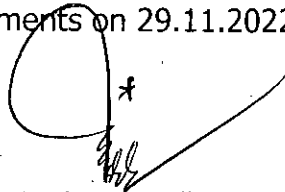


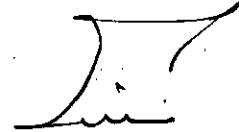
14.09.2022

Learned counsel for the appellant present. Mr. Zafrullah Khan, Superintendent alongwith Mr. Muhammad Jan, District Attorney for official respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not gone through the record. Adjourned. To come up for arguments on 29.11.2022 before the D.B.



(Mian Muhammad)
Member (E)



(Salah-Ud-Din)
Member (J)

29.11.2022

*Due to rush of work. This case has been deleted.
To come up for the same as before on 21.02.2023.*

Cy/H

21.02.2023

Bench is incomplete, therefore, case is adjourned to 24.05.2023 for the same as before.



Reader

03.08.2022

Clerk of learned counsel for the appellant present. Mr. Kabir Ullah Khattak, Additional Advocate General for official respondents present. None present on behalf of respondents No. 6 & 7.

Written reply/comments on behalf of respondents No. 1 to 5 have already been submitted while respondents No. 6 and 7 has not yet submitted their reply. Hence they are placed ex parte. Come up for arguments on 14.09.2022 before D.P.


(Kalim Arshad Khan)
Chairman

18.07.2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for official respondents present. None present on behalf of private respondent No. 7.

Reply/comments on behalf of official respondents No. 1 to 5 submitted which is placed on file and copy of the same is handed over to the learned counsel for the appellant. Reply/comments on official respondent No. 6 and private respondent No. 7 are still awaited therefore, notice be issued to them for submission of reply/comments. Adjourned. To come up for reply/comments on 03.08.2022 before S.B.

(Mian Muhammad)
Member (E)

18.07.2022

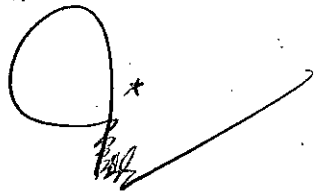
Learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for official respondents present. None present on behalf of private respondent No. 7. Reply/comments on behalf of official respondents No. 1 to 5 submitted which is placed on file and copy of the same is handed over to the learned counsel for the appellant. Reply/comments on official respondent No. 6 and private respondent No. 7 are still awaited therefore, notice be issued to them for submission of reply/comments. Adjourned. To come up for reply/comments on 03.08.2022 before S.B.

(Mian Muhammad)
Member (E)

23.05.2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Addl. AG alongwith Mr. Noor Sher Khan S.O for the respondents present.

Mr. Zartaj Anwar, Advocate present and submitted Wakalatnama as well as application for impleadment of one Mr. Saif Ullah Khan S/o Abdullah Khan Deputy Director (OPS) P&C Small Dams Peshawar in the panel of respondents. Application is placed on file as well as provided to the learned counsel for the appellant. Learned counsel for the appellant did not object the same. Application is allowed and office is directed to make necessary entry in the heading of appeal as well as relevant register with red ink. Representative of the official respondents as well as learned counsel for private respondents No. 7 seeks time to submit written reply/comments. Granted. To come up for written reply/comments on 07.06.2022 before S.B.



(Mian Muhammad)
Member (E)

07.06.2022

Clerk to counsel for the appellant present.

Muhammad Riaz Khan Paindakheil learned Assistant Advocate General alongwith Hamid Saleem Law Officer for official respondents No.1 to 6 present. Junior to counsel for private respondent No.7 present.

Reply of respondents is still awaited. Respondents requested for time to submit reply/comments. Last opportunity is granted. To come up for reply/comments on 18.07.2022 before S.B.


(Rozina Rehman)
Member (J)

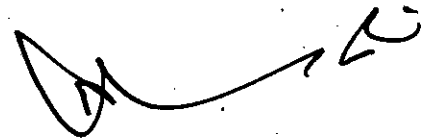
SCANNED
K
Peshawar

SA 207/2022

22th April, 2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Addl. AG alongwith Zafrullah, Superintendent for the official respondents present. Vide our detailed order of today in connected Service Appeal No. 7917/2021, titled "Engr. Imtiaz Khan Vs. Khyber Pakhtunkhwa through Chief Secretary and others", this appeal to come up for written reply/comments on 11.05.2022 before S.B. A copy of detailed order be placed in this file.

2. *Pronounced in open court at Peshawar and given under my hand and seal of the Tribunal this 22nd day of April, 2022.*



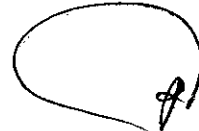
Chairman

11.05.2022

Appellant present through counsel.

Muhammad Adeel Butt, learned Additional Advocate General alongwith Zafar Ullah Superintendent for respondents present.

Written reply was not submitted. Representative of respondents requested for time to submit the same. Opportunity is granted. To come up for written reply/comments on 23.05.2022 before S.B.



(Rozina Rehman)
Member (J)

11.04.2021

Appellant present through counsel. Preliminary arguments heard.
Record perused.

Points raised need consideration. Instant appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notice be issued to respondents for submission of written reply/comments.

Annexed with the memo of appeal is an application for suspension of impugned order dated 28.04.2021. Notice of the same be issued to the respondents for reply. Status-quo be maintained till the date fixed

Identical nature Service Appeal No.7917/2021 titled Engineer Imtiaz Ahmad Vs. Government of Khyber Pakhtunkhwa, is fixed for 21.04.2022 for reply, therefore, appeal in hand is also adjourned to 21.04.2022 for reply/comments before S.B

Rs-1200/-
Appellant Deposited
Security & Process Fee

A. J. Ikh
14/4/22

(Rozina Rehman)
Member (J)

21th April, 2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Addl. AG for the official respondents present.

To come up for further proceedings tomorrow on 22.04.2022 alongwith connected Service Appeal No. 7917/2021.

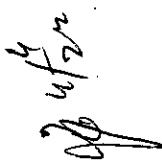
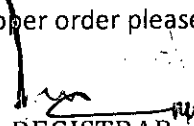

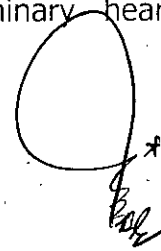
Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. - _____ 207/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	21/02/2022 	<p>The Joint appeal of Mr. Sohail Khan and four others presented today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench at Peshawar for preliminary hearing to be put there on 05-04-2022. </p> <p style="text-align: right;">CHAIRMAN.</p> <p>05.04.2022</p> <p>Appellant alongwith his counsel present.</p> <p>Preliminary arguments could not be heard due to paucity of time. Adjourned. To come up for preliminary hearing on 11.04.2022 before S.B.</p> <p style="text-align: right;"> (MIAN MUHAMMAD) MEMBER(E)</p>

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

SERVICE APPEAL NO. 207 /2022

SOHAIL KHAN

V/S

IRRIGATION DEPTT:

I N D E X

S.NO	DOCUMENTS	ANNEXURE	PAGE
1	Memo of appeal	1-7
2	Affidavit	8
3	Stay application	9
4	service record/appointment orders	A	10-11
5	rules	B	12-13
6	impugned minutes,	C	14-17
7	Pakistan Engineering Council Act, 1976,	D	18-39
8	Notification and judgment	E & F	40-46
9	impugned Notification	G	47-48
10	Departmental appeals	H	49-93
11	Constitution of Standing Service Rules committee,	I	94-95
12	Notification No. SO(E)/Irr/23-5/73/Vol-IV (S. Rules) dated 06.04.2018	J	96-98
13	Irrigation Department Notification No. SO(E)/IRR/23-5/2010-11 dated 25 June 2012	K	99
14	Secretary Irrigation Department vide notification No. SO(E)/IRR/4-10/77/Vol-VI: dated 18-12-2020	L	100
15	Legal Notice dated 06 April, 2021	M	101-103
16	PEC Act 1976.	N	104-105
17	C.P No.78-K of 2015 announced on 03/10/2018	O	106-115
18	Honorable Supreme Court vide order dated, 05/03/2019.	P	116-118
19	Wakalat Nama	119

Dated: 02.2021

APPELLANT

Through:

NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO. _____/2022

1. Engineer Sohail Khan Deputy Director (Design), O/O Chief Engineer (South) Irrigation Department, KPK, Peshawar.
2. Engineer Taimoor Zahid, Executive Engineer, Irrigation Division Abbott bad Irrigation Department, KPK, Peshawar.
3. Engineer Masood Ahmad, Deputy Director, PHLCE Project Directorate, Irrigation Department, KPK, Peshawar.
4. Engineer Fazli Moula, Deputy Director, Remodeling of Warsak Canal System in District Peshawar & Nowshera Project Directorate, Irrigation Department, KPK, Peshawar.
5. Engineer Ali Ahmad, Executive Engineer, Irrigation Division Chitral Irrigation Department, KPK, Peshawar.

..... **APPELLANTS**

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary Irrigation Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The Secretary Law & Parliamentary Affairs Department, Khyber Pakhtunkhwa, Peshawar.
- 5- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 6- The Chief Engineer (South) Irrigation Department, Khyber Pakhtunkhwa, Peshawar.

..... **RESPONDENTS**

SERVICE APPEALS UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED AGENDA ITEM NO.4 OF THE SSRC MINUTES DATED 29.4.2021 AND NOTIFICATION DATED 24.8.2021 WHEREBY UNJUSTIFIED 20% PROMOTION QUOTA IN BPS-18 (EXECUTIVE ENGINEER) TO B-TECH/DIPLOMA HOLDERS FOR WORKING AGAINST THE PROFESSIONAL ENGINEERING WORKS POSTS HAS BEEN CREATED BY THE RESPONDENTS AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEALS OF APPELLANTS WITHIN THE STATUTORY PERIOD OF NINETY DAYS

RESPECTFULLY SHEWETH:

FACTS:

Brief facts giving rise to the present appellants are as under:

1. That the appellants is the employee of respondent Department and is performing duty quite efficiently and up to the entire satisfaction of his superiors. Copy of the service record/appointment orders are attached as annexure **A.**

2. That the appellants is highly qualified Civil/Mechanical Engineers and registered with Pakistan Engineering Council and having command and experience over the services in respect of Professional Engineering Work. That under the existing rules of the respondent Department the appellants have better prospects of promotion/case progression. That according to the rules ibid the post of Executive Engineer/Deputy Director/Technical Officer (BPS-18) has to be filled up **"by promotion, on the basis of seniority cum fitness from amongst the sub Divisional Officer, Assistant Engineers and Assistant Directors possessing Degree in B.E/B.Sc Engineering (Civil or Mechanical) from a recognized University, With at least five years service as such, and have passed the professional or Revenue Examination under the prescribed rules"**. Copy of the rules is attached as annexure **B.**

3. That recently through agenda item No.4 of the impugned minutes dated 29.4.2021 passed/issued by the standing service rules committee not comprised in accordance with Notification of the Establishment Department dated 29.1.2005 and judgment of the august Peshawar High Court, Peshawar passed in W.P No. 4378/2017 Titled Manzoor Ahmad VS Govt: of KPK and other dated 11.3.2020, unfortunately due to some mala fide intentions or knowingly misinterpreted the settled law of the land, non-qualified/ non-engineers of B-Tech technology / diploma holder persons have been granted illegal benefits in shape of assigning Professional Engineering Works (PEW) and also benefiting them by awarding promotion to the Grade-17 once and now once again a 20% quota has been proposed for promotion to Grade-18 (Executive Engineer) post and will be performing professional engineering works which is against the Pakistan Engineering Council Act 1976. Copies of the impugned minutes, Pakistan Engineering Council Act, 1976, Notification and judgment is attached as annexure **C, D, E and F.**

4. That in light of the ibid SSRC minutes dated 29.4.2021 the respondents issued the impugned Notification dated 24.8.2021 whereby amendments have been made in the service rules of the respondent Department dated 17.2.2011 whereby non-qualified/ non-engineers of B-Tech technology / diploma holder persons have been granted illegal benefits in shape of assigning Professional Engineering Works (PEW) and also benefiting them by awarding promotion to the Grade-17 once and now once again a 20% quota has been proposed for promotion to Grade-18 (Executive Engineer) post and will be performing professional engineering works which is

against the Pakistan Engineering Council Act 1976. Copy of the impugned Notification is attached as annexure **G.**

5. That appellants feeling aggrieved from the impugned minutes of the standing service rules committee passed/issued on 29.4.2021 and impugned Notification dated 24.8.2021 filed Departmental appeals before the respondent No.1 but no response has been received so far. Copy of the Departmental appeals are attached as annexure **H.**

6. Hence the present appeal on the following grounds amongst the others.

GROUND:

1. That agenda item No.4 passed by the standing service rules committee dated 29.4.2021 is against the law, facts, Norms of natural justice and materials on the record hence not tenable and liable to be set aside.
2. That the appellants have not been treated in accordance with law and rules and as such the respondents violated Article 4 & 25 of the Constitution of Pakistan, 1973.
3. That Executive Engineer (BPS-18) in Irrigation Department is a Professional Engineering post and the person who holds the said post has to look into the matters which is related to the professional engineering works with human resource having professional BE/BSc Civil and Mechanical Engineering degrees duly registered with the Pakistan Engineering Council. At present in Irrigation Dept, all the Executive Engineer/Deputy Director (BPS-18) posts are professional engineering posts whose job requirement involves professional engineering works, allowed only to BE/BSc Civil / Mechanical Engineering degree holders registered with Pakistan Engineering Council.
4. That according to the Code of Khyber Pakhtunkhwa, Constitution of Standing Service Rules committee, page 257 (***Annexure-I***), Framing of Service Rules/Recruitment Rules point No. 2 which is reproduced, "***while sending proposals for framing of new Service Rules and making amendments in the existing rules, the qualifications proposed for appointment to posts should suit the requirement of the job***". Which in the present case has been completely ignored by SSRC in its meeting dated 29.04.2021, as neither change has occurred in set Job description of Executive Engineers (BPS-18) nor they have changed the requirement of the job since last SSRC and still allotted 20% quota to B-Tech/Diploma holders whose qualification does not meet the present requirement for the job. By doing so, it violates the Pakistan Engineer Council Act requirement to perform against the BPS-18 Executive Engineer Post performing professional engineering works.

5. That a committee was constituted vide Secretary Irrigation Department Notification No. SO(E)/Irr/23-5/73/Vol-IV (S. Rules) dated 06.04.2018 (**Annexure-J**) having members from Irrigation Department, C&W, LGE&RDD, Peshawar Development Authority, Public health Engineering Department and Pakhtunkhwa Energy and Development Organization. The committee was tasked to examine the position of B-Tech (Hons) degree via B.Sc. / BE Engineering in light of decision of Pakistan Engineering Council (PEC), Supreme court of Pakistan, High Court Peshawar and Khyber Pakhtunkhwa Service Tribunal and to come up with well considerate proposal along with recommendation for allocation of uniform percentage quota for their promotion. The committee in its report submitted the following recommendations;
- "That B-Tech (hons) qualification is not equivalent to BE/BSc Engineering. As basic qualification required for posting / appointment against the position of Assistant Engineer / Assistant Director / SDO etc. in BS-17 and above is BE/BSc Engineering in Civil / Mechanical / Electrical as per requirement of a department, there B-Tech (Hon) qualification holder may not be promoted and / or posted against such position(s) that involve performance of professional engineering works/services. However, such qualification (i.e., B-Tech) holders cannot be denied promotion to higher scale; provide no law/Rule is violated and for which non engineering positions (Technologists) may be created, if not already existing"***
6. That the recommendation of the committee in para-3, makes the previously SSRC approved Irrigation Department Notification No. SO(E)/IRR/23-5/2010-11 dated 25 June 2012 (**Annexure-K**) not maintainable for creating quota at first place for promotion of non-engineers to BPS-17 and performing engineering works. ***As a Corollary to this, in the Medical profession or health department, nurses acquire qualification of three years diploma after which they is allowed to enhance their qualification in their field even to the Master level but they is never considered as MBBS doctors nor is they posted to the professional positions or Medical Officers nor is they registered by Pakistan Medical and Dental Council (PMDC) as registered medical practitioners (Doctors).***
7. That the recommendation produced in Para-3 has been completely ignored by the department and non-professional engineers have been placed in various engineering positions and even elevated higher positions, not meeting the job criteria and equivalent qualification required for the post. One such unjustified order was issued by the Secretary Irrigation Department vide notification No. SO(E)/IRR/4-10/77/Vol-VI: dated 18-12-2020 (**Annexure-L**) by placing a B-Tech Diploma holder Sub Divisional Officer on higher position of Deputy Director Jabba Dam. The present action of

creating 20% quota clearly indicates that the Secretary Irrigation Department office wants to regularize the unjustified action / notification / orders issued.

8. That the Irrigation Engineers represented by the Advocate A. Latif Afridi has already served two weeks Legal Notice dated 06 April, 2021 to Chief Secretary Office, Secretary Irrigation Office and Secretary Establishment office (*Annexure-M*) against for your inaction in removing non-engineer from engineering practicing posts.
9. That the competent authority envisage provision under Pakistan Engineering Council (PEC) Act 1976 for qualification, mannerism, mode and mechanics for granting promotion to registered Civil/Mechanical engineers registered with PEC while B-Tech degree holders, is not competent / qualified for any Professional Engineering Works (PEW) and promotion to such high grades involving engineering works; hence, the promotion and assigning the duties to non-professional like B-Tech / Diploma holders by the department is illegal, unjustified and in effective upon the rights of appellant and liable to be struck down/ reversed accordingly.
10. That PEC is a statutory body having been constituted under the PEC Act V 1976 enacted by the parliament and the competent authority allegedly on several occasion has promoted non-professional, non-registered and non-graduates having diploma and B. Tech certificate against the post, which were specified/ allocated only for professional engineers, furthermore, the grievance of the appellant is that BSC/BE Civil engineering is not at par with B. Tech (Hon) and that non-professional engineers (B-Tech) were promoted posted against the post of professional engineers which is against the law and settled realities hence this practice should require to be stopped forthwith and implement the PEC Rules Regulation. ***The explanation of all kind of PEWs is enacted in section 2 (xxv) of the PEC Act 1976. (Annexure-N).***
11. The recent historical & decisive judgment of the August Court of the Supreme Court of Pakistan in its decision on the C.P No.78-K of 2015 announced on 03/10/2018 (*copy enclosed as Annexure-*), upheld the provisions of the PEC Act 1976 in its detail judgment where in ***Para 21 & 23*** is worth reading. In operative part of the judgment Para 23, the Honorable Supreme Court contains that: - ***"Government shall not allow or permit any person to perform professional engineering work as defined in the PEC Act who does not possess accredited engineering qualification from the accredited engineering institution and his name in not registered as a registered engineer or professional engineer under the PEC Act"***.
12. That the appellants are highly aggrieved of certain orders of competent authority which was passed in favor of the non-qualified / non registered B-Tech / diploma holders, because the people having

lesser qualification were being alleviated and posted to higher posts without meeting the job criteria and which were specified for performing professional engineers work only, whereas the appellants having rightful superior education/ qualification and most importantly meeting the job criteria were put on idle positions desk jobs hence the competent authority have been committing violation of laws including the legislation of the PEC Act 1976 and the judgments of the Superior Court of the country.

13. That according to the PEC Act 1976 the management and supervision of the engineering works in respect of all engineering disciplines is "**Professional Engineering Works**" and that under **section 27** can only be under taken/ executed by engineers who is registered with PEC hence the statutory provisions of PEC Act 1976 is frequently violated by the authorities which is bad in law and also punishable act under the law, **as Section 27 (1) of PEC Act criminalizes the undertaking of engineering work by non-engineers making it an offence punishable with 6 months imprisonment or Rs.10,000 fine or both. Conversely, engaging a non-engineer for doing professional engineering work is also criminalized, being an offence punishable with 6 months imprisonment or Rs.5,000 fine or both.**
14. That Pakistan Engineering Council through various reference kept on reminding Provincial Government of Khyber Pakhtunkhwa & other competent authorities about the limitation of the PEC Act 1976, its implementation / repercussion in case of violations & even reminded to implement the decision of the afore mentioned judgment of Honorable Supreme Court C.P No.78-K of 2015, announced on 03/10/2018 but all in vain. (**Annexure-----O**).
15. That it is admitted fact regarding clarification of B-Tech degree from HEC which is not qualified engineers and for this reason PEC unable to registered them as engineer so promotion awarded and duties assigned to non-graduates, non-professional and non-registered by PEC by the competent authority on engineering works, this has caused a grave in justice and utter disregard of the mandatory statutory provision of the PEC Act 1976 hence the competent authority violated not only the provision of PEC Act 1976 but also its own rules and regulation beside involved in contempt of court proceeding, if initiated.
16. That appointment of in-eligible people to handle extremely technical works would be disaster for the public at large and rule of the regulatory body is to ensure professionalism and trust for the public. Furthermore, the question of the qualification B-Tech being equivalent to BSc Engineering has already been decided by the superior court of the country. PLD 2003 SC 143, as well as in the aforementioned judgment of 03/10/2018. Once forever.
17. That most recently, review petitions have also been dismissed by the Honorable Supreme Court vide order dated, 05/03/2019.

(Annexure-----P).

18. **That the appellants through the forums of Khyber Pakhtunkhwa Association of Government Engineering (KPAGE)** previously prayed the competent forums for redressal of their genuine demands regarding subject issues but no action has so far been taken and blue-eyed favors its B-Tech degrees holder / diploma holder / non engineers is still enjoying the perks & privileges of their illegal appointments / posting status against the Professional Engineering Works (PEW) posts starting right from Assistant Engineer to high ones.
19. That the promotions awarded to B. Tech (Hon) employees and duties assigned to them against Professional Engineering Works (PEW) is the result of political victimization, illegal, injustice and also in effective upon the valid rights of the appellant.
20. That the appellants seek permission to advance other grounds and proofs at the time of hearing.

That on acceptance of this appeals the impugned agenda item No. 4 of the SSRC minutes dated 29.4.2021 and Notification dated 24.8.2021 whereby creation of unjustified 20% promotion quota in BPS-18 (Executive Engineer) to B-Tech/Diploma Holders for working against the professional engineering works posts may kindly be declared as illegal, unconstitutional and in effective upon the rights of appellants which may kindly be set aside. That the respondents may further please directed that not to issue/make promotions of B-Tech/Diploma holders against the post specified for professional engineers, in line with the provisions of the PEC Act, 1976 and in light of the judgments/decisions dated 3.10.2018 of the august Supreme Court of Pakistan in C.P No. 78-K/2015. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellants.

Dated: _____02.2022

APPELLANTS

Sohail Khan and Others

THROUGH:

**NOOR MOHAMMAD KHATTAK,
ADVOCATE**

8

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. _____ / 2022

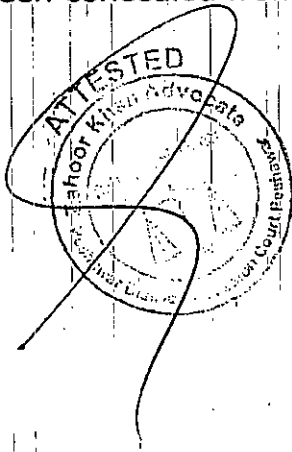
SOHAIL KHAN

V/S

IRRIGATION DEPTT:

AFFIDAVIT

Stated on oath that the contents of the accompanying service appeal are correct to best of my knowledge and belief and nothing has been concealed from this Honorable Service Tribunal.



[Signature]
DEPONENT

CERTIFICATE:

Certify that no earlier service appeal has been filed by the appellant in the instant matter before this Honorable Service Tribunal.

[Signature]
CERTIFICATION

(8)

(9)

8 of 8

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

C.M NO. _____ /2022

IN
APPEAL No. _____ /2022

SOHAIL KHAN VS GOVT: OF KP

**APPLICATION FOR SUSPENSION OF OPERATION OF
THE IMPUGNED NOTIFICATION DATED 24.08.2021
TILL THE DISPOSAL OF THE MAIN APPEAL**

R/SHEWETH:

- 1- That the above mentioned appeal along with this application has been filed the appellant before this august Tribunal in which no date has been fixed so far.
- 2- That appellant filed the above mentioned appeal against the impugned notification dated 24.08.2021.
- 3- That all the three ingredients necessary for the stay is in favor of the appellant.
- 4- That the impugned notification dated 24.08.2021 had been issued by the respondents in utter disregard of law and prevailing Rules.

