

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1342/2015

Date of Institution ... 02.12.2015

Date of Decision ... 13.11.2019

Hayatullah Khan, S/O Mohibullah Khan, Assistant Engineer (BPS-17),  
Rehabilitation of Irrigation System in Khyber Pakhtunkhwa. ... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and one  
others: ... (Respondents)

-----  
MR. MUHAMMAD ZAFAR TAHIRKHELI,  
Advocate

--- For appellant.

MR. ZIAULLAH,  
Deputy District Attorney

--- For respondents

MR. AHMAD HASSAN

---

MEMBER(Executive)

MR. MUHAMMAD AMIN KHAN KUNDI

---

MEMBER(Judicial)

JUDGMENT:

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the  
parties heard and record perused.

ARGUMENTS:

02. Learned counsel for the appellant argued that he was appointed as graduate  
Sub-Engineer (BPS-11) on 18.12.1990 and subsequently promoted as Assistant  
Engineer (BPS-17) on acting charge basis through order dated 01.09.1999. That he  
was reverted to the post of Sub-Engineer (BPS-11) vide order dated 29.11.2000. For  
redressal of his grievances, he filed service appeal no. 341/2001 in this Tribunal and  
under judgment dated 23.06.2001 notification dated 29.11.2000 was set aside. The  
respondents assailed the aforementioned judgment before the august Supreme Court  
of Pakistan by filing CPLA no. 325-P/2001 and the matter was decided through

judgment dated 24.05.2002. In line with the judgment of the apex court the Advocate General, Khyber Pakhtunkhwa tendered advice to respondent no.2 vide letter dated 17.06.2002. Based on the said advice, the appellant was promoted as Assistant Engineer (BPS-17) with immediate effect through notification dated 25.03.2003. Learned counsel for the appellant further stressed that being a graduate Sub-Engineer, he was entitled for promotion as Assistant Engineer w.e.f 17.01.1995 as per judgment of this Tribunal referred to above. He was denied his legitimate right without any cogent reason/justification. As a last resort, the appellant filed departmental appeal on 28.09.2014, which was regretted on 07.09.2015 but communicated to the appellant on 11.11.2015. As the respondent no.3 unable to defend their position on merit thus they took shelter under amendments brought in the relevant service rules whereby quota of promotion for the category of appellant had been reduced. He further clarified that promotion made prior to the amendments had become a close and past transaction and could not be reopened. On the other hand one Muhammad Tahir also filed service appeal no. 342/2001 and CPLA no. 323/2001 and was granted promotion <sup>AS</sup> Assistant Engineer (BPS-17) alongwith the appellant on 29.03.2003 but later on his promotion was given effect from 1993 on acceptance of his departmental appeal. As such his promotion was antedated and proper place was also assigned to him in the seniority list.

03. Learned Deputy District Attorney argued that the present service appeal was not maintainable being hit by the principle of limitation. The appellant was granted regular promotion on 25.03.2003 and if he felt aggrieved from the said dispensation, the same was required to be challenged in time. However, he opted to remain silent for unknown reasons and missed the train. The appellant filed departmental appeal on 28.09.2014 after a lapse of eleven years. As the present service appeal was badly barred by time, therefore, the same was not maintainable.

While arguing the case on merits, learned DDA informed that promotion order dated 25.3.2003 was issued on the strength of judgment of august Supreme Court of Pakistan dated 24.05.2002. The appellant had an option that if the respondents had violated the directions contained in the said judgment, he could file C.O.C but no such action was taken.

04. He further invited attention to the promotion case of Mr. Muhammad Tahir by referring to letter dated 11.04.2011 addressed to the Secretary to Government of Khyber Pakhtunkhwa Establishment Department. In this letter it was categorically mentioned that promotion of the above officer was deferred for want of certain deficiencies and finally, he was granted antedated promotion being covered under para-5(d) of promotion policy of 2009. On the other hand case of the appellant was never deferred by the competent forum thus it would be unjust to draw parallel between both the cases.

**CONCLUSION:**

05. As learned Deputy District Attorney raised preliminary objection on the maintainability of the present service appeal, therefore, we deem it proper to address it and thereafter if need be merits of the case would be touched. It is not disputed that the appellant was granted regular promotion as Assistant Engineer (BPS-17) in the respondent-department vide notification dated 25.03.2003. On the other hand, the appellant claims regular promotion against the above post w.e.f 17.01.1995. Obviously notification dated 25.03.2003 clashed with the claim of the appellant and he was obligated to have raised his concerns through available options. He did not challenge the said order for reasons best known to him. We invited the attention of the learned counsel for the appellant to this fact but he was unable to give any satisfactory explanation. Similarly, departmental appeal dated

28.09.2014 was badly barred by time and thus the present service appeal was not maintainable. Furthermore, order dated 25.03.2003 was issued as a sequel to the directions contained in the judgment of the august Supreme Court of Pakistan dated 24.05.2002 and if in the opinion of the appellant, the same was not in line with the spirit of the above judgment, he was at liberty to file COC but remained silent which in our opinion proved that he had willingly accepted the order referred to above. After scrutiny of record it was also confirmed that there was hardly any similarity between the case of the appellant and that of Mr. Tahir and it also settled once for all the issue of discrimination agitated by the appellant. Due to the issue of limitation there is no need to comment on the merits of the case and even on merits, learned counsel for the appellant failed to make out a strong case for indulgence of this Tribunal.

06. As a sequel to the above, the appeal is appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.



(AHMAD HASSAN)  
Member

  
(MUHAMMAD AMIN KHAN KUNDI)  
Member

ANNOUNCED  
13.11.2019

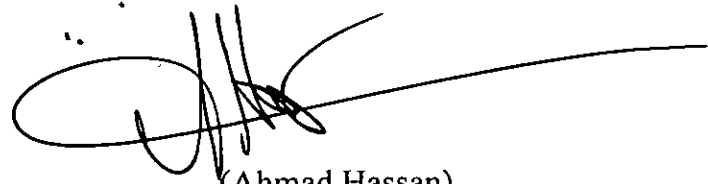
**ORDER**

13.11.2019

Appellant with counsel present. Mr. Ziaullah, DDA for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today of this Tribunal placed on file, the appeal is dismissed. Parties are left to bear their own cost. File be consigned to the record room.

Announced:  
13.11.2019



(Ahmad Hassan)  
Member

*Muhammad Amin*  
(Muhammad Amin Khan Kundi)  
Member

02.09.2019

Appellant in person and Mr. Usman Ghani, District Attorney alongwith Mr. Arsalan, Section Officer (Litigation) for the respondents present.

Learned District Attorney stated that the present appeal was assigned to Mr. Ziaullah, Deputy District Attorney who is not available today due to death of his relative. He therefore requested for adjournment. Adjourned to 17.10.2019 for arguments before D.B.

  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member

17.10.2019

Appellant in person and Mr. Ziaullah, Deputy District Attorney for the respondents present. On previous numerous occasions, the case was adjourned on the request of appellant/learned counsel for the appellant. Today appellant again made a request for adjournment. The case is adjourned but at cost of Rs. 3000/- which <sup>shall be</sup> borne by the appellant from his pocket. Case to come up for arguments and <sup>payment of</sup> cost of Rs. 3000/- on 13.11.2019 before D.B.

  
(Ahmad Hassan)  
Member

  
(M. Amin Khan Kundi)  
Member

L-79/05  
"C"

IN THE SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)

PRESENT:  
Mr. Justice Saiyed Saeed Ashhad  
Mr. Justice Ch. Ejaz Ahmad

CIVIL APPEALS NO.785 TO 788/2002  
(On appeal from the order dated 23.6.2001 passed by  
NWFP Service Tribunal, Peshawar in Service Appeals Nos.  
342, 340, 341 and 347 of 2001)

Secretary to Government of NWFP,  
Irrigation Department Peshawar and others Appellants

Versus

Muhammad Tahir. (C.A.785/2002)  
Akber Khan (C.A.786/2002)  
Hayatullah Khan (C.A.787/2002)  
Amir Muhammad. (C.A.788/2002) Respondents.

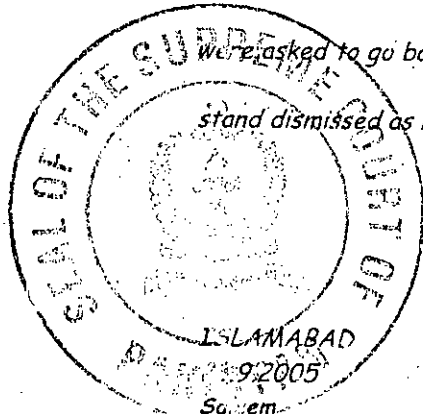
For the Appellants : Mr. Muhammad Isa Khan, Addl.A.G. NWFP  
(in all appeals) Haji M.A. Qayyum Mazhar AOR (Absent)

For Respondents: Mr. Khushdil Khan, ASC.  
Mr. Muhammad Zahoor Qureshi, AOR  
(Absent)

Date of hearing: 23.9.2005

ORDER

Mr. Muhammad Isa Khan, Additional Advocate General, NWFP states  
that these appeals have become infructuous as the respondents have been  
promoted to the posts on which they were officiating and by notifications  
were asked to go back to their substantive posts. Accordingly, these appeals  
stand dismissed as having become infructuous.



Sd/- Saiyed Saeed Ashhad, J  
Sd/- Ch. Ejaz Ahmad, J  
Certified to be true copy

Superintendent  
Supreme Court of Pakistan  
ISLAMABAD  
25/10/2005

NOT APPROVED FOR REPORTING

M/2/19


30.10.2018


Due to retirement of Hon'ble Chairman, the Tribunal is incomplete. Therefore, the case is adjourned. To come up for the same on 11.12.2018.

  
Reader

11.12.2018


Appellant with counsel present. Mr. Šanaullah, SO (Lit) alongwith Mr. Ziaullah, DDA for respondents present. Counsel for the appellant seeks adjournment on the ground that he has not prepared the case. Adjourned. To come up for arguments on 30.01.2019 before D.B.


  
Member

  
Member

30.01.2019

Learned counsel for the appellant and Mr. Usman Ghani learned District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 28.02.2019 before D.B.

  
Member

  
Member

28.02.2019

Bench is incomplete, therefore the case is adjourned. To come up on 22-3-2019

  
READER



22.03.2019 Appellant in person and Mr. Muhammad Jan, DDA for the respondents present.

The appellant has submitted an application for placing on record additional documents with a copy to the learned DDA. The application alongwith the annexed documents is made part of the record.

To come up for arguments on 15.05.2019 before the D.B.

  
Member

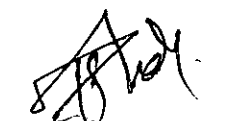
  
Chairman

15.05.2019 Clerk counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Clerk of counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy before the Hon'ble Peshawar High Court. Adjourned to 27.06.2019 for arguments before D.B.

  
(AHMAD HASSAN)  
MEMBER

  
(M. AMIN KHAN KUNDI)  
MEMBER

27.06.2019 Appellant in person present. Mr. Zia Ullah learned Deputy District Attorney for the respondents present. Appellant requested for adjournment as his counsel is not in attendance. Adjourned. Case to come up for arguments on 02.09.2019 before D.B.

  
(Hussain Shah)  
Member

  
(M. Ahmad Hassan)  
Member


30.10.2018


Due to retirement of Hon'ble Chairman, the Tribunal is incomplete. Therefore, the case is adjourned. To come up for the same on 11.12.2018.

  
Reader

11.12.2018

Appellant with counsel present. Mr. Sanaullah, SO (Lit) alongwith Mr. Ziaullah, DDA for respondents present. Counsel for the appellant seeks adjournment on the ground that he has not prepared the case. Adjourned. To come up for arguments on 30.01.2019 before D.B.

  
Member

  
Member

30.01.2019

Learned counsel for the appellant and Mr. Usman Ghani learned District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 28.02.2019 before D.B.

  
Member

  
Member


28.02.2019

Bench is incomplete, therefore the case is adjourned. To come up on 22-3-2019

  
READER

25.06.2018


Appellant absent. Learned counsel for the appellant is also absent. However, clerk of the counsel for appellant present and seeks adjournment on the ground that learned counsel for the appellant is not available today. Mr. Kabirullah Khattak, Additional AG for the respondents present. Adjourned. To come up for arguments on 01.08.2018 before D.B.


  
(Muhammad Amin Kundi)  
Member

  
(Muhammad Hamid Mughal)  
Member

01.08.2018


Appellant absent. Learned counsel for the appellant is also absent. However, clerk of the counsel for appellant present and seeks adjournment. Mr. Ziaullah, Deputy District Attorney for the respondents present. Adjourned. To come up for arguments on 24.09.2018 before D.B.


  
(Ahmad Hassan)  
Member (E)

  
(Muhammad Hamid Mughal)  
Member (J)

24.09.2018

Appellant in person present. Mr. Ziaullah, DDA for respondents present. Appellant made a request for adjournment. Granted. Case to come up for arguments on 30.10.2018 before D.B.


  
(Ahmad Hassan)  
Member

  
(M. Amin Khan Kundi)  
Member

12.12.2017


Appellant in person present. Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Due to general strike of the bar arguments could not be heard. To come up for rejoinder and arguments on 26.01.2018 before D.B.

  
(Gul Zeeshan Khan)  
Member (E)

  
(Muhammad Hamid Mughal)  
Member (J)

26.01.2018

Clerk to counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney for the respondents present. Clerk to counsel for the appellant seeks adjournment as learned counsel has gone to Federal Service Tribunal. Adjourned. To come up for arguments on 03.04.2018 before D.B.

  
(Ahmad Hassan)  
Member(E)

  
(M. Hamid Mughal)  
Member (J)

03.04.2018

Clerk to counsel for the appellant and Mr. Zia Ullah, learned Deputy District Attorney for the respondents present. Clerk to counsel for the appellant seeks adjournment as Learned counsel for the appellant is not available. Adjourn. To come up for arguments on 08.05.2018 before D.B

  
(Ahmad Hassan)  
Member

  
(Muhammad Hamid Mughal)  
Member


08.05.2018

The Tribunal is defunct due to retirement of Hon'ble Chairman. Therefore, the case is adjourned. To come on 25.06.2018

  
READER

12. 30.06.2017

Appellant in person and Asstt. AG alongwith Mr. Shamsud Din, Assistant for the respondents present. Appellant seeks adjournment due to engagement of his counsel in High Court.. Adjourned. To come up for final hearing on 13.09.2017 before the D.B.

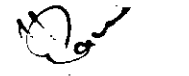
  
Member

  
Chairman

13.09.2017

Clerk to counsel for the appellant and Addl: AG for the respondents present. Clerk to counsel for the appellant seeks adjournment. Adjourned. To come up for and arguments on 10.11.2017 before D.B.

  
Member  
(Executive)

  
Member  
(Judicial)

10.11.2017

Clerk of the counsel for appellant present. Mr. Ziaullah, Deputy District Attorney for the respondents also present. Clerk of the counsel for appellant requested for adjournment on the ground that learned counsel for the appellant is not available today. Adjourned. To come up for arguments on 12.12.2017 before D.B.

  
(Gul Zeb Khan)  
Member

  
(Muhammad Amin Khan Kundi)  
Member

1342/2015

05.01.2017

Appellant with counsel and Mr. Shams, Assistant alongwith Mr. Ziaullah, GP for the respondents present. Requisite record vide previous order sheet dated 09.11.2016 not produced by the respondents. Representative of the respondent-department Mr. Shams, Assistant is once again directed to produce relevant record as directed in previous order sheet dated 09.11.2016. To come up for record and arguments on 06.03.2017 before D.B.

  
MUHAMMAD AAMIR NAZIR  
MEMBER

06.03.2017

Appellant in person and Mr. Ziaullah, GP for respondents present. Arguments could not be heard due to General Strike of the Bar. To come up for arguments on 03.04.2017 before D.B.

  
(MUHAMMAD AAMIR NAZIR)  
MEMBER

  
(ASHFAQUE TAJ)  
MEMBER

03.04.2017

Counsel for the appellant and Mr. Adeel Butt, Add: AG for the respondents present. Argument could not be heard due to incomplete bench. To come up for final hearing on 30.06.2017 before D.B.

