

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

~~Khyber Pakhtunkhwa~~
~~Service Tribunal~~

Diary No. 3614

Dated 16/2/2023

Service Appeal No.931/2022

Engr. Riaz Arshad
Superintending Engineer (Retired)

Appellant

Versus

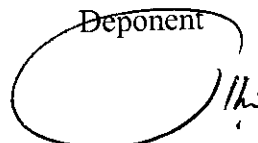
Govt of Khyber Pakhtunkhwa
through Chief Secretary Khyber Pakhtunkhwa
and others

Respondents

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Deponent



Zahid Ullah
Section Officer (Litigation)
C&W Department, Peshawar

BEFORE THE KHYBER PAKHTUNKHWASERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 931 OF 2022

Engr. Riaz Arshad.....Appellant

VERSUS

Govt. of Khyber Pakhtunkhwa & others.....Respondents

Joint Para-wise Comments on behalf of Respondents No. 1 to 4

Respectfully Sheweth,

PRELIMINARY OBJECTIONS

- i. That the appeal is not maintainable in its present form.
- ii. That the appellant has no cause of action and locus standi to file appeal.
- iii. That the appeal is barred by law and limitation
- iv. That the appeal is bad for mis joinder and non joinder of necessary parties.
- v. That acting charge basis appointment does not confer any right upon the appellant for regular promotion according to Appointment, Promotion & Transfer Rules, 1989. Reliance is placed on 2015 SCMR 165, 1997 SCMR 1730, 2013 PLC (CS) 1031.

FACTS

1. Pertains to record
2. Pertains to record
3. Pertains to record
4. In this regard, it is clarified that a working paper for filling up 02 Nos posts of Chief Engineer BS-20 on acting charge basis was placed before the Provincial Selection Board (PSB) on **26.08.2019**, including the case of the appellant (Engr. Riaz Arshad) as appearing at Sr.No.01. The PSB in its meeting held on 23.09.2019 recommended Engr. Riaz Arshad for appointment against the post of Chief Engineer (BS-20) on acting charge basis which was vacated by a Chief Engineer (BS-20) C&W Department on account of his posting as Director General PDA (**Annex-I**). In this connection, the department moved a summary to Competent Authority (Chief Minister) for approval of posting proposal of Engr. Riaz Arshad against the post of Chief Engineer (CDO) C&W Peshawar for actualization on the eve of his appointment as BS-20 on acting charge basis. However, the Establishment Department returned the summary with the observations to which the department attended and was resubmitted. Accordingly the Competent Authority (Chief Minister) approved the Establishment Department view point that Engr. Muhammad Uzair Chief Engineer (BS-20) C&W Department was transferred and posted as Director General PDA Peshawar and his successor Engr. Riaz Arshad (Appellant) was recommended by PSB in its meeting held on 23.09.2019 for appointment in BS-

20 on acting charge basis against the post vacated by Engr. Muhammad Uzair. On return to the original incumbent post i.e. Engr. Muhammad Uzair, the acting charge appointment of Engr. Riaz Arshad (Appellant) shall be reverted to his original post, if there exist no clear vacancy for regularization of his acting charge appointment in light of Establishment Department instructions dated 13.01.1999. Hence, acting charge appointment needs to be withdrawn and no further posting is required (**Annex-II**). Further acting charge appointment is not promotion. Reliance is placed on 2015 SCMR 165, 1997 SCMR 1730, 2013 PLC (CS) 1031, 2003 PLC (CS) 212 etc.

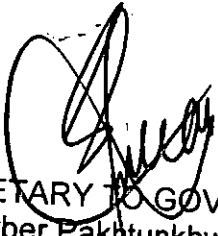
5. Incorrect, C&W Department again placed a working paper before PSB for filling up of two (02) Nos posts of Chief Engineers BS-20 (01 regular + 01 acting charge appointment), including the appellant was placed before PSB for consideration on **09.10.2020 (Annex-III)**. The Establishment Department returned the working paper and observed that the PSB did not consider promotion cases due to conditional retirement in awake of Peshawar High Court Peshawar judgment dated **19.02.2020** on which CPLA has been lodged before Apex court and Establishment Department has sought the advice from Law Department in the cases of conditional retirement (**Annex-IV**).
6. As per para-5 above
7. In this connection, it is submitted that Engr. Riaz Arshad Superintending Engineer (BS-19) C&W Department, while working as Chief Engineer (Reconstruction) PERRA Abbottabad in his own pay & scale retired from Govt service on attaining the age of superannuation i.e. 60 years **w.e.f. 24.11.2020** and the retirement Notification issued on 31.03.2021, while the retirement age i.e. 63 years of Govt employees was disputed in the Peshawar High Court Peshawar in writ petition No.5673-P/2019. The Provincial Government has issued amended Ordinance 2021, whereby a civil servant shall retired from service on the completion of sixtieth (60th) years of his age (**Annex-V**).
8. Incorrect, the application for redressal of the grievances in respect of appellant (Riaz Arshad) retired Superintending Engineer C&W Department as attached with service appeal was not received in the Department.
9. Pertains to record.
10. Pertains to record.