It is therefore, most humbly prayed that on acceptance of this application the operation of the impugned notification dated 24.08.2021 may very kindly be suspended till the disposal of the above mentioned service appeal.

Dated: _____ 02.2022

APPLICANT

SOHAIL KHAN & OTHERS

THROUGH:

NOOR MOHAMMAD KHATTAK

**KAMRAN KHAN
ADVOCATES**

ANNEX A

19



GOVERNMENT OF NWFP IRRIGATION DEPARTMENT

Dated Peshawar the 27th January, 2010.

NOTIFICATION

NO.S0(E)IRR/14-1473 The Competent Authority in consultation with the NWFP Public Service Commission and in pursuance of the provisions contained in sub-section (2) of section 19 of the North-West Frontier Province Civil Servants Act, 1973 (NWFP Act No.XVIII of 1973), as amended by the North-West Frontier Province, Civil Servants (Amendment) Act, 2005 (N-W.F.P. Act No.IX of 2005) is pleased to order appointment of the following candidates as Assistant Engineers BS-17 (Rs.9850-740-24650) in the Irrigation Department, subject to the terms & conditions mentioned hereunder:

S.No.	Name of candidate	Present Address	Postal Address
1	Mr. Shahzad Ali Khan S/O Haji Khan Faraz.	Haji Abad, village & P.O. Ghundo, Kallang, Tehsil & District Mardan.	House No.130 Street No.3 Sector K-4, Phase-3 Hayatabad Peshawar.
2	Mr. Hafiz Muhammad Yasir S/O Gul Sher.	Village Gohi, P.O. Pakha Ghulam, Tehsil & District Peshawar.	village Gohi, P.O. Pakha Ghulam, Tehsil & District Peshawar.
3	Mr. Sulaman Daud S/O Daud Khan.	House No.1095/C Mohallah Hayatullah, Near GHS No.3 D.I.Khan.	House No.1095/C Mohallah Hayatullah, Near GHS No.3 D.I.Khan.
4	Mr. Muhammad Idris Khan S/O Abdur Rashid Khan.	House No.372/P-2, Street-11, Phase-4, Hayatabad, Peshawar.	House No.372/P2, Street-11, Phase-4, Hayatabad, Peshawar.
5	Mr. Muhammad Alam S/O Sald Karim.	Village & PO D/Allandand Mohallah Haji Abad, Tehsil Balthella District Malakand.	Village & PO D/Allandand Mohallah Haji Abad, Tehsil Balthella District Malakand.
6	Mr. Imranullah Khan S/O Nawab Khan.	Phase-I Sector D-1, Street-64 House No.221, Hayatabad Peshawar.	Phase-I Sector D-1, Street-64 House No.221, Hayatabad Peshawar.
7	Mr. Masood Ahmad S/O Bashir Ahmad.	TSK ENGINEERING INTERNATIONAL 54-A, Small Industrial Estate, Jumrud Road, Peshawar.	TSK ENGINEERING INTERNATIONAL 54-A, Small Industrial Estate, Jumrud Road, Peshawar.
8	Mr. Sohail Khan S/O Sultan Esher.	House No.221, Sector L-2, Phase-3, Hayatabad, Peshawar.	House No.221, Sector L-2, Phase-3, Hayatabad, Peshawar.
9	Mr. Imlaz Khan S/O Muhammad Gul.	Village Shah Baz Khel Derra Adam Khel FR Kohat.	Haji Abad No.1, Flat No.1, opposite Civil Colony Kohat Road Peshawar.
10	Mr. Ali Ahmad S/O Bashir Ahmad.	Village Singoor (Shahmirandeh), District Chitral.	C/O Dr. Nazir Hussain Shah, Flat No. 14, old Doctors' Flat Khyber Teaching Hospital, Peshawar.
11	Tabinda Nousheen D/O Yahya Gul.	House No.10, Street No.20 Lal Abad Ring Road Peshawar.	House No.10, Street No.20 Lal Abad Ring Road Peshawar.
12	Mr. Taimoor Zahid S/O Muhammad Zahid.	Mohallah K.Knader Khan Khel, P.O. & Village Meini Tehsil Topi District Swabi.	House No.3 F/9 Phase-6 Hayatabad Peshawar.

~~AFFECTED~~



TERMS & CONDITIONS:

- a. They shall, for all intents and purposes, be Civil Servants except for purpose of pension or gratuity. In lieu of pension and gratuity, they shall be entitled to receive such amount contributed by them towards Contributory Provident Fund (C.P.F) along with the contributions made by Government to his account in the said fund, in the prescribed manner.
 - b. They shall be governed by the NWFP Civil Servants Act 1973, all the laws applicable to the Civil Servants and Rules made there-under.
 - c. They shall, initially, be on probation for a period of two years extendable upto 3 years.
 - d. They shall undergo pre-service training for four months for which they should be attached at Divisional level of the Irrigation Department.
 - e. Their services will be liable to termination at any time without assigning any reason therefore before the expiry of the period of probation/extended period of probation, if their work during this period is not found satisfactory. In such an event, they will be given a month's notice of termination from service or one month's pay in lieu thereof. In case they wish to resign at any time, a month's notice shall be necessary or in lieu thereof a month's pay shall be forfeited.
 - f. They will not be entitled to any TADA on their first appointment as Assistant Engineers.
2. If the above terms & conditions are acceptable to them, they should report to Secretary, Irrigation Department within 30 days from the date of issuance of this offer of appointment.

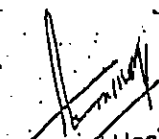
5
P
VT
2010
ice
he
ed
of
7
7

CHIEF SECRETARY
N.W.F.P

Endst: No. & date as above.

A copy is forwarded to:

- 1. The Accountant General, NWFP Peshawar.
- 2. The Chief Engineer (O&M), Irrigation Department, Peshawar.
- 3. The Chief Engineer (Dev), Irrigation Department, Peshawar.
- 4. The Director General, Small Dams Organization, Peshawar.
- 5. Deputy Secretary-III, NWFP Public Service Commission, 2 Fort Road, Peshawar Cantt (Near Governor House w/r to his letters No.NWFP-PSC-SR-VI/45667 dated 15-9-2009, No.NWFP-PSC-SR-VI/45668 dated 15-9-2009, No.NWFP-PSC-SR-VI/45669 dated 15-9-2009, No.NWFP-PSC-SR-VI/47565 dated 28-9-2009.
- 6. PS to Chief Secretary, NWFP.
- 7. PS to Secretary, Establishment Department.
- 8. PS to Secretary, Irrigation Department, Peshawar.
- 9. PA to Additional Secretary, Irrigation Department.
- 10. Manager, Government Printing Press Peshawar.
- 11. A/C and desks concerned.
- 12. P.O.
- 13. M.S.E.P.


(Anwarul Haq)
Section Officer (Establishment)
Irrigation Department

ATTESTED



GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT
(Establishment Section)

11/A

Dated Peshawar the 30th July, 2019

NOTIFICATION

No. SO(E)IRR/4-10/2019/Vol-VII The Competent Authority is pleased to order posting/transfer of the following officers of Irrigation Department with immediate effect, in the public interest, till further orders:-

S.#	Name & Designation of the Officer	From	To
1	Engr. Abdul Ghaffar, Executive Engineer (BS-18)	Awaiting posting	Project Director, Ground Water, Merged Area against the vacant post in his own pay scale.
2	Engr. Imtiaz Khan, Assistant Engineer (BS-17)	Awaiting posting	Deputy Director, Small Dams, FDA Peshawar against the vacant post in his own pay scale.
3	Engr. Sohail Khan, Assistant Engineer (BS-17)	Assistant Director, Pehur High Level Canal Extension Project, Swabi.	Deputy Director, Ground Water, Merged Area against the vacant post in his own pay scale.
4	Engr. Javed Iqbal, Assistant Engineer (BS-17)/XEN (OPS)	Deputy Director, Remodeling of Warsak Canals System Project, Peshawar(OPS).	Executive Engineer, Irrigation & Hydel Power Division, District Khyber, Merged Area. Vice No. 5 in his own pay scale.
5	Mr. Waheed Ullah, Executive Engineer (BS-18)	Executive Engineer, Irrigation & Hydel Power Division, District Khyber, Merged Area	Deputy Director, Irrigation & Hydel Power Directorate, Merged Area against the vacant post.
6	Mr. Karam Khan, Sub Engineer/Assistant Engineer (OPS)	Assistant Engineer, Irrigation & Hydel Power Division, District, Bajaur (OPS).	Assistant Engineer, Irrigation & Hydel Power Division, District, Kurram against the vacant post in his own pay scale.
7	Mr. Naseer Ullah, Sub Engineer (BS-16)	Sub Engineer, Irrigation Sub Division, Chakdara District Dir Lower.	Assistant Engineer, Irrigation & Hydel Power Division, District, Bajaur in his own pay scale. Vice No: 6.
8	Mr. Mudassar Khan, Sub Engineer. (BS-16)	Sub Engineer, Bannu Canal Division, Bannu.	Assistant Engineer, Irrigation & Hydel Power Division District North Waziristan Miran Shah (Sub Division, Wazir Bannu) Merged Area in his own pay scale against the vacant post.
9	Muhammad Sajjad, Sub Engineer (BS-16)	Sub Engineer, Hazara Irrigation Division, Abbotabad.	Assistant Director, Small Dams FDA Peshawar, in his own pay scale against vacant post.

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Page-1

~~ATTESTED~~

11/B

Copy to:-

- 1- The Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 2- The Chief Engineer (North/South), Irrigation Department, Peshawar.
- 3- The Superintending Engineer (H/Q) (South/North) Irrigation Department.
- 4- The Director, Irrigation and Hydle Power, Merged area Pesawar
- 5- PS to Minister Irrigation, Khyber Pakhtunkhwa
- 6- The Director (Tech:), PMC, Irrigation Department.
- 7- The Project Director Ground Water, Merged Area Peshawar.
- 8- District Accounts District Khyber, Kurram, Bajaur, Bannu and North Waziristan.
- 9- The Officers concerned.
- 10- The Chief Executive, FDA Peshawar.
- 11- The Director Small Dams FDA Peshawar.
- 12- PS to Secretary Irrigation Department.
- 13- PA to Additional Secretary, Irrigation Department.
- 14- Personal Files of the officers.

(Abdul Rauf)
Section Officer (Estt:)

~~RECEIVED~~



**GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT
(Establishment Section)**

11/c

Dated Peshawar 15th April, 2021

NOTIFICATION

No. SO(E)/IRR/4-977/Vol-IV: The Competent Authority is pleased to order posting/transfer of the following officers of Irrigation Department with immediate effect, in the public interest:-

S. #	Name of Officer	From	To
1.	Engr: Muhammad Zubair, Executive Engineer (BS-18)	Deputy Director (P&C), Small Dams, Kohat.	Project Director, Siran Right Bank Canal Project, Mansehra against the vacant post in his own pay and scale.
2.	Engr: Muhammad Younas, Executive Engineer (BS-18)	Deputy Director, Remodelling of Warsak Canals System Project, Peshawar.	Deputy Director, Pehur High Level Canal Extension Project, Swabi against the vacant post.
3.	Engr: Fazil Maula, Assistant Engineer (BS-17)/XEN (OPS)	Deputy Director (OPS), Siran Right Bank Canal Project, Mansehra.	Deputy Director (OPS), Remodelling of Warsak Canals System Project, Peshawar. Vice Sr. No. 2
4.	Engr: Rabia Abbasi, Assistant Engineer (BS-17)	Sub Divisional Officer, Hydrology Irrigation Sub Division, Abbotabad.	Deputy Director, Siran Right Bank Canal Project, Mansehra vice Sr. No. 3 in her own pay and scale with additional charge of SDO, Hydrology Abbotabad.

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Encl: No. & Date as above

Copy of the above is forwarded to:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar
2. The Chief Engineer (North/South), Irrigation Department, Peshawar
3. The Chief Engineer (Merged Areas) Irrigation Department,
4. The Director General, Small Dams, Peshawar.
5. The Director General, Jabba Dam District Khyber.
6. The Project Director, Remodelling of Warsak Canals System Project, Peshawar.
7. The Project Director, Pehur High Level Canal Extension Project, Swabi.
8. The Project Director, Siran Right Bank Canal Project, Mansehra.
9. All Superintending Engineers of Irrigation Department.
10. The PSO to Chief Minister, Khyber Pakhtunkhwa.
11. The Officers concerned.
12. The Section Officer (Dev) Irrigation Department.
13. The Section Officer (General), Irrigation Department.
14. The District Accounts Officers concerned.
15. PS to Secretary Irrigation Department.
16. PA to Additional Secretary, Irrigation Department.
17. PA to Deputy Secretary (Admn), Irrigation Department.
18. Personal Files of the officers.

16/4/21
 294
 16- 4- 2021
 3

ATTACHED

12

ANNEXURE-B



**GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT**

Dated Peshawar the 24th August, 2021

NOTIFICATION

No. SO(E)/IRR/23-5/73/Val-VI: In pursuance of the provisions contained in sub-rule (2) of rule-3, of the Khyber Pakhtunkhwa, Civil Servants (Appointment, Promotion and Transfer) Rules, 1989; the Irrigation Department, in consultation with the Establishment Department and Finance Department, hereby direct that in this Department's Notification No. SO(E)/IRR/23-5/73 dated 17.02.2011, the following further amendments shall be made namely:-

AMENDMENTS

In the APPENDIX.-

- (a) under the heading "PART-I ENGINEERING STAFF", against Serial No. 3, in Column No. 5, for the existing entries, the following shall be substituted, namely:-

	5
(a)	Eighty percent (80%) by promotion, on the basis of seniority-cum-fitness, from amongst the holders of the post of Assistant Engineer, Sub Divisional Officer and Assistant Director possessing Degree in B.E/B.Sc Engineering (Civil or Mechanical) from a recognized University with at least five years service as such and have passed the Professional or Revenue Examination under the prescribed rules;
(b)	Twelve percent (12%) by promotion, on the basis of seniority-cum-fitness, from amongst the holders of the post of Assistant Engineer, Sub Divisional Officer and Assistant Director possessing Degree in B. Tech (Hons) from a recognized University with at least five years service as such and have passed the Professional and Revenue Examination under the prescribed rules; and
(c)	eight percent (08%) by promotion, on the basis of seniority-cum-fitness, from amongst the holders of the post of Assistant Engineer, Sub Divisional Officer and Assistant Director possessing Diploma of Associate Engineering in (Civil, Mechanical, Auto and Electrical) Technology from a recognized Board of Technical Education with at least five years service as such and have passed the Professional and Revenue Examination under the prescribed rules.

Note: A separate seniority list of all the three categories of the Assistant Engineers, Sub Divisional Officers and Assistant Directors shall be maintained for the purpose of promotion; and

Change
12
12
20%

M
 T-C

ATTESTED

ATTESTED

13

(b) under the heading "PART-V DRAWING ESTABLISHMENT", against Serial No. 26, in Column No. 5, for the existing entries, the following shall be substituted, namely:

	5
(a)	Seventy percent (70%) by promotion, on the basis of seniority-cum-fitness, from amongst the holders of the post of Tracer who have qualified the prescribed Examination of Draftsman with three years service as such; and
(b)	thirty percent (30%) by initial recruitment".

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Encls: No and date even

Copy of the above is forwarded:-

1. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. The Secretary to Governor, Khyber Pakhtunkhwa.
3. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
4. The Accountant General, Khyber Pakhtunkhwa.
5. The Additional Accountant General (PR, Sub Office), Peshawar.
6. All the Commissioners in Khyber Pakhtunkhwa.
7. The Chief Engineers (North)/South & Merged Areas Irrigation Department, Khyber Pakhtunkhwa.
8. All Deputy Commissioners in Khyber Pakhtunkhwa.
9. The Registrar, Peshawar High Court, Peshawar.
10. The Secretary, Board of Revenue, Khyber Pakhtunkhwa.
11. The Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
12. The Secretary, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
13. PS to Chief Secretary, Khyber Pakhtunkhwa.
14. PS to Secretary Irrigation Department, Peshawar.
15. The Manager Govt. Printing Press, Khyber Pakhtunkhwa, Peshawar.
He is requested to supply 200 copies of the printed gazette, for further distribution.
16. PA to Additional Secretary, Irrigation Department, Peshawar
17. PA to Deputy Secretary (Admn)-Irrigation Department.

(Signature)
(ABDUL RAUF)
Section Officer (Estt)
24/8/21

WITNESSED

(14)

ANNEX C

(Handwritten initials)

MINUTES OF THE STANDING SERVICE RULES COMMITTEE (SSRC) MEETING REGARDING AMENDMENTS IN THE EXISTING SERVICE RULES OF IRRIGATION DEPARTMENT HELD ON 29TH APRIL, 2021 UNDER THE CHAIRMANSHIP OF SECRETARY IRRIGATION

A meeting of the Standing Service Rules Committee (SSRC) was held on 29th April, 2021 at 11.30 A.M. under the chairmanship of Secretary Irrigation Department. The following attended the meeting:-

- | | |
|--|------------------|
| ✓ 1. Secretary Irrigation | Chairman ✓ |
| ✓ 2. Engr. Sahibzada Muhammad Shabir, C.E (South) | Member ✓ |
| ✓ 3. Muhammad Yousaf Khan, OS (R-III) Estt. Deptt. | Member |
| ✓ 4. Mr. Wasil Khan, Additional Secretary, Irrigation Deptt. | Secretary/Member |
| ✓ 5. Mr. Niamat Khan, SO(SR-III), Finance Department | Member |

2. The meeting started with recitation from the Holy Quran. The chair welcomed the participants. The following agenda items were placed before the committee for consideration:-

Agenda Item No. 01
AMENDMENTS IN THE SERVICE RULES OF DRAWING ESTABLISHMENT (DRAFTSMAN BS-11) IN IRRIGATION DEPARTMENT.

Agenda Item No. 02
AMENDMENTS IN THE SERVICE RULES FOR PROMOTION OF FIELD CHOWKIDAR TO THE POST OF GAUGE RADER READER.

Agenda Item No. 03
AMENDMENTS IN THE SERVICE RULES FOR RECRUITMENT OF SECURITY OFFICER

✓ Agenda Item No. 04.
AMENDMENTS IN THE SERVICE RULES OF IRRIGATION DEPARTMENT FOR PROMOTION OF ASSISTANT ENGINEER (BS-17) TO THE POST OF EXECUTIVE ENGINEER (BS-18)

Agenda Item No. 1

The Chief Engineer (South) Irrigation Department presented the agenda item and submitted that the present service rules notified in 2011 for promotion of Draftsman at Sr. No.26 (part-V) of appendix is as under:-

- a. 50% by initial recruitment.
- b. 25% by promotion, on the basis of seniority-cum-fitness, from amongst the Tracers having certificate of Civil Draftsman course of two years duration from a recognized Board of Technical Education with three years' service as such and
- c. 25% by promotion on the basis of seniority-cum-fitness, from amongst the tracer who have qualified the prescribed Departmental Examination of Draftsman and having three years service as such.

Note:- If no suitable candidate is available for promotion against the quota at (b) then the vacancy shall filled in by the way as prescribed at (c) and Vice Versa.

be

(Handwritten signature)

15

(Handwritten mark)

He clarified that the fresh recruits, though having Civil Draftsman Course are not so capable to handle the related issues rather than the Tracers having practical experience in the department. After detailed discussion by the committee the following decision was taken:-

- a. 30% by Initial recruitment.
- b. 70% by promotion on the basis of seniority-cum-fitness, from amongst the tracer who have qualified the prescribed Examination of Draftsman and having three years service as such.

Agenda Item No. 02

AMENDMENTS IN THE SERVICE RULES FOR PROMOTION OF FIELD CHOWKIDAR TO THE POST OF GAUGE READER

The Chief Engineer (South) Irrigation presented the Agenda Item No. 2 that Under Sr. No. 60 of Appendix to the notification No. SO(E)IRR/23-573, dated 20.12.2006 the recruitment criteria for Gauge Reader BS-7 in Irrigation Department is as under:-

- 1. Minimum Qualification SSC or equivalent qualification from recognized institute or Board.
- 2. Age Limit 18-30 year.
- 3. Method of recruitment
 - i). 50% by initial recruitment.
 - ii). 50% by promotion on the basis of seniority cum fitness from amongst the male Regulation Beldar and Beldars having SSC qualification and ten years service in the Circle.

He clarified that Beldars, Chowkidars having SSC or higher qualification are also performing duties at various Gauge Station looking after the Gauges and assisting the Gauge Readers at sites and familiar with job but due to non existing of field Chowkidars promotion in the present Service Rules and requested the SSRC that the field Chowkidar may be included in the Service Rules for promotion of Gauge Reader. The committee unanimously recommended the proposed amendment.

h
T

Agenda Item No. 03

AMENDMENTS IN THE SERVICE RULES FOR RECRUITMENT OF SECURITY OFFICER

The Chief Engineer (South) Irrigation has submitted that under Sr. No. 39 of Appendix to the notification No. SO(E)IRR/23-573, dated 20.12.2006 the appointment criteria for appointment of Security Officer is as under:

Security Officer	Retired Armed/Civil Armed Forces at least in the rank of Subedar with SSC qualification.	18-30 years	By Initial recruitment
------------------	--	-------------	------------------------

Now subedar

(Handwritten signature)

[Handwritten mark]

He requested the forum that at the age of 30 years no Subedar is retired from Armed/Civil Armed Forces and requested the SSRC to enhance the age for recruitment of Security Officer from 18-30 years to 30-45. The committee unanimously agreed with the proposal with the addition that the word subedar may be replaced with Junior Commission Officer (JCO).

Agenda Item No. 04.

AMENDMENTS IN THE SERVICE RULES OF IRRIGATION DEPARTMENT FOR PROMOTION OF ASSISTANT ENGINEER (BS-17) TO THE POST OF EXECUTIVE ENGINEER (BS-18)

The Section Officer (Estt) Irrigation Department has submitted that following criteria is adopted for promotion of Assistant Engineers/Sub Divisional Officer/Assistant Directors (BS-17) to the post of Executive Engineer/Deputy Directors/Technical Officer (BS-18).

Executive Engineer/Deputy Director/Technical Officer (BS-18)	By promotion, on the basis of seniority-cum-fitness from amongst the Sub Divisional Officer, Assistant Engineers and Assistant Directors possessing Degree in B.E/BSc Engineering (Civil or Mechanical) from a recognized University, with at least five years service as such, and have passed the professional or Revenue Examination under the prescribed rules.
--	---

The B. Tech (Hons) Degree Holder Sub-Divisional Officers (BS-17) have submitted a joint application for reservation of 20% quota for promotion to the post of BS-18, as the present service rules does not allow them to be promoted to the post of Executive Engineer (BS-18).

He further informed the forum that the B.Tech (Hons) degree holders have also submitted a joint application to the Chief Secretary, Khyber Pakhtunkhwa. Establishment Department has examined their joint application and vide letter dated 21st April, 2021 advised the Irrigation Department to place the matter before the Standing Service Rules Committee (SSRC).

Therefore, the matter is placed before the SSRC to consider their request. The committee, after detailed discussion recommended the following amendments in the existing Service Rules:-

- i. 80% By promotion, on the basis of seniority-cum-fitness from amongst the Sub Divisional Officer, Assistant Engineers and Assistant Directors possessing Degree in B.E/BSc Engineering (Civil or Mechanical) from a recognized University, with at least five years service as such, and have passed the professional or Revenue Examination under the prescribed rules.
- ii. 12 % By promotion, on the basis of seniority-cum-fitness from amongst the Sub Divisional Officer, Assistant Engineers and Assistant Directors, possessing Degree in B. Tech (Hons) from a recognized University, with at least five years service as such, and have passed the professional or Revenue Examination under the prescribed rules.

[Handwritten initials]

ATTACHED

(18)

iii. 08% By promotion, on the basis of seniorly-cum-fitness from amongst the Sub Divisional Officer, Assistant Engineers and Assistant Director possessing Diploma of Associate Engineering from a recognized Board, with at least five years service as such, and have passed the professional or Revenue Examination under the prescribed rules.

Note: Separate seniorly lists of all the three categories of the Sub Divisional Officer/Assistant Engineers and Assistant Directors shall be maintained.

The meeting ended with a vote of thank from and to the chair.

Muhammad Tahir Orakzai
Secretary Irrigation Department
(Chairman)

Engr. Sahibzada Muhammad Shabir
Chief Engineer (South) Irrigation
(Member)

Mr. M. Yousaf Khan
Deputy Secretary (R-III) Estt Dept
(Member)

Mr. Niamat Khan
Section Officer (SR-III), Finance Department
(Member)

M
T-c

~~ATTESTED~~

(18)

ANNEX D



PAKISTAN
ENGINEERING COUNCIL



PEC ACT, 1976

[Published in the Gazette of Pakistan
Extraordinary dated the 14th January, 1976]
Amended upto 24th January, 2011.

W
T

PEC
ACT
1976

~~RESTRICTED~~

19

The Gazette of Pakistan



EXTRAORDINARY
PUBLISHED BY AUTHORITY

ISLAMABAD, WEDNESDAY, JANUARY 14, 1976

PART I

Acts, Ordinances, President's Orders and Regulations:

NATIONAL ASSEMBLY OF PAKISTAN

Islamabad, the 14th January, 1976

The following Acts of Parliament received the assent of the President on the 10th January, 1976, and are hereby published for general information:-

ACT No. V OF 1976

An Act to make provision for the regulation of the engineering profession

WHEREAS it is expedient to make provision for regulation of the engineering profession and for that purpose to constitute an Engineering Council;

WHEREAS the Council shall regulate the engineering profession with the vision that the engineering profession shall function as a key driving force for achieving rapid and sustainable growth in all national, economic and social fields;

WHEREAS the Council shall as its mission set and maintain realistic and internationally relevant standards of professional competence and ethics for engineers, and licence engineers, and engineering institutions to competently and professionally promote and uphold the standards;

AND WHEREAS, the Council, covering the entire spectrum of engineering disciplines, shall function as an apex body to encourage and promote the pursuit of excellence in engineering profession and to regulate the quality of engineering education and the practice of engineering and thereby promote rapid growth in economic and social fields in Pakistan.

It is hereby enacted as follows:-

1. *Short title, extent and commencement.*- (1) This Act may be called the Pakistan Engineering Council Act, 1975.

ATTESTED

20

3

- (2) It extends to the whole of Pakistan.
- (3) It shall come into force at once.

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

- (i) "Accreditation Committee" means the Accreditation Committee constituted under sub-section (1) of section 14;
- (ii) "accredited engineering qualification" means any of the qualifications included in the First Schedule or the Second Schedule;
- (iii) "bye-laws" means bye-laws made under this Act;
- (iv) "Chairman" means the Chairman of the Council;
- (v) "constructor" means any person, partnership, corporate body or any other legal entity which or who is engaged in the business of construction and is licensed and registered as such;
- (vi) "consulting engineer" means any person, partnership, corporate body or any other legal entity which independently performs study, prepared reports, makes design, supervises construction or undertakes any other similar advisory activities in engineering disciplines and is registered as such by the Council;
- (vii) "continued professional development" means the systematic maintenance, improvement and broadening of knowledge, understanding and skill, and the development of personal qualities necessary for the execution of professional and technical duties throughout the individual's working life;
- (viii) "Council" means the Pakistan Engineering Council constituted under section 3;
- (ix) "creativity" means innovation, invention, hypothesis, theories and such other actions in the realm of engineering profession contributory to development;
- (x) "engineering institution" means an institution within or without Pakistan which grants degree, diploma and certificate in engineering and related education and is accredited as such by the Council;
- (xi) "engineering products" means the products as a result of or the outcome of professional engineering works or engineering profession or both;

ATTESTED

(21)

4

(21)

- (xii) "engineering profession" means engineering education and practices of engineering and technology;
- (xiii) "engineering public organization" means a department of the Federal Government or a Provincial Government, a Public Corporation, autonomous or semi-autonomous body, cantonment board, municipality, improvement trust or other local authority;
- (xiv) "engineering services" means services relating to study, preparation of reports, design, supervision, estimation, documentation, evaluation and advising in matters of engineering profession and engineering works;
- (xv) "engineering university" means a degree awarding university or institution as has more than fifty per cent of their undergraduate and postgraduate programmes as well as student population pertaining to engineering and are recognized as such;
- (xvi) "enrolment committee" means the enrolment committee referred to in sub-section (1) of section 17;
- (xvii) "Governing Body" means the Governing Body of the Council;
- (xviii) "learned societies" means institutions and associations for promotion of knowledge and excellence in engineering and technology;
- (xix) "Management Committee" means the Management Committee of the Council;
- (xx) "member" means a member of the Council and includes the Chairman, Senior Vice-Chairman, Vice-Chairman, professional engineers and registered engineers;
- (xxi) "operator" means any person, partnership, corporate body or any other legal entity which is engaged in the business of operating construction work and is licensed and registered as such;
- (xxii) "prescribed" means prescribed by bye-laws;
- (xxiii) "professional engineer" means a person who holds an accredited engineering qualification and after obtaining a professional experience of five years, whether working privately or in the employment of an engineering public organization, has passed the prescribed engineering practice examination and is registered as such by the Council;
- (xxiv) "professional engineering bodies" means professional engineering institutes, associations and such other bodies registered as such by the Council;

by
T.C

ATTESTED

(Signature)

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

- (a) railways, aerodromes, bridges, tunnels and metalled roads;
- (b) dams, canals, harbours, light houses;
- (c) works of an electrical, mechanical, hydraulic, communication, aeronautical power engineering, geological or mining character;
- (d) waterworks, sewers, filtration, purification and incinerator works;
- (e) residential and non-residential buildings, including foundations, framework and electrical and mechanical systems thereof;
- (f) structures accessory to engineering works and intended to house them;
- (g) imparting or promotion of engineering education, training and planning, designing, development, construction, commissioning, operation, maintenance and management of engineering works in respect of computer engineering, environmental engineering, chemical engineering, structural engineering, industrial engineering, production engineering, marine engineering and naval architecture, petroleum and gas engineering, metallurgical engineering, agricultural engineering, telecommunication engineering, avionics and space engineering, transportation engineering, air-conditioning-ventilation, cold storage works, system engineering, electronics, radio and television engineering, civil engineering, electrical engineering, mechanical engineering and biomedical engineering etc;
- (h) organizing, managing and conducting the teaching and training in engineering universities, colleges, institutions, Government colleges of technology, polytechnic institutions and technical training institutions;
- (i) preparing standard bidding, or contract documents, construction cost data, conciliation and arbitration procedures; guidelines for bid evaluation; prequalification and price adjustments for construction and consultancy contracts; and.

M
T

~~ATTESTED~~

(Handwritten mark)

(j) any other work which the Council may, by notification in the official Gazette, declare to be an engineering work for the purposes of this Act;

(xxvi) "Register" means the Register maintained under section 16;

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

(xxviii) "registered" means registered under this Act;

(xxix) "Registrar" means the Registrar of the Council;

(xxx) "Senior Vice-Chairman" means the Senior Vice-Chairman of the Council;

(xxxi) "Think Tank" means a creative and innovative body to advise on engineering and national development plans;

(xxxii) "Think Tank Committees" means bodies of eminent engineers constituted by the Council to assist in formulation of relevant policies relating to national development;

(xxxiii) "university" means a University established by law in Pakistan and having an engineering faculty; and

(xxxiv) "Subsidiary" means a body formed by the Governing body of the Council to operate under its control and to perform its delegated functions.

3. *Constitution and incorporation of Engineering Council.* (1) There shall be constituted in accordance with the provisions of this Act an Engineering Council to be known as the Pakistan Engineering Council.

M.T.C

(2) The Council constituted under sub-section (1) shall be a body corporate having perpetual succession and a common seal, with power to acquire and hold property, both movable and immovable, and to contract, and shall by the name by which it is known sue and be sued.

(3) The Council shall be composed of all persons whose names may hereafter be entered in the Register, so long as they continue to have their names borne on the Register.

(4) Notwithstanding anything contained in sub-section (3), the Council shall, upon its first constitution, be composed of

ATTESTED



- (a) a Chairman, being an engineer with not less than twenty years standing to be nominated by the Federal Government;
- (b) ten members, being engineers, of whom two each shall be nominated by the Federal Government and a Provincial Government; and
- (c) one member, being an engineer, to be nominated by each University.

(5) The headquarters of the Council shall be at Islamabad or at such other place as the Federal Government may appoint.

3A. *Executive powers of the Council.* - (1) The general direction and administration of the Council and its affairs shall vest in the Governing Body which may exercise all powers and do all acts and things that may be exercised or done by the Council:

(2) Subject to the provisions of this Act, the bye-laws and the general or special delegation of powers by the Governing Body and the Management Committee, the Chairman shall be the Chief Executive of the Council and shall also be empowered to -

- (a) take any action or step in emergency which in his opinion requires immediate action as he may consider necessary, subject to ratification by the Governing Body in its meeting immediately held thereafter; and
- (b) exercise the powers of the Council in the matters relating to its administration and the staff of the Council, who may delegate such powers to the Registrar subject to such conditions as he may specify in this regard.

(3) The Council shall be funded through an initial grant by the Government and thereafter continuous financial support shall be provided besides that accrue from registrations for running the affairs of the Council.

4. *Chairman, Senior Vice-Chairman and Vice-Chairmen.* - (1) There shall be a Chairman, Senior Vice-Chairman and four Vice-Chairmen of the Council who shall be eminent professional engineers of known integrity, competence, standing and stature with a minimum of twenty-five years of standing.

(2) The Chairman and Senior Vice-Chairman shall be elected by members from amongst themselves in such manner as may be prescribed.

(3) Four Vice-Chairmen shall be elected one from each Province by the votes registered in the respective Province.

W
T

TESTED

25

8

[Handwritten signature]

(4) The Chairman, Senior Vice-Chairman and Vice-Chairmen shall hold office for a term of three years but no person shall hold office for more than two consecutive terms.

(5) When the Chairman, by reason of absence from Pakistan or any other cause is unable to perform his functions, the Senior Vice-Chairman for the time being shall perform the functions of Chairman until the Chairman returns to Pakistan or, as the case may be, resumes his functions.

5. *Annual general meeting of the Council.* (1) An annual general meeting of the Council shall be held at the headquarters of the Council or at a provincial capital by rotation at such time as may be appointed by the Governing Body.

(2) The following business may be transacted at the annual general meeting namely:-

- (a) presentation of annual report;
- (b) presentation of audited accounts;
- (c) presentation of annual budget;
- (d) appointment of auditors; and
- (e) such other business as may be placed before the meeting by the Governing Body or as the meeting may decide.

6. *Extraordinary general meeting of the Council.* (1) An extraordinary general meeting of the Council shall be called by the Chairman at the headquarters of the Council -

- (a) within fourteen days of the receipt by him of a requisition signed by not less than one hundred members and stating the business proposed to be transacted at the meeting; or
- (b) at any time, if the holding of such meeting for the consideration of any urgent matter is in his opinion necessary.

(2) At a meeting called in pursuance of clause (a) of sub-section (1), no business other than the business stated in the requisition referred to in that clause shall be transacted.

7. *General provisions relating to meetings of Council.* (1) An annual or extraordinary general meeting of the Council shall be held and conducted in accordance with the bye-laws.

(2) To constitute a quorum at an annual or extraordinary general meeting of the Council, the presence of not less than one hundred members shall be necessary.

~~ATTESTED~~

Provided that, in respect of the Council as constituted under sub section (4) of section 3, this sub section shall have effect as if, for the words "one hundred" therein the word "six" were substituted.

(3) All decisions of the Council at an annual or extraordinary general meeting shall be taken by majority of the members present and voting.

8. *Functions of the Council.* - The following shall be the functions of the Council, namely:-

- (a) maintenance of a Register of persons qualified to work as registered engineers, professional engineers, consulting engineers, constructors and operators;
- (b) accreditation of engineering qualifications for the purpose of registration of registered engineers, professional engineers;
- (c) removal of names from the Register and restoration to the Register of names which have been removed;
- (d) laying down of standards of conduct for the members;
- (e) safeguarding the interests of the members;
- (f) promotion of reforms in the engineering profession;
- (g) management of the funds and properties of the Council;
- (h) promotion of engineering education and review of courses of studies in consultation with the Universities;
- (i) levy and collection of fees from applicants for registration or temporary licences and members;
- (j) exercise of such disciplinary powers over the members and servants of the Council as may be prescribed;
- (k) formation of such committees and subsidiaries as may be prescribed;
- (l) assistance to the Federal Government as a Think Tank;
- (m) promotion of engineering profession in totality;
- (n) encouragement, facilitation and regulation of working of professional engineering bodies for creativity and as custodian of engineering under the umbrella of the Council;
- (o) ensuring and managing of continued professional development through engineering academies and professional bodies;
- (p) establishing standards for engineering contracts, cost and services;



- (q) facilitating engineering sector industries;
- (r) coordinating between various engineering forums and Federal Government;
- (s) providing forum for arbitrations pertaining to disputes in construction and consultancy contracts, and
- (t) performance of all other functions connected with, or ancillary or incidental to, the aforesaid functions.

9. *Governing Body.*- (1) There shall be a Governing Body which shall be the principal executive authority of the Council for supervising and governing the affairs and functions assigned to the Council by or under this Act and bye-laws.

(2) The Governing Body, besides Registrar, shall be composed of the following sixty-five professional engineers registered with the Council with a minimum twenty years standing, namely:-

- (a) the Chairman, Senior Vice-Chairman and four Vice-Chairmen one from each Province who shall also be the Chairman, Senior Vice-Chairman and Vice-Chairmen of the Governing Body;
- (b) the Registrar;
- (c) two distinguished professional engineers to be nominated by the Federal Government one member each from Azad Jamu and Kashmir and Gilgit-Baltistan;
- (d) one distinguished professional engineer to be nominated by each Provincial Government;
- (e) five Vice-Chancellors of engineering universities (one nominated by each Provincial and one by the Federal Government);
- (f) President or Chairman Association of Consulting Engineers (Pakistan);
- (g) President or Chairman All Pakistan Contractors Association or their nominee;
- (h) Elected President of the Institution of Engineers Pakistan;
- (i) Forty members to be elected in the prescribed manner in proportion to the number of engineers registered in each Province, by the valid professional and registered engineers whose names are borne on the Register on the thirtieth June of the year in which elections to the Governing Body are to be held, physical balloting will be held and no proxy voting to be permitted.

W
F.C

~~ATTACHED~~

[Handwritten mark]

(j) and Elected President of Pakistan Engineering Congress;

(k) One nominee from the following Ministry or organizations of the Federal Government, not below the BPS-20, namely:-

- (i) Planning Commission;
- (ii) Ministry of Science and Technology;
- (iii) Higher Education Commission;

(3) The members of the Governing Body, other than the Registrar, shall hold office for a term of three years and no person shall hold office for more than two consecutive terms.

(4) The members of the Governing Body shall be nominated or, as the case may be, elected not less than fifteen days before the term of the outgoing members is due to expire.

(5) The Governing Body shall hold at least three meetings per year, the quorum for which shall be thirty per cent of the total membership of the Governing Body.

(6) The election of members of the Governing Body under clause (i) of sub-section (2) shall be held so as to conclude not less than fifteen days before the term of the outgoing members is due to expire.

9A. Management Committee.- (1) There shall be a Management Committee, to oversee working of the Secretariat to run the affairs of the Council in accordance with the provisions of this Act and bye-laws.

(2) The Management Committee shall be composed of the following, namely:-

- (a) Chairman;
- (b) Senior Vice-Chairman; and
- (c) Four Vice-Chairmen;

M F C

(3) The tenure of the Management Committee shall be the same as that of the Governing Body. The Management Committee shall hold meetings at least once in a quarter, the quorum for which shall be three.

10. Accreditation of engineering qualifications granted by institutions in Pakistan.- (1) The engineering qualifications granted by engineering institutions

~~ATTESTED~~

29



in Pakistan which are included in the First Schedule shall be the accredited engineering qualifications for the purposes of this Act.

(2) Any engineering institution in Pakistan which grants an engineering qualification not included in the First Schedule may apply to the Council to have such qualification accredited and the Council may, by notification in the official Gazette, amend the First Schedule so as to include such qualification therein.

11. *Accreditation of foreign engineering qualifications.*- (1) The engineering qualifications granted by engineering institutions outside Pakistan which are included in the Second Schedule shall be accredited engineering qualifications for the purposes of this Act.

(2) Any engineering qualification granted by an engineering institution outside Pakistan not included in the Second Schedule may be accredited by the Council, and the Council may, by notification in the official Gazette, amend the Second Schedule so as to include such qualification therein.

12. *Grant of temporary licences.*- (1) The Enrolment Committee may grant to any person, domiciled outside Pakistan who does not hold an accredited engineering qualification but who holds an engineering degree, or who is a corporate member of an engineering body, society, institute or association accredited by the Council of respective country, a temporary licence for a specific project to work as an associate of a professional engineer; the professional engineer shall sign and seal the plans and specifications for the project.

(2) The Enrolment Committee may, if it feels that such action is warranted by special circumstances, grant to a person referred to in sub-section (1) a temporary licence to work as the engineer in charge of a specific project for so long as he is assisted by a professional engineer.

(3) The Enrolment Committee may, for works to be carried out at the discretion of an engineering public organization, grant a temporary licence to any person on the recommendation of such organization.

(4) Any person to whom a temporary licence has been granted shall, during the period for which the licence is valid, be subject to the provisions of this Act and the bye-laws.

13. *Power to require information as to courses of study and examination.*- Every engineering institution in Pakistan which grants a accredited engineering qualification shall furnish such information as the Council may, from time to time, require as to the courses of study and examination to be undergone in order to obtain such qualification.

14. *Accreditation of engineering institutions.*- (1) The Council shall constitute an Accreditation Committee for organizing and carrying out a comprehensive program of accreditation of engineering universities, colleges and

TC

~~ATTEST~~



institutions etc. according to the criteria approved by the Governing Body in consultation with Higher Education Commission.

(2) The curricula of courses of studies in various disciplines of engineering and minimum level and standard of such courses including lectures, laboratory, design, drawing and field work shall be examined and scrutinized by the Accreditation Committee who shall submit its report to the Governing Body for approval.

15. *Withdrawal of accreditation.*- (1) When upon report by the Accreditation Committee, it appears to the Council that the courses of study and examination to be gone through in any engineering institution in Pakistan in order to obtain an accredited engineering qualification or the standards of proficiency required from candidates in any examination held for the purpose of granting such qualification are not such to secure to person holding such qualification the knowledge and skill requisite for the efficient practice of engineering, the Council shall forward the report to the engineering institution concerned with an intimation of the period within which it may submit its explanation to the Council;

(2) On receipt of the explanation or, where no explanation is submitted within the specified period, on the expiry of that period, the Council, after making such further inquiry, if any, as it may think fit, may, by notification in the official Gazette, direct that an entry shall be made in the First Schedule against the engineering qualification to which the explanation relates declaring that it shall be a accredited engineering qualification only, when granted before a specified date.

16. *Maintenance of Register, etc.*- (1) The Council shall maintain in the prescribed manner a Register in which shall be entered the names and other particulars of persons possessing accredited engineering qualifications whose application for registration as registered engineers, professional engineers, consulting engineers, constructors and operators are, from time to time, granted by the Council.

(2) Every application for registration under this Act shall be made to the Council in the prescribed form and be accompanied by the prescribed fee.

(3) Every registered engineer, professional engineer, consulting engineer registered under this Act shall be entitled to receive a certificate of registration under the hand of the Registrar.

(4) A certificate of registration issued under sub section (3), shall, subject to the provisions of this Act, remain in force until the thirty first day of December of the year in which it is issued and shall thereafter be renewable for any number of years not exceeding three at a time upon payment of the prescribed fee.

(5) Every constructor and operator registered under this Act shall be entitled to receive a licence under the hand of the Registrar.

~~REGISTERED~~

(31)

(32)

17. *Registration and removal of names from Register.* (1) Every application for registration and every case of removal of a name from the Register shall be considered by an enrolment committee consisting of the Chairman, Senior Vice-Chairman and three other members, being engineers of not less than twenty years' standing, nominated by the Governing Body.

(2) The enrolment committee in its discretion may refuse to permit the registration of any person or direct the removal altogether or for a specified period from the Register of the name of any registered engineer, professional engineer, consulting engineer, constructor or operator who has been convicted of any such offence as implies in the opinion of the committee a defect of character after providing such person an opportunity of being heard, and shall record reasons for action under this section.

(3) The enrolment committee may direct that any name removed from the Register under sub section (2) shall be restored.

18. *Appeal against removal of name from Register.* (1) Any registered engineer, professional engineer, consulting engineer, constructor or operator aggrieved by an order under sub section (1) of section 17 for the removal of his or its name from the Register may, within thirty days of the communication of the order, prefer an appeal to the Governing Body.

(2) Upon the receipt of an appeal under sub section (1), the Governing Body may, after holding such inquiry as it may consider necessary and giving the appellant an opportunity of being heard in person or through an advocate, pass such order as it may deem fit.

19. *Revision of Register.* (1) The Registrar shall remove from the Register the name of any registered engineer, professional engineer, consulting engineer, constructor or operator.

- (a) who has died or, as the case may be, which has ceased to exist;
- (b) who or which has failed to have his or its certificate of registration renewed within one year of the date of its expiry, or
- (c) whose name has been directed under sub section (2) of section 17 or sub section (7) of section 22 to be removed from the Register.

(2) The Registrar shall restore to the Register the name of any registered engineer, professional engineer, consulting engineer, constructor or operator whose name has been removed from the Register under clause (b) of sub-section (1) if such registered engineer, professional engineer, consulting engineer, constructor or operator applies for such restoration and pays the prescribed fee.

Tc

~~SECRET~~

(B)

(3) The Council may, in its discretion, after the expiry of not less than one year following the removal from the register of the name of any registered engineer, professional engineer, consulting engineer, constructor or operator grant registration to such registered engineer, professional engineer, consulting engineer, constructor or operator if he or it applies for registration.

20. *Complaints against professional engineers, etc.*- (1) A complaint made against any registered engineer, professional engineer, consulting engineer, constructors or operators as to work or conduct shall be considered by the enrolment committee and, if that committee is of the opinion that there are sufficient reasons to proceed against the person to whom the complaint relates, it may either proceed to inquire into the complaint itself or refer the complaint to a Tribunal of Inquiry.

(2) Where the enrolment committee decides to proceed with the complaint itself, it shall follow the same procedure as has been prescribed for the Tribunal of Inquiry and may pass such order as it is competent to pass under sub section (7) of section 22.

(3) For the purpose of any inquiry, the enrolment committee shall be deemed to be a court within the meaning of the Qanun-e-Shahadat, 1984 (P.O. No. 10 of 1984), and shall exercise all the powers of a civil court for summoning witnesses, for compelling the production of documents and for issuing commissions.

(4) The Enrolment Committee may also take *sub moto* notice of a professional misconduct by registered engineer, professional engineer, consulting engineer, constructor or operator or an engineering organizations, whether in the public or in private sector, and shall follow the same procedure as provided in sub-sections (1) and (2).

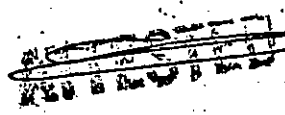
21. *Tribunals of Inquiry.*- (1) For holding inquiries into the professional conduct of registered engineers, professional engineers, consulting engineers, constructors and operators, the Governing Body may constitute as many Tribunals of Inquiry as it may consider necessary.

(2) A Tribunal shall consist of three members appointed by the Governing Body out of a panel of members of the Council maintained by the Committee who have professional standing of not less than ten years and who hold, or have held high engineering assignments.

(3) The Governing Body shall appoint one of the members of a Tribunal to be the Chairman thereof.

22. *Procedure in inquiries, etc.*- (1) In inquiries relating to the professional conduct of registered engineer, professional engineer, consulting engineer, constructors or operator, the Tribunal shall, except as hereinafter provided, follow such procedure as may be prescribed.

TC



(2) The Tribunal shall fix a date for the hearing of the case and shall cause notice of the day so fixed to be given to the complainant and the registered engineer, professional engineer, consulting engineer, constructors or operator concerned, hereafter in this section referred to as the respondent, and shall afford to the complainant and the respondent an opportunity of leading evidence, if any, and of being heard before recommendations are made in the case.

(3) The Chairman of the Tribunal may empower a member of the Tribunal to consider and decide preliminary issues and to record evidence.