  
Chairman

Appeal No. 1342/2015  
Hayatullah Khan vs Govt

09.11.2016

Counsel for the appellant and Mr. Abdur Razzaq, Assistant alongwith Mr. Usman Ghani, Sr. GP for respondents present. During the course of arguments it was submitted that that in similar facts and circumstances, departmental appeal of one Mr. Muhammad Tahir was accepted by the respondents where as departmental appeal of the appellant was declined as and thus discriminated. It was also stated that the said Mr. Muhammad Tahir is presently at serial No. 19 of the seniority list where is the appellant is lagging behind at serial No. 49 unlike the erstwhile seniority position in the year 2000 according to which the said M. Muhammad Tahir was only one step senior to the appellant. When confronted with this situation learned GP requested for time to consult the record. In the meanwhile representative, Abdur Razzaq, Assistant is directed to produce relevant seniority list and other record on the next date. To come up for such record and arguments on 5-1-17.



(MUHAMMAD AAMIR NAZIR)  
MEMBER



(PIR BAKHSH SHAH)  
MEMBER



14.06.2016

Appellant in person and Mr. Abdur Razzaq, Assistant  
alongwith Mr. Muhammad Jan, GP for respondents present.  
Rejoinder not submitted and requested for further time for  
submission of rejoinder. To come up for rejoinder and  
arguments on 10.8.16



MEMBER




MEMBER

10.08.2016

Appellant in person and Mr. Abdur Razzaq, Assistant alongwith  
Addl. AG respondents present. Arguments could not be heard due to  
general strike of the bar. To come up for arguments on

7-10-16.



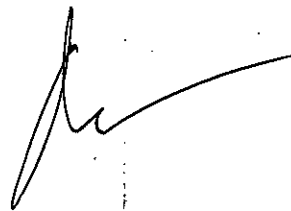
Member



Member

07.10.2016

Counsel for the appellant and Mr. Abdur Razzaq,  
Assistant alongwith Mr. Ziaullah, GP for respondents  
present. Learned GP requested for adjournment. To come  
up for arguments on 09.11.2016.



(MUHAMMAD AAMIR NAZIR)  
MEMBER



(PIR BAKHSH SHAH)  
MEMBER



21.12.2015

Appellant Deposited  
Security & Process Fee

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant is serving as Assistant Engineer (BPS-17). That he was entitled to promotion with effect from retrospective date i.e 17.1.1995 as extended to one Muhammad Tahir a similarly placed employee by accepting his departmental appeal dated 10.5.2011. That the appellant was not extended similar treatment and was, therefore, constrained to file departmental appeal on 28.9.2014 which was rejected on 7.9.2015 but communicated to the appellant on 11.11.2015 and hence the instant service appeal on 2.12.2015.

That the appellant is entitled to promotion with retrospective effect as he was eligible to promotion on 17.1.1995 and vacancy was also available at the relevant date.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 25.2.2016 before S.B.

  
Chairman

25.02.2016

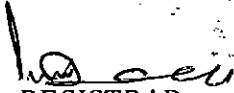

Counsel for the appellant and Mr. Abdur Razzaq, Assistant alongwith Addl: A.G for respondents present. Para-wise comments submitted. The appeal is assigned to D.B for rejoinder and final hearing for 14.6.2016.

  
Member

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 1342/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	02.12.2015	<p>The appeal of Mr. Hayat Ullah Khan presented today by Mr. Muhammad Zafar Tahirkeli Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p>
2	3-12-15	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>21-12-15</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

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

Service Appeal No. 1349 /2015

Hayat Ullah Khan s/o Mohib Ullah Khan,  
Assistant Engineer (BPS-17),  
Rehabilitation of Irrigation System in Khyber Pakhtunkhwa. .... Appellant

**VERSUS**

1. Government of Khyber Pakhtunkhwa, through  
Chief Secretary, Peshawar.
2. Secretary Irrigation, Government of Khyber Pakhtunkhwa, Peshawar.  
..... Respondents


=====

**INDEX**

=====

S.No	Particulars	Annexure	Dates	Pages
1	Memo of Petition			1-3
2	Impugned order	"A"	07-09-2015	4-6
3	Departmental Appeal	"B"	28-09-2014	7-8
4	Order	"C"	01-09-1999	9
5	Order	"D"	29-11-2000	10-11
6	Judgment and order	"D1"	23-06-2001	12-20
7	S.C Judgment and order	"E"	24-05-2002	21-24
8	Order	"F"	25-03-2003	25
9	Memorandum	"G"	17-06-2002	26
10	Letter & Judgment	"H"	26-08-2002	27-34
11	Letter	"J"	10-05-2011	35-37
12	Vakalatnama			38

Date:-2<sup>nd</sup> Dec, 2015

  
(Muhammad Zafar Tahirkheli)  
Advocate,  
High Court Peshawar

  
(Ansar Ullah Khan)  
Advocate

1

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

Service Appeal No. 1348 /2015

**A. W. P. Province**  
**Service Tribunal**  
Entry No. 1408  
Dated 02-12-2015

Hayat Ullah Khan s/o Mohib Ullah Khan,  
Assistant Engineer (BPS-17),  
Rehabilitation of Irrigation System in Khyber Pakhtunkhwa.

..... Appellant

**VERSUS**

1. Government of Khyber Pakhtunkhwa, through  
Chief Secretary, Peshawar.
  2. Secretary Irrigation, Government of Khyber Pakhtunkhwa, Peshawar.
- ..... Respondents

=====

**SERVICE APPEAL U/S 4 OF KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL ACT, 1974 AGAINST ORDER DATED 07-09-2015 RECEIVED  
ON 11-11-2015 (Annex "A"), WHEREBY THE DEPARTMENTAL APPEAL  
OF THE APPELLANT DATED 28-09-2014, (Annex "B") WAS REFUSED**

=====

**"Prayer"**

- (a) By accepting this appeal and setting aside the impugned order dated 07-09-2015 (annex "A"), communicated on 11-11-2015 whereby the appellant's departmental appeal (annex "B") for promotion with retrospective effect from 17-01-1995, with all back benefits was refused., and
- (b) directing the respondent department to modify the appellant's promotion order as Assistant Engineer BPS-17 w.e.f 17-01-1995 with all the back benefits of service.

=====

**Respectfully Sheweth,**

1. The appellant being qualified and eligible was selected and appointed as Graduate Sub Engineer BPS-11 on 18-12-1990. He was appointed as Assistant Engineer BPS-17 on acting charge basis on 1-09-1999. (Copy annexed hereto **marked "C"**).
2. That he was reverted to the post of Sub Engineer BPS-11 vide order dated 29-11-2000. The appellant aggrieved of the said revision order filed a service appeal No. 341/2001 before the Service Tribunal, which was accepted vide judgment and order dated 23-06-2001, whereby the impugned notification dated 29-11-2000 was set aside.. (Copies annexed hereto **marked "D" & "D1"**).
3. That the respondent department approached the august Supreme Court of Pakistan through CPLA No. 325-P/2001, against the judgment of Service Tribunal. That the Hon'ble Supreme Court vide order dated 24-05-2002 directed the learned Advocate General to render proper advice to the department to protect the interest of the present appellant. (Copy annexed hereto **marked "E"**).

Filed to  
Registrar  
2/12/15

4. That on the advice of Advocate General, the appellant was promoted as Assistant Engineer BPS-17 vide order dated 25-03-2003, with immediate effect. (Copy annexed hereto marked "F").

The appellant being a Graduate Sub Engineer was lawfully entitled to be considered for promotion to the next higher scale w.e.f 17-01-1995 in view of the decision of Hon'ble Service Tribunal and on the advice of the Advocate General.

5. The appellant was however denied of his legitimate right to be granted anti date promotion without showing any solid cause of reason. The appellant being consistently denied of his lawful and valid right, was constrained to file his departmental appeal dated 28-09-2014, which was however refused vide impugned order dated 07-09-2015, communicated on 11-11-2015.

Feeling aggrieved and finding no other remedy, the appellant has been constrained to approach the Hon'ble Services Tribunal for the redress of his grievance, inter-alia on the following:

### Grounds

- (a) The respondent department has acted in most arbitrary manner while refusing to allow anti date promotion to the appellant, on the pretext of, "having no justification". The impugned order is thus liable to be rescinded as such.
- (b) That the Hon'ble Service Tribunal while allowing the service appeal No. 341/2001 had not only set aside the impugned order of appellant's appointment to next higher scale, but also restored / reinstated him to his original post as Assistant Engineer BPS-17, **with back benefits.**

The impugned refusal order dated 07-09-2015 is thus in clear violation to the judgment passed by the worthy Tribunal, thus subject to correction.

- (c) The august Supreme Court of Pakistan in its order dated 24-05-2002 CPLA No. 325-P/2001 instructed the Advocate General to render proper advice to the department to protect the interest of the present appellant, which was done vide memorandum dated 17-06-2002, whereby the learned Advocate General observed as under;

**".....I must say that this interpretation is not in accordance with law and it has been held by NWFP Service Tribunal in service appeal No. 406/1998 titled Rabbani Gul Vs Govt. of NWFP, decided on 12-10-1999 that quotes allocated through amendment in rules cannot be given retrospective effect.**

**In this view of the matter, I am constrained to advice you that the case of promotion of Sub Engineer to the post of Assistant Engineers including the respondents may be processed in accordance with quota allocated to them by the Rules irrespective of the present position of incumbents of the post of Assistant Engineers."**

(Copy annexed hereto marked "G").

- (d) That responding to the advice of the Irrigation Department on the subject issue, the law department endorsed the legal advice of learned A.G vide letter dated 26-08-2002, whereby it was stated that,

**"The promotion made before the amendment of rule would be considered as a closed chapter and the post which were available at the time of amendment or become available after the amendment would have to be filled in accordance with the rules prevailing at the very moment. The Tribunal has also held the same view and the Advocate General also hold the same views. "**

(Copy annexed hereto marked "H").

- (e) That the department was legally bound to grant anti date promotion to the appellant w.e.f 17-01-1995, as the post pertaining to Graduate Sub Engineers were lying vacant. The appellant was required to be considered and granted promotion from the date of the occurrence of substantive vacancy / quota regarding Graduate Sub Engineers.

The department's lame excuse that the quota of Graduate Sub Engineers was already exhausted is immaterial and without any lawful justification. The advice of learned A.G is very clear on the subject, as the rules cannot be given retrospective effect. The promotions made prior to the amendments are close and past transaction. The vacancies available are required to be filled in accordance with the law and rules prevailing at the very moment.

- (f) It is necessary to mention that one M. Tahir, who had also filed similar service appeal No. 342/2001 and CPLA No. 323 of 2001, and was granted promotion as Assistant Engineer BPS-17 along with the present appellant on 29-03-2003, has been allowed anti date promotion w.e.f 1993 on acceptance of his departmental representation. (Copy annexed hereto **marked "J"**).

It is also necessary to mention that Mr. M. Tahir was placed at S. No. 48 of the seniority list of Assistant Engineers BPS-17 and on acceptance of his representation, he has been placed at S. No. 19.

- (g) The impugned order and omission of the respondent department to grant promotion to the appellant with retrospective effect, i.e. 17-01-1995, is thus arbitrary, discriminatory, against the principles of equity, law, justice and proprietary, subject to correction by this Hon'ble Tribunal.
- (h) The Respondent Department was required by law to act in accordance with the well established principles of equity and justice. Their impugned action justifies interference by the Hon'ble Service Tribunal.

In view of the above, it is most humbly requested that by accepting this appeal the impugned order dated 07-09-2015 may kindly be set aside and the respondent department may be directed to allow promotion to the appellant with retrospective effect, i.e. 17-01-1995, with all the back benefits of service.

Any other relief deemed appropriate may also be granted

Peshawar, dated  
2<sup>nd</sup> Dec, 2015

Through,

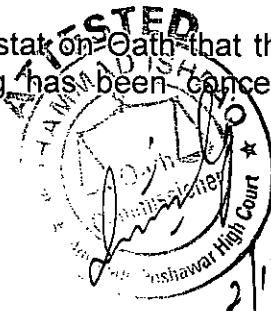
Appellant

(Muhammad Zafar Tahirkheli)  
Advocate

(Ansar Ullah Khan)  
Advocate

**Affidavit**

I, the appellant, do hereby state on Oath that the contents of the above application are true and correct and nothing has been concealed or withheld from this Hon'ble Tribunal.



DEPONENT



GOVERNMENT OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT  
(Establishment Section)

Dated Peshawar the 04<sup>th</sup> October, 2019

NOTIFICATION

No. SO(E)/IRRI:/4-9/77/Vol-III: The Competent Authority on the recommendation of Provincial Selection Board (PSB), in its meeting held on 23.09.2019 is pleased to promote the following Assistant Engineers (BS-17) to the post of Executive Engineers (BS-18) of Irrigation Department on regular basis, with immediate effect:-

- I. Engr. Muhammad Tahir
- II. Engr. Waheedullah
- III. Engr. Muhammad Aqeel Azhar
- IV. Engr. Waseem Malik
- V. Engr. Abdul Sattar
- VI. Engr. Khalid Khattak
- VII. Engr. Baatur Zaman
- VIII. Engr. Wajid Ali Shah
- IX. Engr. Syed Shoukat Hussain Shah

3. The officers on promotion will remain on probation for a period of one year extendable for further one year in terms of Section 6 (2) of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Section 15 (1) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfers) Rules, 1989.

4. The Officers are allowed to actualize their promotions against the already occupied posts

Secretary to Govt. of Khyber Pakhtunkhwa  
Irrigation Department

Endst. No. & date even.

Copy forwarded to:-

15. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
16. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
17. The Chief Engineer (South/North) Irrigation Department, Peshawar.
18. The Director General, Small Dams, Peshawar.
19. The Deputy Secretary (Tech:) Irrigation Department.
20. PSO to Chief Secretary, Khyber Pakhtunkhwa.
21. All Project Directors, Irrigation Department
22. All Superintending Engineers of Irrigation Department.
23. The officers concerned.
24. The Section Officer (Dev:) & (General) Irrigation Department.
25. PS to Minister for Irrigation, Khyber Pakhtunkhwa.
26. PS to Secretary Irrigation Department, Peshawar.
27. The Manager, Govt. Printing & Stationary Department, for publication in the next official gazette.
28. Personal File of the officers.

  
(Abdul Rauf)  
Section Officer (Estt:)



4  
OFFICE OF THE PROJECT DIRECTOR

REHABILITATION OF IRRIGATION SYSTEM  
IN KHYBER PAKHTUNKHWA PESHAWAR

(Banglow-A Near Park View Apartments, Justice Talat  
Qayyum Qureshi Road, Warsak Road, Peshawar)  
Phone No. 091-5200710 Fax No. 091-5200703

A

No. 4530 /Rehab/E-1 (Vol-II)

Dated Peshawar the 11 /10/2015.

To,

Engr. Hayatullah Khan.  
Assistant Engineer (SIC) (Local)

Subject:

APPEAL FOR IMPLEMENTATION OF THE DIRECTION OF  
HONORABLE SUPREME COURT OF PAKISTAN AND JUDGMENT  
OF N.W.F.P / KHYBER PAKHTUNKHWA SERVICE TRIBUNAL IN THE  
LETTER AND SPIRIT.

A copy of letter No. 6792/A-6/1492-PF, dated 05-10-2015, received from  
Chief Engineer (South) Irrigation Department Peshawar along with its enclosure for favor of  
further necessary action.

Encl: A.A

  
PROJECT DIRECTOR

TRUE COPY







5  
A  
OFFICE OF THE CHIEF ENGINEER (SOUTH)  
IRRIGATION DEPARTMENT KHYBER PAKHTUNKHWA PESHAWAR  
Phone No. 091-9212116 Fax No. 091-9212652

No 6792 /A-6/1492-PF

Dated Peshawar the 25/10/2015

To

The Project Director,  
Rehabilitation of Irrigation System,  
Khyber Pakhtunkhwa Peshawar.

Subject. - APPEAL FOR IMPLEMENTATION OF THE DIRECTION OF HONORABLE SUPREME COURT OF PAKISTAN AND JUDGMENT OF NWFP/KHYBER PAKHTUNKHWA SERVICE TRIBUNAL IN THE LETTER AND SPIRIT.

Reference: - Your office letter No.4136/Rehab/E-I/Vol-II), dated 18/08/2015.

I am directed for forward herewith a copy of Secretary to Govt. of Khyber Pakhtunkhwa Irrigation Department letter No.SO(E)/Irr:1-3/2003/PF, dated 07/09/2015, for information and further necessary action please.

Encl:AA

ADMINISTRATIVE OFFICER  
(PHONE.NO.9212118)

Copy to the Section Officer (Estt:) Government of Khyber Pakhtunkhwa Irrigation Department with reference to his letter mentioned above for information please.

ADMINISTRATIVE OFFICER  
(PHONE.NO.9212118)

TRUE COPY



6  
GOVERNMENT OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT

16/3  
16/ A<sup>2</sup>

No. SO(1)/Irr./13/2003/PF

Dated Peshawar, the 7<sup>th</sup> September, 2015

To

The Chief Engineer (South),  
Irrigation Department.

Subject: APPEAL FOR IMPLEMENTATION OF THE DIRECTION OF HONOURABLE SUPREME COURT OF PAKISTAN AND JUDGMENT OF NWFP/KHYBER PAKHTUNKHWA SERVICE TRIBUNAL IN TRUE LETTER AND SPIRIT

I am directed to refer to your letter No. 6060/IB/A-6/1492-PF <sup>of 16/</sup> dated 28.08.2015 on the subject noted above and to state that the subject departmental appeal of Mr. Hayat Ullah, Assistant Engineer (BS 17) was considered by the competent forum and filed having no justification.

*Misal Khan*  
(MISAL KHAN)  
Section Officer (F&T)

TRUE COPY

41273  
to 9/9  
8/9/15  
M/G  
8/9/15

7  
The Secretary to Govt. of Khyber Pakhtunkhwa,  
Irrigation & Power Department,  
Peshawar.

THROUGH: PROPER CHANNEL

Subject: APPEAL FOR IMPLEMENTATION OF THE DIRECTIONS OF HONOURABLE SUPREME COURT OF PAKISTAN AND JUDGMENT OF N.W.F.P SERVICE TRIBUNAL IN TRUE LETTER AND SPIRIT.

Respected Sir,

It is submitted that the undersigned, while working as graduate sub engineer, was appointed as Assistant Engineer ( BPS: 17 ), on acting charge basis, under section 9 of appointment, promotion and transfer rules, after proper examination and consideration of Departmental Promotion Committee vide notification no. SO (E)/Irr:/4-3/91, 11855-69 dated 01/09/1999. (Copy enclosed as *annexure - I*)

The department, irrespective of availability of posts of assistant engineer, without assigning any reasons, reverted the undersigned to the post of sub engineer

Aggrieved by the aforesaid notification, the applicant filed service appeal before the service tribunal, which was decided in my favour on 23-06-2003.

(Copy enclosed as *annexure - II*)

The department filed CPLA in the Supreme Court of Pakistan and during the very first hearing issued directions vide paras 5 & 6, to Advocate General NWFP stating thereby, "*wherein without expressing any opinion on the question involved, the advocate general is required to render proper advice to the department to protect the interests of the respondents strictly according to law and without being influenced by the judgment of the tribunal or the grant of leave in these petitions*".

(Copy enclosed as *annexure - III*)

In light of the advice of Advocate general and opinion of law department, stating thereby that, "*Rules and amendments in rules should always be prospective in nature and not retrospective in their applications. The promotions made before the amendment of rules would be considered as a closed chapter and the posts which were available at the time of amendment become available after the amendment would have to be filled in accordance with the rules prevailing at the very moment. The tribunal has also held the same view and the advocate general also hold the same view.*"

(Copies enclosed as *annexure- IV & V*)

The department placed the case before the departmental promotion committee for consideration. The departmental promotion committee cleared my promotion as assistant engineer (BPS 17) on regular basis, however the seniority dispute remained unattended, as my claim was to consider my promotion after the first amendment in service rules in 1995 vide which the quota of graduate sub engineers

TRUE COPY

8

( in service and pre- service). The advice of advocate general and opinion of law department clearly established my right of promotion just after amendment in rules in 1995 and denied the plea of the department that, the promotion quota of pre-service graduate sub engineers has been exhausted.

Therefore in view of the above facts, my age and in pursuance of the directions of the Supreme court of Pakistan, advice of advocate general and the opinion of law department, my promotion may please be reconsidered from the due date i.e; 17-01-1995, where the rules in tact were followed with all back benefits please

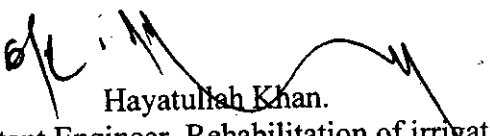
Dated: 28/09/2014.

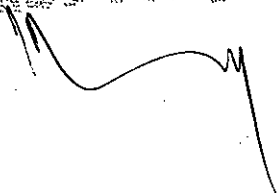
Thanking you in anticipation.

Yours,

Hayatullah Khan.  
Assistant Engineer, Rehabilitation of irrigation System  
in Khyber Pakhtun Khwa Peshawar.

Advance copy is forwarded to the Secretary to Govt. of Khyberpakhtun Khwa,  
Irrigation & Power Department Peshawar.

  
Hayatullah Khan.  
Assistant Engineer, Rehabilitation of irrigation System  
in Khyber Pakhtun Khwa Peshawar

**TRUE COPY**  


19  
E

GOVERNMENT OF N.W.F.P.  
IRRIGATION DEPARTMENT.

Dated Pesh: the 01-09/1999

O R D E R.

The Governor, NWFP, in consultation with the Departmental Promotion Committee, is pleased to appoint the following four (04) Graduate Sub Engineers (BPS-11) as Assistant Engineers (BPS-17), on acting charge basis, purely on temporary measures, with immediate effect, in accordance with Rule-9 of the NWFP Government Servants (Appointment & Promotion) Rules, 1979 and S&GAD circular letter No. SORI (S&GAD) /1-29/75/Volume-IV, dated 13-1-1999.

1. Mr. Mohammad Tahir.
2. Mr. Amir Muhammad.
3. Mr. Akbar Khan.
4. Mr. Hayatullah.

Consequent upon their appointment on acting charge basis as Assistant Engineer (BPS-17) they are hereby adjusted against the following positions noted against each, with immediate effect, in the public interest.

<u>S. NO.</u>	<u>NAME OF OFFICERS</u>	<u>ADJUSTED AS:</u>
1.	Mr. Mohammad Tahir.	Assistant Design Engineer, office of the Chief Engineer Irr:
2.	Mr. Amir Muhammad.	SDO Small Irr: Scheme Pesh:
3.	Mr. Akbar Khan.	SDO Mech: Irr: Sub Divn: D.I. Khan
✓ 4.	Mr. Hayatullah.	SDO Janikhel Irr: Sub Div: Bannu

SECRETARY TO GOVT: OF NWFP,  
IRRIGATION DEPARTMENT.

11835-69

Endst: No. SC(E)IRR:/4-3/91, Dated Pesh: the 01/09/1999.

Copy forwarded to the:

1. Accountant General, NWFP, Peshawar.
2. Chief Engineer (O&M) Irrigation Department.
3. Chief Engineer (Dev:) Irrigation Department.
4. P.S. to Minister Irrigation.
5. District Accounts Officers, D.I. Khan, Bannu.
6. Section Officer (R-IV) S&GAD.
7. Section Officer (SR-II) Finance Department.
- ✓ 8. officers concerned.
9. P.Es of the officers.

SECTION OFFICER (ESTT:)  
IRRIGATION DEPARTMENT.

Dated Pesh: the 29.11.2000.

NOTIFICATION.

No,SO(E)IRR:/4-10/77/ In consultation with the placement Scrutiny Committee, the following transfers/adjustment amongst the Assistant Engineer, (B-17) of the Irrigation Department, NWFP is hereby ordered with immediate effect, in the public interest.

S.No.	Name of Officer	From	To	Remarks
1.	Mr. Farooq Ahmed	Waiting for posting/drawing Pay as AE L/R PC Div:Peshawar	SDO Civil Canal sub Division Peshawar	Against the vacant Post
2.	Hayatuddin	Repatriated from CRBC consultants DIK (Jr.Engineer)	posted as A.E. L/R PC Division Peshawar.	-do-
	Mr. Farooq	Waiting for posting/drawing Pay as AE L/R	posted as AE L/R PC Division Peshawar	-do-
4.	Mr. Tariq Ali Khan.	-do-	SDO T/W Sub Divn:DIKhan	relieving Eg:Mr. Hayatullah Sub:Engr: from acting charge.
5.	Mr. Azizur Rehman	-do-	SDO CRBC Sub Divn:DIKhan	vice No.12
6.	Mr. Akhtar Rashid	-do-	SDO Small Irr: Chitral	Against the vacant post.
7.	Mr. Saadullah	-do-	P.A to Xen Chitral	Against the vacant post
8.	S. Iqbal Shah	Waiting for posting/drawing pay as SDO SIS Bannu.	SDO Small Irr: schemes Project Bannu.	Relieving Mohd Tahir
9.	Mr. Mohammad Niser	Repatriated from CRBC Consultants DIK (Jr.Engineer)	SDO Tajori Irr:Sub Div: Bannu	Relieving Mr. Amir Mond from Acting charge.
10.	Misal Khan	Waiting for posting	SDO Mech:Irr: Sub Div:DIKhan	Relieving Mr. Akbar Khan from acting charge

THANK YOU

11.	Mr. Ali ur Rehman	Waiting for posting/drawing pay as AE L/R	SDO Mech:Irr: Sub Div:Mardan	Against the vacant post
12.	Mr. Zubair Khan	SDO CRBC Sub Divn: DIKhan	SDO Irr:Sub Divn:A-Abad	Against the vacant post
13.	Mr. Haider Ali	Waiting for posting/drawing pay as AE L/R	posted as AE L/R PC Divn Peshawar & look after the post of T.O. (O&M)	-do- U
14.	Mr. Mohammad Majjad	-do-	posted as AE L/R PC Divn: Peshawar look after the work at Mardan Lab:	-do-
15.	Mr. Mohammad Younas	-do-	posted as AE L/R Divn: Peshawar.	-do-

NOTE: M/S Mohammad Tahir, Amir Mohammad, Akbar Khan and Hayatullah Graduate Sub:Engineer are hereby relieved from acting charge appointment and they are directed to report to the Chief Engineer O & M for further posting as Sub Engineers.

Secretary Irrigation

Endst:No.SO(E)IRE:/4-10/77 Dated 29.11.2000.

1x Copy forwarded to the:-

1. Accountant General NWFP, Peshawar.
2. Chief Engineer (O&M) Irrigation.
3. Chief Engineer (Dev) Irrigation.
4. Project Director/Chief Engineer CRBC Consultants DIKhan w/r to their letter No. CRBC/CE&PD/595-A/9534-38 dated 27.11.2000.
5. Private Secretary to Minister for irrigation.
6. Superintending Engineer, Malakand Irrigation.
7. Superintending Engineer, NIC Mardan.
8. Superintending Engineer, CIC Peshawar.
9. Superintending Engineer, SIC Peshawar.
10. District Accounts Officer D.I.Khan, Bannu, Mardan, Abbottabad, Kohat and Chitral.
11. Officer Concerned.
12. Personal files of the officers.
13. office order file.
14. Copy to file No.4-1/99

Sd/-

SECTION OFFICER(ESTT)  
IRRIGATION DEPARTMENT

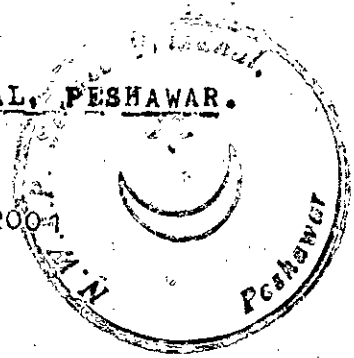




13

BEFORE THE N.W.F.P. SERVICE TRIBUNAL, PESHAWAR.

SERVICE APPEAL NO. 342/2001



Date of institution ... 14.3.2001

Date of decision ... 23.6.2001

Mohammad Tahir s/o Abdur Rauf,  
Sub-Engineer, Baharpur Irrigation Division,  
D.I.Khan. .. Appellant

VERSUS

1- Secretary, Govt. of NWFP,  
Irrigation Department,  
Peshawar.

2- Chief Secretary,  
Government of NWFP,  
Peshawar.

.. Respondents

Mr. Saadullah Khan Marwat,  
Advocate.

.. For appellant

Mr. Nasar Ali Raza,  
Government Pleader.

For respondents

Mr. Khan Akbar Khan,  
Mr. Mohammad Shaukat.

.. Chairman  
Member

JUDGMENT

KHAN AKBAR KHAN, CHAIRMAN: Appellant Mohammad-

Tahir has filed the instant appeal, under section 4 of the NWFP Service Tribunals Act, 1974, against the Notification dated 29.11.2000 of respondent No.1, whereby the appellant was relieved from service as Assistant Engineer/SDO.

EXAMINER  
NWFP Service Tribunal  
Peshawar.

ADJUSTED

2001

2- Briefly stated the facts are that the appellant, being qualified and eligible, was appointed as Sub-Engineer on 31.8.1986 after observing all the cedal formalities. He was performing his official duties to the best of his abilities and to the entire satisfaction of his superiors and no complaint, whatsoever, was made against him. Due to his good performance, he was appointed as Assistant Engineer/ Sub-Divisional Officer (BPS-17) by the Governor, NWFP, with immediate effect vide order dated 1.9.1999 (Annexure-A). Later on vide Notification dated 29.11.2000, the appellant was relieved from acting charge appointment as is evident from the Note of the said order/Notification (Annexure-B) inspite of the fact that 8/9 posts of Assistant Engineers still are/laying vacant in the department. Aggrieved from the said Notification, the appellant submitted an appeal before respondent No.2 on 5.12.2000 which has not been responded so far, hence this appeal. Copy of appeal is Annexure-C.

3- The grounds of appeal are that at present 8/9 posts of Assistant Engineers are available in the department but the appellant was relieved for no good ground; that even one Mueen Khan, who was also appointed as Assistant Engineer in Central Irrigation Workshop, Peshawar, is still working and thus the appellant was discriminated; that an improper/has been passed in respect of the incumbents mentioned therein and only "Note" at the bottom of the said Notification is given which could not be treated as a legal order; that specific separate order might have been passed in this respect and moreover, no reason for relieving the appellant/has been given in the Note of the impugned Notification; that the order of promotion to the post of Assistant Engineer was prompted by the Governor, NWFP, while the impugned order has been issued by respondent No.1, who is not the competent authority under the law in respect of the appellant; hence the impugned order being

RECEIVED  
 EXECUTIVE  
 SERVICE TRIBUNAL  
 PESHAWAR

without lawful authority is liable to be struck down on this score alone and that the incumbents mentioned at S.No. 11, 14 and 15 of the impugned Notification are junior to the appellant, but they were retained in service while the appellant was relieved without any notice/reason or complaint, whatsoever, which shows malafide on the part of the respondent department. In the prayer the appellant has asked for acceptance of the present appeal by setting aside the impugned Notification dated 29.11.2000 and for his reinstatement to his original post of Assistant Engineer with all back benefits, by regularizing his services.

4- Respondents <sup>to</sup> contested the appeal vehemently by filing reply through their respective representative/counsel by stating that the action has been taken by the department strictly in accordance with law and rules and no injustice/discrimination has been done to him. The appellant has also filed his rejoinder.

5- We have considered the arguments of the learned counsel for the appellant and learned Government Pleader for the state at great length and have perused the record carefully. According to the record, the present appellant was initially appointed as Sub-Engineer (BPS-11) in the year, 1986 in the Irrigation Department. Later on vide order dated 1.9.99 he/was appointed by the Governor, NWFP in consultation with the Departmental Promotion Committee as Assistant Engineer (BPS-17) on acting charge basis, purely on temporary measures, with immediate effect, in accordance with Rule--9 of the NWFP Government Servants (Appointment & Promotion) Rules, 1989 and S&GAD circular letter No. SORI (S&GAD)/1-29/75/Volume-IV, dated 13.1.99. He served on the said post for some-time. Consequently,

ATTESTED  
 EXAMINER  
 NWFP Service Tribunal  
 Registrar

vide Notification dated 29.11.2000 he alongwith three other connected appellants were relieved from acting charge appointment as is evident from the 'NOTE' at the bottom of the said Notification and they were directed to report to the Chief Engineer O&M for further posting as Sub-Engineers. Not content with the same, the appellant lodged an appeal before respondent No.2 and ultimately he moved this Tribunal for the redress of his grievance.

