

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1420/2022.

MR. Rahim Ullah, Sub Engineer, SDO(OPS).
Public Health Engineering Division, Nowshera.

.....APPELLANT

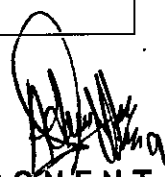
V E R S U S

1. The Govt of Khyber Pakhtunkhwa through Secretary PHED, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Establishment Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Finance Khyber Pakhtunkhwa, Peshawar.
4. The Chief Engineer (Center), Public Health Engineering Department Peshawar.
5. Mr. Zahid Hussain Shah, SDO (OPS) PHE Sub-Division-I, Abbottabad.
6. Mr. Raheel Shahzad, SDO (OPS) PHE Division, Oghi Manshera.
7. Mr. Waseem Khan, SDO (OPS) PHE Division, Oghi Manshera.
8. Mr. Muhammad Safi Ullah Khan, Sub-Engineer PHE Division Bannu with Additional charge of PHE Sub Division Bannu-II.
9. Mr. Adnan, Sub Engineer PHE Sub Division, Saidu Sharif-I, Swat-I.

.....RESPONDENT

I N D E X

S. No.	Description of Documents	Annex	Pages
1	Para-wise Comments		1-4
2	Affidavit		5
3	Copy of B Tech Degree of respondent No.9	A	6
4	Copy of service rules of C&W Department	B	7-8


DEPONENT
03449571494

9-3-2023

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REPLY ON BEHALF OF RESPONDENTS NO. 9.

RESPECTFULLY SHEWETH:

PRELIMINARY OBJECTIONS:

1. The Appellant has neither cause of action nor locus standi to file the instant appeal.
2. The Appellant has not come to the court with clean hands.
3. The instant appeal is hit by "laches" and as such not maintainable.
4. The present appeal is liable to be dismissed for miss joinder / non-joinder of necessary parties.
5. The Appellant has filed the instant appeal on malafide motives.
6. The instant appeal is against the prevailing laws and rules.

7. The Appellant is estopped by his own conduct to file the present appeal.
8. The instant appeal is not maintainable in the present form and also in the present circumstances of the issue.

ON FACTS:

1. Incorrect and misconceived. The appellant is working as Sub Engineer in (BPS-12) and not in (BPS-16).
2. Incorrect and misconceived. The appellant acquired his B Tech degree in 2015 during service. Initially he was placed in seniority list of diploma holders Sub Engineers and their share in promotion is 20%. After acquiring his B Tech degree, later on, the appellant was placed in the seniority list of B Tech holders wherein 8% quota is reserved for Sub Engineers having B Tech(Hons) degree. However, the respondent no.9 acquired B Tech degree from Government College of Technology Nowshera affiliated with the then NWFP University of Engineering and Technology of Pakistan in 2004 Having 4 years program (copy of degree is attached as annexure A). The respondent no.9 joined PHE Department on 15/8/2013 and is a direct graduate and was included in seniority list of B Tech holders accordingly. However, the appellant was reflected in seniority list of diploma holders where in 20% quota is reserved for promotion. The appellant after acquiring his B Tech Degree during service was included in seniority list of B Tech holders. Respondent no.9 has been promoted on merit in light of PHE Service Rules framed by Standing Service Rules Committee (SSRC) which is a competent forum comprising of Establishment Department, Finance Department and PHE Department.
3. Incorrect and misconceived. As discussed in para 2 of the above. The respondent no.9 acquired B Tech(Honors) degree in the year 2013 and the appellant acquired his B Tech degree in the year 2016 during service.
4. Does not relate to respondent no.9 Hence No comment.
5. Does not relate to respondent no.9 Hence No comment.

6. No comment.
7. No comment.
8. No comment.
9. Incorrect and misconceived. It is clarified that the respondent no.9 being direct graduate promoted by the respondent Department on merit in light of PHED Service Rules, whereas, the appellant acquired his B Tech degree during service in the year 2015 and jumped from seniority list of diploma holder Sub Engineers to seniority list of B Tech holders.
- 10.No comment.

GROUND:

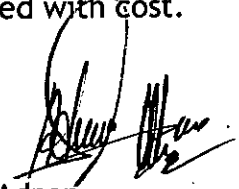
- A. Incorrect and misconceived. As discussed in the preceding paras.
- B. Does not relate to respondent no.9.
- C. Incorrect and misconceived. Every department has its Service Rules and the Service Rules of other departments are not binding on the respondent department. However, C&W Department also framed new Service Rules which is also supporting respondent no.9(copy is attached as annexure B)
- D. Incorrect and misconceived. The appellant misleads this honorable court, Initially he was placed in seniority list of diploma holders Sub Engineers appointed by initial recruitment in accordance with the merit assigned by the commission or as the case may be, and promotion quota of diploma holders is 20%, while the respondent no.9 is a direct graduate and his seniority was reflected in seniority list of B Tech holders and the promotion quota of B Tech holders is 8% and appellant acquired his B Tech degree later on from respondent no 9.
- E. No comment.
- F. No comment.

G. No comment.

H. The respondent no.9 seeks permission from this honorable court to raise additional grounds at the time of arguments, please.

Prayers:

It is, therefore, most humbly prayed before this Honorable Court, that the present appeal, being vexatious and devoid of merit may please be dismissed with cost.