GROUND

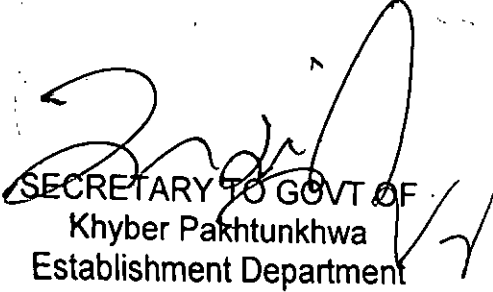
- A. Incorrect and misconceived, hence denied. The promotion policy of the Provincial Government is binding on all the Provincial Government Departments, including answering respondents as they make their own policies, rules and laws in good faith and that too for the public benefit.
- B. Incorrect, as explained in para-4 of the facts
- C. Incorrect, as explained in para-7 of the facts
- D. As explained in para-5.
- E. Incorrect and misconstrued, hence denied. appellant cannot claim any vested right on policy decisions of the govt. The Government 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.
- F. Incorrect, as explained para-7 of the facts
- G. Incorrect as explained in para-4 of the facts. Since the appellant case is not covered under the rules, he had not been deprived of any fundamental or constitutional rights.

- H. Incorrect, the appellant did not submit any request to the department in this behalf.
- I. Incorrect, the promotion cases were considered by the PSB as per rules/law and on the completion of all codal formalities.
- J. Incorrect, as replied in above paras.
- K. Incorrect. As replied in above paras.
- L. Incorrect, there is no mala-fide, no discrimination and violation of rights of the applicant has been made. In fact, the Department followed rules/policy strictly in the cases of promotion of officers/officials of the Department.
- M. The respondents would like to seek permission of the Hon'able court in advance for 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)


SECRETARY TO GOVT OF
Khyber Pakhtunkhwa
Finance Department
(Respondent No. 3)


SECRETARY TO GOVT OF
Khyber Pakhtunkhwa
Establishment Department
(Respondent No. 4)



(4)

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Service Appeal No.931/2022

Engr. Riaz Arshad
Superintending Engineer (Retired)

Appellant

Versus

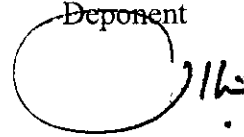
Govt of Khyber Pakhtunkhwa
through Chief Secretary Khyber Pakhtunkhwa
and others

Respondents

AFFIDAVIT

I, Zahid Ullah, Section Officer Litigation (BS-17) C&W Department, Peshawar hereby affirm and declare that all the contents of the Parawise comments are correct to the best of my knowledge and belief and nothing has been concealed.

Deponent



Zahid Ullah
Section Officer (Litigation)
C&W Department, Peshawar

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(5) (B) (P)



GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

No. SOE/C&WD/4-2/79
Dated Peshawar, the August 26, 2019

To

The Section Officer (PSB)
Establishment & Admn Department
Peshawar

Subject: APPOINTMENT OF SUPERINTENDING ENGINEER (BS-19) AGAINST THE POST OF CHIEF ENGINEER (BS-20 A.C.B) C&W DEPARTMENT

I am directed to refer to this Departments' letter of even number d 03.07.2019 on the subject noted above and to forward herewith 07 set revised working papers along-with related documents duly completed in respect for appointment of Superintending Engineers (BS-19) against the post of Chief Engineer (BS-20 on acting charge basis) for placing before Provincial Selection Board (PSB) for consideration please.

Endst even No. & date

Copy forwarded to PS to Secretary C&W Department, Peshawar

[Handwritten signature]
SECTION OFFICER (Estb)

[Handwritten signature]
SECTION OFFICER (Estb)

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Rem...
26/8/19
[Handwritten signature]

(6)

WORKING PAPER FOR PROVINCIAL SELECTION BOARD

Department: Communication & Works Department

1. Nomenclature of the post/Basic Scale Chief Engineer (BPS-20)
2. Service/Group/Cadre Engineering (C&W)
3. Sanctioned strength of the Cadre Total posts 6 (5-regular and 01 Ex-Cadre) Annex-I

	Direct	Promotion	Trans
4. i. Percentage of share		100%	
ii. No. of posts allocated to each category	-	06	-
iii. Present occupancy position	-		-
1) Regular		05	
2) Acting charge		00	
iv. No. of vacancies in each category:	-		-
a. Regular		00	
b. Acting charge		02	

- v. How did the vacancy(ies) under promotion quota accrue and since when

Position of 02 Nos Acting charge Appointment

- a. One (01) regular Chief Engineer (BS-20) Department Engr. Muhammad Uzair has been Director General PDA Peshawar (Annex-II).
- b. One (01) regular Chief Engineer (BS-20) Department Engr. Muhammad Shahab Khattak posted as Secretary C&W Department (Annex-III).

- vi. Recruitment Rules

By selection, on merit from amongst Super Engineers/Principal Design Engineers, with 17 (seventeen) years of service in BPS-17 or above possessing Degree in B.E/B.Sc. Engineering (from a recognized University and have successfully completed Senior Management Course (Annex-IV).

- vii. Required length of service

At least 17 (seventeen) years of service in BPS-17 and above

- viii. Whether to be promoted on regular basis or appointed on acting charge basis?

Acting charge appointment = 02 posts

- ix. Mandatory training, if any

S.M.C

- x. Minimum required score on EI.