(4) On completion of the inquiry, the Tribunal may recommend to the Enrolment Committee:-

- (a) dismissal of the complaint;
- (b) imposition of any of the following penalties on the respondent namely:-
 - (i) reprimand;
 - (ii) removal of name from the Register for a period not exceeding five years.
 - (iii) removal of name from the Register altogether; or
- (c) prosecution of the respondent for the offence constituted by his or its conduct.

(5) The Tribunal may make such recommendation to the Enrolment Committee as to the cost of the proceedings before it as it may deem fit; and where the Tribunal is of the opinion that a complaint made against a respondent is false and vexatious, it may, in addition and without prejudice to any other remedy available to the respondent, recommend imposition upon the complainant of costs not exceeding a sum of ten thousand rupees and payment to the respondent of the whole or any part of the costs recovered from the complainant.

(6) In any case in which it has recommended the imposition of any penalty on, or the prosecution of the respondent, the Tribunal may also recommend that an amount not exceeding twice the amount of the fee received by the respondent from the complainant may be recovered from the respondent and paid to the complainant as compensation.

(7) The Enrolment Committee shall meet to consider the recommendations of the Tribunal within a period of six weeks from the date of receipt thereof and pass such orders as it may deem fit.

(7A) Any person aggrieved by an order under sub section (7) may, within thirty days of the communication of order to him, prefer an appeal to the Governing Body.

~~SECRET~~

W
TC

34

(8) Any order of the Enrolment Committee as to the costs of the proceedings before the Tribunal or as to the recovery of any amount from a complainant or a respondent shall be executable as if it were an order of a District Judge.

(9) When any professional engineer or consulting engineer is reprimanded under this Act a record of the punishment shall be entered against his or its name in the Register.

23. Powers of the Tribunal.- (1) For the purpose of any such inquiry as aforesaid, a Tribunal shall have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (Act V of 1908); in respect of the following matters; namely:-

- (a) enforcing the attendance of any person,
- (b) compelling the production of documents; and
- (c) issuing commissions for the examination of witnesses.

(2) Every such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Pakistan Penal Code (Act XLV of 1860), and a Tribunal shall be deemed to be a civil court for the purpose of sections 480 and 482 of the Code of Criminal Procedure 1898 (Act V of 1898).

(3) For the purposes of enforcing the attendance of any person or of compelling the production of documents or issuing commissions-

- (a) the jurisdiction of a Tribunal shall extend to the whole of Pakistan; and
- (b) a tribunal may send to any civil court having jurisdiction in the place where the Tribunal is sitting any summons or other process for the attendance of a witness or the production of documents required by the Tribunal; or any commission which it desires to issue, and the civil court shall serve such process or issue such commission, as the case may be, and may enforce any such process as if it were a process for attendance or production before itself.

(4) Proceedings before a Tribunal in any such inquiry shall be deemed to be civil proceedings for the purposes of Articles 15 of the Qanun-e-Shahadar, 1984 (P.O. No. 10 of 1984) and the provisions of that section shall apply accordingly.

24. Fund of the Council; accounts and audit.- (1) All sums received by the Council as fees, grants donations or subscriptions shall form part of a fund which shall be managed, administered and utilized in such manner as may be prescribed.

Handwritten signature and initials

~~APPROVED~~

(35)

(22)

(2) The Governing Body shall cause to be maintained such books of account and other books in such form and manner as may be prescribed.

(3) The accounts of the Council shall be audited, before the thirtieth day of November each year, by an auditor appointed by the Council who is a chartered accountant within the meaning of the Chartered Accountants Ordinance, 1961 (X of 1961).

25. *Bye-laws of the Council.* - (1) The Governing Body may, with the previous sanction of the Federal Government, by notification in the official Gazette, make bye-laws for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such bye-laws may provide for all or any of the following matters, namely:-

- (a) the summoning and holding of meetings of the Council and Governing Body, the time and places where such meetings are to be held, the conduct of business and the number of members necessary to constitute a quorum at a meeting of the Governing Body;
- (b) the powers and duties of the Chairman, Vice-Chairman and Registrar;
- (c) the terms of office and powers and duties of the Registrar and other officers and servants of the Council;
- (d) the appointment, powers, duties and procedure of inspectors;
- (e) the procedure for maintenance and publication of the Register, the fees to be charged under this Act and establishment of sub-offices or branches of the Council;
- (f) the management of the property of the Council and the maintenance and audit of its accounts;
- (g) the procedure at any inquiry held under sub-section (2) of section 22; and
- (h) any other matter which is to be or may be prescribed.

25A. *Power to make regulations.* - The Governing Body may, in consultation with the committee of Vice-Chancellors of the Universities of Engineering and Technology of Pakistan set up by the Higher Education Commission, make regulations, not inconsistent with the provisions of this Act and the bye-laws, to provide for-

W
TC

~~ATTACHED~~

[Handwritten mark]

- (a) minimum standard of courses of study and practical training for obtaining graduate and post-graduate engineering qualifications to be included in the First and Second Schedules;
- (b) minimum requirement for the content and duration of courses of study as aforesaid;
- (c) minimum qualifications for admission to engineering institutions offering course of study and laying down minimum standard for holding admission examinations;
- (d) qualification and experience required of teachers for appointment in engineering universities, colleges and institutions;
- (e) minimum standards of examinations, and duration and standard of practical training, for securing accreditation of engineering qualifications under this Act; and
- (f) qualifications and experience required of examiners for professional examinations of accredited engineering qualifications.

26. *Proof of membership, etc.*- For the purposes of any action or proceeding under this Act, a certificate of the Registrar certifying under the seal of the Council that, on a specified date, the name of a person was or was not borne on the Register shall be proof of its contents and of the authenticity of his signature, until the contrary is proved.

27. *Penalties and procedure.*- (1) After such date as the Federal Government may, after consultation with the Council, by notification in the official Gazette, appoint in this behalf, whoever undertakes any professional engineering work shall, if his name is not for the time being borne on the Register, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both, and, in the case of a continuing offence, with a further fine which may extend to two hundred rupees for every day after the first during which the offence continues.

(2) After the date appointed as aforesaid, whoever employs for any professional engineering work any person whose name is not for the time being borne on the Register shall be punishable, on first conviction, with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both, and on a second or subsequent conviction, with imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both.

(3) Whoever willfully procures or attempts to procure himself or itself to be registered under this Act as a registered engineer, professional engineer, consulting engineer, constructor or operator by making or producing or causing to be made or produced any false or fraudulent representation or declaration, either orally or in writing, and any person who assists him therein shall be punishable

[Handwritten signature]

~~ATTESTED~~

37

38

with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(4) Whoever falsely pretends to be registered under this Act, or not being registered under this Act, uses with his name of title any words or letters representing that he is so registered, irrespective of whether any person is actually deceived by such pretence or representation or not, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(5) No person undertaking any professional engineering work shall, unless he is registered under this Act, be entitled to recover before any court or other authority any sum of money for services rendered in such work.

(5A) No person shall, unless registered as a registered engineer or professional engineer, hold any post in an engineering organization where he has to perform professional engineering work.

(6) No court shall take cognizance of any offence punishable under this Act save on complaint made by, or under the authority of, the Council.

(7) No court inferior to that of a Magistrate of the first class shall try any offence punishable under this Act.

28. Saving.- Nothing in this Act shall be deemed to-

(a) affect the right of any person who was, immediately before the date specified in a notification issued under sub-section (1) of section 27, entitled to practise as an architect to continue such practice provided a professional engineering work is executed under the supervision of a professional engineer, or to prevent him from associating with a professional engineer;

(b) affect the right of any person to execute or undertake any work for which he has been trained in an institution specified by the Council, by notification in the official Gazette, for the purposes of this clause;

(c) affect the right of any person who was, immediately before the date specified in a notification issued under sub-section (1) of section 27, entitled to work as a land surveyor to continue such work, or

(d) restrict the normal practice of his art or trade by an artisan or skilled workman; or

(e) affect the rights of the members of the Governing Body constituted for the term commencing from the year 2008 and ending in 2010.

TC

~~ATTACHED~~

38

(Handwritten mark)

29. *Power to exempt.* If the Council so recommends, the Federal Government may, by notification in the official Gazette, exempt any person or class of persons, or any professional engineering work or class of such works, from the operation of the provisions of section 27, subject to such conditions, if any, as may be specified in the notification.

30. *Commission of Inquiry.* (1) Whenever it is made to appear to the Federal Government that the Council is not complying with any of the provisions of this Act, the Federal Government may refer the particulars of the complaint to a Commission of Inquiry consisting of-

- (a) a person who is, or has been, or is qualified to be, a Judge of a High Court, to be appointed by the Federal Government;
- (b) a professional engineer, to be nominated by the Federal Government; and
- (c) a professional engineer, to be nominated by the Council.

(2) The Commission shall proceed to inquire and report to the Federal Government as to the truth of the matters charged in the complaint and, in case of any charge of default or of improper action being found by the Commission to have been established, the Commission shall recommend remedies, if any, which are in its opinion necessary.

(3) The Federal Government may require the Council to adopt the remedies so recommended within such time as, having regard to the report of the Commission, it may think fit; and, if the Council fails to comply with any such requirement, the Federal Government may amend the bye-laws or make such provision or order or take such other steps as may seem necessary to give effect to the recommendations of the Commission.

(4) A Commission of Inquiry shall have power to administer oaths, to enforce the attendance of witnesses and the production of documents, and shall have all such other necessary powers for the purpose of any inquiry conducted by it as are exercised by a civil court under the Code of Civil Procedure, 1908 (Act V of 1908).

30A. *Indemnity.*- No suit, prosecution, or other legal proceedings shall lie against the Council or any of its Committees, Officers or servants for anything which is in good faith done or intended to be done in pursuance of this Act or the bye-laws or regulations made thereunder.

(Handwritten signature)

~~RESTRICTED~~

(39)

22

30B. *Validation of actions, Act V of 1976.*- Anything done, actions taken, orders passed, instruments made, proceedings initiated, process or communications issued, powers conferred, assumed, exercised by the Council or its officers and servants on or after the 15th January, 2008, and before the commencement of the Pakistan Engineering Council (Amendment) Act, 2011 shall be deemed to have been validly done, made, issued, taken, initiated, conferred, assumed and exercised shall have, and shall be deemed always to have had, effect accordingly.

Amended vide National Assembly Secretariat Notification No. F.22(28)/2009-Legis dated 24th January, 2011.

T.C

ATTESTED

ANNEX - E

40

257

~~Handwritten signature~~ - (Handwritten mark)

Constitution of Standing Service Rules Committee

Under the provision of Rule 3(2) of the NWFP Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, the Provincial Government is pleased to constitute with immediate effect and in supersession of Services and General Administration Department Notification No.SOR.II (S&GAD)2(9)/97 dated 12th September, 2001, the Standing Service Rules Committee with the following composition:-

- | | | |
|----|---|------------------|
| 1. | Administrative Secretary concerned | Chairman |
| 2. | Additional Secretary (Regulation)
E&A Department | Member |
| 3. | Additional Secretary (Regulation)
Finance Department | Member |
| 4. | Additional Secretary
Law Department | Member |
| 5. | Head of the attached Department concerned | Member |
| 6. | Deputy Secretary(Admn) of the
Department concerned | Member/Secretary |

2. I am further directed to request that the Working Paper for the Standing Service Rules Committee should be prepared in light of instructions issued vide letter No.SOR-I (S&GAD) 1-206/74(A) dated 13th October, 1990.

(Authority: Notification No.SOR.VI(E&AD)2-69/2003. dated 29th Jan, 2005)

Framing of Service Rules/Recruitment Rules

I am directed to refer to this department letter No.SOR-I(S&GAD) 4-2/85, dated 4.12.1985, on the subject noted above and to enclose herewith revised proforma (Annexure 'I' and Annexure-'II') for initiating proposals for framing new Service/Recruitment Rules. The Administrative Departments are requested that all proposals for framing of new Service Rules and amendments in the existing rules should be accompanied by a working paper (six copies) explaining background and justification for the proposal, particularly where existing rules are required to be amended.

2. It is requested that while sending proposals for framing of new Service Rules and making amendments in the existing rules, the qualifications proposed for appointment to posts should suit the requirement of the job.

3. It has been decided that the Law Department/Public Service Commission and Finance Department would in no case delay vetting/ clearance/ concurrence of rules for more than one month.

Handwritten initials

~~ANNEXED~~

41

258

[Handwritten initials]

Annexure-I

NEW RULES

PROFORMA SHOWING PROPOSED METHOD OF RECRUITMENT APPLICABLE TO THE POSTS IN THE

S.No.	Nomenclature of the post.	Minimum qualification for appointment by initial recruitment or by transfer	Minimum qualification for appointment by promotion	Age limit	Method of recruitment
1	2	3	4	5	6

Annexure-II

PROFORMA SHOWING PROPOSED AMENDMENT IN THE EXISTING SERVICE RULES

Nomenclature of the post. (Existing) (Proposed) (Reasons)	Qualification		Age		Method of recruitment	
	(Existing)	(Proposed) (Reasons)	(Existing)	(Proposed) (Reasons)	(Existing)	(Proposed) (Reasons)
2	3		4		5	

Sanction of the post/posts by the Finance Dept may also be quoted and enclosed.

(Authority: No.SOR-I(S&GAD) 1-206/74(A) Dated Peshawar 13.10.1990)

Framing of Service/Recruitment Rules.

I am directed to refer to this Department letter of even number dated 15.10.1998 on the subject noted above and to say that ever since the re-organization of the Standing Service Rules Committee, the Administrative Departments, fix schedule of the Standing Service Rules Committee meetings without consulting S&GAD and Finance Department. Needless to point out that representatives of those Departments do have other important official engagements/commitments.

2. Furthermore, the working papers/proposals for framing of service/ recruitment rules are forwarded to this Department shortly before the meeting. As such it becomes difficult to examine the proposals properly.

3. I am, therefore, directed to request you to kindly ensure that proposals/ working paper for framing/amending the rules shall be furnished to the S&GAD and Finance Department at least seven days, before the date of the meeting. The above instructions may be brought to the notice of all concerned for strict compliance.

(Authority S&GAD letter No.SORII(S&QAD)2(9)/98 dated 24.12.98)

[Handwritten signature]

ATTACHED

ANNEX F

42

Handwritten marks and scribbles.

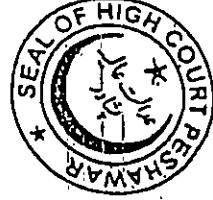
JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT)

WP No. 4378-P/2017

S.M. Assad Hallmi and others

Vs

Chief Secretary to Govt. of KP and others



JUDGMENT.

Date of hearing: 11.03.2020

Petitioner (s): *G. No. 10/2017/DCPS* - *Shri. S. Usman*
(Shri. Usman)

Respondent (s): *G. No. 10/2017/DCPS*

WAOAR AHMAD SETH, CJ:- Petitioners,

through the instant Writ Petition, seeks issuance of an appropriate writ with the following prayer:-

"In view of the aforesaid submissions, it is humbly prayed that an appropriate writ may kindly be issued in favour of the petitioners in the following terms:-

- i. Declare that the impugned notification No. SOH(II)/HD/10-4/2017/DCPS is void ab initio, therefore the respondents may kindly be directed to withdraw the impugned notification as well as the posting/transfers orders made in pursuant to the impugned notification may kindly be withdrawn.
- ii. To reconsider the matter in light of the logic, rationale and requirements of the rules/relevant law in the matter.
- iii. The proportionate ratio of higher posts of B-18, B-19 and B-20 in the Drug Inspector cadre may be

ATTESTED

EXAMINER
Peshawar High Court

Handwritten signature and stamp.

(43)

(3)

(3)

2

equated to that of Drug Analysts and Pharmacists cadres as indicated in para-5 (table-2) above of the petitioner.

- iv. Direction be issued to respondents that in case the merger is required to be carried out, it be done in a rational manner as per the prevailing procedure and renamed the so merged cadre with a new name and joint seniority of the employees of the so merged cadres be caused with reference to their respective dates of appointment or promotion to a particular post/grade. No cadre so merged should be dying cadre as this method is not applicable in the instant case.
- v. Grant any other relief which is deemed appropriate by this Hon'ble Court in the circumstances of the case".

2. Brief facts of the case are that the petitioners have been inducted in service of the Health Department through Khyber Pakhtunkhwa Public Service Commission as Drug Inspectors (BPS-17). According to the petitioners, Drug Inspectors, Pharmacists and Chemists and Drug Analysts are working in the Health Department Government of Khyber Pakhtunkhwa in separate cadres having same basic qualifications but with different job descriptions.

The Provincial Government under the Agenda to improve the human resources management and to

ATTESTED
EXAMINER
Peshawar High Court

ATTESTED

44

minimizing the transfer and posting problems face by the Health Department in other sub-cadres having minimum choice, proposed the merging of three cadres of Drug Inspectors, Pharmacists and Chemists and Drug Analysts and for this purpose, a meeting of "Standing Service Rules Committee" was held on 26.12.2016 wherein it was proposed to combine the three cadres into one as per structure given in para-ii of the minutes of the meeting and as such, the respondents have issued the impugned Notification No. SOH(HI)/HD/10-4/2017/DCPS dated 08.09.2017, which reads as under:-

"Consequent to the recommendations of the SSRC and to improve the human resource management, the Chief Minister Khyber Pakhtunkhwa is pleased to approve the following arrangements for Pharmacists, Drug Inspectors, Chemists & Drug Analysts cadres of Health Department Khyber Pakhtunkhwa.

- 1) These cadres are declared dying cadres with the existing incumbents to continue under the existing service rules, seniority and promotion prospects which shall stand protected for each cadre within their own lines of hierarchy till last incumbent is in service.
- 2) For the new recruitment at the initial stage, since basic qualifications of the above mentioned cadres are the same, therefore, all the three cadres are

APPESTED

EXAMINER
Peshawar High Court

45

Handwritten marks in a circle and below it.

hereby merged into a single cadre for which rules shall be framed as per procedures.

3) All the three cadres are hereby declared as pool posts for posting/transfer only.

3. Aggrieved from the aforesaid Notification, the petitioners have filed the instant Writ Petition.

4. Respondents have furnished their comments and opposed the writ of petitioners.

5. Arguments heard and record perused.

6. Admittedly, the impugned notification of

merger of three cadres of Drug Inspectors, Pharmacists and Chemists and Drug Analysts have been issued on the recommendation of Standing Service Rules Committee ("SSRC") but while perusing minutes of the

Committee, so constituted, the persons, who had attended the meeting, are not in accordance with the

Notification No. SOR.VI(E&AD)2-69/2003 dated 29th January, 2005 produced by the learned counsel for the

petitioners during the course of hearing, placed on file; vide which, the Committee would comprising of

Administrative Secretary concerned (Chairman),

Handwritten signature or initials.

ATTESTED
EXAMINER
Peshawar High Court

ATTESTED

46

Additional Secretary (Regulation) E&A Department,
 Additional Secretary (Regulation) Finance Department,
 Additional Secretary Law Department, Head of the
 attached Department concerned and Deputy Secretary
 (Admin) of the Department concerned (Members); so,
 keeping in view the above fact, the impugned
 notification issued by the respondents is illegal, void ab-
 initio and the same, is, thus, liable to be set aside.

7. In view of the above, the Writ Petition is
 allowed and the impugned Notification No.
 SOH(II)/HD/10-4/2017/DCPS dated 08.09.2017, is set
 aside.

ANNOUNCED
 Dated: 11.03.2020

Chis: _____

Judge:

No. 14364
 Date of Presentation of Application 27/10/2020
 No of Pages 127
 Copy fee 500
 Total 500
 Date of Preparation of Copy 27/10/2020
 Date of Delivery of Copy 27/10/2020
 Received By [Signature]

CERTIFIED TO BE TRUE COPY
 EXAMINER
 Allahabad High Court, Prayagraj
 Authorized Under Article 87 of
 the Constitution of India
 27-OCT-2020

ATTESTED

ANNEX 4

47

EXTRAORDINARY
GOVERNMENT



REGISTERED NO. RIII.

GAZETTE

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, TUESDAY, 24TH AUGUST, 2021.

GOVERNMENT OF KHYBER PAKHTUNKHWA IRRIGATION DEPARTMENT

NOTIFICATION

Dated Peshawar the 24th August, 2021

No. SO(E)IRR/23-5/73/VOI-VI.— In pursuance of the provisions contained in sub-rule (2) of rule-3, of the Khyber Pakhtunkhwa, Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Irrigation Department, in consultation with the Establishment and Finance Department, hereby direct that in this Department's Notification No. SO(E)IRR/23-5/73 dated 17.02.2011, the following further amendments shall be made namely:-

AMENDMENTS

In the APPENDIX,-

- (a) Under the heading "PART-I ENGINEERING STAFF", against Serial No./3, in Column No. 5, for the existing entries, the following shall be substituted, namely:-

- | | |
|-----|--|
| (a) | Eighty percent (80%) by promotion, on the basis of seniority-cum-fitness, from amongst the holders of the post of Assistant Engineer, Sub Divisional Officer and Assistant Director possessing Degree in B.E/B.Sc Engineering (Civil or Mechanical) from a recognized University with at least five years service as such and have passed the Professional or Revenue Examination under the prescribed rules; |
| (b) | twelve percent (12%) by promotion, on the basis of seniority-cum-fitness, from amongst the holders of the post of Assistant Engineer, Sub Divisional Officer and Assistant Director possessing Degree in B. Tech (Hons) from a recognized University with at least five years service as such and have passed the Professional and Revenue Examination under the prescribed rules; and |
| (c) | eight percent (08%) by promotion, on the basis of seniority-cum-fitness, from amongst the holders of the post of Assistant Engineer, Sub Divisional Officer and Assistant Director possessing Diploma of Associate Engineering in (Civil, Mechanical, Auto and Electrical) Technical Education with at least five years service as such and have passed the Professional and Revenue Examination under the prescribed rules. |

161 A

ATTESTED

REGISTERED

48

~~48~~

161 B

KHYBER PAKHTUNKWHA GOVT. GAZETTE, EXTRAORDINARY, 24TH AUGUST, 2021

Note: A separate seniority list of all the three categories of the Assistant Engineers, Sub Divisional Officers and Assistant Directors shall be maintained for the purpose of promotion; and

(b)

under the heading "PART-V DRAWING ESTABLISHMENT", against Serial No. 26, in Column No. 5, for the existing entries, the following shall be substituted, namely:

- (a) Seventy percent (70%) by promotion, on the basis of seniority-cum-fitness, from amongst the holders of the post of Tracer who have qualified the prescribed Examination of Draftsman with three years' service as such; and
- (b) thirty percent (30%) by initial recruitment".

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department.

Printed and published by the Manager,
Staty. & Ptg. Dept., Khyber Pakhtunkhwa, Peshawar.

ATTESTED

ATTESTED

ANNEX "H"

49

To

The Chief Secretary
Irrigation Department
Khyber Pakhtunkhwa, Peshawar.

Subject: APPEAL AGAINST CREATION OF 20% QUOTA IN BPS-18 FOR NON-REGISTERED PROFESSIONAL ENGINEERS ON PROFESSIONAL ENGINEERING WORKS POSTS

Reference: Government of Khyber Pakhtunkhwa Irrigation Department Notification No. SO(E)/IRRI/23-5/73/VOI-VI dated 24 August 2021

Respectfully Sheweth;

1. That the under signed has the privilege of being citizens of Islamic Republic of Pakistan. I am engineer by profession within the meaning of Pakistan Engineering Council Act, 1976, and is duly registered as such with the Pakistan Engineering Council.
2. The appellant was directly appointed as Assistant Engineer (BPS-17) through Public Service commission vide notification No SOE/IRR:/4-14/73 dated 27 January 2010 in accordance with the Khyber Pakhtunkhwa Civil Servants Act 1973. (Copy enclosed Annexure-A)
3. That the appellant is holding MSc Engineering degree in Water Resources from UET Peshawar. The Appellant did his graduation in Civil/Mechanical Engineering from NUST/UET/Etc. It is pertinent to point out here that there are very few officers who have such a higher qualification in the department.
4. That the appellant during the course of his service performed his duties with zeal and dedication. He remained upright, have a clean service record. He remained posted at different stations and on different posts as and when assigned any responsibilities, he complied with the posting orders considering it to be in the exigencies of service.

50

5. That Executive Engineer (BPS-18) in Irrigation Department is a Professional Engineering works post and the person who holds the said post has to look into the matters which are related to the professional engineering works with human resource having professional BE/BSc Civil and Mechanical Engineering degrees duly registered with the Pakistan Engineering Council.
6. At present in Irrigation Dept, all the Executive Engineer/Deputy Director (BPS-18) posts are professional engineering posts whose job requirement involves professional engineering works, allowed only to BE/BSc Civil / Mechanical Engineering degree holders, registered with Pakistan Engineering Council.
7. Due to some mala fide intentions or knowingly misinterpreted the settled law of the land, non-qualified/ non-engineers of B-Tech technology / diploma holder persons have been granted illegal benefits in shape of assigning Professional Engineering Works (PEW) and also benefiting them by awarding promotion to the Grade-17 once and now once again a 20% quota has been created for promotion to Grade-18 (Executive Engineer) post and will be performing professional engineering works which is against the Pakistan Engineering Council Act 1976. Hence being aggrieved from the illegal, unjustified and against the law behavior of the competent authority the appellants made a departmental representation/appeal Inter alia on the following grounds to your good self please;
 - a. That a committee was constituted vide Secretary Irrigation Department Notification No. SO(E)/Irr/23-5/73/Vol-IV (S. Rules) dated 06.04.2018 (*Annexure-B*) having members from Irrigation Department, C&W, LGE&RDD, Peshawar Development Authority, Public health Engineering Department and Pakhtunkhwa Energy and Development Organization. The committee was tasked to examine the position of B-Tech (Hons) degree visa viz B.Sc. / BE Engineering in light of decision of Pakistan Engineering Council (PEC),

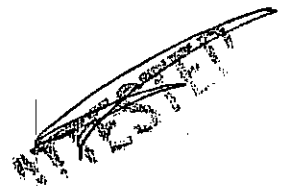
~~SECRET~~

51

Supreme court of Pakistan, High Court Peshawar and Khyber Pakhtunkhwa Service Tribunal and to come up with well considerate proposal along with recommendation for allocation of uniform percentage quota for their promotion. The committee in its report submitted the following recommendations;

"That B-Tech (hons) qualification is not equivalent to BE/BSc Engineering. As basic qualification required for posting / appointment against the position of Assistant Engineer / Assistant Director / SDO etc. in BS-17 and above is BE/BSc Engineering in Civil / Mechanical / Electrical as per requirement of a department, the B-Tech (Hon) qualification holder may not be promoted and / or posted against such position(s) that involve performance of professional engineering works/services. However, such qualification (i.e., B-Tech) holders cannot be denied promotion to higher scale; provide no law/Rule is violated and for which non-engineering positions (Technologists) may be created, if not already existing"

- b. In MAULA BUX SHAIKH and others---Petitioners C.P. No. 78-K of 2015, decided on 03.10.2018 (Annex-I) at Para 5 it is reiterated that "It is common ground that neither Diploma nor B. Tech (Hons.) Degree are accredited engineering qualification for the reason that there is no reference to the Diploma and B. Tech (Hons.) Degree in the accredited engineering qualification provided in the first and second schedule of the PEC Act. Thus, accredited engineering qualification is ascribed to those who hold Bachelor Degree in Engineering from accredited Engineering Universities/Institutions in Pakistan and abroad".
- c. In MAULA BUX SHAIKH and others---Petitioners C.P. No. 78-K of 2015, decided on 03/10/2018 it has been clarified at para 23 that "With note of caution that government shall not allow or permit any person to perform professional engineering works as defined in the PEC Act, who does not possess accredited engineering qualification from the accredited engineering institution and his name is not registered as a registered engineer or professional engineer under the PEC Act".
- d. The works executed by Sub Divisional Officer/Assistant Engineers (SDO/AE BPS-17) and Executive Engineer (BPS-18) falls under professional engineering

A handwritten signature in black ink is written over a circular stamp. The stamp contains the text "ATKES" and "11/11/18" in a circular arrangement.

works as envisaged under PEC Act 1976 section 2(XXV) and as reiterated in C.P. No. 78-K of 2015 at Para 7.

- e. Professional Engineer is defined in section 2(xxii) of Pakistan Engineering Council Act 1976 and reproduced at para 6 of MAULA BUX SHAIKH and others—Petitioners C.P. No. 78-K of 2015 which is as follows:
"Professional Engineers" means a person who holds an accredited engineering qualification and after obtaining a professional experience of five years, whether working privately or in the employment of an engineering public organization, has passed the prescribed engineering practice examination and is registered as such by the Council.
- f. Please refer to Statutory Notifications, (S. R. O.) Government of Pakistan Ministry of Water and Power Notification Islamabad, the 20th November, 1985 S.R.O. 1142(I)/85;
- (i) A candidate who has passed the Diploma of Associate Engineer (DAE) Examination, securing at least 60% aggregate marks shall be eligible for applying in admission against [02%] reserved seats in relevant discipline of Engineering in which he or she has passed the DAE examination;
- (ii) A candidate possessing [B. Tech (Hons)/B. S/B.Sc./Bachelor of Technology (with relevant discipline)] or equivalent qualification duly recognized by HEC seeking admission towards the relevant engineering discipline against 02% reserved seats of [B. Tech Hons)/B. S/B.Sc./Bachelor of Technology (with relevant discipline)], shall be considered for admission in 2015 and after, with one year of exemption:
- g. Also, please refer to Deputy Director Accreditation & Attestation, Higher Education Commission letter no. 8-61/A&A/2017/HEC/3811 dated May 4, 2017 states in first para 4th line, "The degree of B. Tech (Hons) is not similar to BE/BSc Engineering Degree." Annex-III
- h. Irrigation Department along with Establishment Department, Finance Department, Law Department and Chief Secretary Khyber Pakhtunkhwa office has signed comments and submitted before the *Khyber Pakhtunkhwa Service Tribunal Peshawar in Service Appeal No 1431/2019 filed by Niaz Badshah Vs Government of Khyber Pakhtunkhwa through Chief Secretary and others* that non engineers cannot be promoted to post of Executive Engineer, citing reason of PEC Act & nonequivalence of B-Tech to that of BSc Engineering.

53

8. Sub Engineers in Irrigation Department with the basic qualification of Diploma in Associate Engineering (DAE) and having BPS Grade-11, a small group among these sub engineers, during service obtained B. Tech (Hons) degree.
9. Through this additional B. Tech degree, in 2012, the Sub Engineers first took benefit by bifurcating the seniority list of Sub Engineers into two categories i.e., for employees having Diploma in Associate Engineering (DAE) Holders and B. Tech (Hons) degree separate seniority lists were maintained. For B. Tech holder separate quota in BPS-17 was allowed and thus elevated to the posts of Sub Divisional Officers. Through this Quota System, few B. Tech (Hons) whom were in BPS grade-16 were promoted to Grade-17 (even though lower in seniority) and some promoted from BPS Grade-11 to Grade-17 (Two steps promotion despite lower in their commission seniority list) while the Public Service Commission seniority was completely ignored.
10. Despite once got undue promotion by B. Tech holder in BPS-17 they are influencing the Government functionaries to obtain further promotion quota in the post of Professional Engineer (BPS-18) in Irrigation Department. Despite this fact and other grounds so submitted herein before, the SSRC of Irrigation Department without adverting to this fact and other legal issues lurking in the matter has approved in their favor 20% quota against the Executive Engineer (BPS Grade-18 posts), which are purely professional Engineering Works Posts as stated above.
11. No such practice of double quota (based on single degree) exists in various services group of Pakistan and Provincial services group i.e., PAS, PMS and PPS
12. The B.Tech holder relying on FIDA HUSSAIN V/S THE SECRETARY KASHMIR AFFAIRS AND NORTHERN AREAS DIVISION, ISLAMABAD AND ANOTHER (PLD 1995 SUPREME COURT 701) that "PEC Act 1976 is not applicable and binding upon the Government", it is worth mentioning that the matter is clarified by the Supreme Court of Pakistan in *Maula Bux Sheikh v. Chief Secretary Sindh* reported in 2018 SCMR 2098 at Para 15 and Para 16 that if Government are performing professional Engineering Works, PEC Act 1976 shall be attracted and not otherwise.
13. As regard the main ground against the posting / transfer / appointment of non-registered professional engineers, the under signed is mainly resting his case on the unequivocal provisions of section 2 (ii) (xxiii) (xxv) (xxvii), section 11, 27 and other



such provisions of the Pakistan Engineering Council Act, 1976 (*'the Act'*), with particular reference to section 27(5A) clearly providing that, *"no person shall, unless registered as a registered engineer or professional engineer, hold any post in an engineering organization where he has to perform professional engineering work"*.

14. Please note that the afore-quoted provisions of sub-section (5A) *ibid* are mandatory in nature because not only that they are couched in a negative expression, but their non-compliance is also dealt with by providing penal consequences as mentioned in section 27 of the Act *supra*.
15. Even in Chapter 1, Rule 2 (j) of the Khyber Pakhtunkhwa Public Procurement Regulatory Authority Rules 2014 formulated and notified under the KPPA Act, 2012 the definition of "Professional Engineering work" has been given in line with the PEC Act, 1976.
16. Under article 143 of the Islamic Republic of Pakistan "If the law of Provincial Government is repugnant to the Act of Parliament, then the Act of Parliament (law of the state) shall prevail. Hence SSRC constituted under Civil Servant Act and APT rules of the province can't overrule Act of the Parliament i.e., PEC Act 1976 while amending service rules of engineering public organization"
17. In support of this very contention and ground of challenge, the undersigned is fortified by the case-law on the subject developed from time to time, according to which the legal position has since been examined and clarified to the effect the holders of B-Tech degree as well as diploma holders are not held to be professional engineers within the meaning of section 2(xxiii) of the Act having not acquired engineering qualification¹ and, therefore, they had been consistently held not

¹ Section 10(1) of the Act provides that, *'the engineering qualifications granted by the engineering institutions in Pakistan which are included in the First Schedule shall be the accredited engineering qualifications for the purposes of this Act.'*

entitled to hold any engineering post and to undertake any professional engineering work as defined and described in section 2(xv) of the Act *supra*.

18. It hardly needs to reiterate here at this juncture that the issue, of whether or not holders of B-Tech or diploma qualification should or should not be equated with or considered as professional engineers at par with B.Sc. Engineers, has long been dilated upon and debated a lot both at the level of PEC as well as in the superior courts of the country. In all, there appears an unanimity of opinion to the effect that (i) neither B. Tech degree holders or diploma holders in any field whatsoever are professional engineers within the meaning of the Act and (ii) nor could they hold any post meant for professional engineering work in any engineering organization.
19. It goes without saying that the indifference of the officials i.e., the Secretary office and respective Chief Engineers and Director General offices is adversely affecting upon the service carrier and progression of the under signed (and those who are similarly placed) in particular cadre, because a great number of engineering posts meant for purely professional engineering work has and will be occupied by non-engineer and non-professional persons which has and will result in stagnation and blockade of normal promotion and progression of the professional engineers serving in the department.
20. As regard PEC level and various provincial as well as Federal govt., there had been exchange of correspondences and discussion over the issue, whereby the former had clearly opined and ruled that holders of such non-engineering degree(s) were not qualified or entitled to work against any engineering post(s) and to undertake any engineering work as such.
21. Recently Pakistan Engineer council has obtained the Washington Accord which is an International Agreement between bodies responsible for Accrediting Engineering Degree Programs. The Washington Accord is specifically focused on academic programs which deal with the practice of engineering at the professional level. The

~~APPROVED~~

56

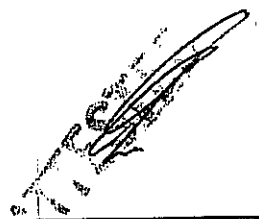
Accord acknowledges that accreditation of engineering academic programs is a key foundation for the practice of engineering at the professional level in each of the countries or territories covered by the Accord. Annexure.

22. B. Tech is accredited by the Sydney Accord. The Sydney Accord is specifically focused on academic programmes dealing with engineering technology. It recognizes the importance of the roles engineering technologists as part of a wider engineering team. Diploma is accredited by the Dublin Accord. The Dublin Accord is specifically focused on the mutual recognition of academic programmes/qualifications that underpin the educational base for Engineering Technicians. It recognizes the importance of the roles engineering technicians play as part of a wider engineering team. Annexure.

23. Approval of Design i.e., PC-1 Government of Pakistan Planning Commission Proforma for Development Projects (Infrastructure Sectors). The PC-1 signed by Executive Engineer which include technical background data, engineering designs, calculation, technology in line with Pakistan Engineering Council Act 1976 section 2 (xxv) Professional Engineers works to be carried out by the registered engineer.

24. "Technical Sanction" implies the scrutiny of the estimates from the technical point of view and denotes that the estimates sanctioned are technically in order and correct. Such sanction will be accorded by the officer of the Public Works Department authorized to do so as per the delegation of Financial Power Rules. Technical Sanction of Professional Engineering Works as defined in Pakistan Engineering Council Act 1976 has to be carried out by the Registered Engineer.

25. Interim Payment Certification: Primarily the Divisional Officer is the responsible disbursing officer of the division. Subject to such instructions, as may be issued by the local Administration in consultation with the Accountant General, detailing the authorities competent to prepare or examine contractors' bills or other demands for payment, and the authorities empowered to make payments thereon, the Divisional Officer may authorize a Sub-divisional Officer to make payments chargeable against the general sanctions of competent authority to expenditure on works. Professional Engineering Works as defined in Pakistan Engineering Council Act 1976 has to be verified by the Registered Engineer.

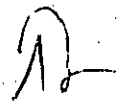
A handwritten signature in dark ink is written over a circular official stamp. The stamp contains some illegible text, possibly a name or title, and a date. The signature is slanted upwards to the right.

57

Prayer: -

It is, therefore, prayed that on acceptance of this appeal/representation, your office may be pleased to;

- A. *Set aside* the aforesaid Notification No. SO(E)/IRRI/23-5/73/VOI-VI dated 24 August 2021 to respectfully avoid from posting / appointing of any non-engineering degree holder against any such post which is meant for purely professional engineering work / undertaking, regulated under the PEC Act 1976, and
- B. *Grant* relief to under signed which is considered just and appropriate in the given circumstances please.



Engr Sohail Khan
Deputy Director
Irrigation Department Peshawar.

2-11-2021

58

To

The Chief Secretary
Irrigation Department
Khyber Pakhtunkhwa, Peshawar.

Subject: APPEAL AGAINST CREATION OF 20% QUOTA IN BPS-18 FOR NON-REGISTERED PROFESSIONAL ENGINEERS ON PROFESSIONAL ENGINEERING WORKS POSTS

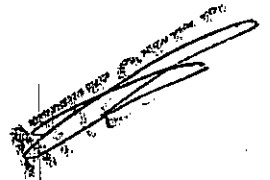
Reference: Government of Khyber Pakhtunkhwa Irrigation Department Notification No. SO(E)/IRRI/23-5/73/VOI-VI dated 24 August 2021

Respectfully Sheweth;

1. That the under signed has the privilege of being citizens of Islamic Republic of Pakistan. I am engineer by profession within the meaning of Pakistan Engineering Council Act, 1976; and is duly registered as such with the Pakistan Engineering Council.
2. The appellant was directly appointed as Assistant Engineer (BPS-17) through Public Service commission vide notification No SOE/IRR:/4-14/73 dated 27 January 2010 in accordance with the Khyber Pakhtunkhwa Civil Servants Act 1973. (Copy enclosed Annexure-A)
3. That the appellant is holding MSc Engineering degree in Water Resources from UET Peshawar. The Appellant did his graduation in Civil/Mechanical Engineering from NUST/UET/Etc. It is pertinent to point out here that there are very few officers who have such a higher qualification in the department.
4. That the appellant during the course of his service performed his duties with zeal and dedication. He remained upright, have a clean service record. He remained posted at different stations and on different posts as and when assigned any responsibilities, he complied with the posting orders considering it to be in the exigencies of service.

59

5. That Executive Engineer (BPS-18) in Irrigation Department is a Professional Engineering works post and the person who holds the said post has to look into the matters which are related to the professional engineering works with human resource having professional BE/BSc Civil and Mechanical Engineering degrees duly registered with the Pakistan Engineering Council.
6. At present in Irrigation Dept, all the Executive Engineer/Deputy Director (BPS-18) posts are professional engineering posts whose job requirement involves professional engineering works, allowed only to BE/BSc Civil / Mechanical Engineering degree holders, registered with Pakistan Engineering Council.
7. Due to some mala fide intentions or knowingly misinterpreted the settled law of the land, non-qualified/ non-engineers of B-Tech technology / diploma holder persons have been granted illegal benefits in shape of assigning Professional Engineering Works (PEW) and also benefiting them by awarding promotion to the Grade-17 once and now once again a 20% quota has been created for promotion to Grade-18 (Executive Engineer) post and will be performing professional engineering works which is against the Pakistan Engineering Council Act 1976. Hence being aggrieved from the illegal, unjustified and against the law behavior of the competent authority the appellants made a departmental representation/appeal inter alia on the following grounds to your good self please;
 - a. That a committee was constituted vide Secretary Irrigation Department Notification No. SO(E)/Irr/23-5/73/Vol-IV (S. Rules) dated 06.04.2018 (*Annexure-B*) having members from Irrigation Department, C&W, LGE&RDD, Peshawar Development Authority, Public health Engineering Department and Pakhtunkhwa Energy and Development Organization. The committee was tasked to examine the position of B-Tech (Hons) degree visa viz B.Sc. / BE Engineering in light of decision of Pakistan Engineering Council (PEC),



60

Supreme court of Pakistan, High Court Peshawar and Khyber Pakhtunkhwa Service Tribunal and to come up with well considerate proposal along with recommendation for allocation of uniform percentage quota for their promotion. The committee in its report submitted the following recommendations;

"That B-Tech (hons) qualification is not equivalent to BE/BSc Engineering. As basic qualification required for posting / appointment against the position of Assistant Engineer / Assistant Director / SDO etc. in BS-17 and above is BE/BSc Engineering in Civil / Mechanical / Electrical as per requirement of a department, the B-Tech (Hon) qualification holder may not be promoted and / or posted against such position(s) that involve performance of professional engineering works/services. However, such qualification (i.e., B-Tech) holders cannot be denied promotion to higher scale; provide no law/Rule is violated and for which non-engineering positions (Technologists) may be created, if not already existing"

- b. In MAULA BUX SHAIKH and others—Petitioners C.P. No. 78-K of 2015, decided on 03.10.2018 (Annex-I) at Para 5 it is reiterated that "It is common ground that neither Diploma nor B. Tech (Hons.) Degree are accredited engineering qualification for the reason that there is no reference to the Diploma and B. Tech (Hons.) Degree in the accredited engineering qualification provided in the first and second schedule of the PEC Act. Thus, accredited engineering qualification is ascribed to those who hold Bachelor Degree in Engineering from accredited Engineering Universities/Institutions in Pakistan and abroad".
- c. In MAULA BUX SHAIKH and others—Petitioners C.P. No. 78-K of 2015, decided on 03/10/2018 it has been clarified at para 23 that "With note of caution that government shall not allow or permit any person to perform professional engineering works as defined in the PEC Act, who does not possess accredited engineering qualification from the accredited engineering institution and his name is not registered as a registered engineer or professional engineer under the PEC Act".
- d. The works executed by Sub Divisional Officer/Assistant Engineers (SDO/AE BPS-17) and Executive Engineer (BPS-18) falls under professional engineering

ACCEPTED

works as envisaged under PEC Act 1976 section 2(XXV) and as reiterated in C.P. No. 78-K of 2015 at Para 7.

- e. Professional Engineer is defined in section 2(xxiii) of Pakistan Engineering Council Act 1976 and reproduced at para 6 of MAULA BUX SHAIKH and others---Petitioners C.P. No. 78-K of 2015 which is as follows:

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

- f. Please refer to Statutory Notifications, (S. R. O.) Government of Pakistan Ministry of Water and Power Notification Islamabad, the 20th November, 1985 S.R.O. 1142(I)/85;

(i) A candidate who has passed the Diploma of Associate Engineer (DAE) Examination, securing at least 60% aggregate marks shall be eligible for applying in admission against [02%] reserved seats in relevant discipline of Engineering in which he or she has passed the DAE examination;

(ii) A candidate possessing [B. Tech (Hons)/B. S/B.Sc./Bachelor of Technology (with relevant discipline)] or equivalent qualification duly recognized by HEC seeking admission towards the relevant engineering discipline against 02% reserved seats of [B. Tech Hons)/B. S/B.Sc./Bachelor of Technology (with relevant discipline)], shall be considered for admission in 2015 and after, with one year of exemption:

- g. Also, please refer to Deputy Director Accreditation & Attestation, Higher Education Commission letter no. 8-61/A&A/2017/HEC/3811 dated May 4, 2017 states in first para 4th line, "The degree of B. Tech (Hons) is not similar to BE/BSc Engineering Degree." Annex-III.
- h. Irrigation Department along with Establishment Department, Finance Department, Law Department and Chief Secretary Khyber Pakhtunkhwa office has signed comments and submitted before the *Khyber Pakhtunkhwa Service Tribunal Peshawar in Service Appeal No 1431/2019 filed by Niaz Badshah Vs Government of Khyber Pakhtunkhwa through Chief Secretary and others* that non engineers cannot be promoted to post of Executive Engineer, citing reason of PEC Act & nonequivalence of B-Tech to that of BSc Engineering.

8. Sub Engineers in Irrigation Department with the basic qualification of **Diploma in Associate Engineering (DAE)** and having **BPS Grade-11**, a small group among these sub engineers, during service obtained **B. Tech (Hons)** degree.
9. Through this additional **B. Tech** degree, in 2012, the Sub Engineers first took benefit by bifurcating the seniority list of Sub Engineers into two categories i.e., for employees having **Diploma in Associate Engineering (DAE)** Holders and **B. Tech (Hons)** degree separate seniority lists were maintained. For **B. Tech** holder separate quota in **BPS-17** was allowed and thus elevated to the posts of Sub Divisional Officers. Through this Quota System, few **B. Tech (Hons)** whom were in **BPS grade-16** were promoted to **Grade-17** (even though lower in seniority) and some promoted from **BPS Grade-11** to **Grade-17** (Two steps promotion despite lower in their commission seniority list) while the **Public Service Commission** seniority was completely ignored.
10. Despite once got undue promotion by **B. Tech** holder in **BPS-17** they are influencing the Government functionaries to obtain further promotion quota in the post of **Professional Engineer (BPS-18)** in Irrigation Department. Despite this fact and other grounds so submitted herein before, the **SSRC** of Irrigation Department without adverting to this fact and other legal issues lurking in the matter has approved in their favor **20% quota** against the **Executive Engineer (BPS Grade-18 posts)**, which are purely professional Engineering Works Posts as stated above.
11. No such practice of double quota (based on single degree) exists in various services group of Pakistan and Provincial services group i.e., **PAS, PMS and PPS**
12. The **B.Tech** holder relying on **FIDA HUSSAIN V/S THE SECRETARY KASHMIR AFFAIRS AND NORTHERN AREAS DIVISION, ISLAMABAD AND ANOTHER (PLD 1995 SUPREME COURT 701)** that "**PEC Act 1976 is not applicable and binding upon the Government**", it is worth mentioning that the matter is clarified by the Supreme Court of Pakistan in **Maula Bux Sheikh v. Chief Secretary Sindh** reported in **2018 SCMR 2098** at **Para 15** and **Para 16** that if Government are performing professional Engineering Works, **PEC Act 1976** shall be attracted and not otherwise.
13. As regard the main ground against the posting / transfer / appointment of non-registered professional engineers, the under signed is mainly resting his case on the unequivocal provisions of section 2 (ii) (xxiii) (xxv) (xxvii), section 11, 27 and other

such provisions of the Pakistan Engineering Council Act, 1976 (*'the Act'*), with particular reference to section 27(5A) clearly providing that, *"no person shall, unless registered as a registered engineer or professional engineer, hold any post in an engineering organization where he has to perform professional engineering work"*.

14. Please note that the afore-quoted provisions of sub-section (5A) *ibid* are mandatory in nature because not only that they are couched in a negative expression, but their non-compliance is also dealt with by providing penal consequences as mentioned in section 27 of the Act *supra*.
15. Even in Chapter 1, Rule 2 (J) of the Khyber Pakhtunkhwa Public Procurement Regulatory Authority Rules 2014 formulated and notified under the KPPA Act, 2012 the definition of "Professional Engineering work" has been given in line with the PEC Act, 1976.
16. Under article 143 of the Islamic Republic of Pakistan "If the law of Provincial Government is repugnant to the Act of Parliament, then the Act of Parliament (law of the state) shall prevail. Hence SSRC constituted under Civil Servant Act and APT rules of the province can't overrule Act of the Parliament i.e., PEC Act 1976 while amending service rules of engineering public organization"
17. In support of this very contention and ground of challenge, the undersigned is fortified by the case-law on the subject developed from time to time, according to which the legal position has since been examined and clarified to the effect the holders of B-Tech degree as well as diploma holders are not held to be professional engineers within the meaning of section 2(xxiii) of the Act having not acquired engineering qualification¹ and, therefore, they had been consistently held not

¹ Section 10(1) of the Act provides that, *'the engineering qualifications granted by the engineering institutions in Pakistan which are included in the First Schedule shall be the accredited engineering qualifications for the purposes of this Act.'*

64

entitled to hold any engineering post and to undertake any professional engineering work as defined and described in section 2(xxv) of the Act *supra*.

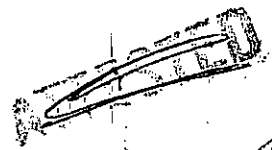
18. It hardly needs to reiterate here at this juncture that the issue, of whether or not holders of B-Tech or diploma qualification should or should not be equated with or considered as professional engineers at par with B.Sc. Engineers, has long been dilated upon and debated a lot both at the level of PEC as well as in the superior courts of the country. In all, there appears an unanimity of opinion to the effect that (i) neither B. Tech degree holders or diploma holders in any field whatsoever are professional engineers within the meaning of the Act and (ii) nor could they hold any post meant for professional engineering work in any engineering organization.
19. It goes without saying that the indifference of the officials i.e., the Secretary office and respective Chief Engineers and Director General offices is adversely affecting upon the service carrier and progression of the under signed (and those who are similarly placed) in particular cadre, because a great number of engineering posts meant for purely professional engineering work has and will be occupied by non-engineer and non-professional persons which has and will result in stagnation and blockade of normal promotion and progression of the professional engineers serving in the department.
20. As regard PEC level and various provincial as well as Federal govt., there had been exchange of correspondences and discussion over the issue, whereby the former had clearly opined and ruled that holders of such non-engineering degree(s) were not qualified or entitled to work against any engineering post(s) and to undertake any engineering work as such.
21. Recently Pakistan Engineer council has obtained the Washington Accord which is an International Agreement between bodies responsible for Accrediting Engineering Degree Programs. The Washington Accord is specifically focused on academic programs which deal with the practice of engineering at the professional level. The

~~RECEIVED~~

65

Accord acknowledges that accreditation of engineering academic programs is a key foundation for the practice of engineering at the professional level in each of the countries or territories covered by the Accord. Annexure.

22. B. Tech is accredited by the Sydney Accord. The Sydney Accord is specifically focused on academic programmes dealing with engineering technology. It recognizes the importance of the roles engineering technologists as part of a wider engineering team. Diploma is accredited by the Dublin Accord. The Dublin Accord is specifically focused on the mutual recognition of academic programmes/qualifications that underpin the educational base for Engineering Technicians. It recognizes the importance of the roles engineering technicians play as part of a wider engineering team. Annexure.
23. Approval of Design i.e., PC-1 Government of Pakistan Planning Commission Proforma for Development Projects (Infrastructure Sectors). The PC-1 signed by Executive Engineer which include technical background data, engineering designs, calculation, technology in line with Pakistan Engineering Council Act 1976 section 2 (xxv) Professional Engineers works to be carried out by the registered engineer.
24. "Technical Sanction" implies the scrutiny of the estimates from the technical point of view and denotes that the estimates sanctioned are technically in order and correct. Such sanction will be accorded by the officer of the Public Works Department authorized to do so as per the delegation of Financial Power Rules. Technical Sanction of Professional Engineering Works as defined in Pakistan Engineering Council Act 1976 has to be carried out by the Registered Engineer.
25. Interim Payment Certification: Primarily the Divisional Officer is the responsible disbursing officer of the division. Subject to such instructions, as may be issued by the local Administration in consultation with the Accountant General, detailing the authorities competent to prepare or examine contractors' bills or other demands for payment, and the authorities empowered to make payments thereon, the Divisional Officer may authorize a Sub-divisional Officer to make payments chargeable against the general sanctions of competent authority to expenditure on works. Professional Engineering Works as defined in Pakistan Engineering Council Act 1976 has to be verified by the Registered Engineer.

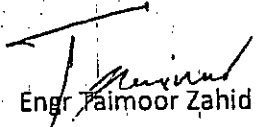


66

Prayer: -

It is, therefore, prayed that on acceptance of this appeal/representation, your office may be pleased to;

- A. *Set aside* the aforesaid Notification No. SO(E)/IRRI/23-5/73/VOI-VI dated 24 August 2021 to respectfully avoid from posting / appointing of any non-engineering degree holder against any such post which is meant for purely professional engineering work / undertaking, regulated under the PEC Act 1976, and
- B. *Grant* relief to under signed which is considered just and appropriate in the given circumstances please.


Engr. Faimoor Zahid

Executive Engineer

Irrigation Department Peshawar.

2-11-2021

67

To

The Chief Secretary
Irrigation Department
Khyber Pakhtunkhwa, Peshawar.

Subject: APPEAL AGAINST CREATION OF 20% QUOTA IN BPS-18 FOR NON-REGISTERED PROFESSIONAL ENGINEERS ON PROFESSIONAL ENGINEERING WORKS POSTS

Reference: Government of Khyber Pakhtunkhwa Irrigation Department Notification No. SO(E)/IRRI/23-5/73/VOI-VI dated 24 August 2021

Respectfully Sheweth;

1. That the under signed has the privilege of being citizens of Islamic Republic of Pakistan, I am engineer by profession within the meaning of Pakistan Engineering Council Act, 1976, and is duly registered as such with the Pakistan Engineering Council.
2. The appellant was directly appointed as Assistant Engineer (BPS-17) through Public Service commission vide notification No SOE/IRR:/4-14/73 dated 27 January 2010 in accordance with the Khyber Pakhtunkhwa Civil Servants Act 1973. (Copy enclosed Annexure-A)
3. That the appellant is holding MSc Engineering degree in Water Resources from UET Peshawar. The Appellant did his graduation in Civil/Mechanical Engineering from NUST/UET/Etc. It is pertinent to point out here that there are very few officers who have such a higher qualification in the department.
4. That the appellant during the course of his service performed his duties with zeal and dedication. He remained upright, have a clean service record. He remained posted at different stations and on different posts as and when assigned any responsibilities, he complied with the posting orders considering it to be in the exigencies of service.

68

5. That Executive Engineer (BPS-18) in Irrigation Department is a Professional Engineering works post and the person who holds the said post has to look into the matters which are related to the professional engineering works with human resource having professional BE/BSc Civil and Mechanical Engineering degrees duly registered with the Pakistan Engineering Council,
6. At present In Irrigation Dept, all the Executive Engineer/Deputy Director (BPS-18) posts are professional engineering posts whose job requirement involves professional engineering works, allowed only to BE/BSc Civil / Mechanical Engineering degree holders, registered with Pakistan Engineering Council.
7. Due to some mala fide intentions or knowingly misinterpreted the settled law of the land, non-qualified/ non-engineers of B-Tech technology / diploma holder persons have been granted illegal benefits in shape of assigning Professional Engineering Works (PEW) and also benefiting them by awarding promotion to the Grade-17 once and now once again a 20% quota has been created for promotion to Grade-18 (Executive Engineer) post and will be performing professional engineering works which is against the Pakistan Engineering Council Act 1976. Hence being aggrieved from the illegal, unjustified and against the law behavior of the competent authority the appellants made a departmental representation/appeal inter alia on the following grounds to your good self please;
 - a. That a committee was constituted vide Secretary Irrigation Department Notification No. SO(E)/Irr/23-5/73/Vol-IV (S. Rules) dated 06.04.2018 (*Annexure-B*) having members from Irrigation Department, C&W, LGE&RDD, Peshawar Development Authority, Public health Engineering Department and Pakhtunkhwa Energy and Development Organization. The committee was tasked to examine the position of B-Tech (Hons) degree visa viz B.Sc. / BE Engineering in light of decision of Pakistan Engineering Council (PEC),

~~SECRET~~

69

Supreme court of Pakistan, High Court Peshawar and Khyber Pakhtunkhwa Service Tribunal and to come up with well considerate proposal along with recommendation for allocation of uniform percentage quota for their promotion. The committee in its report submitted the following recommendations;

"That B-Tech (hons) qualification is not equivalent to BE/BSc Engineering. As basic qualification required for posting / appointment against the position of Assistant Engineer / Assistant Director / SDO etc. in BS-17 and above is BE/BSc Engineering in Civil / Mechanical / Electrical as per requirement of a department, the B-Tech (Hon) qualification holder may not be promoted and / or posted against such position(s) that involve performance of professional engineering works/services. However, such qualification (i.e., B-Tech) holders cannot be denied promotion to higher scale; provide no law/Rule is violated and for which non-engineering positions (Technologists) may be created, if not already existing"

- b. In MAULA BUX SHAIKH and others—Petitioners C.P. No. 78-K of 2015, decided on 03.10.2018 (Annex-I) at Para 5 it is reiterated that "It is common ground that neither Diploma nor B. Tech (Hons.) Degree are accredited engineering qualification for the reason that there is no reference to the Diploma and B. Tech (Hons.) Degree in the accredited engineering qualification provided in the first and second schedule of the PEC Act. Thus, accredited engineering qualification is ascribed to those who hold Bachelor Degree in Engineering from accredited Engineering Universities/Institutions in Pakistan and abroad".
- c. In MAULA BUX SHAIKH and others—Petitioners C.P. No. 78-K of 2015, decided on 03/10/2018 it has been clarified at para 23 that "With note of caution that government shall not allow or permit any person to perform professional engineering works as defined in the PEC Act, who does not possess accredited engineering qualification from the accredited engineering institution and his name is not registered as a registered engineer or professional engineer under the PEC Act".
- d. The works executed by Sub Divisional Officer/Assistant Engineers (SDO/AE BPS-17) and Executive Engineer (BPS-18) falls under professional engineering

RECEIVED

works as envisaged under PEC Act 1976 section 2(XXV) and as reiterated in C.P. No. 78-K of 2015 at Para 7.

- e. Professional Engineer is defined in section 2(xxiii) of Pakistan Engineering Council Act 1976 and reproduced at para 6 of MAJLA BUX SHAIKH and others—Petitioners C.P. No. 78-K of 2015 which is as follows:

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

- f. Please refer to Statutory Notifications, (S. R. O.) Government of Pakistan Ministry of Water and Power Notification Islamabad, the 20th November, 1985 S.R.O. 1142(I)/85;

(i) A candidate who has passed the Diploma of Associate Engineer (DAE) Examination, securing at least 60% aggregate marks shall be eligible for applying in admission against [02%] reserved seats in relevant discipline of Engineering in which he or she has passed the DAE examination;

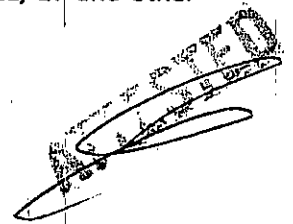
(ii) A candidate possessing [B. Tech (Hons)/B. S/B.Sc./Bachelor of Technology (with relevant discipline)] or equivalent qualification duly recognized by HEC seeking admission towards the relevant engineering discipline against 02% reserved seats of [B. Tech Hons)/B. S/B.Sc./Bachelor of Technology (with relevant discipline)], shall be considered for admission in 2015 and after, with one year of exemption;

- g. Also, please refer to Deputy Director Accreditation & Attestation, Higher Education Commission letter no. 8-61/A&A/2017/HEC/3811 dated May 4, 2017 states in first para 4th line, "The degree of B. Tech (Hons) is not similar to BE/BSc Engineering Degree." Annex-III

- h. Irrigation Department along with Establishment Department, Finance Department, Law Department and Chief Secretary Khyber Pakhtunkhwa office has signed comments and submitted before the *Khyber Pakhtunkhwa Service Tribunal Peshawar in Service Appeal No 1431/2019 filed by Niaz Badshah Vs Government of Khyber Pakhtunkhwa through Chief Secretary and others* that non engineers cannot be promoted to post of Executive Engineer, citing reason of PEC Act & nonequivalence of B-Tech to that of BSc Engineering.

MAJLA BUX SHAIKH

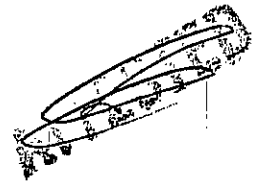
8. Sub Engineers in Irrigation Department with the basic qualification of Diploma in Associate Engineering (DAE) and having BPS Grade-11, a small group among these sub engineers, during service obtained B. Tech (Hons) degree.
9. Through this additional B. Tech degree, in 2012, the Sub Engineers first took benefit by bifurcating the seniority list of Sub Engineers into two categories i.e., for employees having Diploma in Associate Engineering (DAE) Holders and B. Tech (Hons) degree separate seniority lists were maintained. For B. Tech holder separate quota in BPS-17 was allowed and thus elevated to the posts of Sub Divisional Officers. Through this Quota System, few B. Tech (Hons) whom were in BPS grade-16 were promoted to Grade-17 (even though lower in seniority) and some promoted from BPS Grade-11 to Grade-17 (Two steps promotion despite lower in their commission seniority list) while the Public Service Commission seniority was completely ignored.
10. Despite once got undue promotion by B. Tech holder in BPS-17 they are influencing the Government functionaries to obtain further promotion quota in the post of Professional Engineer (BPS-18) in Irrigation Department. Despite this fact and other grounds so submitted herein before, the SSRC of Irrigation Department without adverting to this fact and other legal issues lurking in the matter has approved in their favor 20% quota against the Executive Engineer (BPS Grade-18 posts), which are purely professional Engineering Works Posts as stated above.
11. No such practice of double quota (based on single degree) exists in various services group of Pakistan and Provincial services group i.e., PAS, PMS and PPS
12. The B.Tech holder relying on FIDA HUSSAIN V/S THE SECRETARY KASHMIR AFFAIRS AND NORTHERN AREAS DIVISION, ISLAMABAD AND ANOTHER (PLD 1995 SUPREME COURT 701) that "PEC Act 1976 is not applicable and binding upon the Government", it is worth mentioning that the matter is clarified by the Supreme Court of Pakistan in *Maula Bux Sheikh v. Chief Secretary Sindh* reported in 2018 SCMR 2098 at Para 15 and Para 16 that if Government are performing professional Engineering Works, PEC Act 1976 shall be attracted and not otherwise.
13. As regard the main ground against the posting / transfer / appointment of non-registered professional engineers, the under signed is mainly resting his case on the unequivocal provisions of section 2 (ii) (xiii) (xv) (xvii), section 11, 27 and other



such provisions of the Pakistan Engineering Council Act, 1976 (*'the Act'*), with particular reference to section 27(5A) clearly providing that, *"no person shall, unless registered as a registered engineer or professional engineer, hold any post in an engineering organization where he has to perform professional engineering work"*.

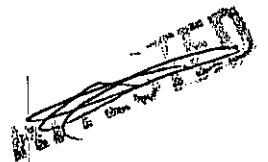
14. Please note that the afore-quoted provisions of sub-section (5A) *ibid* are mandatory in nature because not only that they are couched in a negative expression, but their non-compliance is also dealt with by providing penal consequences as mentioned in section 27 of the Act *supra*.
15. Even in Chapter 1, Rule 2 (J) of the Khyber Pakhtunkhwa Public Procurement Regulatory Authority Rules 2014 formulated and notified under the KPPA Act, 2012 the definition of "Professional Engineering work" has been given in line with the PEC Act, 1976.
16. Under article 143 of the Islamic Republic of Pakistan "If the law of Provincial Government is repugnant to the Act of Parliament, then the Act of Parliament (law of the state) shall prevail. Hence SSRC constituted under Civil Servant Act and APT rules of the province can't overrule Act of the Parliament i.e., PEC Act 1976 while amending service rules of engineering public organization"
17. In support of this very contention and ground of challenge, the undersigned is fortified by the case-law on the subject developed from time to time, according to which the legal position has since been examined and clarified to the effect the holders of B-Tech degree as well as diploma holders are not held to be professional engineers within the meaning of section 2(xiii) of the Act having not acquired engineering qualification¹ and, therefore, they had been consistently held not

¹ Section 10(1) of the Act provides that, *'the engineering qualifications granted by the engineering institutions in Pakistan which are included in the First Schedule shall be the accredited engineering qualifications for the purposes of this Act.'*



entitled to hold any engineering post and to undertake any professional engineering work as defined and described in section 2(xxv) of the Act *supra*.

18. It hardly needs to reiterate here at this juncture that the issue, of whether or not holders of B-Tech or diploma qualification should or should not be equated with or considered as professional engineers at par with B.Sc. Engineers, has long been dilated upon and debated a lot both at the level of PEC as well as in the superior courts of the country. In all, there appears an unanimity of opinion to the effect that (i) neither B. Tech degree holders or diploma holders in any field whatsoever are professional engineers within the meaning of the Act and (ii) nor could they hold any post meant for professional engineering work in any engineering organization.
19. It goes without saying that the indifference of the officials i.e., the Secretary office and respective Chief Engineers and Director General offices is adversely affecting upon the service carrier and progression of the under signed (and those who are similarly placed) in particular cadre, because a great number of engineering posts meant for purely professional engineering work has and will be occupied by non-engineer and non-professional persons which has and will result in stagnation and blockade of normal promotion and progression of the professional engineers serving in the department.
20. As regard PEC level and various provincial as well as Federal govt., there had been exchange of correspondences and discussion over the issue, whereby the former had clearly opined and ruled that holders of such non-engineering degree(s) were not qualified or entitled to work against any engineering post(s) and to undertake any engineering work as such.
21. Recently Pakistan Engineer council has obtained the Washington Accord which is an International Agreement between bodies responsible for Accrediting Engineering Degree Programs. The Washington Accord is specifically focused on academic programs which deal with the practice of engineering at the professional level. The



74

Accord acknowledges that accreditation of engineering academic programs is a key foundation for the practice of engineering at the professional level in each of the countries or territories covered by the Accord. Annexure.

22. B. Tech is accredited by the Sydney Accord. The Sydney Accord is specifically focused on academic programmes dealing with engineering technology. It recognizes the importance of the roles engineering technologists as part of a wider engineering team. Diploma is accredited by the Dublin Accord. The Dublin Accord is specifically focused on the mutual recognition of academic programmes/qualifications that underpin the educational base for Engineering Technicians. It recognizes the importance of the roles engineering technicians play as part of a wider engineering team. Annexure.
23. Approval of Design i.e., PC-1 Government of Pakistan Planning Commission Proforma for Development Projects (Infrastructure Sectors). The PC-1 signed by Executive Engineer which include technical background data, engineering designs, calculation, technology in line with Pakistan Engineering Council Act 1976 section 2 (xiv) Professional Engineers works to be carried out by the registered engineer.
24. "Technical Sanction" implies the scrutiny of the estimates from the technical point of view and denotes that the estimates sanctioned are technically in order and correct. Such sanction will be accorded by the officer of the Public Works Department authorized to do so as per the delegation of Financial Power Rules. Technical Sanction of Professional Engineering Works as defined in Pakistan Engineering Council Act 1976 has to be carried out by the Registered Engineer.
25. Interim Payment Certification: Primarily the Divisional Officer is the responsible disbursing officer of the division. Subject to such instructions, as may be issued by the local Administration in consultation with the Accountant General, detailing the authorities competent to prepare or examine contractors' bills or other demands for payment, and the authorities empowered to make payments thereon, the Divisional Officer may authorize a Sub-divisional Officer to make payments chargeable against the general sanctions of competent authority to expenditure on works. Professional Engineering Works as defined in Pakistan Engineering Council Act 1976 has to be verified by the Registered Engineer.

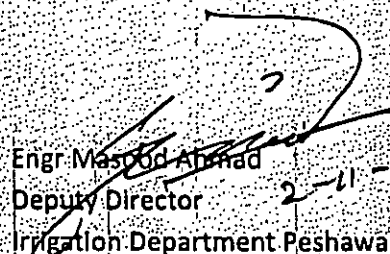
ATTESTED

75

Prayer: -

It is, therefore, prayed that on acceptance of this appeal/representation, your office may be pleased to;

- A. *Set aside* the aforesaid Notification No. SO(E)/IRRI/23-S/73/VOI-VI dated 24 August 2021 to respectfully avoid from posting / appointing of any non-engineering degree holder against any such post which is meant for purely professional engineering work / undertaking, regulated under the PEC Act 1976, and
- B. *Grant* relief to under signed which is considered just and appropriate in the given circumstances please.


Engr. Masood Ahmad
Deputy Director
Irrigation Department Peshawar

2-11-2021

76

To

The Chief Secretary
Irrigation Department
Khyber Pakhtunkhwa, Peshawar.

Subject: APPEAL AGAINST CREATION OF 20% QUOTA IN BPS-18 FOR NON-REGISTERED PROFESSIONAL ENGINEERS ON PROFESSIONAL ENGINEERING WORKS POSTS

Reference: Government of Khyber Pakhtunkhwa Irrigation Department Notification No. SO(E)/IRRI/23-5/73/VOI-VI dated 24 August 2021.

Respectfully Sheweth

1. That the under signed has the privilege of being citizens of Islamic Republic of Pakistan. I am engineer by profession within the meaning of Pakistan Engineering Council Act, 1976, and is duly registered as such with the Pakistan Engineering Council.
2. The appellant was directly appointed as Assistant Engineer (BPS-17) through Public Service commission vide notification No SOE/IRR./4-14/73 dated 27 January 2010 in accordance with the Khyber Pakhtunkhwa Civil Servants Act 1973. (Copy enclosed Annexure-A)
3. That the appellant is holding MSc Engineering degree in Water Resources from UET Peshawar. The Appellant did his graduation in Civil/Mechanical Engineering from NUST/UET/Etc. It is pertinent to point out here that there are very few officers who have such a higher qualification in the department.
4. That the appellant during the course of his service performed his duties with zeal and dedication. He remained upright, have a clean service record. He remained posted at different stations and on different posts as and when assigned any responsibilities, he complied with the posting orders considering it to be in the exigencies of service.

77

5. That Executive Engineer (BPS-18) in Irrigation Department is a Professional Engineering works post and the person who holds the said post has to look into the matters which are related to the professional engineering works with human resource having professional BE/BSc Civil and Mechanical Engineering degrees duly registered with the Pakistan Engineering Council.
6. At present in Irrigation Dept, all the Executive Engineer/Deputy Director (BPS-18) posts are professional engineering posts whose job requirement involves professional engineering works, allowed only to BE/BSc Civil / Mechanical Engineering degree holders, registered with Pakistan Engineering Council.
7. Due to some mala fide intentions or knowingly misinterpreted the settled law of the land, non-qualified/ non-engineers of B-Tech technology / diploma holder persons have been granted illegal benefits in shape of assigning Professional Engineering Works (PEW) and also benefiting them by awarding promotion to the Grade-17 once and now once again a 20% quota has been created for promotion to Grade-18 (Executive Engineer) post and will be performing professional engineering works which is against the Pakistan Engineering Council Act 1976. Hence being aggrieved from the illegal, unjustified and against the law behavior of the competent authority the appellants made a departmental representation/appeal inter alia on the following grounds to your good self please;
 - a. That a committee was constituted vide Secretary Irrigation Department Notification No. SO(E)/Irr/23-5/73/Vol-IV (S. Rules) dated 06.04.2018 (*Annexure-B*) having members from Irrigation Department, C&W, LGE&RDD, Peshawar Development Authority, Public health Engineering Department and Pakhtunkhwa Energy and Development Organization. The committee was tasked to examine the position of B-Tech (Hons) degree visa viz B.Sc. / BE Engineering in light of decision of Pakistan Engineering Council (PEC),

~~SECRET~~

Supreme court of Pakistan, High Court Peshawar and Khyber Pakhtunkhwa Service Tribunal and to come up with well considerate proposal along with recommendation for allocation of uniform percentage quota for their promotion. The committee in its report submitted the following recommendations;

"That B-Tech (hons) qualification is not equivalent to BE/BSc Engineering. As basic qualification required for posting / appointment against the position of Assistant Engineer / Assistant Director / SDO etc. in BS-17 and above is BE/BSc Engineering in Civil / Mechanical / Electrical as per requirement of a department, the B-Tech (Hon) qualification holder may not be promoted and / or posted against such position(s) that involve performance of professional engineering works/services. However, such qualification (i.e., B-Tech) holders cannot be denied promotion to higher scale; provide no law/Rule is violated and for which non-engineering positions (Technologists) may be created, if not already existing"

- b. In MAULA BUX SHAIKH and others---Petitioners C.P. No. 78-K of 2015, decided on 03.10.2018 (Annex-I) at Para 5 it is reiterated that "It is common ground that neither Diploma nor B. Tech (Hons.) Degree are accredited engineering qualification for the reason that there is no reference to the Diploma and B. Tech (Hons.) Degree in the accredited engineering qualification provided in the first and second schedule of the PEC Act. Thus, accredited engineering qualification is ascribed to those who hold Bachelor Degree in Engineering from accredited Engineering Universities/Institutions in Pakistan and abroad".
- c. In MAULA BUX SHAIKH and others---Petitioners C.P. No. 78-K of 2015, decided on 03/10/2018 it has been clarified at para 23 that "With note of caution that government shall not allow or permit any person to perform professional engineering works as defined in the PEC Act, who does not possess accredited engineering qualification from the accredited engineering institution and his name is not registered as a registered engineer or professional engineer under the PEC Act".
- d. The works executed by Sub Divisional Officer/Assistant Engineers (SDO/AE BPS-17) and Executive Engineer (BPS-18) falls under professional engineering

[Handwritten signature and stamp]

works as envisaged under PEC Act 1976 section 2(XXV) and as reiterated in C.P. No. 78-K of 2015 at Para 7.

- e. Professional Engineer is defined in section 2(xxiii) of Pakistan Engineering Council Act 1976 and reproduced at para 6 of MAULA BUX SHAIKH and others---Petitioners C.P. No. 78-K of 2015 which is as follows:

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

- f. Please refer to Statutory Notifications, (S. R. O.) Government of Pakistan Ministry of Water and Power Notification Islamabad, the 20th November, 1985 S.R.O. 1142(I)/85;

(i) A candidate who has passed the Diploma of Associate Engineer (DAE) Examination, securing at least 60% aggregate marks shall be eligible for applying in admission against [02%] reserved seats in relevant discipline of Engineering in which he or she has passed the DAE examination;

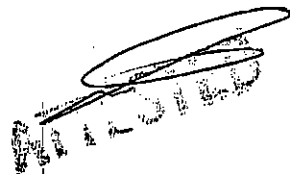
(ii) A candidate possessing [B. Tech (Hons)/B. S/B.Sc./Bachelor of Technology (with relevant discipline)] or equivalent qualification duly recognized by HEC seeking admission towards the relevant engineering discipline against 02% reserved seats of [B. Tech Hons)/B. S/B.Sc./Bachelor of Technology (with relevant discipline)], shall be considered for admission in 2015 and after, with one year of exemption;

- g. Also, please refer to Deputy Director Accreditation & Attestation, Higher Education Commission letter no. S-61/A&A/2017/HEC/3811 dated May 4, 2017 states in first para 4th line, "The degree of B. Tech (Hons) is not similar to BE/BSc Engineering Degree." Annex-III

- h. Irrigation Department along with Establishment Department, Finance Department, Law Department and Chief Secretary Khyber Pakhtunkhwa office has signed comments and submitted before the *Khyber Pakhtunkhwa Service Tribunal Peshawar in Service Appeal No 1431/2019 filed by Niaz Badshah Vs Government of Khyber Pakhtunkhwa through Chief Secretary and others* that non engineers cannot be promoted to post of Executive Engineer, citing reason of PEC Act & nonequivalence of B-Tech to that of BSc Engineering.

ACCEPTED
14/05/2019

8. Sub Engineers in Irrigation Department with the basic qualification of **Diploma in Associate Engineering (DAE)** and having BPS Grade-11, a small group among these sub engineers, during service obtained B. Tech (Hons) degree.
9. Through this additional B. Tech degree, in 2012, the Sub Engineers first took benefit by bifurcating the seniority list of Sub Engineers into two categories i.e., for employees having Diploma in Associate Engineering (DAE) Holders and B. Tech (Hons) degree separate seniority lists were maintained. For B. Tech holder separate quota in BPS-17 was allowed and thus elevated to the posts of Sub Divisional Officers. Through this Quota System, few B. Tech (Hons) whom were in BPS grade-16 were promoted to Grade-17 (even though lower in seniority) and some promoted from BPS Grade-11 to Grade-17 (Two steps promotion despite lower in their commission seniority list) while the Public Service Commission seniority was completely ignored.
10. Despite once got undue promotion by B. Tech holder in BPS-17 they are influencing the Government functionaries to obtain further promotion quota in the post of Professional Engineer (BPS-18) in Irrigation Department. Despite this fact and other grounds so submitted herein before, the SSRC of Irrigation Department without adverting to this fact and other legal issues lurking in the matter has approved in their favor 20% quota against the Executive Engineer (BPS Grade-18 posts), which are purely professional Engineering Works Posts as stated above.
11. No such practice of double quota (based on single degree) exists in various services group of Pakistan and Provincial services group i.e., PAS, PMS and PPS
12. The B.Tech holder relying on **FIDA HUSSAIN V/S THE SECRETARY KASHMIR AFFAIRS AND NORTHERN AREAS DIVISION, ISLAMABAD AND ANOTHER (PLD 1995 SUPREME COURT 701)** that "PEC Act 1976 is not applicable and binding upon the Government", it is worth mentioning that the matter is clarified by the Supreme Court of Pakistan in *Maula Bux Sheikh v. Chief Secretary Sindh* reported in 2018 SCMR 2098 at Para 15 and Para 16 that if Government are performing professional Engineering Works, PEC Act 1976 shall be attracted and not otherwise.
13. As regard the main ground against the posting / transfer / appointment of non-registered professional engineers, the under signed is mainly resting his case on the unequivocal provisions of section 2 (ii) (xxiii) (xxv) (xxvii), section 11, 27 and other

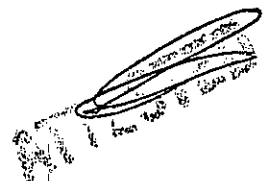


81

such provisions of the Pakistan Engineering Council Act, 1976 (*'the Act'*), with particular reference to section 27(5A) clearly providing that, "no person shall, unless registered as a registered engineer or professional engineer, hold any post in an engineering organization where he has to perform professional engineering work".

14. Please note that the afore-quoted provisions of sub-section (5A) *ibid* are mandatory in nature because not only that they are couched in a negative expression, but their non-compliance is also dealt with by providing penal consequences as mentioned in section 27 of the Act *supra*.
15. Even in Chapter 1; Rule 2 (J) of the Khyber Pakhtunkhwa Public Procurement Regulatory Authority Rules 2014 formulated and notified under the KPPA Act, 2012 the definition of "Professional Engineering work" has been given in line with the PEC Act, 1976.
16. Under article 143 of the Islamic Republic of Pakistan "If the law of Provincial Government is repugnant to the Act of Parliament, then the Act of Parliament (law of the state) shall prevail. Hence SSRC constituted under Civil Servant Act and APT rules of the province can't overrule Act of the Parliament i.e., PEC Act 1976 while amending service rules of engineering public organization"
17. In support of this very contention and ground of challenge, the undersigned is fortified by the case-law on the subject developed from time to time, according to which the legal position has since been examined and clarified to the effect the holders of B-Tech degree as well as diploma holders are not held to be professional engineers within the meaning of section 2(xxiii) of the Act having not acquired engineering qualification¹ and, therefore, they had been consistently held not

¹ Section 10(1) of the Act provides that, '*the engineering qualifications granted by the engineering institutions in Pakistan which are included in the First Schedule shall be the accredited engineering qualifications for the purposes of this Act.*'



entitled to hold any engineering post and to undertake any professional engineering work as defined and described in section 2(xxv) of the Act *supra*.

18. It hardly needs to reiterate here at this juncture that the issue, of whether or not holders of B-Tech or diploma qualification should or should not be equated with or considered as professional engineers at par with B.Sc. Engineers, has long been dilated upon and debated a lot both at the level of PEC as well as in the superior courts of the country. In all, there appears an unanimity of opinion to the effect that (i) neither B. Tech degree holders or diploma holders in any field whatsoever are professional engineers within the meaning of the Act and (ii) nor could they hold any post meant for professional engineering work in any engineering organization.
19. It goes without saying that the indifference of the officials i.e., the Secretary office and respective Chief Engineers and Director General offices is adversely affecting upon the service carrier and progression of the under signed (and those who are similarly placed) in particular cadre, because a great number of engineering posts meant for purely professional engineering work has and will be occupied by non-engineer and non-professional persons which has and will result in stagnation and blockade of normal promotion and progression of the professional engineers serving in the department.
20. As regard PEC level and various provincial as well as Federal govt., there had been exchange of correspondences and discussion over the issue, whereby the former had clearly opined and ruled that holders of such non-engineering degree(s) were not qualified or entitled to work against any engineering post(s) and to undertake any engineering work as such.
21. Recently Pakistan Engineer council has obtained the Washington Accord which is an International Agreement between bodies responsible for Accrediting Engineering Degree Programs. The Washington Accord is specifically focused on academic programs which deal with the practice of engineering at the professional level. The

[Handwritten signature]
ATTACHED

Accord acknowledges that accreditation of engineering academic programs is a key foundation for the practice of engineering at the professional level in each of the countries or territories covered by the Accord. Annexure.

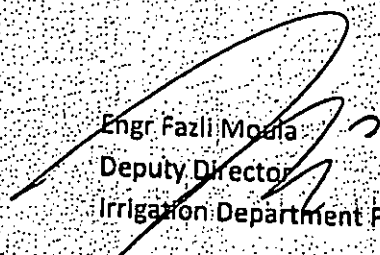
22. B. Tech is accredited by the Sydney Accord. The Sydney Accord is specifically focused on academic programmes dealing with engineering technology. It recognizes the importance of the roles engineering technologists as part of a wider engineering team. Diploma is accredited by the Dublin Accord. The Dublin Accord is specifically focused on the mutual recognition of academic programmes/qualifications that underpin the educational base for Engineering Technicians. It recognizes the importance of the roles engineering technicians play as part of a wider engineering team. Annexure.
23. Approval of Design i.e., PC-1 Government of Pakistan Planning Commission Proforma for Development Projects (Infrastructure Sectors). The PC-1 signed by Executive Engineer which include technical background data, engineering designs, calculation, technology in line with Pakistan Engineering Council Act 1976 section 2 (xxv) Professional Engineers works to be carried out by the registered engineer.
24. "Technical Sanction" implies the scrutiny of the estimates from the technical point of view and denotes that the estimates sanctioned are technically in order and correct. Such sanction will be accorded by the officer of the Public Works Department authorized to do so as per the delegation of Financial Power Rules. Technical Sanction of Professional Engineering Works as defined in Pakistan Engineering Council Act 1976 has to be carried out by the Registered Engineer.
25. Interim Payment Certification: Primarily the Divisional Officer is the responsible disbursing officer of the division. Subject to such instructions, as may be issued by the local Administration in consultation with the Accountant General, detailing the authorities competent to prepare or examine contractors' bills or other demands for payment, and the authorities empowered to make payments thereon, the Divisional Officer may authorize a Sub-divisional Officer to make payments chargeable against the general sanctions of competent authority to expenditure on works. Professional Engineering Works as defined in Pakistan Engineering Council Act 1976 has to be verified by the Registered Engineer.

84

Prayer: -

It is, therefore, prayed that on acceptance of this appeal/representation, your office may be pleased to;

- A. *Set aside* the aforesaid Notification No: SO(E)/IRRI/23-5/73/VOI-VI dated 24 August 2021 to respectfully avoid from posting / appointing of any non-engineering degree holder against any such post which is meant for purely professional engineering work / undertaking, regulated under the PEC Act 1976, and
- B. *Grant* relief to under signed which is considered just and appropriate in the given circumstances please.


Engr. Fazli Modia
Deputy Director
Irrigation Department Peshawar.

02-11-2021

85

To

The Chief Secretary
Irrigation Department
Khyber Pakhtunkhwa, Peshawar.

Subject: APPEAL AGAINST CREATION OF 20% QUOTA IN BPS-18 FOR NON-REGISTERED PROFESSIONAL ENGINEERS ON PROFESSIONAL ENGINEERING WORKS POSTS

Reference: Government of Khyber Pakhtunkhwa Irrigation Department Notification No. SO(E)/IRRI/23-5/73/VOI-VI dated 24 August 2021

Respectfully Sheweth;

1. That the under signed has the privilege of being citizens of Islamic Republic of Pakistan. I am engineer by profession within the meaning of Pakistan Engineering Council Act, 1976, and is duly registered as such with the Pakistan Engineering Council.
2. The appellant was directly appointed as Assistant Engineer (BPS-17) through Public Service commission vide notification No SOE/IRR/4-14/73 dated 27 January 2010 in accordance with the Khyber Pakhtunkhwa Civil Servants Act 1973. (Copy enclosed Annexure-A)
3. That the appellant is holding MSc Engineering degree in Water Resources from UET Peshawar. The Appellant did his graduation in Civil/Mechanical Engineering from NUST/UET/Etc. It is pertinent to point out here that there are very few officers who have such a higher qualification in the department.
4. That the appellant during the course of his service performed his duties with zeal and dedication. He remained upright, have a clean service record. He remained posted at different stations and on different posts as and when assigned any responsibilities, he complied with the posting orders considering it to be in the exigencies of service.

5. That Executive Engineer (BPS-18) in Irrigation Department is a Professional Engineering works post and the person who holds the said post has to look into the matters which are related to the professional engineering works with human resource having professional BE/BSc Civil and Mechanical Engineering degrees duly registered with the Pakistan Engineering Council.
6. At present in Irrigation Dept, all the Executive Engineer/Deputy Director (BPS-18) posts are professional engineering posts whose job requirement involves professional engineering works, allowed only to BE/BSc Civil / Mechanical Engineering degree holders, registered with Pakistan Engineering Council.
7. Due to some mala fide intentions or knowingly misinterpreted the settled law of the land, non-qualified/ non-engineers of B-Tech technology / diploma holder persons have been granted illegal benefits in shape of assigning Professional Engineering Works (PEW) and also benefiting them by awarding promotion to the Grade-17 once and now once again a 20% quota has been created for promotion to Grade-18 (Executive Engineer) post and will be performing professional engineering works which is against the Pakistan Engineering Council Act 1976. Hence being aggrieved from the illegal, unjustified and against the law behavior of the competent authority the appellants made a departmental representation/appeal inter alia on the following grounds to your good self please;
 - a. That a committee was constituted vide Secretary Irrigation Department Notification No. SO(E)/Irr/23-5/73/Vol-IV (S. Rules) dated 06.04.2018 (*Annexure-B*) having members from Irrigation Department, C&W, LGE&RDD, Peshawar Development Authority, Public health Engineering Department and Pakhtunkhwa Energy and Development Organization. The committee was tasked to examine the position of B-Tech (Hons) degree visa viz B.Sc. / BE Engineering in light of decision of Pakistan Engineering Council (PEC),

87

Supreme court of Pakistan, High Court Peshawar and Khyber Pakhtunkhwa Service Tribunal and to come up with well considerate proposal along with recommendation for allocation of uniform percentage quota for their promotion. The committee in its report submitted the following recommendations;

"That B-Tech (hons) qualification is not equivalent to BE/BSc Engineering. As basic qualification required for posting / appointment against the position of Assistant Engineer / Assistant Director / SDO etc. in BS-17 and above is BE/BSc Engineering in Civil / Mechanical / Electrical as per requirement of a department, the B-Tech (Hon) qualification holder may not be promoted and / or posted against such position(s) that involve performance of professional engineering works/services. However, such qualification (i.e., B-Tech) holders cannot be denied promotion to higher scale; provide no law/Rule is violated and for which non-engineering positions (Technologists) may be created, if not already existing"

- b. In MAULA BUX SHAIKH and others—Petitioners C.P. No. 78-K of 2015, decided on 03.10.2018 (Annex-I) at Para 5 it is reiterated that "It is common ground that neither Diploma nor B. Tech (Hons.) Degree are accredited engineering qualification for the reason that there is no reference to the Diploma and B. Tech (Hons.) Degree in the accredited engineering qualification provided in the first and second schedule of the PEC Act. Thus, accredited engineering qualification is ascribed to those who hold Bachelor Degree in Engineering from accredited Engineering Universities/Institutions in Pakistan and abroad".
- c. In MAULA BUX SHAIKH and others—Petitioners C.P. No. 78-K of 2015, decided on 03/10/2018 it has been clarified at para 23 that "With note of caution that government shall not allow or permit any person to perform professional engineering works as defined in the PEC Act, who does not possess accredited engineering qualification from the accredited engineering institution and his name is not registered as a registered engineer or professional engineer under the PEC Act".
- d. The works executed by Sub Divisional Officer/Assistant Engineers (SDO/AE BPS-17) and Executive Engineer (BPS-18) falls under professional engineering

88

works as envisaged under PEC Act 1976 section 2(XXV) and as reiterated in C.P. No. 78-K of 2015 at Para 7.

- e. Professional Engineer is defined in section 2(xxiii) of Pakistan Engineering Council Act 1976 and reproduced at para 6 of MAULA BUX SHAIKH and others---Petitioners C.P. No. 78-K of 2015 which is as follows:

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

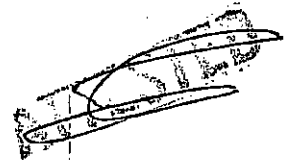
- f. Please refer to Statutory Notifications, (S. R. O.) Government of Pakistan Ministry of Water and Power Notification Islamabad, the 20th November, 1985 S.R.O. 1142(I)/85;

(i) A candidate who has passed the Diploma of Associate Engineer (DAE) Examination, securing at least 60% aggregate marks shall be eligible for applying in admission against [02%] reserved seats in relevant discipline of Engineering in which he or she has passed the DAE examination;

(ii) A candidate possessing [B. Tech (Hons)/B. S/B.Sc./Bachelor of Technology (with relevant discipline)] or equivalent qualification duly recognized by HEC seeking admission towards the relevant engineering discipline against 02% reserved seats of [B. Tech Hons)/B. S/B.Sc./Bachelor of Technology (with relevant discipline)], shall be considered for admission in 2015 and after, with one year of exemption:

- g. Also, please refer to Deputy Director Accreditation & Attestation, Higher Education Commission letter no. 8-61/A&A/2017/HEC/3811 dated May 4, 2017 states in first para 4th line, "The degree of B. Tech (Hons) is not similar to BE/BSc Engineering Degree." Annex-III

- h. Irrigation Department along with Establishment Department, Finance Department, Law Department and Chief Secretary Khyber Pakhtunkhwa office has signed comments and submitted before the *Khyber Pakhtunkhwa Service Tribunal Peshawar in Service Appeal No 1431/2019 filed by Niaz Badshah Vs Government of Khyber Pakhtunkhwa through Chief Secretary and others* that non engineers cannot be promoted to post of Executive Engineer, citing reason of PEC Act & nonequivalence of B-Tech to that of BSc Engineering.



89

8. Sub Engineers in Irrigation Department with the basic qualification of **Diploma in Associate Engineering (DAE)** and having **BPS Grade-11**, a small group among these sub engineers, during service obtained **B. Tech (Hons)** degree.
9. Through this additional **B. Tech** degree, in 2012, the Sub Engineers first took benefit by bifurcating the seniority list of Sub Engineers into two categories i.e., for employees having **Diploma in Associate Engineering (DAE)** Holders and **B. Tech (Hons)** degree separate seniority lists were maintained. For **B. Tech** holder separate quota in **BPS-17** was allowed and thus elevated to the posts of Sub Divisional Officers. Through this Quota System, few **B. Tech (Hons)** whom were in **BPS grade-16** were promoted to **Grade-17** (even though lower in seniority) and some promoted from **BPS Grade-11** to **Grade-17** (Two steps promotion despite lower in their commission seniority list) while the **Public Service Commission** seniority was completely ignored.
10. Despite once got undue promotion by **B. Tech** holder in **BPS-17** they are influencing the Government functionaries to obtain further promotion quota in the post of **Professional Engineer (BPS-18)** in Irrigation Department. Despite this fact and other grounds so submitted herein before, the **SSRC** of Irrigation Department without adverting to this fact and other legal issues lurking in the matter has approved in their favor **20%** quota against the **Executive Engineer (BPS Grade-18)** posts, which are purely professional Engineering Works Posts as stated above.
11. No such practice of double quota (based on single degree) exists in various services group of Pakistan and Provincial services group i.e., **PAS, PMS and PPS**
12. The **B. Tech** holder relying on **FIDA HUSSAIN V/S THE SECRETARY KASHMIR AFFAIRS AND NORTHERN AREAS DIVISION, ISLAMABAD AND ANOTHER (PLD 1995 SUPREME COURT 701)** that "**PEC Act 1976 is not applicable and binding upon the Government**", it is worth mentioning that the matter is clarified by the Supreme Court of Pakistan in **Maula Bux Sheikh v. Chief Secretary Sindh'** reported in **2018 SCMR 2098** at **Para 15** and **Para 16** that if Government are performing professional Engineering Works, **PEC Act 1976** shall be attracted and not otherwise.
13. As regard the main ground against the posting / transfer / appointment of non-registered professional engineers, the under signed is mainly resting his case on the unequivocal provisions of section 2 (ii) (xxiii) (xxv) (xxvii), section 11, 27 and other

Signature and Stamp

90

such provisions of the Pakistan Engineering Council Act, 1976 (*'the Act'*), with particular reference to section 27(5A) clearly providing that, **"no person shall, unless registered as a registered engineer or professional engineer, hold any post in an engineering organization where he has to perform professional engineering work"**.

14. Please note that the afore-quoted provisions of sub-section (5A) *ibid* are mandatory in nature because not only that they are couched in a negative expression, but their non-compliance is also dealt with by providing penal consequences as mentioned in section 27 of the Act *supra*.
15. Even in Chapter 1, Rule 2 (J) of the Khyber Pakhtunkhwa Public Procurement Regulatory Authority Rules 2014 formulated and notified under the KPPA Act, 2012 the definition of "Professional Engineering work" has been given in line with the PEC Act, 1976.
16. Under article 143 of the Islamic Republic of Pakistan "If the law of Provincial Government is repugnant to the Act of Parliament, then the Act of Parliament (law of the state) shall prevail. Hence SSRC constituted under Civil Servant Act and APT rules of the province can't overrule Act of the Parliament i.e., PEC Act 1976 while amending service rules of engineering public organization"
17. In support of this very contention and ground of challenge, the undersigned is fortified by the case-law on the subject developed from time to time, according to which the legal position has since been examined and clarified to the effect the holders of B-Tech degree as well as diploma holders are not held to be professional engineers within the meaning of section 2(xxiii) of the Act having not acquired engineering qualification¹ and, therefore, they had been consistently held not

¹ Section 10(1) of the Act provides that, *'the engineering qualifications granted by the engineering institutions in Pakistan which are included in the First Schedule shall be the accredited engineering qualifications for the purposes of this Act.'*



91

entitled to hold any engineering post and to undertake any professional engineering work as defined and described in section 2(xxv) of the Act *supra*.

18. It hardly needs to reiterate here at this juncture that the issue, of whether or not holders of B-Tech or diploma qualification should or should not be equated with or considered as professional engineers at par with B.Sc. Engineers, has long been dilated upon and debated a lot both at the level of PEC as well as in the superior courts of the country. In all, there appears an unanimity of opinion to the effect that (i) neither B. Tech degree holders or diploma holders in any field whatsoever are professional engineers within the meaning of the Act and (ii) nor could they hold any post meant for professional engineering work in any engineering organization.
19. It goes without saying that the Indifference of the officials i.e., the Secretary office and respective Chief Engineers and Director General offices is adversely affecting upon the service carrier and progression of the under signed (and those who are similarly placed) in particular cadre, because a great number of engineering posts meant for purely professional engineering work has and will be occupied by non-engineer and non-professional persons which has and will result in stagnation and blockade of normal promotion and progression of the professional engineers serving in the department.
20. As regard PEC level and various provincial as well as Federal govt., there had been exchange of correspondences and discussion over the issue, whereby the former had clearly opined and ruled that holders of such non-engineering degree(s) were not qualified or entitled to work against any engineering post(s) and to undertake any engineering work as such.
21. Recently Pakistan Engineer council has obtained the Washington Accord which is an International Agreement between bodies responsible for Accrediting Engineering Degree Programs. The Washington Accord is specifically focused on academic programs which deal with the practice of engineering at the professional level. The

Accord acknowledges that accreditation of engineering academic programs is a key foundation for the practice of engineering at the professional level in each of the countries or territories covered by the Accord. Annexure.

22. B. Tech is accredited by the Sydney Accord. The Sydney Accord is specifically focused on academic programmes dealing with engineering technology. It recognizes the importance of the roles engineering technologists as part of a wider engineering team. Diploma is accredited by the Dublin Accord. The Dublin Accord is specifically focused on the mutual recognition of academic programmes/qualifications that underpin the educational base for Engineering Technicians. It recognizes the importance of the roles engineering technicians play as part of a wider engineering team. Annexure.

23. Approval of Design i.e., PC-1 Government of Pakistan Planning Commission Proforma for Development Projects (Infrastructure Sectors). The PC-1 signed by Executive Engineer which include technical background data, engineering designs, calculation, technology in line with Pakistan Engineering Council Act 1976 section 2 (xxv) Professional Engineers works to be carried out by the registered engineer.

24. "Technical Sanction" implies the scrutiny of the estimates from the technical point of view and denotes that the estimates sanctioned are technically in order and correct. Such sanction will be accorded by the officer of the Public Works Department authorized to do so as per the delegation of Financial Power Rules. Technical Sanction of Professional Engineering Works as defined in Pakistan Engineering Council Act 1976 has to be carried out by the Registered Engineer.


25. Interim Payment Certification: Primarily the Divisional Officer is the responsible disbursing officer of the division. Subject to such instructions, as may be issued by the local Administration in consultation with the Accountant General, detailing the authorities competent to prepare or examine contractors' bills or other demands for payment, and the authorities empowered to make payments thereon, the Divisional Officer may authorize a Sub-divisional Officer to make payments chargeable against the general sanctions of competent authority to expenditure on works. Professional Engineering Works as defined in Pakistan Engineering Council Act 1976 has to be verified by the Registered Engineer.

99

Prayer: -

It is, therefore, prayed that on acceptance of this appeal/representation, your office may be pleased to,

- A. *Set aside* the aforesaid Notification No. SO(E)/IRRI/23-5/73/VOI-VI dated 24 August 2021 to respectfully avoid from posting / appointing of any non-engineering degree holder against any such post which is meant for purely professional engineering work / undertaking, regulated under the PEC Act 1976, and
- B. *Grant* relief to under signed which is considered just and appropriate in the given circumstances please.


Engr. Ali Ahmad 2/11/2021
Executive Engineer
Irrigation Department Peshawar

Constitution of Standing Service Rules Committee

Under the provision of Rule 3(2) of the NWFP Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, the Provincial Government is pleased to constitute with immediate effect and in supersession of Services and General Administration Department Notification No.SQR-II (S&GAD)2(9)/97 dated 12th September, 2001, the Standing Service Rules Committee with the following composition:-

- | | | |
|----|---|------------------|
| 1. | Administrative Secretary concerned | Chairman |
| 2. | Additional Secretary (Regulation)
E&A Department | Member |
| 3. | Additional Secretary (Regulation)
Finance Department | Member |
| 4. | Additional Secretary
Law Department | Member |
| 5. | Head of the attached Department concerned | Member |
| 6. | Deputy Secretary (Admn) of the
Department concerned | Member/Secretary |

2. I am further directed to request that the Working Paper for the Standing Service Rules Committee should be prepared in light of instructions issued vide letter No.SQR-I (S&GAD) 1-206/74(A) dated 13th October, 1990.

(Authority: Notification No.SQR.VI(E&AD)2-69/2003. dated 29th Jan, 2005)

Framing of Service Rules/Recruitment Rules

I am directed to refer to this department letter No.SQR-I(S&GAD) 4-2/85, dated 4.12.1985, on the subject noted above and to enclose herewith revised proforma (Annexure 'I' and Annexure-'II') for initiating proposals for framing new Service/Recruitment Rules. The Administrative Departments are requested that all proposals for framing of new Service Rules and amendments in the existing rules should be accompanied by a working paper (six copies) explaining background and justification for the proposal, particularly where existing rules are required to be amended.

2. It is requested that while sending proposals for framing of new Service Rules and making amendments in the existing rules, the qualifications proposed for appointment to posts should suit the requirement of the job.

3. It has been decided that the Law Department/Public Service Commission and Finance Department would in no case delay vetting/ clearance/ concurrence of rules for more than one month.

[Handwritten signature]

95

Annexure-I

NEW RULES

PROFORMA SHOWING PROPOSED METHOD OF RECRUITMENT APPLICABLE TO THE POSTS IN THE _____

S.No.	Nomenclature of the post.	Minimum qualification for appointment by initial recruitment or by transfer	Minimum qualification for appointment by promotion	Age limit	Method of recruitment
1	2	3	4	5	6

Annexure-II

PROFORMA SHOWING PROPOSED AMENDMENT IN THE EXISTING SERVICE RULES

Nomenclature of the post (Existing) (Proposed) (Reasons)	Qualification (Existing) (Proposed) (Reasons)	Age (Existing) (Proposed) (Reasons)	Method of recruitment (Existing) (Proposed) (Reasons)
2	3	4	5

Sanction of the post/posts by the Finance Deptt may also be quoted and enclosed.

(Authority: No.SOR-I(S&GAD) 1-206/74(A) Dated Peshawar 13.10.1990)

Framing of Service/Recruitment Rules.

I am directed to refer to this Department letter of even number dated 15.10.1998 on the subject noted above and to say that ever since the re-organization of the Standing Service Rules Committee, the Administrative Departments, fix schedule of the Standing Service Rules Committee meetings without consulting S&GAD and Finance Department. Needless to point out that representatives of those Departments do have other important official engagements/commitments.

2. Furthermore, the working papers/proposals for framing of service/ recruitment rules are forwarded to this Department shortly before the meeting. As such it becomes difficult to examine the proposals properly.

3. I am, therefore, directed to request you to kindly ensure that proposals/ working paper for framing/amending the rules shall be furnished to the S&GAD and Finance Department at least seven days, before the date of the meeting. The above instructions may be brought to the notice of all concerned for strict compliance.

(Authority S&GAD letter No.SORII(S&GAD)2(9)/98 dated 24.12.98)

GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT
Dated 6.4.2018

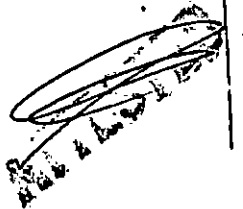
NOTIFICATION

No. SO(E):/Irr /23-5/73NoIvol-IV (s.rule) in pursuance of the decision taken in the meeting held on 3.4.2018 in Irrigation department with heads of C&W, Local government & public health engineer departments, the following committee is constituted.

1. Engr. Muhammad mujahid saeed, chief engineer (north) irrigation department (convener)
2. Engr. Arbab zulfiqar khan project director remodeling of warsak canal system irrigation department Peshawar.
3. Engr. Muhammad uzair chief engineer (north) C&W department.
4. Engr. Muhammad ayub, chief engineer C&W Department.
5. Engr. Azghar khan, local govt: & rural department.
6. Engr. Ijaz afza khan director (PDA) LR&RDD.
7. Engr. Bahramand khan chief engineer public health engineering department.
8. Engr. Zainullah shah, Pakhtunkhwa energy development organization (PEDO)

2. the committee shall examine the position of B-TECH (hons) degree visa viz B.Sc B engineering in light of the decision of Pakistan engineering council supreme court of pakistan Peshawar high court Peshawar and Khyber Pakhtunkhwa service tribunal and to come up with well considered proposals alongwith recommendations for allocation of uniform percentage quota for their promotion to the post of assistant engineers.

3. the committee will submit its report/recommendations with in 10 days.



GOVERNMENT OF KHYBER PAKHTUNKHWA **ANNEX - U**
IRRIGATION DEPARTMENT

96

NOTIFICATION

No. 50 (E)/ Irr 723-5/73/Vol-IV (S.Rules)

In pursuance of the decision taken in the meeting held on 03/04/2018 in Irrigation Department with Heads of C&W, Local Government & Public Health Engineering Departments, the following committee is constituted:-

1. Engr. Muhammad Mujahid Saeed, Chief Engineer (North) Irrigation Department. (Convener)
2. Engr. Arbab Zulfqar Khan, Project Director Remodelling of Warsak Canal System Irrigation Department Peshawar.
3. Engr. Muhammad Uzair Chief Engineer (North) C&W Department.
4. Engr. Muhammad Ayub, Chief Engineer C&W Department.
5. Engr. Azghar Khan, Local Govt. & Rural Dev. Department.
6. Engr. Ijaz Alzal Khan Director (PDA), LR&RDD.
7. Engr. Bahramand Khan, Chief Engineer, Public Health Engineering Department.
8. Engr. Zainullah Shah, Pakhtunkhwa Energy Development Organization (PEDO)

2. The Committee shall examine the position of B-Tech (Hons) degree visa viz B.Sc IB Engineering in light of the decisions of Pakistan Engineering Council, Supreme Court of Pakistan, Peshawar High Court Peshawar and Khyber Pakhtunkhwa High Court and to come up with well-considered proposals along with recommendations for allocation of uniform percentage quota for their promotion to the post of Assistant Engineers.

3. The committee will submit its report/recommendation within 10 days:

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Ends: of Even No. & Date

Copy is forwarded for information to;

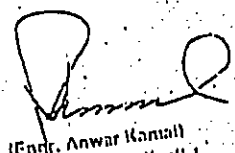
1. The Secretary to Govt. of Khyber Pakhtunkhwa LG & RD Department.
2. The Secretary to Govt. of Khyber Pakhtunkhwa C&W Department.
3. The Secretary to Govt. of Khyber Pakhtunkhwa PHE Department.
4. The Secretary to Govt. of Khyber Pakhtunkhwa Energy & Power Department.
5. The PSO to Chief Minister, Khyber Pakhtunkhwa.
6. The PSO to Chief Secretary, Khyber Pakhtunkhwa.
7. The Director General, PDA Peshawar.
8. The Private Secretaries to Provincial Ministers Irrigation, C&W, PHE & Local Govt. Khyber Pakhtunkhwa.
9. All committee members.
10. PS to Secretary Irrigation, Khyber Pakhtunkhwa.
11. PA to Additional Secretary Irrigation Department.

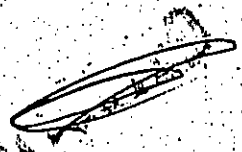
CE OF C.I. ()

1. Dated: 04/04/2018

1. 6/4

1. 21


(Engr. Anwar Kanwal)
Section Officer (Estt)



Section 5(A), Section 27(1) & (2) of PEC Act is punishable with imprisonment and/or fine for both, employer as well as for the incumbent. Therefore, a B.Tech (Hons) qualification holder should not be posted against an engineering position where he has to perform professional engineering works/services.

v. The quota already fixed for promotion to the positions involving performance of professional engineering work/engineering service is against the basic qualification requirement defined in the service rules and PEC Act 1976, thus, needs to be cancelled in light of Para 13 of the judgment dated 5th June 1995 of the Supreme Court of Pakistan, in the WP 52 of 1993; reproduced below;

"We may again observe that it is exclusively within the domain of the government to decide whether a particular qualification will be considered sufficient for promotion from a particular grade to a higher grade and it is also within the domain of the government to change the above policy from time to time as nobody can claim any vested right in policy. However, it cannot abdicate its powers to decide the above question in favour of a corporate body which is not in its control nor it can act in a manner which may be violative of Article 25 of the Constitution on account of being discriminatory. It is still open to the government for future to provide that academic qualification of B.Tech (Hons) will not be considered sufficient for promotion from BPS-16 to BPS-17 if the same does not violate the above principle."


vi. Service Rules framed erroneously can be reformed according to the statutory provisions as observed by the Supreme Court of Pakistan already explained in above mentioned para (i.e. It is still open to the government for future to provide that academic qualification of B.Tech (Hons) will not be considered sufficient for promotion from BPS-16 to BPS-17 if the same does not violate the above principle.)

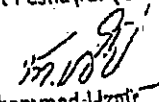
E. RECOMMENDATIONS

As sequel to the above, it is unanimously recommended that B. Tech (Hon) qualification is not equivalent to the BE/ B.Sc Engineering. As basic qualification required for posting/ appointment against the position of Assistant Engineer/Assistant Director/ SDO etc. in BS-17 and above is BE/ B.Sc Engineering in Civil/Mechanical/Electrical as per requirement of a department, therefore, B. Tech (Hon) qualification holder may not be promoted and/or

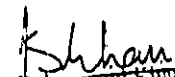
98

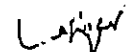
posted against such position(s) that involve performance of professional engineering works/services. However, such qualification (i.e. B.Tech) holders cannot be denied promotion to a higher scale, provided no Law/Rule is violated and for which new engineering positions (Technologists) may be created, if not already existing.



Engr. Syed Mujahid Saeed
Chief Engineer (North) Irrigation
Department Peshawar (Chairman)

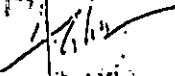

Engr. Muhammad Uzair
Chief Engineer, C&W
Department

Engr. Asghar Khan
Local Govt. & Rural Dev.
Department


Engr. Bahramand Khan
Chief Engineer (North), PHE
Department


Engr. Arbab Zulfiqar Khan
Project Director, RWCS,
Irrigation Deptt.


Engr. Muhammad Ayub,
Chief Engineer, C&W
Department


Engr. Ijaz Afzal Khan
Director (PDA), LG&RDD

Engr. Zainullah Shih
Representative of Pakhtunkhwa
Energy Dev. Organization (PEDO)

99

Better copy page No

KHYBER PAKHTUNKHWA

Published by authority

Peshawar, Monday, 25th June 2012

GOVERNMENT OF KHYBER PAKHTUNKHWA,

IRRIGATION DEPARTMENT.

NOTIFICATION

Dated 25th June 2012

No. SOE-IRRI-23-5/2010-11—in pursuance of the provision contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa, civil servants (Appointment, promotion and transfer), Rules, 1989 the irrigation department in consultation with the establishment department and the finance department, hereby directs that in this department notification No. SO(E)IRI/23-5/79 dated 17.02.2011, the following amendments shall be made namely:

AMENDMENT

In the appendix,

(1) Against serial No. 4 in column No. 5 for the existing entries, in clause (b), (c) and (d) the following shall be respectively substituted namely:

(b) Twelve percent of promotion on the basis of seniority-cum-fitness, from amongst the sub engineers, having degree in Civil Engineering of mechanical Engineering from a recognized university and have passed departmental grade B&A examination with five year service of such.

Note: for the purpose of clause (b) a joint seniority list of the sub engineers having degree in civil engineering or mechanical engineering shall be maintained and their seniority is to be reckoned from the date of their 1st appointment as sub engineer.

(c) Eight percent by promotion on the basis of seniority cum fitness from amongst the sub engineers having degree in B.Tech (Hones) and have passed departmental grade B & A examination with five years' service as such and

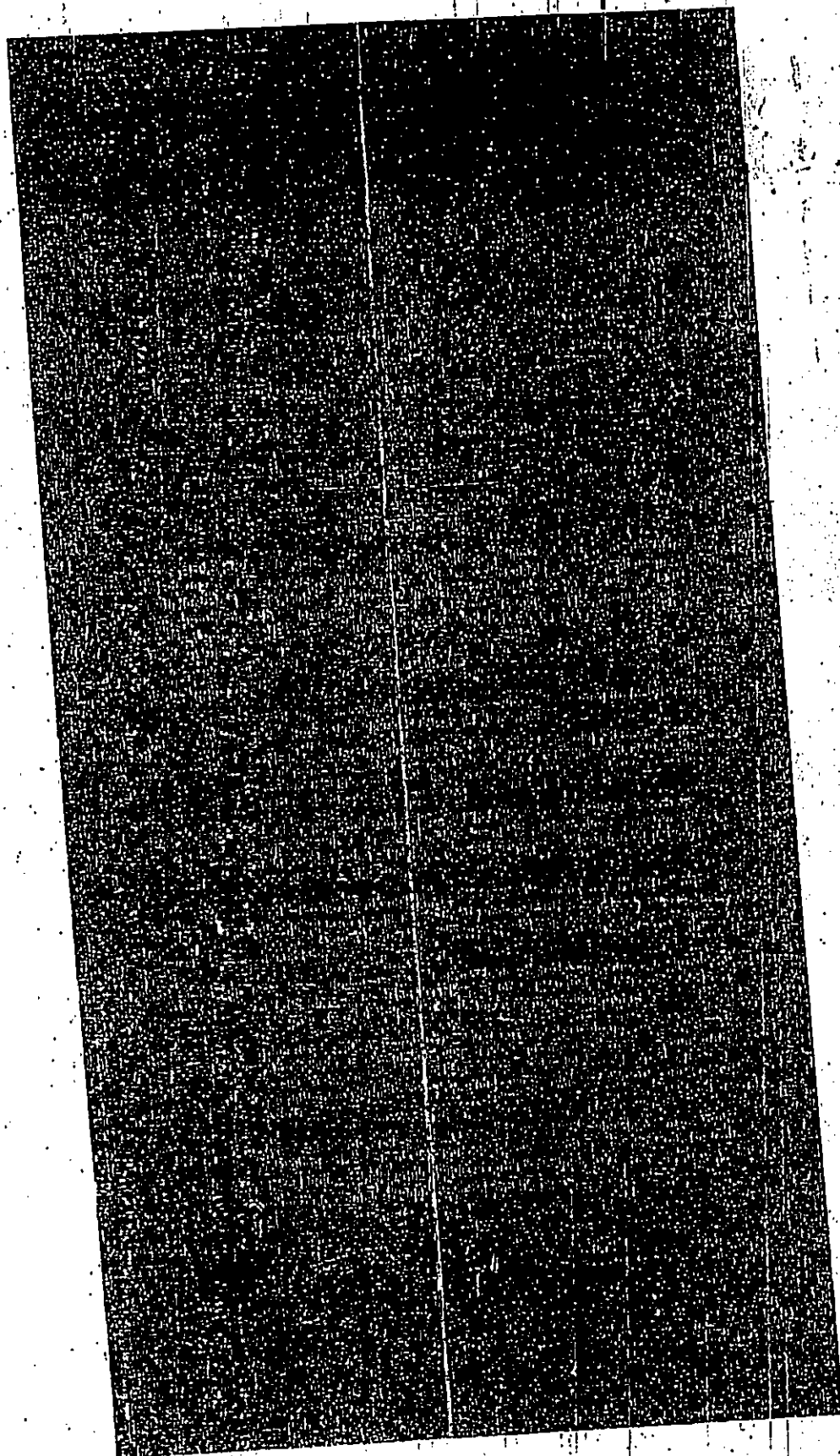
Note: for the purpose of clause (b) a joint seniority list of the sub engineers having degree in civil engineering or mechanical engineering shall be maintained and their seniority is to be reckoned from the date of their 1st appointment as sub engineer.

(d) Eight percent by promotion on the basis of seniority cum fitness from amongst the sub engineers having degree in B.Tech (Hones) and have passed departmental grade B & A examination with five years' service as such and

Note: for the purpose of clause (b) a joint seniority list of the sub engineers having degree in civil engineering or mechanical engineering shall be maintained and their seniority is to be reckoned from the date of their 1st appointment as sub engineer.

ANNEX K

99



W
5

~~SECRET~~

100

BETTER COPY PAGE NO:.....

GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT
Establishment section

Dated 18th December 2020

NOTIFICATION

NO.SO(E)/IRR/4-10/Vol- VI:

the competent authority is pleased to transfer Mr. saifullah khan sub divisional officer Irrigation sub division, Charsadda and post him as deputy director. Jabba dam, district Khyber against the vacant post in his own pay and scale with immediate effect in the public interest.

SECRETARY TO GOVT: OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT.

by
T.C

~~SECRETARY~~

GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT
(Establishment Section)

Dated Peshawar 18th December 2022

NOTIFICATION

No. 52 (EMRCA) 11/77 Vol. VI
Shirullah Khan, Sub-divisional Officer
Khanjani, Deputy Director
Wahyudin, Sub-divisional Officer

For the purpose of the above mentioned
proclamation, the following officers are
appointed to the posts mentioned in the
Schedule of posts attached herewith.

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Encl: No. 52 as above.

- Copy of the above is forwarded to:-
- 1. The Accountant General, Khyber Pakhtunkhwa, Peshawar
- 2. The Chief Engineer (North South), Irrigation Department, Peshawar
- 3. The Chief Engineer (Merges & Areas), Irrigation Department, Peshawar
- 4. The Director General, Jammu & Kashmir, Jammu
- 5. The Deputy Chief Engineer, Irrigation Department, Peshawar
- 6. The District Engineer, Peshawar
- 7. The District Engineer, Mardan
- 8. The District Engineer, Peshawar
- 9. The District Engineer, Peshawar
- 10. The District Engineer, Peshawar
- 11. The District Engineer, Peshawar
- 12. The District Engineer, Peshawar
- 13. The District Engineer, Peshawar
- 14. The District Engineer, Peshawar
- 15. The District Engineer, Peshawar
- 16. The District Engineer, Peshawar
- 17. The District Engineer, Peshawar
- 18. The District Engineer, Peshawar
- 19. The District Engineer, Peshawar
- 20. The District Engineer, Peshawar
- 21. The District Engineer, Peshawar
- 22. The District Engineer, Peshawar
- 23. The District Engineer, Peshawar
- 24. The District Engineer, Peshawar
- 25. The District Engineer, Peshawar
- 26. The District Engineer, Peshawar
- 27. The District Engineer, Peshawar
- 28. The District Engineer, Peshawar
- 29. The District Engineer, Peshawar
- 30. The District Engineer, Peshawar
- 31. The District Engineer, Peshawar
- 32. The District Engineer, Peshawar
- 33. The District Engineer, Peshawar
- 34. The District Engineer, Peshawar
- 35. The District Engineer, Peshawar
- 36. The District Engineer, Peshawar
- 37. The District Engineer, Peshawar
- 38. The District Engineer, Peshawar
- 39. The District Engineer, Peshawar
- 40. The District Engineer, Peshawar
- 41. The District Engineer, Peshawar
- 42. The District Engineer, Peshawar
- 43. The District Engineer, Peshawar
- 44. The District Engineer, Peshawar
- 45. The District Engineer, Peshawar
- 46. The District Engineer, Peshawar
- 47. The District Engineer, Peshawar
- 48. The District Engineer, Peshawar
- 49. The District Engineer, Peshawar
- 50. The District Engineer, Peshawar
- 51. The District Engineer, Peshawar
- 52. The District Engineer, Peshawar
- 53. The District Engineer, Peshawar
- 54. The District Engineer, Peshawar
- 55. The District Engineer, Peshawar
- 56. The District Engineer, Peshawar
- 57. The District Engineer, Peshawar
- 58. The District Engineer, Peshawar
- 59. The District Engineer, Peshawar
- 60. The District Engineer, Peshawar
- 61. The District Engineer, Peshawar
- 62. The District Engineer, Peshawar
- 63. The District Engineer, Peshawar
- 64. The District Engineer, Peshawar
- 65. The District Engineer, Peshawar
- 66. The District Engineer, Peshawar
- 67. The District Engineer, Peshawar
- 68. The District Engineer, Peshawar
- 69. The District Engineer, Peshawar
- 70. The District Engineer, Peshawar
- 71. The District Engineer, Peshawar
- 72. The District Engineer, Peshawar
- 73. The District Engineer, Peshawar
- 74. The District Engineer, Peshawar
- 75. The District Engineer, Peshawar
- 76. The District Engineer, Peshawar
- 77. The District Engineer, Peshawar
- 78. The District Engineer, Peshawar
- 79. The District Engineer, Peshawar
- 80. The District Engineer, Peshawar
- 81. The District Engineer, Peshawar
- 82. The District Engineer, Peshawar
- 83. The District Engineer, