Petition No.1320-P/2017, hence perusal of copy of the Writ Petition would be relevant for the disposal of the present service appeal. Junior to counsel for the appellant seeks adjournment to submit copy of Writ Petition bearing No. 1320-P/2017. Adjourn. To come up for further proceedings on 06.12.2019 before D.B.



Member



Member

6.12.19

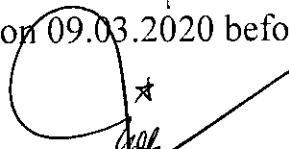
The Bench is incomplete
Therefore case is adjourned to
11-2-2020



Reader

11.02.2020

Appellant with counsel present. Mr. Usman Ghani learned District Attorney alongwith Abbas S.C present. Learned counsel for the appellant submitted additional documents placed on file of connected service appeal No.95/2018 filed by Awais ur Rehman. Copy of the same given to learned District Attorney. Adjournment requested. Adjourn. To come up for further proceedings on 09.03.2020 before D.B.



Member



Member

16.10.2019

Learned counsel for the appellant present. Mr. Riaz Khan Paindakheil learned Assistant Advocate General present. Arguments heard. Learned AAG requested for time to produce recommendations by SSRC. Adjourned to 17.10.2019 for further proceedings before D.B.


Member


Member

17.10.2019

Appellant with counsel present. Mr. Riaz Paindakheil learned Assistant Advocate General alongwith Abbas Senior Clerk present. Representative of the respondent department submitted minutes of the meeting of SSRC dated 19.06.2013 and 16.04.2014. Learned counsel for the appellant and learned AAG relied upon the arguments already heard. Adjourn. To come up for order on 31.10.2019 before D.B.


Member


Member

31.10.2019

Junior to counsel for the appellant present. Mr. Riaz Paindakheil learned Assistant Advocate General present. Some points need further consideration. Adjourn. To come up for order on 12.11.2019 before S.B


Member


Member

04.10.2019

Application for interim relief received through office. None present on behalf of appellant. Adjourned to 09.10.2019 before D.B.

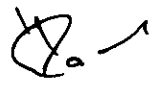
Member


Member

09.10.2019

Learned counsel for the appellant and Mr. Riaz Khan Paindakheil learned Assistant Advocate General present. Heard. Besides application for interim relief, the appellant has also submitted application for fixation of early date of hearing. In view of the reason mentioned in the application for early date of hearing, the same is allowed and the next date in the present service appeal is fixed as 16.10.2019 subject to notice to the respondents. Adjourn. To come up for further proceedings/arguments on the date fixed before D.B.


Member


Member

16.10.2019

Learned counsel for the appellant present Mr. Riaz Khan Paindakheil learned Assistant Advocate General present. Learned AAG requested for time to produce documents to SSC. Adjourned to 21.10.2019 for further proceedings before D.B.

Member

Member

12.04.2019

Learned counsel for the appellant and Mr. Riaz Paindakhel learned Assistant Advocate General for the respondents present. Learned counsel for the appellant submitted rejoinder and seeks adjournment. Adjourn. To come up for arguments on 28.06.2019 before D.B.



Member



Member

28.06.2019

Counsel for the appellant and Addl: AG for respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. Case to come up for arguments on 12.09.2019 for arguments before D.B.



Member




Member

12.09.2019

Appellant in person present. Mr. Riaz Khan Paindakhel learned Assistant Advocate General alongwith Mr. Kaleem Statistical Officer for the respondents present. Appellant seeks adjournment as his counsel is busy before August Supreme Court of Pakistan in many cases. Adjourn. To come up for arguments on 26.11.2019 before D.B.



(Hussain Shah)
Member



(M Hamid Mughal)
Member

17.12.2018

Junior to counsel for the appellant and Mr. Kabir Ullah Khattak learned AAG present. Written reply not received. Mr. Naris Kumar Assistant representative of the respondents absent. Adjourn. To come up for written reply/comments on 23.01.2019 before S.B. Notice be issued to the respondents.


Member

23.01.2019

Appellant in person present. Written reply not submitted. Abbas Senior Clerk representative of the respondent department present and seeks adjournment to furnish written reply/comments. Granted. To come up for written reply/comments on 13.02.2019 before S.B.


Member

13.02.2019

Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Abbas S.C present. Representative of the respondents submitted written reply/comments. Adjourn. To come up for rejoinder/arguments on 12.04.2019 before D.B.


Member

30.08.2018

Learned counsel for the appellant argued that he was appointed as Sub-Engineer in C&W Department on 01.09.2014, having degree of B.Tech (Hons) (Civil). Service Rules notified on 14.10.2014 had earmarked quota for promotion of B.Tech Sub-Engineers to the post of SDO. That vide impugned notification dated 26.03.2018 10 % quota for promotion has been reserved for the above category but those Sub-Engineers who acquired the degree of B.Tech before joining service have been discriminated by merging their seniority/promotion quota with those who acquired the same qualification during service. Amendments through notification referred to above is against the spirit of Section-8 of Civil Servants Act, 1973 and Rule-17 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989. It is also discriminatory and violative of Article-25 of the Constitution of Islamic Republic of Pakistan.

Appellant Deposited
Security & Process Fee

Points urged need consideration. The appeal is admitted for regular hearing subject to deposit of security and process fee within 10 days, thereafter, notice be issued to the respondent for written reply/comments for 31.10.2018 before S.B.

(Ahmad Hassan)
Member

31-10-18

Due to Retirement of Honorable
Chairman the Tribunal is non functional
therefore the case is adjourned to come up
for the same on 17-12-2018

Reader

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 953/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	02/08/2018 3-8-18	The appeal of Mr. Awais-ur-Rehman presented today by Mr. Khaled Rehman Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please. REGISTRAR 21/8/18 This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>30-8-18</u> . CHAIRMAN
2-		

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 953 /2018

Mr. Awais-ur-Rehman Appellant

Versus

The Govt. of KPK and others.....Respondents

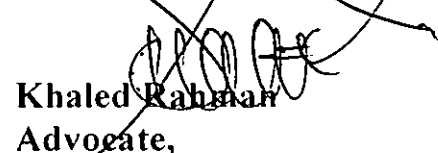
INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal			1-6
2.	Credentials		A	7-8.
3.	Notification thereby reserved 10% quota for promotion of Sub Engineers to the post of Assistant Engineer	13.01.1980	B	9-11.
4.	Notification thereby for the very first time through amendment 10% separate promotion quota was reserved for Sub-Engineers who had acquired Degree before joining the service	18.10.1986	C	12.
5.	Notification thereby 5% separate quota was reserved for promotion of those Sub Engineers who acquired degrees before joining the service and for those who acquired the requisite qualification during service	12.04.1992	D	13.
6.	Notification thereby 5% promotion quota was reserved for Sub-Engineers who had joined the Service as Engineering Graduates and those who had acquired the same Degree during service	12.01.1999	E	14.
7.	Notification thereby 20%, 8% & 7% quota respectively was reserved for promotion of Sub-Engineers holding Diploma (Civil/Mechanical/Electrical), Degree of B.E/B.Sc. Engineering (Civil/Mechanical/ Electrical) at the time of joining service and for those who had acquired the Degree during service respectively.	16.12.2011	F	15.
8.	Notification thereby for the category of the appellant i.e. B.Tech. (Hons) Degree holders	14.10.2014	G	16.

S.No.	Description of Documents	Date	Annexure	Pages
	(both who acquired the same before service and during service) 3.5% promotion quota was reserved			16.
9.	Impugned Notification whereby no separate quota was reserved for promotion to the post of SDO/Assistant Engineer in respect of Sub-Engineers who acquired B.Tech. (Hons) Degree at the time of appointment or during service.	26.03.2018	H	17.
10.	Departmental Representation	16.04.2018	I	18.20
11.	Wakalat Nama			


Appellant

Through


Khaled Rahman
Advocate,
Supreme Court of Pakistan
3-D, Haroon Mansion
Khyber Bazar, Peshawar
Off: Tel: 091-2592458
Cell # 0345-9337312

Dated: 02 /08/2018

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 953 /2018Khyber Pakhtunkhwa
Service TribunalDiary No. 1217Dated 02-8-2018Mr. Awais-ur-Rehman

Sub-Engineer

Building FATA Division,

Khyber Agency.....

Appellant

VERSUS

1. The Govt. of Khyber Pakhtunkhwa

through Chief Secretary,

Khyber Pakhtunkhwa,

Civil Secretariat, Peshawar.

2. The Secretary

Govt. of Khyber Pakhtunkhwa

Communication & Works Department,

Civil Secretariat, Peshawar.

3. The Chief Engineer (Centre)

Communication & Works Department

Khyber Pakhtunkhwa, Peshawar

Respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION DATED 26.03.2018 ISSUED BY RESPONDENT NO.2 WHEREBY THE APPELLANT BEING PRE-SERVICE B.TECH (HONS) DEGREE HOLDER ENGINEER WAS NOT ALLOWED SEPARATE QUOTA FROM THE IN-SERVICE B.TECH. DEGREE HOLDERS ENGINEERS AS ALLOWED TO GRADUATE SUB-ENGINEERS HAVING DEGREE OF B.E/B.SC ENGINEERING AGAINST WHICH APPELLANT PREFERRED DEPARTMENTAL APPEAL ON 16.04.2018 BUT THE SAME HAS NOT BEEN DECIDED WITHIN THE

STATUTORY PERIOD OF 90 DAYS.