70


Secretary

Dated 26 /08/2019

Secretary to Govt of
Khyber Pakhtunkhwa
C&W Department

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PANEL OF OFFICERS FOR CONSIDERATION

Sl. No.	Sen. No.	Name of Officer with qualification	Date of Birth	Date of 1 st entry into Govt Service	Date of Appointment/promotion to BS-19	Date of regular Appointment/promotion to the present scale	Whether fulfill the prescribed length of service	Quantified score	Missing PERs (if any)	Disciplinary proceedings (if any)	Case (if any) in any court of Law, including NAB/ Plea bargaining with NAB	Mandatory Training for promotion	Research papers	Present posting	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
1	1	Riaz Arshad B.Sc/MS (Civil)	25.11.1960 Peshawar	26.05.1988	09.12.2014	09.12.2014	Yes	64.34	---	---	---	---	---	Awaiting post	Exempted from SMC training he has attained the age of years
2	2	Muhammad Ayub B.Sc/MS (Civil)	03.02.1961 Kohat	26.09.1987	09.12.2014	09.12.2014	Yes	65.16	21.08.2017 to 25.12.2017 (Not countersigned)	---	---	---	---	CE (Centre) C&W Peshawar (OPS)	Exempted from SMC training he has attained the age of years
3	3	Abdul Sattar B.Sc (Civil)	07.03.1961 Orakzai	26.09.1988	01.09.2016	01.09.2016	Yes	65.11	03.04.2016 to 31.12.2017	---	---	---	---	SE (Southern) C&W Circle Tribal Districts at Bannu	Exempted from SMC training he has attained the age of years
4	4	Noor-us-Saeed Shah B.Sc (Civil)	02.03.1962 Mardan	26.09.1988	05.06.2015	05.06.2015	Yes	55.71	---	---	---	Yes Annex-V	---	SE (HQ) O/O CE (Merged Areas) Peshawar	---
5	5	Amer Nadeem Durrani B.Sc (Civil)	28.04.1962 Peshawar	26.09.1988	05.06.2015	05.06.2015	Yes	56.46	01.01.2018 to 31.12.2018	---	Yes	Nil	---	SE (PBMC) C&W Peshawar	The officer was involved in VR case with NAB amounting to Rs.5,10,011/-, pursuant of Supreme Court Pakistan judgment dated-24.10.2011 he was proceeded against under ES Rules 2011. After fulfillment of all cod formalities, a minor penalty "Censure" has been imposed upon him (Annex-VI).
6	6	Rafi-ud-Din B.Sc (Civil)	01.04.1962 Abbottabad	26.09.1987	01.09.2016	01.09.2016	Yes	55.63	01.01.2018 to 31.12.2018	---	---	Nil	---	SE C&W Circle Mardan	---

1. Certified that the officers included in the panel are eligible for appointment to the post of BS-20 on acting charge basis in all respects.
2. Certified that the officers included in the panel are not involved in any NAB case nor entered into plea bargain or VR with National Accountability Bureau (NAB) except Sr.No.5

Signature: _____


Date: 26/08/2019

Secretary to Govt of
Khyber Pakhtunkhwa
C&W Department

CERTIFICATE

It is certified that:-

1. The officers included in the panel are eligible in terms of length of service required for promotion.
2. No disciplinary action/proceedings or criminal charges in any court of law are pending against any of the officer included in the panel.
3. The seniority list of the officers, included in the panel issued on 09.04.2019 is final (Annex-VII).
4. As per record, the officers included in the panel are neither involved in any NAB case nor entered into plea bargaining/VR agreement with NAE authorities except Sr.No.5.


SECRETARY Secretary to Gc
C&W Khyber Pakhtun
C&W Departm
Dated 26/08/2019

**IMMEDIATE
CONFIDENTIAL**

~~SECRET~~
DSA/SCOE

File No. f720
L. 8-10-2019
Secretary C&W Deptt



**GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT**

9

NO. SO(PSB)ED/1-3/2019/P-111
Dated Peshawar, the 02.10.2019

To
The Secretary to Govt. of Khyber Pakhtunkhwa,
C&W Department.

SUBJECT: - **MINUTES OF THE MEETING OF PROVINCIAL SELECTION BOARD
HELD ON 23.09.2019.**

**APPOINTMENT OF SUPERINTENDING ENGINEER BS-19 TO THE
POST OF CHIEF ENGINEER BS-20 ON ACTING CHARGE BASIS.**

Dear Sir,

I am directed to refer to C&W Department letter No. SOE/C&WD/4-2/79 dated 26.08.2019 on the subject and to forward herewith an extract of **Item No (16)** of the minutes/recommendations of the meeting of Provincial Selection Board held on **23.09.2019** as well as copy of approved summary wherein the Chief Minister being competent authority in terms of Rule 4 (1) (a) of the Khyber Pakhtunkhwa (Appointment, Promotion & Transfer) Rules, 1989 has approved the recommendation of the PSB, for further necessary action.

Yours faithfully,

Abdul Hameed
(Abdul Hameed)
SECTION OFFICER (PSB)

Encl: As Above

COMMUNICATION & WORKS DEPARTMENT

(Meeting of PSB held on 23.09.2019)

SUBJECT: - APPOINTMENT OF SUPERINTENDING ENGINEER BS-19 TO THE POST OF CHIEF ENGINEER BS-20 ON ACTING CHARGE BASIS.

Secretary C&W apprised the Board that due to posting of two BS-20 officers against ex-cadre posts, two posts of Chief Engineer BS-20 are lying vacant, which can temporarily be filled by appointment on acting charge basis under Rule 9 of APT Rules, 1989. The Board thoroughly discussed the vacant position and observed that the acting charge appointment can be made only against the post vacated by Mr. Muhammad Uzair currently posted as DG, PDA, Peshawar.

2. According to service rules, the post is required to be filled as under:-

"By selection, on merit from amongst Superintending Engineers/Principal Design Engineers, with at least 17 years of service in BS-17 and above, possessing Degree in B.E/B.Sc. Engineering (Civil) from a recognized University and have successfully completed Senior Management Course Training".