Adnan
Sub Divisional Officer
Public Health Engineering Department
(Respondent No. 9)

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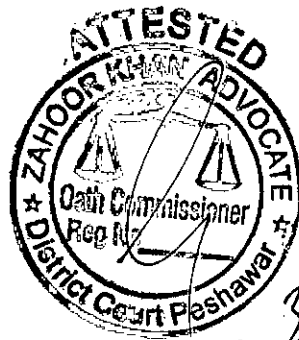
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.....RESPONDENT

AFFIDAVIT

I, Adnan, Son of Umar Zada Sub Divisional Officer, Public Health Engineering Department do hereby solemnly affirm and declare on oath that the contents of accompanying Reply on behalf of respondents No.9 are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



DEPONENT
CNIC # 15602-2068130-3

9/3/23

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

University of Engineering & Technology Peshawar, Pakistan

By virtue of the authority granted by Statutes, the University has conferred the degree of

Bachelor of Civil Technology

upon

Adnan

son of Umar Zada

of

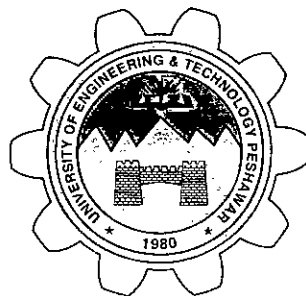
Government College of Technology, Nowshera (an affiliate)

*who is entitled to all rights and honours thereto appertaining,
this 4th day of February, Two Thousand and Thirteen*

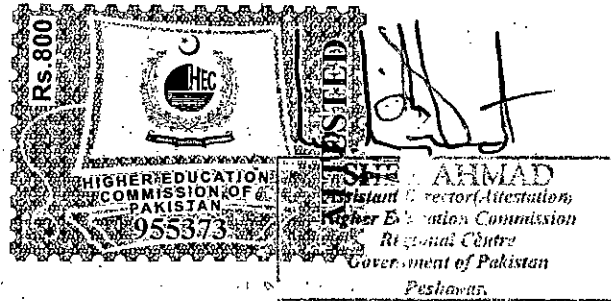
Attested
Executive Engineer
P. H. Engineering Division
ENR

[Signature]
Registrar

Registration No. 2008-Nir/B.Tech/C-40



[Signature]
Vice Chancellor



06 APR 2015

Serial No. 000052

Prepared by. _____

Checked by. _____



Dated Peshawar, the Jan 20, 2023

7

NOTIFICATION:

No SOE/C&WD/8-12/2023: In pursuance of the provision contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Communication & Works Department, in consultation with the Establishment Department and the Finance Department, hereby direct that in this Department Notifications No SOE/C&WD/8-12/2009, dated 25th March, 2010, the following further amendments shall be made, namely:

AMENDMENTS

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

- (i) Sixty five percent (65%) by initial recruitment; and
- (ii) thirty five (35%) by promotion, on the basis of seniority-cum-fitness, in the following manner, namely:
- (a) sixteen and half percent (16.50%) by promotion, from amongst the holders of the posts of Sub-Engineer who hold a Diploma of (Civil, Mechanical or Electrical) and have passed Departmental Professional Examination, with ten (10) years service as such;
 - (b) five percent (5%) by promotion, from amongst the holders of the posts of Sub-Engineer 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 03 (three) years service as such;
 - (c) three and half percent (3.5%) by promotion, from amongst the holders of the posts of Sub-Engineer who acquired Degree of B.E or B.Sc Engineering (Civil, Mechanical or Electrical) during service and have passed Departmental Professional Examination, with 03 (three) years service as such;
- Provided that if no suitable candidate is available for promotion, then the post shall be filled in the manner, as prescribed at clause (b) and vice-versa;
- (d) four percent (4%) by promotion, from amongst the holders of the posts of Sub-Engineer who have acquired B.Tech (Hons) four (04) years degree during service and have passed Departmental Professional Examination, with five (05) years service as such;
- and
- (e) six percent (6%) by promotion, from amongst the holders of the posts of Sub-Engineers who possess B.Tech (Hons) four (04) years degree at the time of appointment and have passed Departmental Professional Examination, with five (05) years service as such;

Note-I. The seniority in all cases shall be determinate from the date of first appointment.

Provided that for the purpose of promotion to the post of Sub Divisional Officer, Assistant Engineer, Junior Engineer and Assistant Research Officer, the seniority of Sub Engineers, mentioned in the clause (c), shall be determined from the date of acquiring the Degree in B.E or B.Sc Engineering (Civil, Mechanical or Electrical) from a recognized University

Note-II (a) For the purpose of promotion to the post of Sub Divisional Officer, Assistant Engineer, Junior Engineer and Assistant Research Officer, the seniority of Sub Engineers under clause (d) in case of service graduates shall be determined from the date of acquiring B.Tech (Hons) four (04) years Degree; and

same date
P.T.O.

Attested
[Signature]
Executive Engr.
P. H. Engrs. Division
Buner

D.No. 442
Date: 20/1/2023

1/1/23

-2-

- (b) For the purpose of promotion to the post of Sub Divisional Officer, Assistant Engineer, Junior Engineer and Assistant Research Officer, the seniority of Sub Engineers under clause (e) shall be determined from the date of their regular appointment;

Provided that, if two or more officials have acquired B.Tech (Hons) four years Degree on the same date or two or more Sub Engineers are appointed on the same date, then their seniority shall be determined from the order of merit in the final merit list."

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 C&W Department
5. Managing Director PKHA Peshawar
6. Secretary Khyber Pakhtunkhwa Public Service Commission Peshawar
7. All Superintending Engineers C&W Department
8. PS to Chief Secretary Khyber Pakhtunkhwa, Peshawar
9. All Executive Engineers C&W/Building/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 Secretary, C&W Department, Peshawar
14. PA to Addl: Secretary (Admn/Tech), C&W Department, Peshawar
15. PA to Deputy Secretary (Admn/Tech), C&W Department, Peshawar
16. Office File

Shah
20.01.2023
(ZAHOR SHAH)
SECTION OFFICER (Estb)

Attested
[Signature]
Executive Engineer
P. H. Engg. Division
Buner