Filed to-day
Registrar
2/8/18
PRAYER:

On acceptance of the instant appeal, the impugned Notification dated 26.03.2018 may graciously be modified to the extent of joint promotion quota for B.Tech (Hons) Degree holder Sub-Engineers by separating the same from those Sub-Engineers who were in possession of B.Tech. (Hons) degree at the time of joining service and for those who had acquired the same qualification during

service on the analogy of B.E/B.Sc. Engineering Degree Holder with all back benefits.

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

1. **That** appellant was appointed as Sub-Engineer in the Communication & Works Division on 01.09.2014. He has been performing his duties as Sub-Engineer at Building FATA Division Khyber Agency. He has qualified Degree of B.Tech. (Hons) (Civil) vide Credentials (*Annex:-A*). Throughout his career appellant has rendered unblemished and spotless services for the Department.
2. **That** the Provincial Government vide Notification dated 13.01.1980 (*Annex:-B*) reserved 10% quota for promotion to the post of Assistant Engineer from amongst Sub-Engineers. Likewise vide Notification dated 18.10.1986 (*Annex:-C*) for the very first time through amendment 10% separate promotion quota was reserved for those Sub-Engineers who had acquired Degree before joining the service. This practice remained in field till 1992 when through amendments vide Notification dated 12.04.1992 (*Annex:-D*) 5% separate quota was reserved for promotion of those Sub Engineers who acquired degrees before joining the service and for those who acquired the requisite qualification during service.
3. **That** vide Notification dated 12.01.1999 (*Annex:-E*) 5% promotion quota was also reserved for Sub-Engineers who had joined the Service as Engineering Graduates and those who had acquired the same Degree during service. It is pertinent to mention here that vide Notification dated 16.12.2011 (*Annex:-F*) 20% promotion quota was reserved for promotion of Sub-Engineers holding Diploma (Civil/Mechanical/Electrical) and 8% promotion quota was reserved for those holding Degree of B.E/B.Sc. Engineering (Civil/Mechanical/ Electrical) at the time of joining service and 07% quota for those who had acquired the Degree during service.
4. **That** through an amendment vide Notification dated 14.10.2014 (*Annex:-G*) for the category of the appellant i.e. B.Tech. (Hons) Degree holders 3.5% promotion quota was reserved for both who acquired the same before

service and during service, thus a different yardstick was applied/used against the appellant.

5. **That** considering the genuine demand of B.Tech. (Hons) degree holder Sub Engineers, in light of the judgment of the Hon'ble Peshawar High Court and after observing all the codal formalities, a meeting of Standing Service Rules Committee was held under the chairmanship of Respondent No.2 wherein recommendation was made for reservation of 10% quota for promotion to the post of SDO/Assistant Engineer (BS-17) in respect of B.Tech. (Hons) degree holder Sub-Engineers but did not separate the quota of both the categories of B.Tech. Degree holders.
6. **That** in the C&W Department, there are two categories of B.Tech (Hons) Degree Holder Sub-Engineers i.e. one those who have acquired B.Tech (Hons) Degree before joining service and the other is that who have obtained the said degree during service.
7. **That** vide impugned Notification dated 26.03.2018 (*Annex:-H*), a separate quotas has been notified for promotion of other cadre of Graduate Sub-Engineers holding Degrees B.E/B.Sc. Engineering to the post of SDO/Assistant Engineer as under:-
 - (c) five percent (5%) by promotion, on the basis of seniority-cum-fitness, from amongst the Sub Engineers who possess *Degree of B.E or B.Sc. Engineering (Civil, Mechanical or Electrical) at the time of their joining service* and have passed Departmental Promotion Examination with 05 (five) years service as such;
 - (d) three and half percent (3.5%) by promotion, on the basis of seniority-cum-fitness, from amongst the Sub Engineers *who acquired Degree of B.E or B.Sc. Engineering (Civil, Mechanical or Electrical) during service* and have passed Departmental Promotion Examination with 05 (five) years service as such.
8. **That** on the other hand, vide the same impugned Notification *ibid*, a different yardstick has been used for promotion quota in respect of Sub Engineers who acquired B.Tech. (Hons) Degree during service or before joining their service and reserved 10% joint quota for their promotion to the post of SDO/Assistant Engineer as under:-

- (e) ten percent (10%) by promotion, on the basis of seniority-cum-fitness, from amongst the Sub-Engineers having Degree of **B-Tech (Hons)** and having passed Departmental Promotion Examination with 05 (five) years service as such;

Thus the Sub-Engineers who acquired Degree of B-Tech (Hons) before their joining service have been discriminated by merging their seniority/promotion quota with those who acquired the same qualification during service.

9. **That** the appellant being aggrieved of the impugned Notification 26.03.2018 *ibid*, preferred Departmental Representation (**Annex:-I**) dated 16.04.2018 before the competent authority but the same was not responded within the statutory period of 90 days, hence the instant appeal *inter-alia* on the following grounds:-

GROUND:-

- A. **That** the impugned Notification dated 26.03.2018 is in violation of Section-8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule-17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 and unlawfully issued the impugned Notification dated 26.03.2018 which is illegal, unlawful, unjust, and hence not sustainable in the eye of law.
- B. **That** the department discriminated appellant as on one hand in the same department similarly placed and his other colleagues were awarded double chance of the career progression in the shape of separate promotion quota while on the other the same benefit was not extended to the appellant by maintaining combined promotion quota/seniority of B-Tech (Hons) degree holders (before joining or during service), which is not sustainable in the eye of law.
- C. **That** appellant was highly discriminated because as per Article 4 & 25 of the Constitution of Islamic Republic of Pakistan 1973, every citizen of the mother land should be treated in accordance with law and policy hence the acts and omissions of the Department of not treating B-Tech (Hons) Degree holders at par with pre and in-service B.E/B.Sc. Engineering Degree holders, is illegal and not tenable.

- D. **That** the impugned Notification *ibid*, is not only against the valuable rights of the appellant but also department imposed upon him, major penalty in shape of joint seniority list because appellant will be thrown at the bottom of the seniority list of B-Tech (Hons) Degree holder Sub-Engineers, hence the same is against the norms of justice and not sustainable under the law.
- E. **That** the even otherwise it is the settled principle that while formulating/designing policies for different categories of civil servants, it is incumbent upon the authority concerned to avoid discriminatory treatment/provisions but in the case of appellant he has been meted out discriminatory treatment, which severely affected his career progression.
- F. **That** it is settled practice of the Respondent Department that they had reserved separate promotion quota amongst the Sub-Engineers who had acquired their degrees before joining the service and for those who had acquired the same during service. It is evident from the Notification of the same Department that this practice remained in filed and the Department had allocated separate promotion quota for the categories of Sub-Engineers and now since the creation of the post i.e. B.Tech. (Hons) Degree holders in the same Department, they have maintained different methods for promotion and reserved 10% quota amongst the B.Tech (Hons) holder inspite of the fact that it was practice of the Department that in similar circumstances they have allocated separate promotion quota for the two categories but in case of the appellant clear discrimination has been made which is against the principle of natural justice and fair-play.
- G. **That** it is vested right of every civil servant for further promotion subject to condition of his eligibility and fitness. It is an admitted fact that appellant being eligible was to be promoted against the next higher post but due to discriminatory treatment of the Department in the shape of merging promotion quota two categories of B.Tech degree holders. The appellant has been illegally deprived of his rights.
- H. **That** the appellate authority also failed to decide the departmental appeal of appellant without any lawful justification and as per Section-24A of the General Clauses Act, 1897 the appellate authority was bound to decide the

departmental appeal fairly, justly and within reasonable time.

- I. **That** appellant would like to offer some other grounds during the course of arguments.

It is, therefore, respectfully requested that the impugned Notification dated 26.03.2018 may graciously be modified to the extent of joint promotion quota for B-Tech (Hons) Degree holder Sub Engineers by separating the same for those Sub Engineers who acquired B-Tech (Hons) Degree at the time of joining service and for those who had acquired the same qualification during service on the analogy of B.E/B.Sc. Engineering Degree holders.

It is, therefore, humbly prayed that the instant appeal may graciously be accepted as prayed for above.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.

Through


Appellant

Khaled Rahman,
Advocate,

Supreme Court of Pakistan

Dated: 02 /07/2018

Preston University

Kohat - Pakistan

Answer A-7 -

This is to Certify That

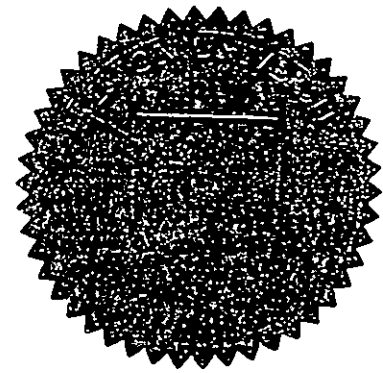
Awais-ur-Rehman

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 (Pass)
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 November 2011.

[Signature]
Chancellor



Attested
Dr. Masood-ur-Rehman
Veterinary Officer, Health
IC Semen Production Unit
Serai Naurang, Lakhri Marwat

[Signature]
Registrar

No: 17C2-310042
No: 1711-0310

Number of Courses Passed 13
Number of Courses Exempted 0
Number of Courses Required for Degree 13
Program Completed in Summer 2011 - Qualified for Degree

Attested
Dr. Masood-ur-Rohi
Veterinary Officer, Health
IC Semen Production Unit
Serai Naurang, Lakhri Marwat





PRESTON UNIVERSITY

OFFICIAL TRANSCRIPT

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

50638

Name: Awais-ur-Rehman		Study Campus: PESHAWAR, PAKISTAN	
Program: B-Tech (Pass)	Registration No: 17C2-310042	Date of Birth: December 10, 1989	Date of Registration: November 02, 2009
Specialization: Civil	Date of Completion: October 31, 2011		
Date of Issue: November 03, 2011			

	Credit Hours	Marks Obt.	Grade	Remarks
First Semester				
Industrial Training	15	91	A	
		Total	Sem GPA	4.0
Second Semester				
Industrial Training	15	91	A	
		Total	Sem GPA	4.0
Third Semester				
Industrial Training	15	91	A	
		Total	Sem GPA	4.0
Fourth Semester				
Foundation of Engineering-I	3	80	B	
Strength of Materials	3	76	C	
Surveying and Leveling	3	66	D	
Electrical Technology	3	82	B	
		Total	Sem GPA	2.3
Fifth Semester				
Foundation of Engineering-II	3	91	A	
Pakistan Studies	3	83	B	
Bridge Engineering	3	84	B	
Engineering Geology	3	75	C	
		Total	Sem GPA	3.0
Sixth Semester				
Project	3	85	B	
Islamic Studies	3	75	C	
Highway Engineering	3	70	C	
Concrete Structures	3	83	B	
Irrigation Engineering	3	90	A	
		Total	Sem GPA	2.8
		Grand Total	Cum GPA	2.9

Number of Courses Passed	13
Number of Courses Exempted	0
Number of Courses Required for Degree	13

Program Completed in Summer 2011 - Qualified for Degree

Attested

Dr. Masood-ur-Rehman
Veterinary Officer (Health)
I/C Semen Production Unit
Seral Naurang, Lakh Marwat

Aw Bakhsh
Registrar

The Registrar is not responsible for signature and official seal.

The University reserves the right to correct any error or omission made inadvertently in this Transcript.

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:
Asstt. Registrar (Verification) 85, Street 3, H-8/1, Islamabad, Pakistan Tel: +92-51-4130597, Fax: +92-51-4430648.

Prepared by:
D.P.O

Checked by:
Asstt. Registrar

Annex - IV

2 8

60

GOVERNMENT OF N.W.F.P.
SERVICES, GENERAL ADMN: TOURISM & SPORTS
DEPARTMENT.

N O T I F I C A T I O N .

Annex B

Dated Peshawar, the 13th January 80

No. SORI(S&GAD)1-12/74- In exercise of the powers conferred by section 26 of the North-West Frontier Province Civil Servants Act, 1973 (N.W.F.P Act XVIII of 1973), and in supersession of all previous rules on the subject in this behalf, the Governor of the North West Frontier Province is pleased to make the following rules, namely:

III. COMMUNICATION & WORKS DEPARTMENT
(RECRUITMENT & APPOINTMENT) RULES, 1979

1. (1) These rules may be called the Communication & Works Department (Recruitment and Appointment) Rules, 1979.
(2) They shall come into force at once.
2. The method of recruitment, minimum qualifications, age limit and other matters related thereto for the posts specified in column 2 of the Schedules annexed shall be such as given in column 3 to 7 of the said Schedules.

SECRETARY TO GOVERNMENT OF NWFP
SERVICES AND GENERAL ADMN:
DEPARTMENT.

LNDST.No, SORI(S&GAD)1-12/74. Dated Peshawar, the 13th Jan-1980

Copy forwarded to :-

1. All Administrative Secretaries to Government of NWFP.
2. All Divisional Commissioners in N.W.F.P.
3. Secretary to Governor, NWFP.
4. Secretary, NWFP, Public Service Commission, Peshawar.
5. All Heads of Attached Departments in NWFP.
6. All District and Sessions Judges in NWFP.
7. All Deputy Commissioners/Political Agents in NWFP.
8. Registrar, High Court, Peshawar.
9. All Section Officers in the S&GAD.
10. Manager, Govt Printing Press Peshawar for publication in the Government Gazette. He is requested to supply 50 copies of the printed.

Sd/-
Syed Noor Badshah
Section Officer (Regulation-1)

COMMUNICATION AND WORKS DEPARTMENT

SCHEDULE-I

Nomenclature of post.	Minimum qualifications for appointment by initial recruitment or by transfer.	Promotion.	Age for initial Recruitment.		Method of recruitment.
			Minimum	Maximum	
2	3	4	5	6	7
Chief Engineer.					By selection on merit from amongst four senior-most officers of the Department, with at least seventeen years experience as Government servant, seniority being considered only in the case of officers of practically the same standard of merit.
Superintending Engineer.		Degree in Engineering from a recognized University.			By selection on merit from amongst the Executive Engineers or holder of equivalent posts in the Communication and Works Department, with at least twelve years service in Grades-17 and 18, seniority being considered only in the case of officers of practically the same standard of merit.
Executive Engineer					By selection on merit with due regard to seniority from amongst Assistant Engineers of the Communication and Works Department with at least six years service as such.

next page...

2014
Batch

63

4. Asstt Engineer

Degree in Civil
Electrical or Mechanical
Engineering from a
recognised University,
as may be specified by
Government for the
respective post.

Degree or Diploma
in Engineering
from a recognized
University or
Institution, as
specified in column.

21
years 30
years

(a) Seventy per cent by initial
recruitment.

(b) Ten per cent by selection on
merit with due regard to
seniority from amongst Sub-
Engineers of the Deptt. who
hold a degree, and

(c) twenty per cent by selection on
merit with due regard to
seniority from amongst Senior
Scale Sub Engineers of the
Deptt. who hold a Diploma and
have passed Departmental
Professional Examination.

Twenty five per cent of the
total number of posts of the
diploma holder Sub Engineers
shall from the cadre of Senior
Scale Sub Engineers and shall
be filled by selection on merit
with due regard to seniority from
amongst Sub Engineers of the
Department, who have passed the
Departmental Examination and have
at least ten years service as such.

By selection on merit with due
regard to seniority from amongst
holders of the posts of Senior
Superintendents/Superintendents,
in the Department.

5. Senior Scale
Sub Engineer.

Diploma in Engin-
eering from a
recognised
Institute.

6. Administrative
Officer/Budget and
Accounts Officer.

Annex-III

60

Annex C

-12-

GOVERNMENT OF N. W. F. PROVINCE
COMMUNICATIONS & WORKS DEPARTMENT.

Dated Peshawar, the October 18, 1986

NOTIFICATION.

NO. SO(E)C&W/4-5/78 In exercise of the powers conferred by sub-rule (2) of rule 3 of the North-West Frontier Province Civil Servants (Appointment, Promotion and Transfer) Rules, 1975, and in consultation with the Services and General Administration Department and Finance Department, the Communication and Works Administration Department is pleased to direct that in the Services and General Administration Department's Notification No. SOI-1(SAGAD)1-12/74, dated the 30th January, 1980, the following amendment shall be made, namely:

AMENDMENT:

In Schedule I, for the existing entry at clause (b) in column 7 against serial No.4, the following entry shall be substituted, namely:

(b) 10% by promotion, on the basis of seniority-cum-fitness, from amongst the Sub Engineers holding a degree in Engineering. Seniority to be determined from the date of acquiring degree or initial appointment whichever is later.

ABDUL MAJID MOHMAND
SECRETARY TO GOVERNMENT N.W.F.P.
COMMUNICATION & WORKS DEPARTMENT

Endst.No. SO(E)C&W/4-5/78 Dated Peshawar, the October 18, 1986.

A copy is forwarded to :-

1. All Administrative Secretaries to Govt of NWFP.
2. All Divisional Commissioners in NWFP.
3. Secretary to Governor, NWFP.
4. Secretary to Chief Minister, NWFP.
5. All Heads of Attached Departments in NWFP.
6. All District & Sessions Judges in NWFP.
7. All Deputy Commissioners/Political Agents in NWFP.
8. Secretary NWFP Public Service Commission/Registrar, S/Tribunal.
9. All Section Officers in S&GAD, NWFP, Peshawar.
10. Registrar, Peshawar High Court, Peshawar.
11. Deputy Secretary (Works) C&W Department.
12. All Section Officers in C&W Department/P.S to Secy C&W Deptt.
13. The Manager, Govt. Printing & Stationery Department Peshawar. He is requested to supply 50 copies of the printed gazette.
14. C/O file/Main file.

Mirza Bashir Ahmad
(MIRZA BASHIR AHMAD)
SECTION OFFICER (E)
C & W DEPARTMENT.

ASHIQ

Annex-II

GOVERNMENT OF N. W. F. P.,
COMMUNICATION & WORKS DEPARTMENT.

Dated Peshawar, the 12th April, 1992

NOTIFICATION

ANNEX "D"
-13-

NO.SO(E)C&W/4-5/78. In exercise of the powers conferred by sub-rule (2) of rule 3 of the North-West Frontier Province Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Communication and Works Department, in consultation with the Services and General Administration Department and the Finance Department, hereby directs that in the Communication and Works Department (Recruitment and Appointment) Rules, 1979, the following amendment shall be made, namely:-

AMENDMENT

In Schedule I, in column 7, for the existing entry at clause (b) against serial No.4, the following shall be substituted, namely:

- (1) 5% by promotion on seniority-cum-fitness from amongst the Sub-Engineers who have acquired degree in Engineering during service.
- (2) 5% by promotion on seniority-cum-fitness from amongst the Sub-Engineers who have joined service as such as Engineering Graduate.

Provided that if no Sub-Engineer in a category is available for promotion, the vacancy shall be deemed to have fallen to the quota of other category and shall be filled in accordingly.

(ADAM KHAN)
SECRETARY TO GOVERNMENT OF NWFP,
COMMUNICATION & WORKS DEPARTMENT.

ENDST.NO.SO(E)C&W/4-5/78. Dated Pesh: the 12th/April, 1992.

A copy is forwarded to:-

- 1) All Administrative Secretaries to Govt of NWFP.
- 2) Secretary to Governor, N.W.F.Province.
- 3) Secretary to Chief Minister, N.W.F.Province.
- 4) P.S to Chief Secretary, N.W.F.Province.
- 5) Secretary, NWFP Public Service Commission.
- 6) Manager, Govt Printing & Stationery Deptt: NWFP. He is requested to supply 50 copies of the printed gazette.
- 7) The S.O(R-II) Govt of NWFP, S&GAD w/r to his U.O.NO.SORII (S&GAD)2(1)/86(B), dated 09.04.1992.
- 8) Dy:Secretary/All Section Officers/P.S to Secretary C&W Deptt.
- 9) O/O file.

HABIB

ADAM KHAN
SECTION OFFICER(E)

12/4/1992

Annex-7

58
"E"

GOVERNMENT OF NWFP
COMMUNICATION & WORKS DEPARTMENT

ANNEX E

Dated Peshawar, the January 12, 1999. - 14 -

NOTIFICATION

No. SO(E)C&W/4-5/78: In exercise of the powers conferred by sub rule (2) of rule 3 of the North-West Frontier Province Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Communication & Works Department, in consultation with the Finance, Communication & Works Department and the Finance Department, and General Administration Department, hereby directs that in the Communication and Works Department (Recruitment and Appointment) Rules, 1979, the following amendments shall be made, namely:-

AMENDMENT

In Schedule I, in column 7, for the existing entry at clause (E) against serial No. 4, the following shall be substituted, namely:

- (1) Five per cent by promotion on seniority-cum-fitness from amongst the Sub-Engineers who have joined service as Engineering Graduate.
- (2) Five per cent by promotion on seniority-cum-fitness from amongst the Sub-Engineers who have acquired degree in Engineering during service. Inter-se seniority to be determined from the date of acquiring degree.

Provided that if no Sub Engineer in one category is available for promotion, the vacancy shall be deemed to have fallen to the quota of other category and shall be filled in accordingly.

SECRETARY TO GOVT. OF NWFP,
COMMUNICATION & WORKS DEPARTMENT

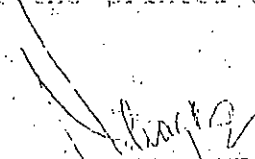
Dated Peshawar, January 12, 1999.

No. SO(H)C&W/4-5/78.

A copy is forwarded to the:-

- 1) All Administrative secretaries to Govt. of NWFP.
- 2) Secretary to Governor, NWFP.
- 3) Secretary to Chief Minister, NWFP.
- 4) P.S. to Chief Secretary, Govt. of NWFP.
- 5) P.S. to secretary C&W Department, NWFP.
- 6) P.S. to Minister for C&W Department.
- 7) Addl Secretary, C&W Department, Peshawar.
- 8) Accountant General, NWFP Peshawar.

- 9) Additional Accountant General(P.R) Sub office, Peshawar.
- 10) Secretary NWFP, Public Service Commission, Peshawar.
- 11) Registrar, Peshawar High Court, Peshawar.
- 12) Registrar, NWFP Service Tribunal, Peshawar.
- 13) All Chief Engineers in C&W Department.
- 14) All Executive Engineers in C&W Department.
- 15) Consulting Architect, C&W Department, Peshawar.
- 16) Section Officer(R-VI) S&GA Department with reference to his letter No.SOR-II(S&GAD)6(12)96, dated 19-11-1998.
- 17) Deputy Secretary, C&W Department, Peshawar.
- 18) All District/Agency Accounts Officer in NWFP.
- 19) Manager, Government Printing & Stationery Department. He is requested to supply 100-copies of the printed Gazette for further distribution.
- 20) O/O File.


(MUHAMMAD ISHAQUE QURESHI)
SECTION OFFICER (ESTABLISHMENT)



GOVT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar, the Dec. 16, 2011

ANNEX F
- 15 -

NOTIFICATION:

No.SO.E/C&WD/8-12/2011: In pursuance of the provisions contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Communication & Works Department in consultation with Establishment Department and the Finance Department, hereby directs that in this Department Notification No.SO.E/C&WD/8-12/2009, dated 25th March, 2010, the following amendment shall be made, namely:

AMENDMENTS

In Schedule-I, against serial number 4, in column number 5, for the existing entries, the following shall be substituted, namely:

- (a) Twenty percent (20%) by promotion, on the basis of seniority-cum-fitness, from amongst the Sub Engineers who hold a Diploma of (Civil/Mechanical/Electrical) and have passed Departmental Professional Examination with 10 (ten) years service as such;
- (b) Eight percent (8%) by promotion, on the basis of seniority-cum-fitness, from amongst the Sub Engineers who possessed Degree of B.E/B.Sc. Engineering (Civil/Mechanical/Electrical) at the time of their joining service;
- (c) Seven percent (7%) by promotion, on the basis of seniority-cum-fitness, from amongst the Sub Engineers who acquired Degree of B.E/B.Sc. Engineering (Civil/Mechanical/Electrical) during service; and
- (d) Sixty five percent (65%) by initial recruitment

Note: As regard clause(c) the seniority to be determined from the date of acquiring the Degree

Secretary to
Govt of Khyber Pakhtunkhwa
Communication & Works Department

Endst of even number and date

Copy is forwarded to the:-

1. All Administrative Secretaries, Govt of Khyber Pakhtunkhwa
2. Secretary to Governor Khyber Pakhtunkhwa, Peshawar
3. Principal Secretary to Chief Minister Khyber Pakhtunkhwa, Peshawar
4. All Chief Engineers C&W Peshawar
5. Chief Engineer (FATA) W&S Peshawar
6. Chief Engineer EQAA Mansehra at Abbottabad
7. Secretary Khyber Pakhtunkhwa Public Service Commission Peshawar
8. All Superintending Engineers C&W Circles
9. All Executive Engineers C&W/Highway Divisions
10. Section Officer (R-VI) Establishment Deptt, Peshawar
11. Assistant Legal Drafter-I, Law Department, Peshawar
12. Managing Printing Press for publication in the issue of next Govt gazette
13. PS to Chief Secretary Khyber Pakhtunkhwa, Peshawar
14. PS to Secretary, C&W Deptt, Peshawar
15. PA to Addl: Secretary, C&W Deptt, Peshawar
16. PA to Deputy Secretary (Admn), C&W Deptt, Peshawar
17. Office File

(RAHIM BADSHAH)
SECTION OFFICER (ESTT)



GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar, the October 14, 2014

NOTIFICATION:

No.SOE/C&WD/8-12/2014: In pursuance of the provisions contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Communication & Works Department, in consultation with the Establishment Department and the Finance Department, hereby directs that in this Department Notification No.SOE/C&WD/8-12/2009, dated 25th March, 2010, the following amendment shall be made, namely:

ANNEX "G"

- 16 -

AMENDMENTS

In the Appendix, against serial No.4, in column No.5, for the existing entries, the following shall be substituted, namely:

- (a) Sixty five percent (65%) by initial recruitment
- (b) twenty percent (20%) by promotion, on the basis of seniority-cum-fitness, from amongst the Sub-Engineers who hold a Diploma of (Civil, Mechanical or Electrical) and have passed Departmental Professional Examination with 10 (ten) years service as such;
- (c) eight percent (8%) by promotion, on the basis of seniority-cum-fitness, from amongst the Sub-Engineers who possess Degree of B.E or B.Sc. Engineering (Civil, Mechanical or Electrical) at the time of their joining service and have passed Departmental Professional Examination with 05 (five) years service as such;
- (d) three and half percent (3.5%) by promotion, on the basis of seniority-cum-fitness, from amongst the Sub-Engineers who acquired Degree of B.E or B.Sc. Engineering (Civil, Mechanical or Electrical) during service and have passed Departmental Professional Examination with 05 (five) years service as such; and
- (e) three and half percent (3.5%) by promotion, on the basis of seniority-cum-fitness, from amongst the Sub-Engineers having Degree of B.Tech-(Hons) and have passed Departmental Professional Examination with 05 (five) years service as such"

Note: The seniority in all cases shall be determined from the date of initial appointment

SECRETARY TO
Government of Khyber Pakhtunkhwa
Communication & Works Department

Endst of even number and date

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2. Secretary to Governor Khyber Pakhtunkhwa, Peshawar
3. Principal Secretary to Chief Minister Khyber Pakhtunkhwa, Peshawar
4. All Chief Engineers C&W Peshawar
5. Chief Engineer (FATA) W&S Peshawar
6. Chief Engineer EQAA Abbottabad
7. Secretary Khyber Pakhtunkhwa Public Service Commission Peshawar
8. All Superintending Engineers C&W Circles
9. All Executive Engineers C&W/Highway Divisions
10. Section Officer (R-VI) Establishment Department Peshawar
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13. PS to Chief Secretary Khyber Pakhtunkhwa Peshawar
14. PS to Secretary C&W Department Peshawar
15. PA to Addl: Secretary C&W Department Peshawar
16. PA to Deputy Secretary (Admn) C&W Department Peshawar
17. Office File

(USMAN JAN)

SECTION OFFICER (Estb)



GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar, the March 26, 2018

ALIVE H

NOTIFICATION:

No. SOE/C&WD/8-12/2014: In pursuance of the provisions contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Communication & Works Department, in consultation with the Establishment Department and the Finance Department, hereby directs that in this Department Notification No. SOE/C&WD/8-12/2009, dated 25th March, 2010, the following further amendments shall be made, namely:

AMENDMENTS

In the Appendix:-

i. against serial No.4, in column No.5, for the existing entries, the following shall be substituted, namely:

- "(a) Sixty five percent (65%) by initial recruitment;
- (b) sixteen and half percent (16.50%) by promotion, on the basis of seniority-cum-fitness, from amongst the Sub Engineers who hold a Diploma of (Civil, Mechanical or Electrical) and have passed Departmental Professional Examination with 10 (ten) years service as such;
- (c) five percent (5%) by promotion, on the basis of seniority-cum-fitness, from amongst the Sub Engineers who possess Degree of B.E or B.Sc. Engineering (Civil, Mechanical or Electrical) at the time of their joining service and have passed Departmental Professional Examination with 05 (five) years service as such;
- (d) three and half percent (3.5%) by promotion, on the basis of seniority-cum-fitness, from amongst the Sub Engineers who acquired Degree of B.E or B.Sc. Engineering (Civil, Mechanical or Electrical) during service and have passed Departmental Professional Examination with 05 (five) years service as such; and

(e) ten percent (10%) by promotion, on the basis of seniority-cum-fitness, from amongst the Sub Engineers having Degree of B-Tech (Hons) and have passed Departmental Professional Examination with 05 (five) years service as such

ii. against serial No.26, in column No.5, for the existing entries, the following shall be substituted, namely:

"By promotion on the basis of seniority-cum-fitness, from amongst the Naib Qasids, Chowkidars and Barkandaz having qualification of Secondary School Certificate with at least three years service as such.

Note:- A joint seniority list of Naib Qasids, Chowkidars and Barkandaz shall be maintained for the purpose of promotion"

iii. after serial No.28, the following new serial shall be inserted, namely:

"29. Barkandaz Preferably literate 18 to 45 years By initial recruitment"

SECRETARY TO
Government of Khyber Pakhtunkhwa
Communication & Works Department

Endst of even number and date

Copy is forwarded to the:-

1. All Administrative Secretaries, Govt of Khyber Pakhtunkhwa
2. Secretary to Governor Khyber Pakhtunkhwa, Peshawar
3. Principal Secretary to Chief Minister Khyber Pakhtunkhwa, Peshawar
4. All Chief Engineers C&W Peshawar
5. Chief Engineer (FATA) W&S Peshawar
6. Chief Engineer (East) C&W Abbottabad
7. Secretary Khyber Pakhtunkhwa Public Service Commission Peshawar
8. All Superintending Engineers C&W Circles
9. All Executive Engineers C&W/Highway Divisions
10. Section Officer (R-VI) Establishment Department Peshawar
11. Assistant Legal Drafter-I, Law Department Peshawar
12. Manager Printing Press for publication in the issue of next Govt gazette. He is requested to provide 25 printed copies of the Notification, preferably gazetteed copies, when published to the Department along with the details of the gazettee in which they are published
13. PS to Chief Secretary Khyber Pakhtunkhwa Peshawar
14. PS to Secretary C&W Department Peshawar
15. PA to Addl. Secretary C&W Department Peshawar
16. PA to Deputy Secretary (Admn) C&W Department Peshawar
17. Office File

(ABDUR RASHID KHAN)
SECTION OFFICER (E.S.O.)

ANNEX I - 18 - 25

To

The worthy Chief Secretary
Govt. of Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar.

PS/C.S Khyber Pakhtunkhwa
Diary No. 3874
Date 19/4/2018

DBA
19/4
AST DSR

Subject: Departmental appeal against the Notification dated 26.03.2018, issued by the Secretary to Government of Khyber Pakhtunkhwa Communication & Works Department whereby the appellant being pre-service B.Tech (Hons) degree holder Engineer was not allowed separate quota from the in-service B-Tech. Degree holders Engineer as allowed to Graduate Sub-Engineers having degree of B.E/B.Sc. Engineering, thus the same is discriminatory and illegal.

Respected Sir,

With due respect I have the honour to submit this departmental appeal/representation for your kind consideration and favourable action on the following facts and grounds:

1. That the appellant was appointed as Sub-Engineer in the Communication & Works Division on 01.09.2014. He has been performing his duties as Sub-Engineer at Building FATA Division Khyber Agency. He has qualified Degree of B.Tech (Hons) (Civil).
2. That considering the genuine demand of B.Tech. (Hons) degree holder Sub Engineers, in the light of Peshawar High Court judgment and after observing all the codal formalities, a meeting of Standing Service Rules Committee was held under the chairmanship of Secretary C&W Department wherein recommendation was made for reservation of 10% quota for promotion to the post of SDO/Assistant Engineer (BS-17) in respect of B.Tech. (Hons) degree holder Sub-Engineers.
3. That in the C&W Department, there are two categories of B.Tech (Hons) Degree Holder Sub-Engineers i.e. one those who have acquired B.Tech (Hons) Degree before joining service and the other is that who have obtained the said degree during service.
4. That vide impugned Notification dated 26.03.2018, a separate quotas has been notified for promotion of other cadre of Graduate Sub-Engineers holding Degrees B.E/B.Sc. Engineering to the post of SDO/Assistant Engineer as under:-
 - (c) five percent (5%) by promotion, on the basis of seniority-cum-fitness, from amongst the Sub Engineers who possess *Degree of B.E or B.Sc. Engineering (Civil, Mechanical or Electrical) at the time of their joining service* and have

SOE
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P.S to Chief Secretary
Govt. of Khyber Pakhtunkhwa

passed Departmental Promotion Examination with 05 (five) years service as such;

(d) three and half percent (3.5%) by promotion, on the basis of seniority-cum-fitness, from amongst the Sub Engineers *who acquired Degree of B.E or B.Sc. Engineering (Civil, Mechanical or Electrical) during service* and have passed Departmental Promotion Examination with 05 (five) years service as such.

5. That on the other hand, vide the same impugned Notification *ibid*, a different yardstick has been used for promotion quota in respect of Sub Engineers who acquired B.Tech. (Hons) Degree during service or before joining their service and reserved 10% joint quota for their promotion to the post of SDO/Assistant Engineer as under:-

(e) ten percent (10%) by promotion, on the basis of seniority-cum-fitness, from amongst the Sub Engineers having Degree of B-Tech (Hons) and having passed Departmental Promotion Examination with 05 (five) years service as such;

Thus the Sub-Engineers who acquired Degree of B-Tech (Hons) before their joining service have been discriminated by merging their seniority/promotion quota with those who acquired the same qualification during service.

6. That the impugned Notification 26.03.2018 *ibid*, is illegal, discriminatory, against the principle of natural justice, hence this departmental appeal inter-alia on the following grounds:-

GROUNDS:-

- A. That the impugned Notification dated 26.03.2018 is in violation of Section-8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule-17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, hence the same is liable to be struck down.
- B. That the department discriminated appellant as on one hand in the same department similarly placed and his other colleagues employees awarded double chance of the career progression in the shape of separate promotion quota while on the other the same benefit was not extended to the appellant by maintaining combined promotion quota/seniority of B-Tech (Hons) degree holders (before joining or during service), which is not sustainable in the eye of law.
- C. That appellant was highly exploited/discriminated because as per Article 4 of the Constitution of Islamic Republic of Pakistan 1973, every citizen of the mother land should be treated in accordance with law and policy hence the acts and omissions of the Department of not treating B-Tech (Hons) Degree holders at par with pre and in-

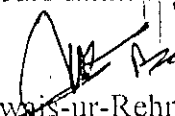
service B.E/B.Sc. Engineering Degree holders, is illegal and not tenable.

D. That the impugned Notification *ibid*, is not only against the valuable rights of the appellant but also department imposed upon him major penalty in shape of joint seniority list because appellant will be thrown at the bottom of the seniority list of B-Tech (Hons) Degree holder Sub-Engineers, hence the same is against the norms of justice and not sustainable under the law.

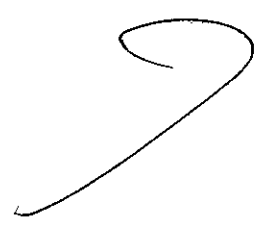
E. That the even otherwise it is the settled principle that while formulating/designing policies for different categories of civil servants, it is incumbent upon the authority concerned to avoid discriminatory treatment/provisions but in the case of appellant he has been meted out discriminatory treatment, which severely affected his career progression.

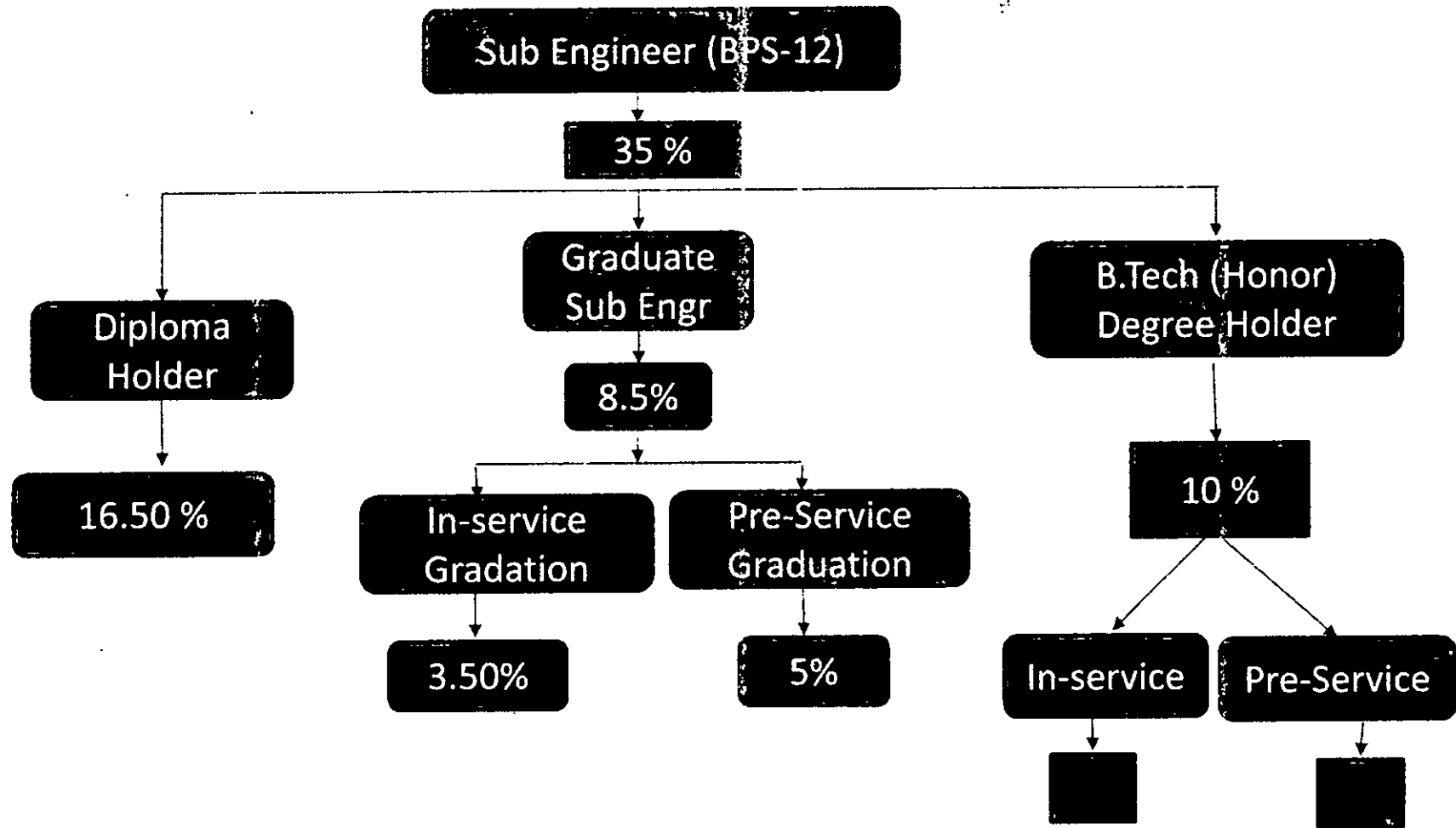
It is, therefore, respectfully requested that the impugned Notification dated 26.03.2018 may graciously be modified to the extent of joint promotion quota for B-Tech (Hons) Degree holder Sub Engineers by separating the same for those Sub Engineers who acquired B-Tech (Hons) Degree at the time of joining service and for those who had acquired the same qualification during service on the analogy of B.E/B.Sc. Engineering Degree holders.

Yours faithfully


Awwis-ur-Rehman
Sub-Engineer
Building FATA Division,
Khyber Agency

Dated: 16 /04/2018





- ★ 8.5% quota for B.E/BSc (Engg) degree Holder @ 5% for Pre-service Graduates and 3.5% for in-service graduates
- ★ 10% for B.Tech (Honor) degree holders without division on the analogy of BE/BSc (Engg) degree holders

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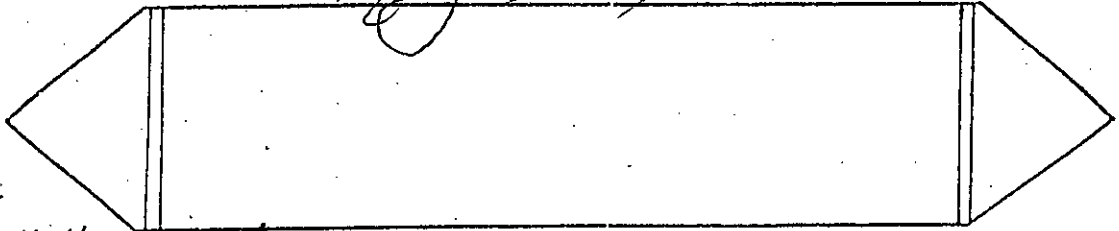
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A.

بعدالت سرسین رٹرنوٹ



2018ء منجانب ایڈووکیٹ

اولیٰ پور کے بنام صورت

S.A 953/18

موزخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکے

محمد عظیم علی

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جو اس کی دیکھ کر روائی متعلقہ
آن مقام کیلئے حالیہ رکن کے لئے ایڈووکیٹ اور ایڈووکیٹ

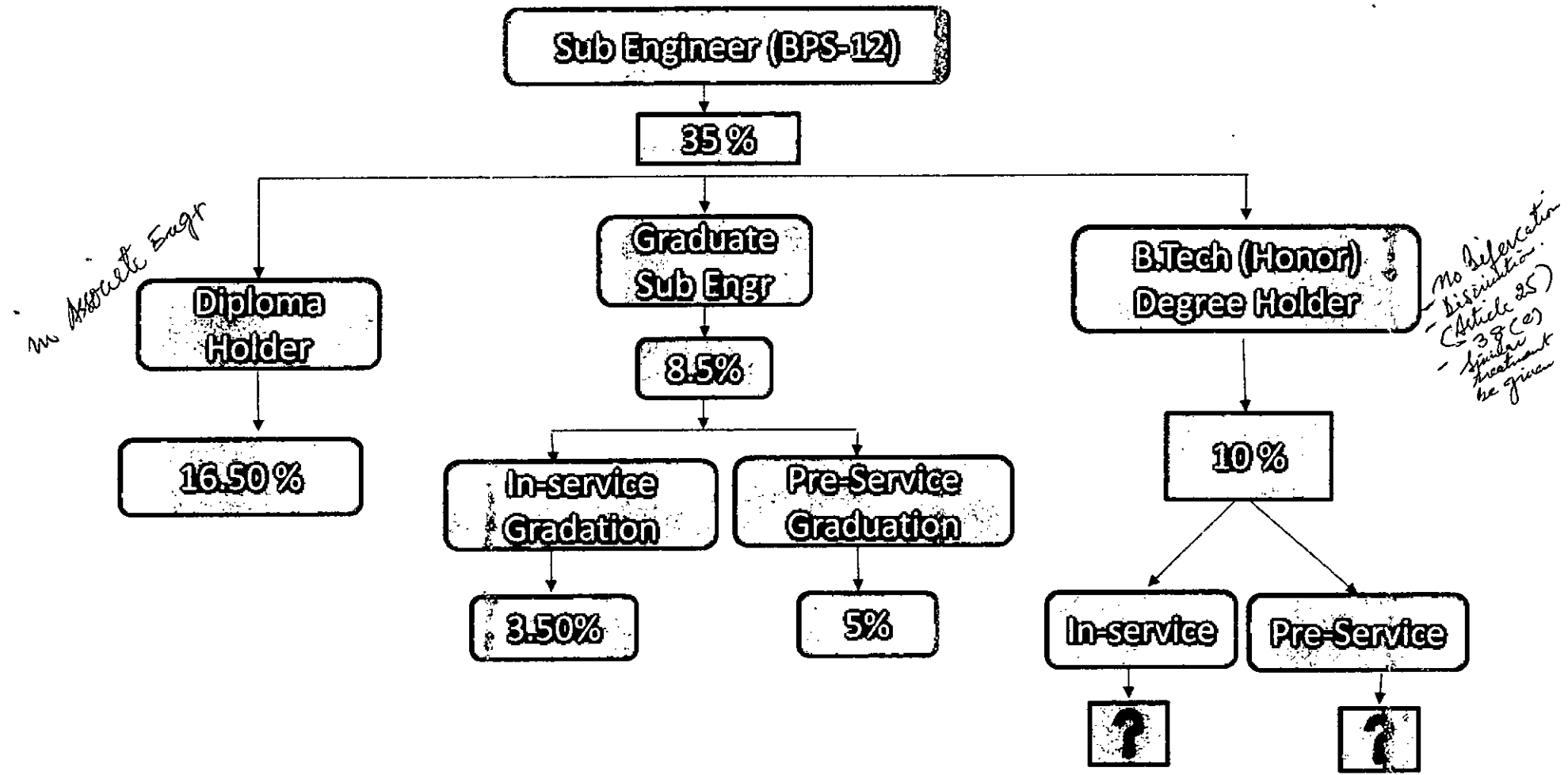
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
دیکھ لیا صاحب کو راضی نامہ کرنے و تقرر ثالثتہ فیصلہ بر حلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخ
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ لیا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو کبھی وہی جملہ مذکورہ یا اختیارات حاصل ہوں گے اور اس کا سائنس
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے وہ ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا اوکالت نامہ لکھ دیا کہ سند ہے۔

ماہ 20

المترجم

M. Razaqdar کے لئے منظور ہے

بمقام



- ★ 8.5% quota for B.E/BSc (Engg) degree Holder @ 5% for Pre-service Graduates and 3.5% for in-service graduates
- ★ 10% for B.Tech (Honor) degree holders without division on the analogy of BE/BSc (Engg) degree holders

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.953 OF 2018

Awais Ur Rehman,
Sub Engineer

(Appellant)....

V/S

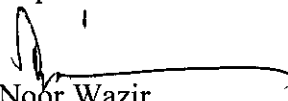
Secretary Communication & Works Department
Peshawar & others

(Respondents)....

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3	Notification No.SOE/C&WD/8-12/2014 dated 14-10-2018	I	5
4	Order dated 04-05-2017 in W.P.No.1320-P/2017 passed by the Peshawar High Court Peshawar	II	6-7

Deponent


Noor Wazir,
Section Officer,
C&W Department Peshawar

①

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR
SERVICE APPEAL NO. 953 OF 2018

Mr. Awais Ur Rehman --- Appellant
Sub Engineer
Building FATA Division Khyber Agency

Versus

1. Chief Secretary --- Respondents
Govt of Khyber Pakhtunkhwa
2. Secretary to Govt of Khyber Pakhtunkhwa
C&W Department, Peshawar
3. Chief Engineer (Centre)
C&W Peshawar

JOINT PARA-WISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1 TO 3

Respectfully Sheweth

PRELIMINARY OBJECTIONS

- i. That the appeal is not maintainable in its present form.
- ii. That the appeal is bad for non-joinder and misjoinder of unnecessary parties
- iii. That the Hon'able Tribunal has no jurisdiction to adjudicate the matters.
- iv. That the appellant has no cause of action and locus standi to file appeal.
- v. That the appeal is time barred
- vi. That there is no final order. Hence the appeal is not maintainable under Section-4 of the KP Service Tribunal Act, 1974.

FACTS

1. Pertains to record
2. Pertains to record
3. Pertains to record
4. As per record, the Sub Engineers having B-Tech (Hons) submitted a joint application for reservation of quota for their promotion to the post of SDO BS-17. In this connection a committee was constituted under Chief Engineer (CDO) C&W Peshawar to submit recommendations. The Committee proposed 3.5% share for Sub Engineers having B-Tech (Hons) on the basis of seniority-cum-fitness by curtailing 07% share quota reserved for Sub Engineer who acquired Degree of B.Sc Engineering (Civil/ Electrical/Mechanical) during service. The Establishment Department placed the case before SSRC for consideration on 19.06.2013. As per Law Department advice the case was referred to Public Service Commission for requisite NOC, who agreed with the proposed amendments for the post of Assistant Engineer/SDO/Junior Engineer/Assistant Research Officer BS-17. In view of SSRC recommendations, draft Notification forwarded to Law Department for vetting before circulation. Law Department vetted the notification with the observations and advised to examine minutely and ensure that it is in order.


In view of above, a note submitted to Chief Secretary with the proposal that the Notification regarding amendments for the post of Assistant Engineers/ SDOs/ Assistant Research Officers (BS-17) in the existing service rules may be approved. However, the Chief Secretary returned the case with direction to submit a revised working paper highlighting the observations of Law Department for placement before the SSRC for consideration/concurrence. Accordingly, a revised working paper was placed before SSRC for consideration on 16.04.2014, the SSRC decided that the seniority in all cadres shall be determine from the date of initial appointment, therefore, the Department again submitted a note to Chief Secretary for proper approval of the notification. The Chief Secretary approved the note and after completion of all codal formalities, notification with necessary amendments duly recommended by SSRC and approved by Chief Secretary has been issued on 14.10.2014 (**Annex-I**).

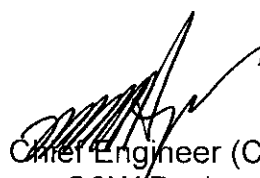
5. Although the writ petition No.1320 of 2017 was relating to the provision to enhance the share for promotion as Assistant Engineers/SDOs in BS-17 but this Hon'able court beside to put the Government/Respondents on notice for filing para-wise comments in the main writ, the Additional Advocate General (Mujahid Ali Khan) was present in court in others / different matter on 04.05.2017 (**order sheet Annex-II**) was put to notice who accepted but no consultation was made with the authority in Department. However the direction of this Hon'able court "**to consider the grievances of the petitioners**", the quota fixed as earlier i.e. 3.5% was enhanced to 10% vide Notification No.SOE/C&WD/8-12/2014 dated 26.03.2018.
6. Pertains to record
7. Pertains to record
8. Incorrect. The Government is empowered to frame or amend the service rules of the Departments, while in the instant case, the Department placed the requests of B-Tech (Hons) Sub Engineers before SSRC for consideration, who recommended the amendments and accordingly a proper note placed before Chief Secretary for approval. While the plea of the appellant that circulation or option before issuance of amendment notification is totally against the policy and procedures of the Government. Besides this, the SSRC recommendations for amendments in the service rules are not circulated amongst the officers/officials for objection/ omission. If this trend once adopted the cases of necessary amendments in any rules/policy will not get finality.
9. As per record, the departmental appeal of the appellant processed and found that there is no weight-age in his appeal on the basis that amendment notification dated 14.10.2014 and 26.03.2018 in the existing service rules for the post Assistant Engineer/SDO/Assistant Research Officer (BS-17) has been issued after fulfillment of all codal formalities as well explained in para-4 of the facts.

GROUNDS

- A. Incorrect, that no legal rights vests in the appellants which could possibly be enforced through the process of court and that too in its constitutional jurisdiction.
- B. Incorrect, neither discrimination to any individual, including the appellant was done nor any rule or principle of law infringed, the apprehension of the appellant is mis-leading.
- C. Incorrect as explained in para-B of the grounds
- D. Incorrect as explained in para-8 of the facts
- E. Incorrect, there is no mala-fide, no discrimination and violation of rights of appellant. Seniority/promotion and framing of rules are strictly accordance to law under relevant rules and regulation.
- F. Incorrect and misconstrued, hence denied. Petitioners cannot claim any vested right on policy decisions of the govt. The latter had formulated and framed its Rules correctly and in public good. There is thus no scope / need of amending them in order to appease and accommodate few and that too at the expense of over-all functioning of the entire department.
- G. Incorrect and misconceived, hence denied. The policy decisions of other provinces (if any) are not binding on the answering respondents as they to make their own policies, rules and laws in good faith and that too for the public benefit.
- H. As per para-4 of the facts. Moreover no fundamental rights of the appellant have been violated, as he was treated purely in accordance with law and rules.
- I. The respondents would like to seek permission of this Hon'able Tribunal to adhere more grounds during the time of arguments.

In view of the above, it is humbly prayed that the instant appeal may kindly be dismissed with cost.


 Secretary to Govt of
 Khyber Pakhtunkhwa
 C&W Department
(Respondents No.1 & 2)


 Chief Engineer (Centre)
 C&W Peshawar
(Respondent No. 3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.953 OF 2018

Awais Ur Rehman,
Sub Engineer

(Appellant)....

V/S

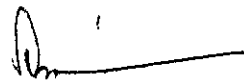
Secretary Communication & Works Department
Peshawar & others

(Respondents)....

AFFIDAVIT

I, Mr. Noor Wazir Section Officer, C&W Department Peshawar hereby affirm and declare that all the contents of the reply / comments are correct to the best of my knowledge and belief and nothing has been concealed.

Deponent



Noor Wazir,
Section Officer,
C&W Department Peshawar



GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar, the October 14, 2014

NOTIFICATION:

No.SOE/C&WD/8-12/2014: In pursuance of the provisions contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Communication & Works Department, in consultation with the Establishment Department and the Finance Department, hereby directs that in this Department Notification No.SOE/C&WD/8-12/2009, dated 25th March, 2010, the following amendment shall be made, namely:

AMENDMENTS

In the Appendix, against serial No.4, in column No.5, for the existing entries, the following shall be substituted, namely:

- "(a) Sixty five percent (65%) by initial recruitment;
- (b) twenty percent (20%) by promotion, on the basis of seniority-cum-fitness, from amongst the Sub Engineers who hold a Diploma of (Civil, Mechanical or Electrical) and have passed Departmental Professional Examination with 10 (ten) years service as such;
- (c) eight percent (8%) by promotion, on the basis of seniority-cum-fitness, from amongst the Sub Engineers who possess Degree of B.E. or B.Sc. Engineering (Civil, Mechanical or Electrical) at the time of their joining service and have passed Departmental Professional Examination with 05 (five) years service as such;
- (d) three and half percent (3.5%) by promotion, on the basis of seniority-cum-fitness, from amongst the Sub Engineers who acquired Degree of B.E. or B.Sc. Engineering (Civil, Mechanical or Electrical) during service and have passed Departmental Professional Examination with 05 (five) years service as such; and
- (e) three and half percent (3.5%) by promotion, on the basis of seniority-cum-fitness, from amongst the Sub Engineers having Degree of B-Tech (Hons) and have passed Departmental Professional Examination with 05 (five) years service as such"

Note: The seniority in all cases shall be determined from the date of initial appointment

SECRETARY TO
Government of Khyber Pakhtunkhwa
Communication & Works Department

Endst of even number and date

Copy is forwarded to the:-

1. All Administrative Secretaries, Govt of Khyber Pakhtunkhwa
2. Secretary to Governor Khyber Pakhtunkhwa, Peshawar
3. Principal Secretary to Chief Minister Khyber Pakhtunkhwa, Peshawar
4. All Chief Engineers C&W Peshawar
5. Chief Engineer (FATA) W&S Peshawar
6. Chief Engineer EQAA Abbottabad
7. Secretary Khyber Pakhtunkhwa Public Service Commission Peshawar
8. All Superintending Engineers C&W Circles
9. All Executive Engineers C&W/Highway Divisions
10. Section Officer (R-VI) Establishment Department Peshawar
11. Assistant Legal Drafter-I, Law Department Peshawar
12. Managing Printing Press for publication in the issue of next Govt gazette
13. PS to Chief Secretary Khyber Pakhtunkhwa Peshawar
14. PS to Secretary C&W Department Peshawar
15. PA to Addl: Secretary C&W Department Peshawar
16. PA to Deputy Secretary (Admn) C&W Department Peshawar
17. Office File


(USMAN JAN)
SECTION OFFICER (Estb)

PESHAWAR HIGH COURT, PESHAWAR

ORDER SHEET

Date of Order of Proceedings	Order or other Proceedings with Signature of Judge
1	2
04.05.2017	<p><u>W.P.No.1320-P/2017:</u></p> <p>Present: Mr.Ghulam Mohy-ud-Din Malik, Advocate for the petitioners.</p> <p style="text-align: center;">***</p> <p><u>YAHYA AFRIDI, C.J.-</u> Muhammad Humayun and others, petitioners seek the constitutional jurisdiction of this Court praying that:-</p> <p style="text-align: center;"><i>“It is, therefore, prayed that on acceptance of this writ petition, respondents may graciously be directed to amend the Rules dated 14.10.2014 regarding enhancement of B-Tech Degree holders quota from 03.50% to 10% (at least) keeping in view number and size of petitioners.</i></p> <p style="text-align: center;"><i>OR any other remedy which deemed proper, equitable, fair, just and in accordance with principles of justice may graciously be granted.”</i></p> <p>2. Mr.Mujahid Ali Khan, AAG present in Court in different mattes is put to notice and he accepted.</p> <p>3. The petitioners are seeking directions of this Court to the Provincial Government for appropriate amendments in the <u>Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989</u> (“Rules”) regarding enhancement of B-Tech Degree</p>

35
2-0

2

2 of 2 writs

7

2 Holders Quota from 03.50% to 10%. In support thereof, the worthy counsel for the petitioners has placed reliance on Muhammad Javed's case (2015 SCMR 269).

3. In view of the above, this Court directs the respondent-Government to consider the grievance of the petitioners in light of the judgment of the apex Court cited above and decide the same, accordingly.

4. This writ petition is disposed of, in the above terms.

CHIEF JUSTICE

JUDGE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 953 /2018

Mr. Awais-ur-Rehman Applicant/Appellant

Versus

The Govt. and others..... Respondents

Khyber Pakhtunkhwa
Service Tribunal

*Put up to the court with
releasement app.*

12/3/2021

APPLICATION FOR EARLY HEARING.

Diary No. 438

Dated 12/3/2021

Rawdu

Respectfully Sheweth,

1. That the titled Service Appeal is scheduled for hearing on 13.04.2021.
2. That the matter involved in the instant appeal is relating to promotion quota which has discriminately been reduced by the Respondents/Department. It is apprised that the matter was heard this Hon'ble Tribunal on two occasions and thereby fixed for announcement but could not be announced owing to administrative grounds.
3. That the case was also adjourned so many times owing to Covid-19 Pandemic and it was January, 2021 when promotion cases were processed by the Department, therefore, applicant moved an application for early hearing along with stay application which was granted and the matter was accelerated to 24.02.2021 but it was adjourned to 04.03.2021 on the request of the learned AAG as he had not prepared the case. On the date fixed the case once again adjourned to 13.04.2021 owing to general strike call of the legal fraternity.
4. That Respondents have again moved a Summary for approval in order to promote Sub-Engineers to next higher grade on the basis of discriminatory promotion quota, therefore, the instant application is being submitted on much urgent basis.

It is, therefore, humbly prayed that on acceptance of this application, the titled Service Appeal along with connected appeals may graciously be fixed as early as possible.

25.3.21 Be accelerated to a date in last week of March 2021. Call to be borne through by the applicant.

Dated: 13 /01/2021

Applicant/Appellant

[Signature]
Khaled Rahman,
Advocate, Peshawar

Verification

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

[Signature]
Applicant/Appellant

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 953 /2018

Mr. Awais-ur-Rehman Applicant/Appellant

Versus

The Govt. and others..... Respondents

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Through

Applicant/Appellant

**Khaled Rahman,
Advocate, Peshawar**

Dated: ___/01/2021

Verification

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

Applicant/Appellant

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 953 /2018

Mr. Awais-ur-Rehman Applicant/Appellant

Versus

The Govt. and others..... Respondents

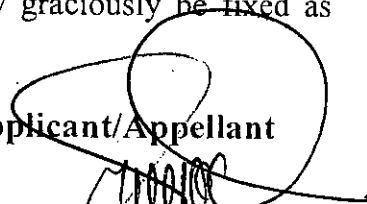
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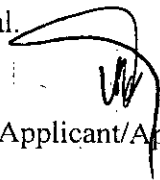

Applicant/Appellant

**Khaled Rahman,
Advocate, Peshawar**

Dated: ___/01/2021

Verification

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


Applicant/Appellant

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 953 /2018

Mr. Awais-ur-Rehman Applicant/Appellant

Versus

The Govt. and others.....Respondents.

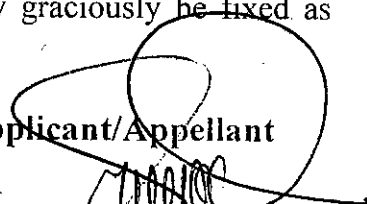
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Through



Applicant/Appellant

**Khaled Rahman,
Advocate, Peshawar**

Dated: ___/01/2021

Verification

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


Applicant/Appellant

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 953 /2018

Awais-ur-Rehman.....Appellant

Versus

The Govt. of KPK and othersRespondents

**REJOINDER ON BEHALF OF APPELLANT IN RESPONSE
TO REPLY FILED BY RESPONDENTS.**

Respectfully Sheweth,

Preliminary Objections:

Preliminary objections raised by answering respondents are erroneous and frivolous. The appeal is maintainable. All the proper and necessary parties have been arrayed as Respondents in the instant appeal. Appellant has got a strong cause of action and for that matter locus standi, the appeal is not time barred. Any civil servant who is aggrieved to any original or appellate order may avail the remedy under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

Facts:

1&2. Need no rejoinder.

3. It is narrated that vide Notification dated 12.02.1999 separate promotion quota was reserved for Sub-Engineers who had joined the service as Engineers Graduates and those who had acquired the same Degree during service.

4. Misconceived. It is averred that different yardstick has been used towards the appellant rather the same treatment should have been extended in case of appellant vide amendment Notification dated

14.10.2014 for the category of the appellant only 3.5% promotion was reserved for both who acquired the same before service and during service.

5. It is also misconceived. In light of the direction of August Peshawar High Court, Peshawar promotion quota was enhanced to 10% to the post of SDO/Assistant Engineer (BPS-17) in respect of B.Tech (Hons). Moreover, Respondents were required to treat the appellant at par with those petitioners.
- 6&7. No plausible replies have been submitted by the Answering Respondents which amounts to admission. It is significant to add here that Respondent/Department has made discriminatory treatment towards the appellant and did not treat him at par with that of B.Sc Engineers by way of allocating (5%) promotion quota who possess Degree of B.E or B.Sc Engineering (Civil, Mechanical or Electrical) at the time of joining service and (3.5%) for those who acquired same during service.
8. Assertions of the Answering Respondents are totally delusional. The domain of making rules is the right of the department but subject to some limitations which have been imposed upon them under the Article 25 of the Constitution of Islamic Republic of Pakistan, 1973. Therefore, appellant was highly discriminated by allocating separate promotion quota for one category while the same was not allocated in the category of the appellant in the same department.
9. Incorrect hence denied. The departmental appeal of the appellant was not responded hence, clear violation of Section 24-A of General Clauses Act, 1897 has been committed.

Grounds:

- A. Incorrect. The appellant was not treated according to law and Respondents unlawfully issued impugned Notification dated 26.03.2018, which is not sustainable in the eye of law.

B&C. It is mythical. Appellant had to be treated at par with B.Sc Engineers by separating promotion quota for both categories, while combined quota was reserved in the category of the appellant which is a clear case of discrimination.

D. No plausible reply has been submitted which amounts to admission.

E&F. Incorrect hence denied. As already explained in the preceding paras that though framing of rules is the domain to the department but under the subject to limitations there should not be malafide or discrimination against any civil servant.

G&H. Incorrect. Detailed replies have already been submitted in the above paras.

I. Needs no reply.

It is, therefore, humbly prayed that the reply of answering Respondents may graciously be rejected and the appeal as prayed for may graciously be accepted with costs.

Through

Appellant


Khaled Rahman
Advocate, Peshawar

Dated: ____/02/2019

Verification

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

Appellant