3. The service record of the officers included in the panel was discussed as follows:

S. #	NAME OF OFFICER	RECOMMENDATIONS OF THE BOARD
1.	Mr. Riaz Arshad B.Sc/ MS (Civil)	His date of birth is 25.11.1960. He joined government service on 26.05.1988 in BS-17. He was promoted to BS-19 on 09.12.2014. He is exempted from mandatory training due to age factor. No enquiry is pending against him. His service record upto 2018 is generally good. The Board recommended the officer for appointment to the temporarily vacated post of Chief Engineer BS-20 on acting charge basis.

Ali Akbar
Section Officer (PSB)
Govt. of Khyber Pakhtunkhwa
Establishment Department



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SUMMARY FOR CHIEF MINISTER

Subject: APPOINTMENT OF SUPERINTENDING ENGINEER (BS-19) AGAINST THE POST OF CHIEF ENGINEER BPS-20 ON ACTING CHARGE BASIS, C&W DEPARTMENT

The Provincial Selection Board in its meeting held on 23.09.2019 considered the case and was cleared/recommended the appointment of Engr. Riaz Arshad Superintending Engineers (BS-19) against the post of Chief Engineer BS-20 on acting charge basis (Annex-I).

2. The Establishment Department has obtained the approval of the recommendations of Provincial Selection Board from Competent Authority (Chief Minister) Annex-II.

3. In order to actualize the appointment of the officer mentioned above, the C&W Department proposes the following:

Sl. No.	Name of Officer & Designation	From	To	Remarks
1	Engr. Riaz Arshad (BS-20 A.C.B)	Awaiting posting	Chief Engineer (CDO) C&W Peshawar. He is also allowed to continue work as Project Director PaRSA/USAID Directorate, Swat at Peshawar, in addition to his own duty.	Against vacant pos

4. The Chief Minister Khyber Pakhtunkhwa (Competent Authority) is requested to approve the proposal with regard to his actualization on the eve of appointment contained in para-3 above, please.

MINISTER FOR C&W (away).

Secretary
SECRETARY 9/x/19
C&W

5. CHIEF SECRETARY

Pl. examine

9/x

Chief Secretary

Secy/Estab

N.P.P.

*DY MC = 113/2019
Dated = 9/10/2019*

06. Summary has been examined. It is observed that in the light of PSB minutes (Annex-I) the officer was recommended for appointment to the temporarily vacated post of Chief Engineer (BS-20) while the proposal of Administrative Department in Para-3 Column-4 of the summary is against the spirit of PSB minutes.

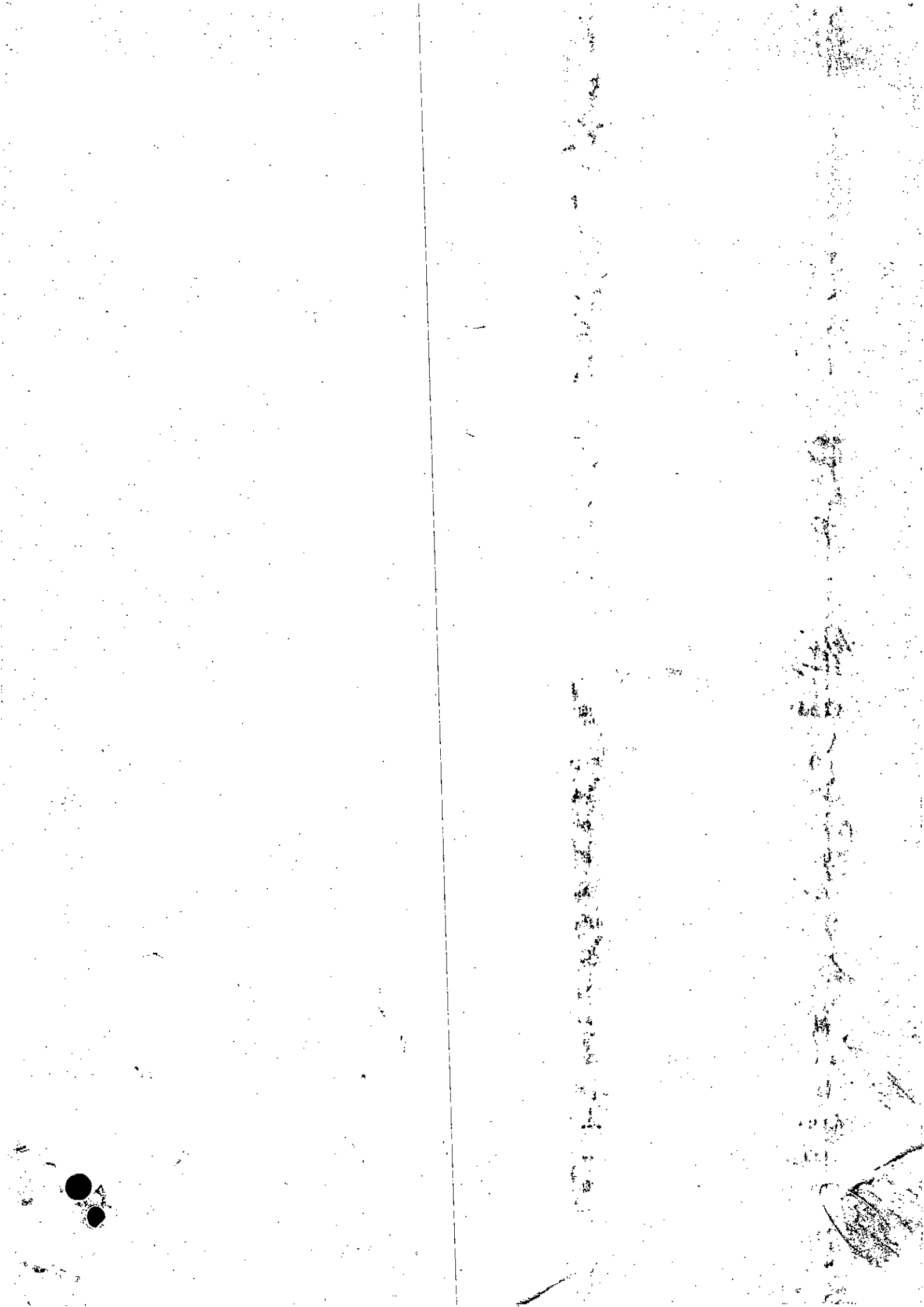
(12)

07. The summary is, therefore, returned to the Administrative Department for clarification.

(Signature)
(Syed Jamal-ud-Din Shah)
Secretary Establishment
22, October, 2019

Secretary C&W Department

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13

Para 1-7/N refer

8. As per **Annex-I**, the Provincial Selection Board (PSB) has recommended Engr. Riaz Arshad for appointment to the temporarily vacated post of Chief Engineer (BS-20) on acting charge basis. In compliance, the department submitted a summary to Chief Minister Khyber Pakhtunkhwa with the proposal that the said Engineer may be posted as Chief Engineer (CDO) C&W Peshawar against vacant post and he may also be allowed to continue work as Project Director PARSA/USAID Directorate, Swat at Peshawar, in addition to his own duty.

9. So far, the observations raised by Establishment Department narrated in para-6 of the summary is concerned, it is clarified that the post on which Engr. Riaz Arshad has been considered by the PSB for appointment as Chief Engineer BS-20 on acting charge basis has since been filled by way of transfer. Moreover, when an officer recommended for appointment against higher post on acting charge basis, then his adjustment are required to be accommodated, enabling the officer to avail the benefit of acting charge appointment, either against regular post or any other equivalent post.

10. Proposal contained in para-3 of the summary is resubmitted for approval please.

Riaz Arshad
18/11/19
SECRETARY
C&W

MINISTER FOR C&W

[Signature]
18-11-19
MINISTER
Communication & Works Dept
Khyber Pakhtunkhwa

SECRETARY ESTABLISHMENT

*DX No=121/2019
Dated=18-10-2019*

N.P.P

11. Summary for Chief Minister was examined previously vide Paras 6-7 and the Administrative Department has responded in Para-8 of the Summary stating therein that the post of Chief Engineer against which Engr. Riaz Arshad was appointed in BS-20 on acting charge basis has been filled by transfer and that his posting as Chief Engineer (CDO) is for the purpose of actualization to get the benefit of the higher post. (14)

12. It is observed that if the post of Chief Engineer (BS-20) against which acting charge appointment of Engr. Riaz Arshad was made has been filled by transfer, then how two employees can draw pay against one post. Therefore, views of Finance Department are required in this regard.

13. The Administrative Department may re-submit the case after getting clarification from Finance Department.

(Syed Jamal-ud-Din Shah)
Secretary Establishment
26, November, 2019

Secretary C&W Department

XPP

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Para 1-13/N refers

14. A working paper with regard to Appointment of Superintending Engineers BS-19 to Chief Engineer BS-20 on acting charge basis was placed before PSB for consideration (Annex-IV). In the working paper, the following position of 02 Nos acting charge appointment was highlighted.

- i. One (01) regular Chief Engineer (BS-20) C&W Department Engr. Muhammad Uzair has been posted as Director General PDA Peshawar.
- ii. One (01) regular Chief Engineer (BS-20) C&W Department Engr. Muhammad Shahab Khattak had been posted as Secretary C&W Department.

15. The PSB has considered the aforesaid working paper and recommended the appointment of Engr. Riaz Arshad SE BS-19 against the post of Chief Engineer BS-20 on acting charge basis but the term used for the said appointment as against the temporarily vacant post of BS-20 on acting charge basis (Annex-I). Moreover, Engr. Muhammad Uzair Chief Engineer BS-20 C&WD, while posted as Director General PDA Peshawar has been repatriated to his parent Department i.e. C&WD on 26.11.2019 (Annex-V).

16. The proposal contained in para-3 ante of the summary is resubmitted for approval of the Chief Minister please.

17. Finance Department may add its views on the case as required by Establishment Department vide para-13 of the summary.

DY No = 130/2020
Dated = 21-01-2020

MINISTER FOR C&W

SECRETARY FINANCE

[Signature]
SECRETARY
C&W

28/12/19

N.P.P

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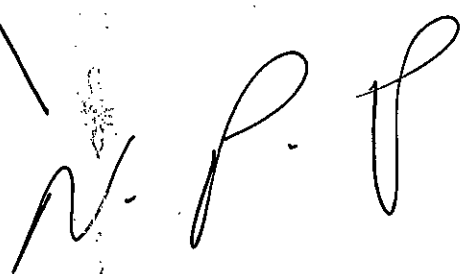
Subject: APPOINTMENT OF SUPERINTENDING ENGINEER (BS-19)
AGAINST THE POST OF CHIEF ENGINEER BPS-20 ON ACTING
CHARGE BASIS, C&W DEPARTMENT.

18. Proposal of the Communication and Works Department contained at para 13/N further clarified at Para 15/N of the summary has been examined in the light of this department circular issued in consultation of Establishment Department vide (Flag-A), which states that appointment against higher post on acting charge basis, pay shall be fixed in the same manner as in the case of regular promotion.

19. Foregoing in view, Establishment Department may offer its views en-route please.

Secretary Establishment Deptt


Secretary, Finance Department



(12)

20. Summary for Chief Minister has been examined. Engineer Muhammad Uzair was transferred and posted as Director General PDA and his successor Engineer Riaz Arshad was recommended by PSB in its meeting held on 23-09-2019 for acting charge appointment against the post vacated by Engineer Muhammad Uzair (Annex-I). On return of the original incumbent of the post i.e Engineer Muhammad Uzair, the acting charge appointment of Engineer Riaz Arshad shall be reverted to his original post, if there exists no clear vacancy for regularization of his acting charge appointment in light of instructions of this Department dated 13-01-1999 (Flag-B). Hence acting charge appointment needs to be withdrawn and no further posting is required.

(Syed Jamal-ud-Din Shah)
Secretary Establishment
19 February, 2020

Chief Secretary Khyber Pakhtunkhwa

Chief Minister

[Signature]
21/2
CHIEF SECRETARY
Govt. of Khyber Pakhtunkhwa

22

Para 20 is approved.

[Signature]
3-2-2020
Chief Minister
Khyber Pakhtunkhwa

CS

Annex-III

17



GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

No. SOE/C&WD/4-2/2020
Dated Peshawar, the October 09, 2020

TO

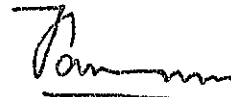
The Section Officer (PSB)
Establishment & Admn Department
Peshawar

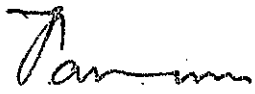
Subject: PROMOTION OF SUPERINTENDING ENGINEER (BS-19) TO THE
POSTS OF CHIEF ENGINEER (BS-20) C&W DEPARTMENT ON
REGULAR BASIS

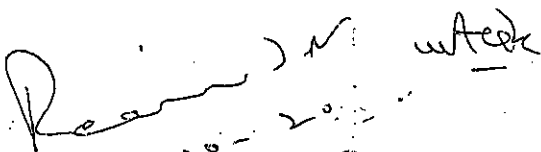
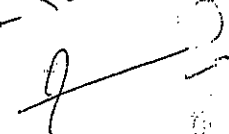
I am directed to refer to the subject noted above and to forward herewith
07 sets of working papers along-with related documents duly completed in all
respect for promotion of Superintending Engineers (BS-19) to the post of Chief
Engineer (BS-19) on regular basis for placing before Provincial Selection Board
(PSB) for consideration, please.

Endst even No. & date

Copy forwarded to PS to Secretary C&W Department, Peshawar


09.10.2020
(ZAHOOR SHAH)
SECTION OFFICER (Estb)


SECTION OFFICER (Estb)


2-10-2020


(19) (a)

WORKING PAPER FOR PROVINCIAL SELECTION BOARD

Department: **Communication & Works Department**

1. Nomenclature of the post/Basic Scale **Chief Engineer (BPS-20)**
2. Service/Group/Cadre **Engineering (C&W)**
3. Sanctioned strength of the Cadre **Total posts 6 (5-regular and 01 Ex-Cadre) Annex-I**

	Direct	Promotion	Transfer
4. i. Percentage of share		100%	
ii. No. of posts allocated to each category	-	06	-
iii. Present occupancy position			
1) Regular	-	04	-
2) Acting charge		00	
iv. No. of vacancies in each category:			
a. Regular	-	01	-
b. Acting charge		01	

v. How did the vacancy(ies) under promotion quota accrue and since when

Position of 01 Nos Regular Post

- a. Due to retirements of Muhammad Shahab Khattak (Annex-II) -- 01 No
-
- Regular Vacant Post -- 01 No

Position of 01 Nos Acting charge Appointment

- b. 01 No. ex-cadre post i.e. MD PKHA Peshawar (BS-19) is lying vacant. Therefore, the appointment of one (1) No. senior SE (BS-19) against the post of MD PKHA (BS-20) is required on acting charge basis, under Section-9 of APT Rule (Annex-III).

vi. Recruitment Rules

By selection, on merit from amongst Superintending Engineers/Principal Design Engineers, with at least 17 (seventeen) years of service in BPS-17 and above possessing Degree in B.E/B.Sc. Engineering (Civil) from a recognized University and have successfully completed Senior Management Course Trainee (Annex-IV).

At least 17 (seventeen) years of service in BPS-17 and above

- vii. Required length of service
- viii. Whether to be promoted on regular basis or appointed on acting charge basis?

Regular = 01 post

Acting charge appointment = 01 post

- ix. Mandatory training, if any S.M.C
- x. Minimum required score on EI. 70

SECRETARY
C&W

Dated 08/10/2020

Secretary to
Govt of Hyber Pakhtunkhwa
C&W Department

10

5

PANEL OF OFFICERS FOR CONSIDERATION

Sl. No.	Sen. No.	Name of Officer with qualification	Date of Birth	Date of 1 st entry into Govt Service	Date of Appointment/promotion to BS-19	Date of regular Appointment/promotion to the present scale	Whether fulfill the prescribed length of service	Quantified score	Missing PERs (if any)	Disciplinary proceedings (if any)	Case (if any) in any court of Law, including NAB/ Plea bargaining with NAB	Mandatory Training for promotion	Research papers	Present posting	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
1	1	Riaz Arshad B.Sc/MS (Civil)	25.11.1960 Peshawar	26.05.1988	09.12.2014	09.12.2014	Yes	63.64	--	--	--	--	--	CE (Reconstn) PERRA A'abad (OPS)	Exempted from SMC training as he has attained the age of 5 years
2	2	Muhammad Aytub B.Sc/MS (Civil)	03.02.1961 Kohat	26.09.1987	09.12.2014	09.12.2014	Yes	66.53	--	--	--	--	--	CE (CDO) C&W Peshawar (OPS)	Exempted from SMC training as he has attained the age of 5 years
3	3	Abdul Sattar B.Sc (Civil)	07.03.1961 Orakzai	26.05.1988	01.09.2016	01.09.2016	Yes	67.14	--	--	--	--	--	SE (Southern) C&W Circle Tribal Districts at Bannu	Exempted from SMC training as he has attained the age of 5 years
4	4	Arshad Khan B.Sc (Civil)	02.10.1961 Mardan (Swabi)	26.05.1988	21.11.2019	21.11.2019	Yes	58.13	--	--	--	--	--	Director (P&D) PKHA Peshawar	Exempted from SMC training as he has attained the age of 5 years
5	5	Noor-us-Saeed Shah B.Sc (Civil)	02.03.1962 Mardan	26.05.1988	05.06.2015	05.06.2015	Yes	64.85	--	--	--	Yes Annex-V	--	Principal Design Engineer O/O CE (CDO) Peshawar	--
6	6	Amer Nadeem Durrani B.Sc (Civil)	28.04.1962 Peshawar	26.05.1988	05.06.2015	05.06.2015	Yes	66.48	--	--	Yes	Nil	--	MD (OPS) PKHA Peshawar	The officer was involved in VR case with NAB amounting to Rs.5,10,011/- in pursuance of Supreme Court of Pakistan judgment dated 24.10.2016 he was proceeded against under E&C Rules 2011. After fulfillment of all code formalities, a minor penalty of "Censure" has been imposed upon him (Annex-VI).

1. Certified that the officers included in the panel are eligible for promotion/ appointment to the post of BS-20 on acting charge basis in all respects.
2. Certified that the officers included in the panel are not involved in any NAB case nor entered into plea bargain or VR with National Accountability Bureau (NAB) except Sr.No.6

Signature: _____

Date: 03/10/2020
Secretary to

10

CERTIFICATE

(CP)
21

It is certified that:-

1. The officers included in the panel are eligible in terms of length of service required for promotion.
2. No disciplinary action/proceedings or criminal charges in any court of law are pending against any of the officer included in the panel.
3. The seniority list of the officers, included in the panel issued on 04.08.2020 is final (Annex-VII).
4. As per record, the officers included in the panel are neither involved in any NAB case nor entered into plea bargaining/VR agreement with NAB authorities except Sr.No.6.

SECRETARY
C&W

Dated 08/10/2020
Secretary to

Govt. of Khyber Pakhtunkhwa
C&W Department



Annex-IV
GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

No. SO(PSB)/ED/1-3/2020/P-114

Dated Peshawar, the November 18, 2020

To

P-3/c
The Secretary to Govt. of Khyber Pakhtunkhwa,
Communication & Works Department.

(12)
22
Diary No: *5712*
Date: *18-11-2020*
Secretary C&W Dept

SUBJECT: PROMOTION OF SUPERINTENDING ENGINEERS BS-19 TO THE POSTS OF CHIEF ENGINEER BS-20 C&W DEPARTMENT ON REGULAR BASIS.

Dear Sir,

I am directed to refer to C&W Department letter No. SOE/C&WD/4-2/2020, dated 09.10.2020 on the subject and to say that the case has been examined in Regulation Wing and observed that the department has shown two vacant posts in the working paper, one for regular promotion and the other for appointment on acting charge basis. However, the post proposed for regular promotion has become vacant due to conditional retirement of Mr. Muhammad Shahab Khattak on 04.04.2020 in wake of Peshawar High Court judgment dated 19.02.2020. The Board in the previous meeting held on 12.06.2020 did not consider promotion against such posts and observed that clear vacancy is required to be available for promotion. Establishment Department has moved a Note to Law Department for obtaining advice as to whether promotion / appointment on acting charge can be considered against posts fallen vacant in wake of Peshawar High Court judgment or otherwise, but their response is still awaited. Moreover, the Board in its meeting held on 03.05.2018 while considering the promotion of Superintending Engineer BS-19 to the post of Chief Engineer BS-20 observed that PKHA being autonomous body, the promotion / appointment on acting charge basis of a Civil Servant against the post of its Managing Director could not be made.

2. I am, therefore, directed to convey that as there is no clear vacancy on which the panelists could be considered either for promotion or appointment on acting charge basis, the working paper and other documents received with the letter quoted above are returned herewith in original.

Yours faithfully,

18/11/2020
SECTION OFFICER (PSB)

Endst. Even no & dated.

A copy is forwarded to Section Officer (R-V) Establishment Department.

SECTION OFFICER (PSB)

To

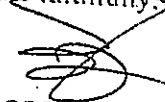
1. The Additional Chief Secretary, Khyber Pakhtunkhwa, Planning & Development Department.
2. The Senior Member Board of Revenue, Khyber Pakhtunkhwa.
3. All Administrative Secretaries to Government of Khyber Pakhtunkhwa,
4. All Heads of Attached Department, Khyber Pakhtunkhwa.
5. All Divisional Commissioner, Khyber Pakhtunkhwa.

Subject: KHYBER PAKHTUNKHWA CIVIL SERVANTS (AMENDMENT) ORDINANCE, 2021

Dear Sir,

I am directed to refer to the subject and to enclose herewith a copy of the Khyber Pakhtunkhwa Civil Servants (Amendment) Ordinance, 2021 issued vide notification No. LEGIS:1 (21) 73 dated 26-03-2021. Specimen Notifications under Section 13(A)(1) and Section 13A(2) of ibid Ordinance are attached for further necessary action at your end please.


Yours faithfully,


SECTION OFFICER (POLICY)

ENDST: NO. & DATE EVEN

Copy forwarded to:-

1. The Principal Secretary to Governor, Khyber Pakhtunkhwa.
2. The Principal Secretary to Chief Minister Khyber Pakhtunkhwa.
3. The Accountant General, Khyber Pakhtunkhwa.
4. The Registrar, Peshawar High Court, Peshawar.
5. PSO to Chief Secretary, Khyber Pakhtunkhwa.
6. All Section Officers in Establishment & Administration Department.
7. PS to Secretary Establishment Department, Khyber Pakhtunkhwa.
8. PS to Special Secretary (Reg), Establishment Department.
9. PS to Special Secretary (Estab), Establishment Department.


SECTION OFFICER (POLICY)



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KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, FRIDAY, 26TH MARCH, 2021.

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

NOTIFICATION

Dated Peshawar, the 26th March, 2021.

No. LEGIS:1 (21) 73 --- The following Ordinance by the Governor of the Khyber Pakhtunkhwa is hereby published for general information:

**THE KHYBER PAKHTUNKHWA
CIVIL SERVANTS (AMENDMENT) ORDINANCE, 2021.
(THE KHYBER PAKHTUNKHWA ORD. NO. II OF 2021)**

An
Ordinance

*further to amend the Khyber Pakhtunkhwa Civil
Servants Act, 1973*

WHEREAS it is expedient further to amend the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973) in the manner hereafter appearing;

AND WHEREAS the Provincial Assembly is not in session and the Governor of the Province of the Khyber Pakhtunkhwa is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by Clause (1) of Article 128 of the Constitution of the Islamic Republic of Pakistan, the Governor of the Khyber Pakhtunkhwa is pleased to make and promulgate the following Ordinance:

1. Short title and commencement:— (1) This Ordinance may be called the Khyber Pakhtunkhwa Civil Servants (Amendment) Ordinance, 2021;

(2) It shall come into force from 31st July, 2019.

2. Substitution of section 13 of the Khyber Pakhtunkhwa Act No. XVIII of 1973. --- In the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), hereinafter referred to as the said Act, for section 13, the following shall be substituted, namely:

"13. Retirement from service.--- (1) A Civil Servant shall retire from service on the completion of sixtieth (60th) year of his age.

(2) A Civil Servant may opt to retire early from service, after completion of twenty five (25) years of qualifying service or attaining the age of fifty five (55) years, whichever is later.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the competent authority may in the public interest, direct that a Civil Servant may retire from service, from such date, as may be determined by the competent authority, after he has completed twenty (20) years of service, qualifying for pension or other retirement benefits, in the manner as may be prescribed:

Provided that no direction under this sub-section shall be made until the Civil Servant has been informed in writing of the grounds on which it is proposed to make the direction, and has been given a reasonable opportunity of showing cause against the said direction.

Explanation.— In this section, the expression "competent authority" means the appointing authority prescribed in rule 4 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989."

3. Insertion of section 13A of the Khyber Pakhtunkhwa Act No. XVIII of 1973. --- In the said Act, after section 13, as so substituted, the following new section shall be inserted, namely:

"13A. Protection of certain acts.--- (1) All the Civil Servants, who were conditionally retired from service on or after 31st day of July, 2019 shall, for all intents and purposes, be deemed to have been regularly retired from service on the date of attaining sixtieth (60th) years of age.

(2) Any Civil Servant, who has completed sixty (60) years of age but is not retired from service, by virtue of or in pursuance of the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2019, shall be deemed to have been retired from service from the date when such Civil Servant has completed sixty (60) years of age.

(3) Any salary, allowances and other ancillary benefits received or drawn by such Civil Servant under this section on or after 31st day of July, 2019 shall be deemed to be validly received and drawn.

Peshawar,
Dated 25th March, 2021

SHAH FARMAN
Governor of the Khyber Pakhtunkhwa

MASOOD AHMAD
Secretary to Government of the Khyber Pakhtunkhwa
Law, Parliamentary Affairs and Human Rights
Department

Printed and published by the Manager,
State Print Deptt., Khyber Pakhtunkhwa, Peshawar.

(BB) (E) (S)

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GOVERNMENT OF THE KHYBER PAKHTUNKHWA
ESTABLISHMENT AND ADMINISTRATION
DEPARTMENT
NOTIFICATION

Peshawar dated the, . . . 2021

No. _____ . In pursuance of section 13A(1) of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), and in supersession of Notification No _____, dated _____ (refers to the notification of conditional retirement), Mr. _____ stands retired from Government Service with effect from _____ on attaining sixtieth (60th) year of age, as his date of birth is _____.

Notwithstanding the supersession of Notification mentioned in above Para, any leave encashment granted or LPR and other benefit, if any, availed thereunder, shall be deemed to be validly granted or availed.

**Secretary to
Government of Khyber Pakhtunkhwa
Establishment and Administrative
Department**

GOVERNMENT OF THE KHYBER PAKHTUNKHWA
ESTABLISHMENT AND ADMINISTRATION
DEPARTMENT

NOTIFICATION

Peshawar dated the, 2021

No. _____ In pursuance of sub-section (2) of section 13(A) of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), read with sub-section (3) thereof, Mr. _____ stands retired from Government Service with effect from _____ on attaining sixtieth (60th) year of age, as his date of birth is _____.

Any salary, allowances and other ancillary benefits received or drawn by him on or after (date of retirement) till date, shall be deemed to have been validly received and drawn.

Secretary to
Government of Khyber Pakhtunkhwa
Establishment and Administrative
Department