6- The learned counsel for the appellant submitted that the posts in question were lying vacant for sufficient time and the appellant was fully eligible/qualified for the said post and as such he was promoted/appointed as Assistant Engineer (B-17) on acting charge basis by the Governor, NWFP in consultation with DPC according to rules. The appellant has got more than 10 years service at his credit and is senior most civil servant. He further argued that the <sup>appellant</sup> was relieved from acting charge appointment without any solid ground/reason/notice by the Secretary Irrigation on 29.11.2000, who in fact is not competent under the law to pass the impugned Notification as according to rules, the competent authority is the Chief Secretary, being the appointing authority, therefore, he should <sup>not</sup> have been made such order. As such the impugned order is illegal and without lawful authority. Moreover, no adverse entry/complaint, whatsoever, has been made against the appellant during his service period. He went on to add that at present about 10 posts of Assistant <sup>lying</sup> Engineers are still/vacant in the department. Learned counsel further stressed that junior to the appellant have been retained/promoted. Similarly 7 officers namely Shaukat Hussain Shah, Faizullah, Mohammad Naeem, Aurangzeb, Ali Rehman, Mohammad Younas and Mohammad Sajjad have acquired their B.Sc Engg: degrees during the years,

EXAMINER  
 NWFP Service Tribunal  
 Peshawar

ATTESTED

1993, 94, 95 and 96 whereas the appellant has acquired <sup>these</sup> the said degree earlier than/mentioned above from Peshawar University in the year 1985. Moreover, some of the officers have acquired their B.Sc degrees from Phillipenes University which was not a recognized one till 1998 by Pakistan Engineering Council, but inspite of that they were promoted as Assistant Engineers (B-17) while the appellant was ignored for the reason best known to the respondent department. Like-wise the Notification regarding amendment in the rules is unlawful/irregular as the approval of the competent authority was not obtained as discussed by the Deputy Secretary (Technical) in his brief note addressed to Secretary Irrigation on appeal for enhancement of promotion quota. So the impugned Notification, being illegal and unlawful, may be declared as null and void and the appeal may be accepted by setting aside the impugned order.

7- On the contrary, learned P.P for the State argued that the appellant has <sup>been</sup> not/represented against his appointment on acting charge basis nor he has challenged the appointment of 7 other officers, mentioned above. Moreover, he was appointed on acting charge basis and according to Rule-9 of the NWFP Government Servants (Appointment, Promotion & Transfer) Rules, 1989, acting charge appointment shall not confer any vested right for regular promotion and as such he could be reverted any time. Similarly, the Chief-Secretary, who is competent authority, has delegated his powers to Secretary Irrigation, hence the action taken against the appellant is strictly in accordance with law and rules and no injustice/discrimination has been done to him and he was thus rightly relieved/reverted to his original post of Sub-Engineer for the reason

ATTACHED  
 EXAMINER  
 NWFP Service Tribunal  
 Peshawar

that his appointment was made on acting charge basis/step gap-arrangement. Similarly the officers mentioned at S.No. 11, 14 and 15 of the impugned Notification were regularly appointed/promoted as Assistant Engineers against 10% reserved quota for the Graduate Sub-Engineers after considering by the DPC. In rebuttal, learned counsel for the appellant contended that since the appellant was not aggrieved by the appointment order, therefore, there was no need to challenge the same and when the appellant was relieved without any reason and was ignored by retaining junior person, he challenged the same.

8- We have given due weight to the contentions raised from either sides and have come to the conclusion that the appellant, being a senior most civil servant and was fully eligible/qualified for the post in question, has got his B.Sc Engg: degree from Peshawar University prior to the incumbents who are junior and have acquired their degrees from the Philippines University which was not a recognized one till 1998. He has got more than 10 years service at his credit and no complaint whatsoever, has been made against him. He was relieved from acting charge basis without any cogent ground/notice inspite of the fact that junior to him have been retained in service/promoted on regular basis as Assistant Engineers, meaning thereby that he has been treated discriminately. Moreover, some posts of Assistant Engineers are still exist/lying vacant in the department and this fact has been candidly admitted by the representative of the respondent department. Like-wise the so-called amendment in the rules are unlawful/irregular as stated above and have been made by the department for some ulterior motives in order to accommodate some favourites without the approval of the competent authority. Similarly, the Hon'ble Peshawar

EXAMINER  
 Service Tribunal  
 Peshawar

ATTESTED

High Court, Peshawar vide its judgment dated 17.5.94 in W.P. No. 94 of 1993 in identical case "titled Rabbani-Gul Petitioner-Vs-Respondent Govt. etc." has declared the impugned Notification dated 12.4.92, issued by the Government of NWFP, Communication & Works Department regarding amendment in the rules, as mala fide, without lawful authority and of no binding effect. Apart from this, the Secretary Irrigation was not competent to pass the impugned Notification regarding relieving of the appellant from acting charge appointment because according to law, the Chief Secretary, being the appointing authority was competent to issue/pass the same. Moreover, the order of promotion by way of appointment of the appellant on acting charge basis was made by the Government NWFP in consultation with the Departmental Promotion Committee in accordance with Rule-9 of the NWFP Government Servants (Appointment & Promotion) Rules, 1989 and according to sub-rule 4 of Rule-9 of the said Rules, acting charge appointment shall be made against posts which are likely to fall vacant for period of six months or more, meaning thereby that the appointment of the appellant on acting charge basis does not specify the period and it would be presumed that it was a regular promotion made after observing all the legal requirements which formalities are not required for <sup>appointment on</sup> acting charge basis. Similarly, the impugned order has been passed without the approval of the Governor which is also illegal and improper. Besides, no notice was given to the appellant before passing the impugned order and as such he was condemned as unheard. So the impugned Notification is illegal and has been passed without lawful authority and is not sustainable in the eyes of law.

h

EXAMINER  
NWFP Service Tribunal  
Peshawar

ATTESTED

9- The upshot of the above discussion is that the appeal is accepted, the impugned Notification dated 29.11.2000 is set aside and the appellant is restored/reinstated to his original post of Assistant Engineer with back benefits.

10- This order will also dispose of other three connected appeals No. 340, 341 and 347 of 2001 filed by Akbar Khan, Hayatullah Khan and Amir Muhammad respectively against the Secretary, Government of NWFP Irrigation Department & Chief Secretary, NWFP, Peshawar as the impugned Notification, points of law and facts are common in all the appeals. No order as to costs. File be consigned to the record.

ANNOUNCED

23.6.2001

*K-Ahr*  
 (KHAN AKBAR KHAN)  
 CHAIRMAN

*Mohammad Shaukat*  
 (MOHAMMAD SHAUKAT)  
 MEMBER

Certified to be true copy  
 EX-11111111  
 NWFP Service Tribunal  
 Peshawar.

Date of Presentation of Applicant..... 25/6/2001  
 Number of Words..... 3200  
 Copying Fee..... 10-00  
 Urgent..... 10-00 *R*  
 Total.....  
 Name of Copyist.....  
 Date of Copy..... 27/6/2001  
 Date of Delivery..... 27/6/2001



EXECUTIVE ENGINEER.

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

**PRESENT:**

MR. JUSTICE RANA BHAGWANDAS  
MR. JUSTICE SYED DEEDAR HUSSAIN SHAH

**CP.L.A. No.323-P of 2001**

(On appeal from Judgment of NWFP Service Tribunal  
dated 23.6.2001 passed in Service Appeal No.342 of 2001)

Secretary, Government of NWFP, Irrigation Department, Peshawar &  
others

Petitioners

Versus

Muhammad Tahir son of Abdur Rauf

Respondent

For the petitioners:

Mr. Imtiaz Ali, Addl. A.G. NWFP

For the respondent:

Mr. Khushdil Khan, ASC

**CP.L.A. No.324-P of 2001**

(On appeal from Judgment of NWFP Service Tribunal  
dated 23.6.2001 passed in Service Appeal No.340 of 2001)

Secretary, Government of NWFP, Irrigation Department, Peshawar &  
others

Petitioners

Versus

Akbar Khan son of Muhammad Khan

Respondent

For the petitioners:

Mr. Imtiaz

Ali, Addl. A.G. NWFP

Respondent:

In person

**CP.L.A. No.325-P of 2001**

(On appeal from Judgment of NWFP Service Tribunal  
dated 23.6.2001 passed in Service Appeal No.341 of 2001)

Secretary, Government of NWFP, Irrigation Department, Peshawar &  
others

Petitioners

Versus

Hayatullah Khan son of Mohibullah Khan

Respondent

For the petitioners:

Mr. Imtiaz Ali, Addl. A.G. NWFP

Respondent:

In person

CP.L.A. No.326-P of 2001

(On appeal from Judgment of NWFP Service Tribunal dated 23.6.2001 passed in Service Appeal No.347 of 2001)

Secretary, Government of NWFP, Irrigation Department, Peshawar & others

Petitioners

Versus

Amir Muhammad

Respondent

For the petitioners:

Mr. Intiaz Ali, Addl. A.G. NWFP

Respondent:

In person

Date of hearing:

24.5.2002

ORDER

RANA BHAGWANDAS, J - Petitioners seek leave to appeal against judgment dated 23.6.2001 passed by NWFP Service Tribunal (hereinafter referred as the Tribunal) allowing service Appeals No.304, 341, 342 & 347 of 2001 filed by respondents impugning vires of Notification dated 29.11.2000 issued by the Secretary Irrigation, Government of NWFP ~~relieving~~ relieving them from the office of Assistant Engineer on acting charge basis and posting regular incumbents of the office of Assistant Engineers Irrigation awaiting posting in their place.

2. Respondents, on the basis of their seniority in their cadre were appointed to work as Assistant Engineers on acting charge basis by the Governor, NWFP vide notification dated 1.9.1999. It was clearly stipulated in the notification that such appointment was by way of temporary measure and would not confer any right on the incumbents towards their regular promotion. By subsequent notification dated 29.11.2000, as many as fifteen Assistant Engineers were transferred and posted relieving the respondents of their acting charge and

reverting them to their parent posts as Sub-Engineers. Feeling aggrieved, respondents, through separate service appeals, invoked the jurisdiction of the Tribunal, which were hotly contested by the petitioner-Government but on extraneous consideration allowed by the Tribunal vide identical order impugned in these petitions.

3. It is, inter alia, contended that appointment of the respondents, on acting charge basis was wrongly assumed to be promotion on the basis of their seniority and qualifications; that promotion of Sub-Engineers to the post of Assistant Engineers from a separate category did not violate the rights of the respondents and, in any event, was neither assailed before the department nor impugned before the Tribunal; that replacement of the respondents was necessitated by the circumstance that some of the Irrigation Projects in NWFP were wound up and regular incumbents of the office of Assistant Engineers were rendered surplus, who had to be accommodated in preference to the respondents, obviously put in charge of Sub-Divisions as temporary measure by way of stop-gap arrangement.

4. Leave to appeal is accordingly granted to consider, inter alia, the following questions:-

- (i) Whether appointment on acting charge basis can in law be equated with an incidence of promotion as misunderstood by the Tribunal?
- (ii) Whether the Tribunal was justified in holding that Sub-Engineers junior to the respondents were promoted in routine as Assistant Engineers as their promotions was neither challenged before

the Tribunal nor the promotee officers arrayed as party to the appeals?

- (iii) Whether the Tribunal was justified in declaring NWFP Irrigation and Public Health Engineering Department (Recruitment and Appointment) Rules, 1979, as amended in 1999 as illegal on the basis of judgment of Peshawar High Court in writ petition No.94 of 1993 decided on 17.5.1994?

5. Respondents, three of whom are un-represented, make a grievance against the department that though posts of Assistant Engineers are still available in the department, against which they are eligible and entitled to be promoted but the department has demonstrated an attitude of cold shoulder in view of their lawful initiative for the enforcement of their rights.

6. Without expressing any opinion on the questions involved, learned Additional Advocate General is required to render proper advice to the department to protect the interests of the respondents strictly according to law and without being influenced by the judgment of the Tribunal or the grant of leave in these petitions.

Islamabad  
24<sup>th</sup> May, 2002  
Not approved for reporting.  
Riaz

25  
GOVERNMENT OF NWFP  
IRRIGATION & POWER DEPARTMENT

Dated: Peshawar the 25<sup>th</sup> March 2003

ORDER

No. SO (E)/Irr/4-3/91: The competent authority with the consultation of the Departmental Promotion Committee is pleased to promote the following Graduate Sub-Engineers B-11 to the rank of Assistant Engineer B-17 with immediate effect.

1. Mr. Muhammad Talib
2. Mr. Amir Muhammad
3. Mr. Akbar Khan
4. Mr. Hayatullah Khan

Their posting/transfer order will follow.

Secretary to Govt. of NWFP  
Irrigation & Power

Adst: No. SO(E)/Irr/4-3/91

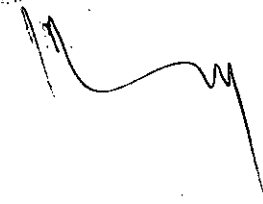
dated: 25/03/2003

Copy to:-

1. The Advocate General, NWFP with reference to his letter No. 3943/AG dated: 17/06/2002.
2. The Accountant General, NWFP Peshawar.
3. The Chief Engineer (O&M), Irrigation Department Peshawar.
4. The Chief Engineer (Dev), Irrigation Department.
5. All Superintending Engineer Irrigation Department.
6. The Registrar Service Tribunal Peshawar
7. The Officer concerned.

  
Section Officer (Estt.)  
Irrigation & Power

TRUE COPY



Ph: 9210205

26  
ANNEXURE II  
SUPREME COURT MATTER

No. 3943 /AG., dated Peshawar, the 17/6 /2002.

From

The Addl. Advocate-General,  
N.W.F.P., Peshawar.

To

The Secretary to Govt. of NWFP,  
Irrigation Department,  
Peshawar.

Subject:-

CPLA NOS. 323-P TO 326-P/2001  
TITLED SECRETARY TO GOVT. OF NWFP  
IRRIGATION DEPARTMENT VS. MOHAMMAD  
TAHIR AND OTHERS.

Memorandum.

Subject case came up for hearing on 24.5.2002 and August Supreme Court was pleased to grant leave to appeal in the case with certain observations contained in Paras 5 & 6 of its order.

You are requested to comply with the directions of the Court and process the case for promotion against vacant posts of Assistant Engineers.

Since I have been required by August Supreme Court to render proper advice to the Department to protect the interest of respondents according to law, therefore, I take this opportunity to make following observations. Contents of the Note for Minister of Irrigation, NWFP dated 18/2/2002 (Annexure-a) filed in the Court by respondents (copy enclosed) reveals that the department intends to give retrospective effect to the amendment made in NWFP Irrigation and PEE Department (Recruitment and Appointment) Rules, 1979. As in Para 7 of the said Note it has been observed that respondents belong to a category which has already exhausted its full quota for promotion and their adjustment would mean allocation of slots over and above the due share. I must say that this interpretation is not in accordance with law and it has been held by N.W.F.P. Service Tribunal in Service Appeal No. 406/1998 (Annexure-b) titled Rabani Gul Vs Govt. of N.W.F.P., decided on 12.10.1999 that quotas allocated through amendment in rules cannot be given retrospective effect.

... Next Sheet ...

In this view of the matter I am constrained to advise you that the case of promotion of Sub-Engineers to the post of Assistant Engineers including the respondents may be processed in accordance with quota allocated to them by the rules irrespective of the present position of incumbents of the post of Assistant Engineers.

— Sd —  
Additional Advocate  
General W.P.A.  
Pesh.

27

Annex. ~~1117~~ H

GOVERNMENT OF N.W.F.P  
LAW DEPARTMENT.

NO.OP.15(201)/LD/2002/ 6381  
Dated Peshawar, the 26<sup>th</sup> Aug., 2002

To

The Secretary to Govt of NWFP,  
Irrigation and Power Department.

SUBJECT:- LEGAL ADVICE IN THE PROMOTION OF SUB-ENGINEERS AND ASSISTANT ENGINEERS.

Dear sir,

I am directed to refer to your letter NO.SO(E)/Irr./ 14-1 /2001/ 8179 dated 9-8-2002 on the subject noted above and to state that the promotions made before the amendment of rules would be considered as a closed chapter and the posts which were available at the time of amendment or became available after the amendment would have to be filled in accordance with the rules prevailing at the very moment. The Tribunal has also held the same view and the Advocate General also hold the same views.

Yours faithfully,

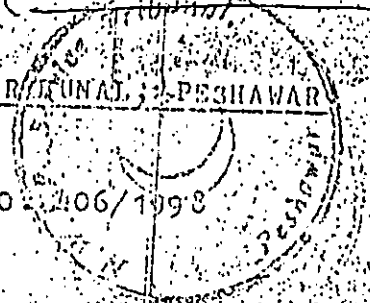
Sd/-

Section Officer (O/1)



BEFORE THE N.W.F.P. SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 406/1998



Date of institution ... 14.10.1998

Date of decision ... 12.10.1999

Rabbani Gul, Sub-Engineer  
C & W Division, Karak.

Appellant

Versus

- 1- Government of NWFP through Chief Secretary, Peshawar.
- 2- Secretary, C&W Department, Government of NWFP, Peshawar.

Respondents

Sardar Shaukat Hayat,  
Advocate.

For appellant

Mr. Mohammad Faheem Jan,  
Advocate (Govt. Pleader).

For respondents

Mr. Mohammad Qaim Jan Khan,  
Syed. Abid Hussain Bokhari.

Chairman

Member

JUDGMENT

MOHAMMAD QAIM JAN KHAN, CHAIRMAN: By virtue of

the present appeal, Rabbani Gul appellant has impugned the orders of respondents, whereby the appellant has been ignored for promotion in violation of C & W Department (Recruitment & Appointment) Rules, 1980 as amended on 12.4.92.

It is further alleged that the appellant joined the service in Communication & Works Department as Sub-Engineer in the year 1979 and since then is working as such. According to C & W Department (Recruitment and

NWFP Service Tribunal  
EXAMINER  
PESHAWAR

12-10-99

29

Appointment) Rules, 1979, as amended in the year 1986, the posts of Assistant Engineers were to be filled in accordance with the following formula:-

- a) 70% by initial recruitment.
- b) 10% by promotion with due regard to the seniority from amongst the Sub-Engineers holding Degree in Engineering. Seniority to be determined from the date of acquiring the Degree or initial recruitment whichever is later.
- c) 20% by selection on merits with due regard to seniority from amongst the Senior scales Sub-Engineers of the Department who hold Diploma and have passed Departmental Professional Examination.

It is quite evident from the aforesaid rules that the Sub-Engineers who hold the degrees in Engineering were given quota of 10% for the purpose of appointment as Assistant Engineers. The said rule did not make any distinction between those Sub-Engineers who had the degrees of Engineering at the time of initial recruitment and those who obtained the same after joining service. Some of the Sub-Engineers who had obtained the degrees in Engineering during service, challenged the amendment made in 1986, quoted above before the MWFP Service Tribunal, but the Hon'ble Service Tribunal dismissed the same with the observation that Tribunal was not competent to declare the piece of legislation as invalid. (Annexure-I). At the relevant time, there were vacant posts of Assistant Engineers. When the appellant showed interest in his being promoted to one of such post, as on the seniority list he stood eligible for the same, he was informed that the rules have been amended and in Schedule-I in column 7 against S.No. 4 the following has been substituted:-

- i) 5% by promotion on seniority-cum-fitness from amongst the Sub-Engineers who

10-55  
ALTERED

ned  
0-  
as

have acquired a degree in Engineering during service.

ii) 5% by promotion on seniority-cum-fitness from amongst Sub-Engineers who had joined the service as such as Graduate Engineers.

Relevant copies are Annexures II & III). It appears that the aforesaid exercise was done in order to favour some individuals who had obtained the degree in Engineering during service and being junior to those who were degree holders at the time of recruitment, including the appellant. The appellant filed a Writ Petition No. 94 of 1993 before Peshawar High Court, Peshawar which was decided in favour of the appellant on 15.7.94. Feeling aggrieved from the decision of the Peshawar High Court, Peshawar, Government of NWFP went in appeal to the Hon'ble Supreme Court of Pakistan, wherein leave was granted and the order of the Peshawar High Court, Peshawar was suspended. There-after 5 Sub-Engineers, all of whom are in service graduates, have been promoted purportedly under the new amended rules dated 12.4.92. Relevant copies are Annexures IV, V & VI. Feeling aggrieved/ignored, despite being at S.No.3 of the seniority list of directly recruited Sub-Engineers, appellant preferred departmental appeal to respondent No.2 which was filed. The appellant then approached this Hon'ble Tribunal through Appeal No. 679/96. The appeal was dismissed as withdrawn vide order dated 15.3.97 with the observation that "as the appeal of the parties is still pending in the Hon'ble Supreme Court of Pakistan, this Tribunal cannot pass any order at present." Appellant however, was allowed to approach this Tribunal after the final adjudication by the Supreme Court of Pakistan (Annexure-VII). Later on it transpired that appellant alongwith other directly recruited Sub-Engineers were being ignored in matters of promotion on the basis of a decision of Departmental Promotion Committee dated

12-10-99

APPEAL

NWFP Service Tribunal

31

6.4.93. Since more vacancies were falling vacant, therefore, appellant again preferred a departmental representation before respondent No.2 pointing out mis-interpretation & mis-application of amended rules of 1992. No order on the representation has till now been communicated to the appellant. (Annexures VIII, IX & X). That in view of the observations dated 15.3.97, respondents waited for the decision of the Supreme Court of Pakistan which has now been delivered vide judgment dated 2.3.98, holding that the Service Tribunal has got the exclusive jurisdiction to deal with the matter, hence the present appeal. (Annexure-XI) The grounds of appeal are that the appellant has not been dealt with in accordance with law and rules. He has been consistently discriminated against to favour other chosen one in the process even the stay order of Supreme Court of Pakistan was flouted. Observations of this Hon'ble Tribunal in order dated 15.3.97 are self explanatory. Although the subject-matter appeal before the Supreme Court of Pakistan was entirely different, yet the appellant was not considered for promotion even under amended rules of 1992, on the flimsy ground of pendency of appeal. It is settled law that rules or amendments thereof, are always prospective in nature and can never be retrospective in their application. After the amendment of C & W Department (Recruitment & Appointment) Rules, 1980 vide Notification No. SO(E)C&W/4-5/78 dated 12.4.92 all vacancies of Assistant Engineers occurring after 12.4.92 had to be equally distributed amongst both the categories of Graduate Sub-Engineers. Decision of Departmental Promotion Committee dated 6.4.95 to promote Sub-Engineers from the category of sub-Engineers who acquired degree during service only to bring the over-all quota at par with the sub-Engineers from other category, is illegal and not

12-10-99

EXAMINER  
Service Tribunal

ATTENDED

Handwritten signature

32

permissible under the law. It amounts to giving retros-  
 pectivity to the rules which are meant to be prospective  
 in its application. Moreover, it is pertinent to note here  
 that respondent No.2 had sought advice from the Law Depart-  
 ment with regard to the import of amendment of 1992 and  
 legality of the decision of DPC dated 26.4.93. However,  
 the advice of Law Department offered vide letter No.OP.15  
 (28)LD/97/5964 dated 12.7.97, which favours the case of  
 the appellant, has also been ignored/not acted upon by  
 respondents 1 & 2 to the detriment of the appellant.  
 (Annexure-XII). In the prayer the appellant has asked for  
 acceptance of the present appeal with the directions to  
 the respondents to decide the appeal/representation of the  
 appellant in accordance with law and consider him for pro-  
 motion under amended rules.

Respondents vehemently contested the allegations  
 of the appellant by filing their replies through their  
 respective representative/counsel. The appellant has also  
 submitted his rejoinder after which detailed arguments of  
 Sardar Shaukat Hayat, Advocate for appellant and Mohammad-  
 Raheem Jan, Advocate (Govt. Pleader) for respondents have  
 been heard and record perused.

Except limitation no other preliminary/legal  
 objection was pressed before us. As regards the limitation,  
 the appellant had preferred a representation before  
 departmental authority (respondent No.2) which has not yet  
 been decided. Moreover, since the appeal of other  
 promotees was sub-judice before the Supreme Court of Pakis-  
 tan, therefore, following the order dated 15.3.97 of this  
 Tribunal in appeal No. 679/96 the appellant alleges to  
 have waited for the decision of the Supreme Court. The  
 judgment of the Hon'ble Supreme Court was delivered on  
 2.11.97 where-after the appellant promptly approa this

*[Handwritten scribble]*

10-99

*[Handwritten signature]*  
 REGISTER

Tribunal, so the delay is condoned and the appeal is well within time.

On factual side, there are some pertinent questions to be answered by this Tribunal. As far as the amendment of rule is concerned, the Government is fully empowered under section 26 of the Civil Servants Act, 1973. These rules are termed "sub-ordinate Legislation" and the Tribunal does not interfere with any decision of Legislation or Sub-ordinate Legislation. As regards the retrospective and prospective nature of the rules is concerned, the law is very much clear on the point. According to the famous maxim, "Omnis nova constitutio futuris formam imponere debet non praeteritis" (new law affects future transactions not the past).

New Law or rules ought to be construed so as to interfere as little as possible with vested rights. So it is quite clear that new law, rules or amended rules are only prospective in nature and not retrospective. But leaving aside this discussion, the amended rules of 1992 fixed 5% quota by promotion on seniority-cum-fitness basis from amongst the Sub-Engineers who have acquired degree in Engineering during service and 5% quota by promotion on seniority-cum-fitness basis from amongst Sub-Engineers who had joined the service as Graduate Engineers. This quota is now fixed and promotion should be allotted strictly in accordance with this percentage. The Departmental Promotion Committee (although the proceedings of the DPC cannot be challenged in this Tribunal) should always strictly follow the quota reserved for each category of Sub-Engineers and should not divide it on its own whims. The plea of the Government, that the quota of the category of Sub-Engineers to which the appellant belongs was already saturated, holds no ground and if some posts still remained that should have

10-59

RECEIVED  
EXAMINER

been equally divided between two categories of sub-Engineers and not otherwise. It is pertinent to note that when-ever the cases of this category of sub-Engineer comes before the Committee, as alleged by the appellant, either the rules are amended or some other method is followed to deprive them from their promotion. Admittedly the rules have fixed quota for each category of sub-Engineers and strict adherence should be done to the percentage allotted to each category. If some posts are still vacant those should be equally divided as required by the rules and the quota of one category should not be given to the other category. Divisions and bringing quotas at par by the Administrative Department will result in ultimate injustice to either category of the Sub-Engineers. With these observations, the respondents are directed to decide the appeal/representation of the appellant in accordance with law and if he is otherwise eligible, he should be given his due right under the amended rules. The appeal is disposed of accordingly. No order as to costs. File be consigned to the record.

ANNOUNCED

12.10.1999

*(Signature)*  
 (MOHAMMAD QAIM JAN KHAN)  
 CHAIRMAN

*(Signature)*  
 (SYED ABID HUSSAIN BOKHARI)  
 MEMBER

*(Signature)*  
 MEMBER  
 Peshawar

Date of Presentation of Applicant..... 7/6/2002  
 Number of Copies..... 2800  
 Copying Fee..... 9-00  
 Urgent..... 2-00  
 Total..... 11-00  
 Date of Completion of Copy..... 7/6/2002  
 Date of Delivery of Copy..... 7/6/2002



35  
ADMINISTRATIVE (7)  
GOVERNMENT OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT

No. SOE/ Irri /2-1/06/ Seniority list.  
Dated Peshawar the 10<sup>th</sup> May, 2011

Eng. Muhammad Tahir,  
Sub Divisional Officer,  
Gomal Zam Irrigation Division, D.I. Khan.

Subject:

APPEAL AGAINST ISSUANCE OF SENIORITY LISTS AS IT  
STOOD ON 31-12-2009 OF ASSISTANT ENGINEERS.

I am directed to refer to your appeal dated 11<sup>th</sup> February, 2010 on the subject noted above and to state that the competent authority has been pleased to accept your appeal in light of provision of Para-V (d) of Promotion Policy, 2009 issued by the Establishment Department, Govt. of Khyber Pakhtunkhwa, by restoring your inter-se-seniority.

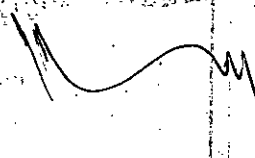
I am therefore, directed to inform that in future your name in the seniority list of Assistant Engineer of Irrigation Department will be placed at Sr. No. 19 instead of at Sr. No. 48.

  
(MISAL KHAN)  
SECTION OFFICER (ESTABLISHMENT)

Copy forwarded to:-

1. P.S to Secretary Irrigation Department.
2. Personal filed of the officer concerned.

SECTION OFFICER (ESTABLISHMENT)





36  
GOVERNMENT OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT

No. SO (E) IRR: /2-1/06/Seniority  
Dated Peshawar the 11<sup>th</sup> April, 2011

To

The Secretary to Govt. of Khyber Pakhtunkhwa,  
Establishment Department, Peshawar.

SUBJECT: APPEAL AGAINST THE ISSUANCE OF SENIORITY LIST OF ENGINEERS OF IRRIGATION DEPARTMENT AS STOOD ON 31-12-2009.

Dear Sir,

I am directed to refer to the subject noted above and to state that tentative seniority list for the year 2009 was circulated amongst the Assistant Engineers BPS-17 vide this Department letter dated 1-2-2010 (copy enclosed) whereby they were asked to submit objections / observations if any, so that a final seniority list may be notified.

2. In response Engr. Muhammad Tahir, Assistant Engineer, BPS-17 vide his appeal dated 11-2-2010 has pointed out that having B.Sc Engg. (Civil) degree, he was appointed as Sub-Engineer on 31-8-1986. His name was placed in the seniority list of Sub-Engineer below Mr. Muhammad Nisar, Assistant Engineer and above Waheedullah (now Assistant Engineer). The junior direct graduate Sub-Engineer was promoted in 1991, while he was not considered for promotion against the reserved quota of direct graduate to the post of Assistant Engineer (B-17) due to indifferent service record. In other meeting of D.P.C, held on 18-12-1993, three more junior, direct graduate Sub-Engineers namely Misal Khan, Samiullah and Aqeel Azhar were considered for promotion as Assistant Engineers (B-17) whereas his case was again deferred for the same remarks referred to above. Subsequently, he alongwith three other sub-engineers were appointed on acting charge basis as Asstt. Engineer (B-17) vide order dated 1-9-1999. He was promoted as Asstt. Engineer (B-17) on regular basis on 25-3-2003. The officer has requested that as per relevant rules his inter-se-seniority amongst the Assistant Engineers junior to him, who were earlier promoted as Assistant Engineer (B-17) from the direct graduate Sub-Engineers quota may be restored and necessary



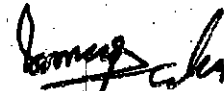
GOVERNMENT OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT

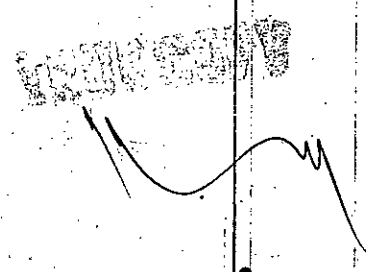
37

correction in this behalf may be made in the seniority list of Assistant Engineers as stood on 31-12-2009 and his name may be placed at Sr. No. 19 instead of at Sr. No. 48 in the final seniority list.

It is requested that this Department may be advised as to whether his inter-se-seniority of Mr. Muhammad Tahir, Assistant Engineer can be restored or otherwise? Because his juniors mentioned, at Sr. No of the Final Seniority List above were promoted much earlier to BPS-17 than the appellant.

Encls: As above

  
(MISAL KHAN)  
Section Officer (Establishment)



# VAKALATNAMA

In:the Court of

**Khyber Pakhtunkhwa Service Tribunal, PESHAWAR**

No. \_\_\_\_\_ of 2015

**Hayat Ullah Khan**

Petitioner  
Plaintiff  
Applicant  
Appellant  
Complainant  
Decree-Holder

**V**ERSUS

**Govt. of KP etc.**

Respondent  
Defendant  
Opponent  
Accused  
Judgment-Debtor

I / We **Hayat Ullah Khan,** the above noted **appellant** do hereby appointed and constitute, **Muhammad Zafar Tahirkheli & Ansar Ullah Khan, Advocates High Court,** to appear, plead, act, compromise, withdraw or refer to arbitration for me / us as my / our counsels / advocates in the above noted matter, without any liability for his default and with the authority to engage any other Advocate / Counsel at my / our cost.

The Client / Litigant will ensure his presence before the Court on each and every date of hearing and the counsel would not be responsible if the case is proceeded ex-parte or is dismissed in default of appearance. All cost awarded in favour shall be the right of Counsel or his nominee, and if awarded against shall be payable by me/us.

I / We authorize the said Advocates to withdraw and receive on my / our behalf all sums and amounts payable or deposited on my / our account in the above noted matter.

Dated

2/12/15

Office

**ATIQ LAW ASSOCIATES,**  
87, Al-Falah Street, Besides State Life Building,  
Peshawar Cantt, Phone: 091-5279529  
E-mail : [zafark.advocate@gmail.com](mailto:zafark.advocate@gmail.com)

Client

**M. Zafar Tahir**

Attested & Accepted (Advocates)

**Ansar Ullah Khan**

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**

**Service Appeal No. 1342/2015**

Hayat Ullah Khan

Appellant

Govt. of Khyber Pakhtunkhwa through Chief Secretary

Respondent

**Parawise comments in Service Appeal No. 1342/2015**

Respectfully sheweth:-

**Preliminary Objections:-**

1. That the appellant has not come to this Hon'able Tribunal with clean hands.
2. That the appellant has no cause of action and locus standi.
3. That in light of the Supreme Court of Pakistan order followed by advice of Advocate General, Khyber Pakhtunkhwa, the appellant has been promoted in BS-17 in the year 2003 with immediate effect.
4. That promotion is always made with immediate effect and not retrospective effect.

**FACTS:**

1. This para pertains to record. Hence no comments.
- 2&3. These paras admitted correct.
4. Admitted correct to the extent that pursuant to the advice of Advocate General, the appellant alongwith his 03 colleagues were promoted to the rank of Assistant Engineer (BS-17) on 25.03.2003. As neither the Supreme Court of Pakistan in its order dated 24.05.2002 had given any direction regarding ante date promotion of the appellant nor the Advocate General in his letter dated 17.06.2002 intimated any specific opinion on account of retrospective promotion as such promotion of the appellant etc was notified with immediate effect.

5. This Para is incorrect. As indicated in pre-para, the appellant has been promoted to the rank of Assistant Engineer (BS-17). Moreover, in the light of departmental appeal dated 28.09.2014 of the appellant, the ante date promotion case was placed before the competent forum i.e. Departmental Promotion Committee in its meetings held on 31.03.2015, 25.05.2015 and 13.05.2015. After threadbare discussion and perusal of the Supreme Court of Pakistan order and advice of the learned Advocate General, Khyber Pakhtunkhwa, referred to above, the committee did not consider the departmental appeal of the appellant for the reasons that neither the Supreme Court of Pakistan in its order dated 24.05.2002 had given any direction for ante date promotion nor the Advocate General in his advice dated 13.06.2002 indicated any specific opinion on account of retrospective promotion of the appellant.

**GROUNDS:-**

- a. As indicated in the above comments, no such orders had been issued by the Supreme Court of Pakistan for ante date promotion of the appellant as such the departmental appeal was rejected by the competent forum.
- b. In the light of Apex Court orders, the appellant alongwith his 03 colleagues had been promoted to the post of Assistant Engineer (BS-17). Hence question of violation of the judgment of the Hon'able tribunal does not arise.
- c&d. As explained in pre-paras, pursuant to the Advocate General's advice based on the orders of the Apex court, the appellant etc have been promoted to the rank of Assistant Engineer (BS-17).
- e. Under the rules, promotion is always considered against a clear vacancy with immediate effect. According to the share quota, promotion of Graduate Sub Engineers have been considered from time to time.
- f. Incorrect to the extent that Muhammad Tahir alongwith the appellant and others have been promoted to the rank of Assistant Engineer (BS-17) on 25.03.2003 and not on 29.03.2003. Moreover, pursuant to the departmental appeal of Muhammad Tahir for reconsideration of his inter-seniority, his case was processed in the Irrigation Department but due to an appeal of late Zahid Ullah, Assistant Engineer pending in this Hon'able Tribunal, seniority of the Assistant Engineers is subjudiced.

g&h. According to orders of the Apex Court and advice of Advocate General thereon, the appellant has been promoted to the rank of Assistant Engineer (BS-17) on merit correctly.

In view of the facts narrated above, the instant appeal having no justification and sound footings may graciously be rejected.

*Jang Pashtud* -

Chief Secretary,  
Khyber Pakhtunkhwa  
(Respondent No. 1)

*Jang Pashtud* -

Secretary Irrigation  
(Respondent No. 2)

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

Service Appeal No. 1342 / 2015

Hayat Ullah Khan

**VERSUS**

Govt of Khyber Pakhtunkhwa etc.

=====

**APPELLICATION FOR FILLING ADDITIONAL DOCUMENTS**

=====

**Respectfully Sheweth:**

1. That the above noted appeal is pending before this Hon'ble Tribunal and is fixed for 22-03-2019.
2. That certain documents are necessary to be placed on record for the just conclusion of appeal on merits, detailed as below:
  - i. Notification dated 30-04-1979
  - ii. Notification dated 13-08-1994
  - iii. Letter dated 17-01-1995
  - iv. Notification dated 30-05-1994
  - v. Letter dated 08-08-1995
  - vi. Letter dated 20-11-1995
  - vii. Letter dated 30-01-1996
  - viii. Letter dated 01-02-1996
  - ix. Letter dated 29-01-1997
  - x. Letter dated 27-02-1999
  - xi. Order dated 07-08-1999
  - xii. Letter dated 06-02-2002
  - xiii. Letter dated 07-01-2015

It is therefore, humbly requested that by application may kindly be allowed by placing the above mentioned documents on record.

Appellant,

Through,

Peshawar, dated  
11<sup>th</sup> / Mar, 2019

(MUHAMMAD ZAFAR TAHIRKHELI)  
Advocate

NOTIFICATION

Annexure I

Dated Peshawar, the 30th April, 1979.

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 North-West Frontier Province is pleased to make the following rules, namely:

THE NORTH-WEST FRONTIER PROVINCE IRRIGATION AND PUBLIC HEALTH ENGINEERING DEPARTMENT (RECRUITMENT AND APPOINTMENT) RULES, 1979.

1. (1) These rules may be called the North-West Frontier Province Irrigation and Public Health Engg; 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 Schedule annexed shall be such as given in column 3 to 7 of the said Schedule.

Secretary to Government of North-West Frontier Province, Services and General Administration Department.

Endst; No. SORI(S&GAD)1-12/74, Dated Peshawar, the 30th April, 1979

Copy forwarded to the:-

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 Deputy Commissioners/Political Agents in NWFP.
7. All District & Sessions Judges in NWFP.
8. Registrar, High Court, NWFP, Peshawar.
9. All Section officers in the S&GAD.
10. Manager, Government Printing Press Peshawar for publication in the Government Gazette. He is to supply 50 copies of the printed notification.

Sydney Khan

(Syed Noor R Section office)

TRUE COPY

1-71  
5:3  
5.A  
6  
7/5  
GH  
96M  
M2  
228  
7/5/79



Annex II

### 3 NOTIFICATION

Peshawar, dated, the 13th

No. SORI (SEGAD) 1-12/74. - In exercise of the powers conferred by section 23 of the North-West Frontier Province Civil Service Act, 1973, (N.W.F.P. Act XVIII of 1973), the Governor of the North-West Frontier Province is pleased to direct that in the North-West Frontier Province Irrigation & Public Health Engg. Department (Recruitment & Appointment) Rules, 1979, the following amendments shall be made, namely:-

#### AMENDMENTS

In the Schedule -

(a) against serial No. 4, in column 7, for clause (c), the following clause shall be substituted, namely:-

"(c) twenty per cent by selection on merit, with due regard to seniority, from amongst officiating Asstt. Engrs. of Senior Scale Sub-Engineers of the Department concerned where the vacancy occurs, who hold a diploma and have passed the Departmental Examination" and

(b) against serial No. 5, for the existing entry-

(i) in column 2, the following entry shall be substituted, namely:-

"Senior Scale Sub-Engineer"; and

(ii) in column 7, the following entry shall be substituted, namely:-

by selection on merit, with due regard to seniority, from amongst Sub-Engineers of the Department concerned where the vacancy occurs, who have passed the Departmental Examination and have at least ten years service as such."

CHIEF SECRETARY,  
GOVERNMENT OF NORTH-WEST FRONTIER PROVINCE

Endst. No. SORI (SEGAD) 1-12/74. Dated Peshawar, the 13th Aug. 1974.

Copy forwarded to the:-

- All Administrative Secretaries to Govt.
- Secretary to Governor, N.W.F.P.
- Secretary, NWFP, Public Service Commission
- Chief Engineer, Irrigation Department, NWFP.
- Chief Engineer, Public Health Engg. Dept. NWFP.
- All Section Officers in SEGAD.
- Manager, Govt. Printing Press Peshawar for publication.
- Govt. Gazette. He is requested to supply 50 copies printed.

TRUE COPY

S.K.  
L  
96/11  
1/2/75  
20/8/81

4

SCHEDULE.

IRRIGATION AND PUBLIC HEALTH ENGINEERING DEPARTMENT.

Sl. No.	Nomenclature of posts.	Minimum qualification for appointment		Age for initial recruitment.		Method of recruitment.
		by initial recruitment or by transfer.	by promotion	Minimum	Maximum	
1.	2.	3.	4.	5.	6.	7.

POSTS COMMON TO IRRIGATION AND PUBLIC HEALTH ENGG. DEPARTMENT.

1. Engineer.

By selection on merit from amongst four senior most officers in each of Irrigation Deptt; and three in case of Public Health Engrg; Deptt; 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.

2. Superintending Engineer.

Degree in Engineering from a recognised University.

By selection on merit from amongst the Executive Engineers or holders of equivalent posts in the Department concerned, in which the vacancy occurs, with at least twelve years service in grade-17 and 18, seniority being considered only in the case of officers of practically the same standard of merit.

3. Executive Engineer.

**TRUE COPY**

By selection on merit with due regard to seniority from amongst Assistant Engineers of the Department concerned in which the vacancy occurs, with at least six years service as such.

5

4(1)  
19.6.64

1. 2. 3. 4. 5. 6. 7.

4. Assistant 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 recognised University or Institute, as specified in column 6.

21 years 30 years

- (a) Seventy per cent by initial recruitment; and
- (b) ten per cent by selection on merit with due regard to seniority from amongst Sub-Engineers of the Department concerned in which the vacancy occurs, who hold a degree; and
- (c) twenty per cent by selection on merit with due regard to seniority from amongst officiating Assistant Engineers of the Department concerned in which the vacancy occurs who hold a diploma.

5. Officiating Assistant Engineers/ Sub-Divisional officer.

Diploma in Engineering from a recognised Institute.

Twenty-five per cent of the total number of posts of the diploma hold Sub-Engineers shall form the posts of officiating Assistant Engineers/ Sub-Divisional officers and shall be filled by selection on merit with due regard to seniority from amongst Sub-Engineers of the Department concerned in which the vacancy occurs, who have passed the Departmental Examination and have at least ten years service as such.

6. Administrative officer/Budget & Accounts officer.

By selection on merit with due regard to seniority from amongst holders of the posts of senior Superintendents Superintendents, in the Department in which the vacancy occurs.

TRUE COPY

6

(- 3 -)

POSTS IN IRRIGATION DEPARTMENT.

7. Canal Collector. -

7A) *Amir Khan*

8. Deputy Collector. -

9. Assistant Accounts officer. -

10. Sub-Engineer. Diploma in Engineering from a recognised Institute of Pakistan. -

15 years - 25 years.

POSTS IN PUBLIC HEALTH ENGINEERING DEPARTMENT.

11. Research officer. M.Sc in Microbiology or Chemistry from recognised University. -

21 years 30 years.

12. Assistant research officer. P.Sc in Microbiology or Chemistry from a recognised University. -

21 years 30 years.

By selection on merit with preference to fitness for higher responsibilities from amongst Deputy Collectors of the Irrigation Department.

By selection on merit with due regard to seniority from amongst holders of the post of Billafars of the Irrigation Department, with at least fifteen years service as such.

By selection on merit with due regard to seniority from amongst the holders of the post of Superintendent.

By initial recruitment.

(i) Fifty per cent by initial recruitment; and

(ii) fifty per cent by selection on merit with due regard to seniority from amongst the holders of the posts of Assistant Research officer, with at least three years experience as such.

By initial recruitment.

**TRUE COPY**

*Handwritten notes in Urdu script at the bottom of the page.*

NOTIFICATION

Annexure I

Dated Peshawar, the 30th April, 1979.

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 North-West Frontier Province is pleased to make the following rules, namely:

THE NORTH-WEST FRONTIER PROVINCE IRRIGATION AND PUBLIC HEALTH ENGINEERING DEPARTMENT (RECRUITMENT AND APPOINTMENT) RULES, 1979.

1. (1) These rules may be called the North-West Frontier Province Irrigation and Public Health Engg; 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 Schedule annexed shall be such as given in column 3 to 7 of the said Schedule.

Secretary to Government of North-West Frontier Province, Services and General Administration Department.

Endst; No. SORI(S&GAD)1-12/74, Dated Peshawar, the 30th April, 1979

Copy forwarded to the:-

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 Deputy Commissioners/Political Agents in NWFP.
7. All District & Sessions Judges in NWFP.
8. Registrar, High Court, NWFP, Peshawar.
9. All Section officers in the S&GAD.
10. Manager, Government Printing Press Peshawar for publication in the Government Gazette. He is to supply 50 copies of the printed notifica

*Sy Noor R*

(Syed Noor R  
Section officer)

TRUE COPY

228  
7/5/79

S.A  
6  
7/5  
GH

96M

M2

2/5

NOTIFICATION

Peshawar, dated, the 13th July

No. SORI (SEGAD) 1-12/74. - In exercise of the powers conferred by section 25 of the North-West Frontier Province Civil Service Act, 1973, (N.W.F.P. Act XVIII of 1973), the Governor of the North-West Frontier Province is pleased to direct that in the North-West Frontier Province Irrigation & Public Health Engg. Department (Recruitment & Appointment) Rules, 1972, the following amendments shall be made, namely; -

AMENDMENTS

In the Schedule -

(a) against serial No. 4, in column 7, for clause (c), the following clause shall be substituted, namely; -

"(c) twenty per cent by selection on merit, with due regard to seniority, from amongst officiating Asstt. Engrs. / Senior Scale Sub-Engineers of the Department concerned where the vacancy occurs, who hold a diploma and have passed the Departmental Examination"; and

(b) against serial No. 5, for the existing entry - (i) in column 1, the following entry shall be substituted, namely; -

"Senior Scale Sub-Engineer"; and

(ii) in column 7, the following entry shall be substituted, namely;

by selection on merit, with due regard to seniority, from amongst Sub-Engineers of the Department concerned where the vacancy occurs, who have passed the Departmental Examination and have at least ten years service as such."

CHIEF SECRETARY, GOVERNMENT OF NORTH-WEST FRONTIER PROVINCE

Endst. No. SORI (SEGAD) 1-12/74. Dated Peshawar, the 13th July 1974

Copy forwarded to the:-

- All Administrative Secretaries to Govt.
- Secretary to Governor, N.W.F.P.
- Secretary, NWFP. Public Service Commission
- Chief Engineer, Irrigation Department, NWFP.
- Chief Engineer, Public Health Engg. Dept.
- All Section Officers in SEGAD.
- Manager, Govt. Printing Press Peshawar
- Govt. Gazette, to be printed to supply 50 copies printed.

TRUE COPY

(Signature)

S.K. 4 20/8/87

12/8/74

9

**SCHEDULE**  
**IRRIGATION AND PUBLIC HEALTH ENGINEERING DEPARTMENT.**

Sl. No.	Nomenclature of posts.	Minimum qualification for appointment		Age for initial recruitment.		Method of recruitment.
		by initial recruitment or by transfer.	by promotion	Minimum	Maximum	
1.	2.	3.	4.	5.	6.	7.

**POSTS CONCERN TO IRRIGATION AND PUBLIC HEALTH ENGG. DEPARTMENT.**

1. Engineer.

2. Superintending Engineer.

3. Executive Engineer.

Degree in Engineering from a recognised University.

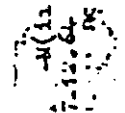
**TRUE COPY**

By selection on merit from amongst four senior most officers in case of Irrigation Deptt; and three in case of Public Health Engrg. Deptt; 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.

By selection on merit from amongst the Executive Engineers or holders of equivalent posts in the Department concerned, in which the vacancy occurs, with at least twelve years service in grade-17 and 18, seniority being considered only in the case of officers of practically the same standard of merit.

By selection on merit with due regard to seniority from amongst Assistant Engineers of the Department concerned in which the vacancy occurs, with at least six years service as such.

10



1. 2. 3. 4. 5. 6. 7.

4. Assistant 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 recognised University or Institute, as specified in column 6.

21 years 30 years

- (a) Seventy per cent by initial recruitment; and
- (b) ten per cent by selection on merit with due regard to seniority from amongst Sub-Engineers of the Department concerned in which the vacancy occurs, who hold a degree; and
- (c) twenty per cent by selection on merit with due regard to seniority from amongst officiating Assistant Engineers of the Department concerned in which the vacancy occurs who hold a diploma.

5. Officiating Assistant Engineers/ Sub-Divisional officers.

Diploma in Engineering from a recognised Institute.

Twenty-five per cent of the total number of posts of the diploma holders Sub-Engineers shall form the posts of officiating Assistant Engineers/ Sub-Divisional officers and shall be filled by selection on merit with due regard to seniority from amongst Sub-Engineers of the Department concerned in which the vacancy occurs, who have passed the Departmental Examination and held at least ten years service as such.

6. Administrative officer, Budget & Accounts officer.

By selection on merit with due regard to seniority from amongst holders of the posts of senior Superintendents, Superintendents, in the Department in which the vacancy occurs.

**TRUE COPY**



11

172  
1730

(- 3 -)

By selection on merit with p...  
reference to fitness for higher...  
possibilities from amongst Dy. Col...  
of the Irrigation Department.

POSTS IN IRRIGATION DEPARTMENT.

7. Canal Collector. -  
7A. *Amir Khan...*

8. Deputy Collector. -

9. Assistant  
Accounts officer. -

10. Sub-Engineer. Diploma in Engineering - 15 25  
from a recognised Insti- years years.  
tute of Pakistan.

By selection on merit with p...  
reference to fitness for higher...  
possibilities from amongst Dy. Col...  
of the Irrigation Department.

By selection on merit with due re-  
gard to seniority from amongst holders  
of the post of Zilladars of the Irrig-  
ation Department, with at least five  
years service as such.

By selection on merit with due re-  
gard to seniority from amongst the holders  
of the post of Superintendent.

By initial recruitment.

POSTS IN PUBLIC HEALTH ENGINEERING DEPARTMENT.

11. Research M.Sc in Microbiology or - 21 30  
officer. Chemistry from recog- years years.  
nised University.

(i) Fifty per cent by initial recruit-  
ment; and

(ii) fifty per cent by selection on  
merit with due regard to seniority  
from amongst the holders of  
the posts of Assistant Research  
officers, with at least three  
years experience as such.

**TRUE COPY**

12. Assistant P.Sc in Microbiology or - 21 30  
Research Research Chemistry from a recog- years years.  
officer. nised University.

By initial recruitment.

*116*  
*96*  
*11/11/54*

لانی پور  
کی پور

*11/11/54*  
*11/11/54*  
*11/11/54*

12

84  
60  
105

GOVERNMENT OF N.W.F.P.  
IRRIGATION DEPARTMENT.

No. SO(E)J&PHE/23-5/73  
Dated Pesh: the 17-1-1995.

To

The Chief Engineer,  
Irrigation Department.

1-91 1711

300  
E  
NO

Subject: AMENDMENT IN IRRIGATION DEPARTMENT (RECRUITMENT AND APPOINTMENT) RULES 1979 SCHEDULE-J (COLUMN (7) CLAUSE (B) SERIAL NO. (4)).

B  
26-60  
E(A)

I am directed to enclose herewith a copy of letter NO. SOR-IV(S&GAD)6-53/94 dated 11th January, 1995 on the subject noted above and to state that the case was referred to S&GAD who advised that amendment already issued in Service Rules of Irrigation Department & PHE vide Notification SO(E)JPHE/6-12/94, dated 30.5.1994 is equally applicable to the employees of the Irrigation Department, therefore there is no need of separate notification by the Irrigation Department.

I am therefore directed to request that seniority list of Sub Engineers, who acquired degree in service and those joined the service as degree holder be prepared separately in accordance to amended service rules and circulated to all concerned for further necessary action.

SECTION OFFICER (ESTT.)  
IRRIGATION DEPARTMENT.

TRUE COPY

6138 31/5/94

13

195

GOVERNMENT OF NWFP  
PUBLIC HEALTH ENGINEERING  
DEPARTMENT

Dated Peshawar, the 30/5/1994

By: Secy  
& A  
O: (P)

NOTIFICATION

No. SO(E)PHED/6-12/94. In exercise of the powers conferred by Section 26 of the North West Frontier Province Civil Servants Act, 1973 (NWFP Act XVIII of 1973), the Governor of North West Frontier Province is pleased to direct that in the North West Frontier Province Irrigation & Public Health Engineering Department (Recruitment & Appointment) Rules, 1979, the following further amendment shall be made, namely;-

AMENDMENT:

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

- “(b) (1) 5% by promotion on the basis of seniority-cum-fitness from amongst the Sub Engineers who have acquired degree in Engineering during service;
- (2) 5% by promotion on the basis of seniority-cum-fitness from amongst the Sub Engineers who have joined service as Graduate Engineer;

Provided that if no Sub Engineer in a category is available for promotion, the vacancy shall be filled in from the other category; and”

**TRUE COPY**

SECRETARY TO GOVT. OF NWFP  
PUBLIC HEALTH ENGINEERING  
DEPARTMENT

Enclat No: SO(E)/PHED/6-12/94

dated Peshawar, the 30/5/1994

Copy forwarded for information and necessary action to:-

1. All Administrative Secretaries to Govt. of NWFP.
2. Secretary to Govt. NWFP, Peshawar.
3. Secretary to Chief Minister, NWFP, Peshawar.
4. Private Secretary to Chief Secretary, NWFP, Peshawar.
5. Chief Engineer, PHED, NWFP, Peshawar.
6. Chief Engineer (Dev), PHED, NWFP, Peshawar.
7. Section Officer (R-II) S&GA Department, Peshawar with reference to his letter No. SO(R-II)S&GAD/9-24/94 dated 30.5.1994.
8. The Assistant Draftsman-II, Govt. of NWFP, Law Department, Peshawar with reference to his letter No. Reg-1(8)/76-2864 dated 25.5.1994.
9. The Manager Government Printing & Stationery Department, Peshawar for publication in the next issue of Government Gazette with the request that 30 printed copies of the Notification may kindly be supplied to this Department for further distribution.

(ABDUL NAZIR KHAN)  
SECTION OFFICER (GEN)  
P. H. E. DEPARTMENT

SOCE)

Irrigation

14

84  
60  
105

GOVERNMENT OF N.W.F.P.  
IRRIGATION DEPARTMENT.

No. SO(E)J&PHE/23-5/73  
Dated Pesh: the 17-1-1995.

To

The Chief Engineer,  
Irrigation Department.

1-91 1711

300  
E  
2  
10

Subject: AMENDMENT IN IRRIGATION DEPARTMENT (RECRUITMENT AND APPOINTMENT) RULES 1979 SCHEDULE-J (COLUMN (7) CLAUSE (B) SERIAL NO. (4).

B  
26.60  
E(A)

I am directed to enclose herewith a copy of letter NO. SOR-IV(S&GAD)6-53/94 dated 11th January, 1995 on the subject noted above and to state that the case was referred to S&GAD who advised that amendment already issued in Service Rules of Irrigation Department & PHE vide Notification SO(E)JPHE/6-12/94, dated 30.5.1994 is equally applicable to the employees of the Irrigation Department, therefore there is no need of separate notification by the Irrigation Department.

I am therefore directed to request that seniority list of Sub Engineers, who acquired degree in service and those joined the service as degree holder be prepared separately in accordance to amended service rules and circulated to all concerned for further necessary action.

SECTION OFFICER (ESTT:)  
IRRIGATION DEPARTMENT.

TRUE COPY

Handwritten signature/initials

4138 31/5/94

15

195

By: Secy  
& A  
O: (P)

GOVERNMENT OF NWFP  
PUBLIC HEALTH ENGINEERING  
DEPARTMENT

Dated Peshawar, the 30/5/1994

NOTIFICATION

No. SO(E)PHED/6-12/94. In exercise of the powers conferred by Section 26 of the North West Frontier Province Civil Servants Act, 1973 (NWFP Act XVIII of 1973), the Governor of North West Frontier Province is pleased to direct that in the North West Frontier Province Irrigation & Public Health Engineering Department (Recruitment & Appointment) Rules, 1979, the following further amendment shall be made, namely;

AMENDMENT:

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

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

Provided that if no Sub Engineer in a category is available for promotion, the vacancy shall be filled in from the other category; and"

SO(E)  
h

SECRETARY TO GOVT. OF NWFP  
PUBLIC HEALTH ENGINEERING  
DEPARTMENT

Endst No: SO(E)/PHED/6-12/94

dated Peshawar, the 30/5/1994

Copy forwarded for information and necessary action to

1. All Administrative Secretaries to Govt. of NWFP.
2. Secretary to Govt. NWFP, Peshawar.
3. Secretary to Chief Minister, NWFP, Peshawar.
4. Private Secretary to Chief Secretary, NWFP, Peshawar.
5. Chief Engineer, PHED, NWFP, Peshawar.
6. Chief Engineer (Dev), PHED, NWFP, Peshawar.
7. Section Officer (R-II) S&GA Department, Peshawar with reference to his letter No. SO(R-II)S&GAD/9-24/94 dated 30.5.1994.
8. The Assistant Draftsman-II, Govt. of NWFP, Law Department, Peshawar with reference to his letter No. Reg-1(8)/76-2864 dated 25.5.1994.
9. The Manager Government Printing & Stationery Department, Peshawar for publication in the next issue of Government Gazette with the request that 30 printed copies of the Notification may kindly be supplied to this Department for further distribution.

TRUE COPY

(ABDUL NAZIR KHAN)  
SECTION OFFICER (GEN)

16

OFFICE OF THE CHIEF ENGINEER  
IRRIGATION N.W.F.P PESHAWAR.

NO. 217/6 /IB/A/3-E(IV),

Dated Peshawar the 8/8/1995.

To

The Secretary to Govt. of NWFP,  
Irrigation Department Peshawar.

Subject. PROMOTION OF MR. MOHAMMAD AFZAL SUB ENGINEER.

Ref: Your letter No. SO(E) I&PHE/4-6/73/6714,  
dated 2/8/1995.

*Chs 129*

Draft working paper alongwith connected documents in connection with the subject noted case is submitted herewith for favour of further necessary action as desired please.

Encl.

*[Signature]*  
ADMINISTRATIVE OFFICER  
Phone No. 279261.

- 1) Working Paper (6copies)
- 2) Synopsis (6copies)
- 3) NO Enquiry Certificate (6copies)
- 4) Seniority List (6copies)
- 5) Personal Register.

TRUE COPY

*[Large Signature]*

17

DRAFT WORKING PAPER.

Subject:- PROMOTION OF SENIOR SCALE (SPS-16) SUB ENGINEER  
(MECHANICAL) TO THE RANK OF SUB DIVISIONAL OFFICER  
(MECHANICAL) (SPS - 17).

It is submitted that Mr. Hidayatullah Sub Divisional Officer (Mechanical) attached to Mechanical Irrigation Sub Division DIKhan is likely to be transferred to CRDC Ist Lift Irrigation Project DIKhan. On his transfer from Mechanical Sub Division, DIKhan a regular/cadre post of Sub Divisional Officer Mechanical will be come vacant in the Department which is required to be filled in on the basis of merit with due regard to seniority-cum-fitness from amongst senior scale Sub Engineers of the Department concerned who have passed the Departmental Examination.

Mr. Mohammad Afzal the senior most senior scale Sub Engineer (Mechanical) SPS-16 at Sl.NO.1 of the attached seniority list fulfilling the above condition of service and is eligible for promotion to the rank of Sub Divisional Officer (Mechanical) in Irrigation Department against the above regular post.

The Sub Engineer is not involved in any departmental/judicial enquiry.

His Personal Register and Synopsis of AOs and seniority list is enclosed herewith.

The case is submitted to the Departmental Promotion Committee for consideration/clearance of Mr. Mohammad Afzal Senior Scale Sub Engineer (Mechanical) SPS-16 to the rank of Sub Divisional Officer (Mechanical) SPS-17 in Irrigation Department.

**TRUE COPY**

18

OFFICE OF C.E. IRR:

Main Diary No. 17338	Date 20/11
Section 946	Date 22/11/95
C. E. T. O. SE HQ A A O	To SWC SWO S. G. A. O.

GOVERNMENT OF N. F. P.  
IRRIGATION DEPARTMENT.  
No. SO(E)IRE/4-3/91 9804  
Dated Pesh: the 20-11-1995.

1. The Additional Secretary (Reg.)  
S & G. A Department.
2. The Additional Secretary (Reg.)  
Finance Department.

SUBJECT: MEETING OF DPC (IRRIGATION DEPARTMENT).

In continuation of this department letter of even number dated 19-11-1995 on the subject noted above and to forward herewith working paper alongwith its enclosure regarding the following promotion case which may also be included in the agenda of the DPC meeting scheduled to be held on 27-11-1995 at 10.00 AM.

PROMOTION OF GRADUATE SUB ENGINEERS (CIVIL)  
TO THE RANK OF ASSISTANT ENGINEER (E-17)  
IRRIGATION DEPARTMENT.

SECTION OFFICER (ESTT.)  
IRRIGATION DEPARTMENT.

Copy forwarded.

1. Chief Engineer, Irrigation Department, Peshawar for information and to request to attend the meeting.
2. P.S. to Secretary Irrigation for information.

*[Signature]*  
SECTION OFFICER (ESTT.)

1-95





19

OFFICE OF THE CHIEF ENGINEER  
IRRIGATION DEPARTMENT NWFP  
PESHAWAR

NO. 2561 /IB/A/3-E(iv).

Dated Peshawar the 30/1/1996/.

To

The Secretary to Govt: of NWFP,  
Irrigation Department Peshawar.

Subject:- PROMOTION OF GRADUATE SUB ENGINEERS TO  
THE RANK OF ASSISTANT ENGINEER (BIS-17)  
IN THE IRRIGATION DEPARTMENT, N.W.F.P.

Draft working paper alongwith connected  
documents in connection with the subject noted case  
are submitted herewith for favour of further necessary  
action.

Personal Registers in respect of the  
following Sub Engineers have already been submitted  
to your office.

- 1/ Mr.Mohammad Naeem.
- 2/ Mr.Aurangzeb.
- 3/ Mr.Mohammad Tahir.
- 4/ Mr.Mohammad Hayat.

Received  
*[Signature]*  
30.1.96

ADMINISTRATIVE OFFICER  
PHONE NO. 279261

*[Signature]*  
30/1

TRUE COPY

*[Signature]*

20  
100  
Annexure-VI  
OFFICE OF THE CHIEF ENGINEER  
IRRIGATION DEPARTMENT NWFP  
PESHAWAR

NO. 2673 /IB/A/3-E(iv),

Dated Peshawar the 1/2/1996/.

To

The Secretary to Govt: of NWFP,  
Irrigation Department, Peshawar.

Subject: - PROMOTION OF SENIOR SCALE SUB ENGINEER  
(BPS-16) TO THE RANK OF ASSISTANT ENGINEER  
(BPS-17) IN IRRIGATION DEPARTMENT.

Working paper alongwith Personal Registers  
in respect of the following officials of Irrigation  
Department, synopsis of Annual Confidential Reports and  
relevant role in connection with the subject noted case  
are submitted herewith for favour of further consideration.

- 1/ Mr. Mohammad Yaqoob,
- 2/ Mr. Imroz Khan.
- 3/ Mr. Abdul Akbar.
- 4/ Mr. Saadullah-II.
- 5/ Mr. Falak Naz.

Personal Register of Mr. Zahir Shah

Sub Engineer, has already been submitted to your office.

Encl: As above.  
1) F/Registers 5 Nos.  
2) Working Paper.

2  
ADMINISTRATIVE OFFICER  
PHCNE NO. 279261

1/2/96  
TRUE COPY

Received

for

1.2.96

Annexure-VII

21

221

220

OFFICE OF THE CHIEF ENGINEER  
IRRIGATION DEPARTMENT NWFP  
PESHAWAR

NO. 2268 /IB/A/3-E(iv),

Dated Peshawar the 27/1/1997/.

To

The Secretary to Govt: of NWFP,  
Irrigation Department Peshawar.

Subject:- PROMOTION OF SENIOR SCALE SUB ENGINEERS BPS-16  
TO THE RANK OF ASSISTANT ENGINEERS BPS-17.

Ref'nce:- Your letter No. SO(E)IRR:/4-3/91/202,  
dated 25-1-1997.

u/220

-----

Necessary reply to the observations contained  
in your above quoted letter is submitted as under please :-

- 1/ It is correct that the seniority of senior scale Sub Engineers BPS-16 in Irrigation Department is under dispute/contraversy over it. But on accepting of appeal of Mr. Zaram Jan Sub Engineer as per directions contained in your letter No. SO(E)IRR:/4-1/84,3965, dated 2-10-1996; a detailed report has already been submitted to your office vide this office letter N. 28082/IB/A/548-PF, dated 9-12-1996 and No. 622/IB/A/548-PF, dated 8-1-1997, for re-consideration of the decision on the appeal of Mr. Zaram Jan Sub Engineer for review and allowing this Department for maintaining the seniority of Senior Scale Sub Engineers on the basis of grant of BPS-16 and not on the basis of appointment (as per past practice in vogue since long) which may kindly be set aside and process the promotion case of Senior Scale Sub Engineers BPS-16 to the rank of Assistant Engineers BPS-17.
  - u/152  
SUB-PF
  - u/153  
SUB-PF
  - u/157  
SUB-PF
- 2/ Four Nos vacancy of Assistant Engineers BPS-17 are available in the Department required to be filled in through promotion of the senior scale Sub Engineers to the post of Assistant Engineers BPS-17.

In this context the list of Diploma Holders Assistant Engineers already submitted with the promotion case of senior scale Sub Engineers BPS-16 is also referred.

c/ CHIEF ENGINEER  
PHONE NO. 278320  
28/1

Handwritten signature and stamp

22

GOVERNMENT OF N.W.F.P.  
IRRIGATION DEPARTMENT.

Dated Pesh: the 27/02/1999

NOTIFICATION.

SO(ED)IRRE/23-5/73. In pursuance of the provisions contained in sub rule (2) of rule 3 of the North West Frontier Province Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 the Irrigation and Public Health Engineering Department, in consultation with the Services and General Administration Department and the Finance Department, hereby directs that in the North-West Frontier Province Irrigation and Public Health Engineering Department (Recruitment and Appointment) Rules, 1979, the following further amendments shall be made namely:-

AMENDMENT.

In the Schedule;

- (i) for the existing entries in column 7 against serial No.4, the following shall be substituted namely.
  - (a) Sixty five percent of the total posts by initial recruitment ;
  - (b) Ten percent of the total posts by promotion, on the basis of seniority-cum-fitness from amongst the Sub Engineers possessing Diploma at the time of their induction into service but acquired degree in Engineering during service ;
  - (c) Ten percent of the total posts by Promotion, on the basis of seniority-cum-fitness, from amongst the Sub Engineers who joined service as Degree holders in Engineering ; and
  - (d) Fifteen percent of the total posts by selection on merit, with due regard to seniority, from amongst the officiating Assistant Engineers/Senior Scale Sub Engineers, who hold a Diploma in Engineering and have passed Departmental Examination;

...2...

**TRUE COPY**

12-1-1999  
9/13

23

....2....

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

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

SECRETARY TO GOVT:OF NWFP  
IRRIGATION & POWER DEPARTMENT

Endst: No. SO(E)IRR: /23-5/73/1423/36 Dated 27/02/1999.

Copy forwarded to the:

1. All Administrative Secretaries to Govt:of NWFP.
2. Secretary to Governor, NWFP Peshawar.
3. Secretary to Chief Minister, NWFP.
4. Private Secretary to Chief Secretary, NWFP.
5. Chief Engineer, Irrigation.
6. Chief Engineer (Development).
7. Manager Government Printing Press, Peshawar, for publication in the next issue of Government Gazettee.
8. Secretary, NWFP, Public Service Commission, Peshawar.
9. Section Officer (R-II) S & GAD, Peshawar.
10. Assistant Draftsman-II, Law Department.

*[Handwritten Signature]*  
SECTION OFFICER (ESTT:)  
IRRIGATION DEPARTMENT.

**TRUE COPY**  
*[Handwritten scribble]*

1728	Date 2/3
705	Date 4/3/99.
S.W.C	
S.W.O	
S.G.	
A.O.	

*[Handwritten signature]*

GOVERNMENT OF N.W.F.P.  
IRRIGATION DEPARTMENT

Dated Pesh: the 07-08-99.

NO. SDC/IR/FA/74-9/917 In consultation with the Departmental Promotion Committee, the Governor, NWFP is pleased to promote the following Seven (07) Diploma Holders-cum-Graduate Sub Engineers (who acquired Degree in Engineering during service) from their 10% reserved quota, and two (02) Diploma Holders-senior scale Sub Engineers (02) of the Irrigation Department to the rank of Assistant Engineers (BPS-17) with immediate effect.

DIPLOMA HOLDER-CUM-GRADUATE SUB ENGINEERS.

1. Mr. Shaukat Hussain Shah.
2. Mr. Mohammad Naeem.
3. Mr. Faizullah Khan.
4. Mr. Aurangzeb Khan.
5. Mr. Ali-ur-Rehman.
6. Mr. Mohammad Younas.
7. Mr. Mohammad Sajjad.

DIPLOMA HOLDER (SENIOR SCALE SUB ENGINEERS).

1. Mr. Eabez Ali.
2. Mr. Riaz Ali.

Consequent upon their promotion, the Assistant Engineers (BPS-17), are hereby appointed to the following positions noted against each, with effect, in the public interest:

S. No.	Name of Officer's	Additional Info
1.	Mr. Shaukat Hussain Shah	SDO, District, Bannu
2.	Mr. Mohammad Naeem	SDO, District, Bannu
3.	Mr. Faizullah Khan	SDO, District, Bannu
4.	Mr. Aurangzeb Khan	SDO, District, Bannu

**TRUE COPY**

25  
(Annexure) ~~(X)~~  
GOVERNMENT OF NWFP  
IRRIGATION & POWER DEPARTMENT.

No.SO(E)/Irr:/14-1/2001/  
Dated Peshawar,the 6-9-2002

To :

The Secretary Establishment,  
Government of NWFP,  
Establishment & Administration  
Department.

Subject:-

LEGAL ADVICE IN THE PROMOTION OF SUB-ENGINEERS AND ASSISTANT ENGINEERS.

Dear Sir,

I am directed to refer to the subject noted and to state that the following Sub-Engineers were promoted as Assistant Engineer on "acting charge basis" vide this Department order No.SO(E)IRR/4-3/91/11856-69 dated 1-9-1999. Annex-I.

1. Mr. Akbar Khan.
2. Mr. Hayatullah Khan
3. Mr. Mir Muhammad
4. Mr. Muhammad Tabir.

2. It was clearly stipulated in the notification that such appointment was by way of temporary measure and would not confer any right on the incumbents towards their regular promotion.

3. Subsequently several Irrigation Projects were wound up and regular incumbents of the office of Assistant Engineers were rendered Surplus who had to be accommodated in preference to the said four Officers.

4. In view of this situation, 15 Assistant Engineers were transferred and posted, thus relieving the respondents of their acting charge and reverting them to their substantive rank as Sub-Engineers (Annex-II).

5. Feeling aggrieved, these officers, through separate Service appeals invoked the jurisdiction of the Service Tribunal which gave a decision in their favour (Annex-III), on the premises that appointment on acting charge basis is presumed to be a regular promotion made after observing of the legal requirements/formalities and that officers junior to the appellants had been promoted against the post of Assistant Engineer by the Department.

6. The Department lodged an appeal against this decision in the Supreme Court of Pakistan, and the august Court granted leave to appeal in the case with certain observations contained in para 5 & 6 of its order (Annex-IV), wherein without expressing any opinion on the question involved, the Additional Advocate General was directed to tender proper advice to the department to protect the interests of the respondents strictly according to law and without being influenced by the judgment of the Tribunal or the grant of leave in these petitions.

TRUE COPY

26

7. In compliance of these directions, the Advocate General had furnished his advice, vide Annex-V, wherein on the basis of decision given by the NWFP, Service Tribunal in Service Appeal No. 4/6 of 1998 titled 'Rabhani Gul vs Government of NWFP', (decided on 12-10-1999), it has been contended that amendments in the recruitment rules cannot be given retrospective effect and the Department had therefore been advised to process the case of promotion of aforementioned officers in accordance with quota allocated to them by the Rules irrespective of the present position of incumbents of the post of Assistant Engineers.

8. The Department submitted the case to the Law Department for its opinion, vide Annex-VI, on the issue whether the number of seats of falling in the recruitment quota reserved for a particular category have to be determined on the basis of the number of posts already occupied by officers of that particular category, irrespective of the fact whether these posts were filled prior to the amendment in the quotas reserved for different categories or after that, OR the quota for different categories is to be worked out solely on the basis of the number of posts which have fallen vacant after the amendment in the recruitment rules.

9. The Law Department submitted its opinion on the above issue vide Annex-VII, which states that the promotions made before the amendment of rules would be considered as a closed chapter and the posts which were available at the time of amendment or became available after the amendment would have to be filled in accordance with the rules prevailing at the very moment. The Tribunal has also held the same view and the Advocate General also hold the same views.

10. The induction of Assistant Engineers in the Department is regulated by the NWFP Irrigation and PHE Department (Recruitment and Appointment) Rules, 1979 which have been amended from time to time. The method of appointment and the amendments issued in this respect are described as follows:-

I. Under Serial No. 4 of schedule to the NWFP Irrigation and PHE Department (Recruitment and Appointment) Rules, 1979, read with Government of NWFP S&GAD Notification No. SORI(S&GAD)1-12/74, dated 13-8-1981, (Annex-VIII) method of recruitment for the post of Sub-Divisional Officer/Assistant Engineer BS-17 was as under:-

- i. Seventy percent by initial recruitment;
- ii. Ten percent by selection on merit with due regard to seniority from amongst Sub-Engineers of the Department concerned in which the vacancy occurs who hold a degree; and
- iii. Twenty percent by selection on merit, with due regard to seniority from amongst officiating Assistant Engineers/Senior Scale Sub-Engineer of the Department concerned where the vacancy occurs, who hold a diploma and have passed the Departmental Examinations.

II. Subsequently, the above said Rules were modified vide Secretary to Government of NWFP PHE Department Notification No. SO(E)PHED/6-12/94, dated 30-5-1994 (Annex-IX), read with Secretary to Government of NWFP Irrigation Department No. SO(E)I&PHE/23-5/73, dated 17-1-1995 (Annex-X) and the existing 10% share quota for promotion of Degree holders Sub-Engineers was distributed as under:-

TRUE COPY



27

- i. 5% by promotion on the basis of seniority cum fitness from amongst the Sub-Engineers who have acquired degree in Engineering during service; and
- ii. 5% by promotion on the basis of seniority cum fitness from amongst the Sub-Engineers who have joined service as Graduate Engineer.

Provided that if no Sub Engineer in a category is available for promotion, the vacancy shall be filled in from other category;

III. On a joint representation from both the Graduate Sub-Engineers i.e. in service and direct graduate Sub-Engineers, an amendment in the Rules was proposed for enhancement of share quota and submitted to the Secretary to Government of NWFP Irrigation Department vide letter No.431/IB/A/4-E, dated 9-1-1999 (Annex-XI), for consideration of Standing Service Rules Committee. The Standing Service Rules Committee (SSRC) in their meeting dated 26-1-1999 approved the following amendment and notified vide Secretary to Government of NWFP Irrigation Department letter No.SO(E) IRR/23-5/73, dated 27-2-1999 (Annex-XII).

- a. 65% by initial recruitment; and
- b. (i). 10% by promotion on the basis of seniority cum fitness from amongst the Sub-Engineers who have acquired degree in Engineering during service.

In case no Sub Engineer in this category is available for promotion, then the vacancy shall be filled from the diploma holder Sub Engineers.

10% by promotion on the basis of seniority cum fitness from amongst the Sub-Engineers who have joined service as Graduate Sub-Engineers.

NOTE.

In case no Sub-Engineer in this category is available for promotion, then the vacancy shall be filled through direct recruitment by Public Service Commission.

- d. 15% by selection on merit with due regard to seniority from amongst officiating Assistant Engineers/Senior Scale Sub-Engineers of the Department concerned where the vacancy occur who hold a diploma and have passed the Departmental Examinations.

THIS COPY

10. It is submitted that after the amendment in the Service Rules bifurcating the quota of graduate Sub-Engineers into in-service and pre-service graduate Sub-Engineers (7 plus 2 diploma holders) in-service Graduate Sub-Engineers were promoted in the DPC meeting held on 13-8-1999.

11. As per advice of the Law Department that "posts which were available at the time of amendment or became available after the amendment would have to be filled in accordance with the rules prevailing at the very moment", half of these seats should have been allotted to the pre-service graduate engineers, but instead all these seats were allotted to the in-service graduates, as already 9 pre-service graduate engineers had been promoted before the amendment in the Rules. Detail of promotion of Assistant Engineers after recruitment in the Service Rules is at Annex-XIII.

28

gc

12. The opinion given by the Law Department establishes the right of the applicants to have been promoted, as they were entitled to half the number of seats on which nine in-service graduates engineers were promoted on 13-8-1999.

13. In order to accommodate them in the light of the opinion of the Law Department, one of the following options may be exercised:-

- ✓ i. Since the quota of pre-service and in-service graduate Engineers has been exhausted, the appellants may be accommodated by reverting 4 of the junior most in-service Assistant Engineers.
- ✓ ii. There are 4 vacancies in the quota reserved for direct recruitment. Establishment & Administration Department may grant permission to accommodate them out of this quota.

There is a ban on fresh recruitment and any further vacancies becoming available would be filled by direct recruitment.

14. The Services Tribunal is pressing for implementation of its decision and 13.9.2002 is fixed for hearing the case. Similarly the direction of the Supreme Court of Pakistan which has granted leave to appeal (but not stay order as yet), have to be adhered to, and the matter resolved before the next date of hearing.

15. It is requested that this Department may kindly be advised on the issue after taking into account the different legal and administrative aspects of the matter. In case clarification or information is required to facilitate consideration of the issue, the undersigned would be available for discussion with the concerned officer of the Establishment & Administration Department.

Yours Faithfully,

- sd -

DEPUTY SECRETARY (ADMN)  
IRRIGATION & POWER DEPARTMENT

TRUE COPY



GOVERNMENT OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT

(Annexure - X)

29

No. SO(E)IRR:/1-3/2003

Dated Peshawar the 7<sup>th</sup> January, 2015

To

The Secretary to Govt. of Khyber Pakhtunkhwa,  
Establishment Department, Peshawar.

Subject:

**APPEAL FOR IMPLEMENTATION OF THE DIRECTIONS OF HON'ABLE  
SUPREME COURT OF PAKISTAN AND JUDGMENT OF N.W.F.P  
SERVICE TRIBUNAL IN TRUE LETTER AND SPIRIT**

Dear Sir,

I am directed to refer to the subject noted above and to state that Mr. Hayat Ullah, Assistant Engineer (BS-17) in his application has intimated that he joined the department as Graduate Sub Engineer and later on he was appointed as Assistant Engineer (BS-17) on acting charge basis on 01.09.1999 (Copy attached). However he was reverted to the post of Sub Engineer without issuing any reasons. Aggrieved by his reversion order, the applicant filed Service Appeal in the Service Tribunal which was decided in favour of the applicant on 23.06.2001 (Copy attached). Furthermore the Irrigation Department filed CPLA in the Supreme Court of Pakistan against the said judgment and during the first hearing the august court issued instructions to the Advocate General, NWFP/Khyber Pakhtunkhwa that **"wherein without expressing any opinion on the question involved the advocate general is required to render proper advice to the department to protect the interests of the respondents strictly according to law and without being influenced by the judgment of the tribunal or the grant of leave in these petitions"**. Accordingly the Advocate General issued advice to the Irrigation Department that the case of promotion of Sub Engineers to the post of Assistant Engineer including the respondents may be processed in accordance with quota allocated to them (Copy attached). The applicant Mr. Hayat Ullah, Assistant Engineer in the concluding paragraph of his application has requested that keeping in view his age factor and directions of the Supreme Court of Pakistan, advice of Advocate General and opinion of Law Department, his promotion may be re-considered and antedated from the due date i.e. 17.01.1995, wherein the rules were in fact to be followed with all back benefits. Opinion of Law Department is reproduced which states that **"the promotions made before the amendment of rules would be considered as a closed chapter and the posts which were available at the time of amendment or became available after the amendment would have to be filled in accordance with the rules prevailing at the very moment"**. The Tribunal has also held the same view and the Advocate General also hold the same views.

TRUE COPY

30

2. While offering comments on the application of the officer, the Chief Engineer (South) Irrigation has intimated that many precedents are available in the department wherein ante date promotions were allowed on the directions of the court as in the case of Mr. Zaram Jan & Alamgir, Sub Engineers etc. Furthermore the instant case of the applicant has also been based on court decision of the Service Tribunal and Supreme Court of Pakistan which is also required to be decided properly through Departmental Promotion Committee (copy attached).

3. In view of the position explained above, I am, therefore directed to request that this department may be advised as to whether the case of the applicant may be placed before the Departmental Promotion Committee for examination his ante date promotion in light of the Tribunal and Supreme Court of Pakistan orders read with Advocate General advice & opinion of Law Department (Copy attached), or otherwise, please.

Yours faithfully,

Sd/-

(Misal Khan)

Section Officer (Estt:)

Encl: as above

Endst: No and date even

Copy to Chief Engineer (South) Irrigation Department w/r to his letter No. 1-138/IB/A-6/1492-PF dated 08.12.2014.

Section Officer (Estt:)

TRUE COPY

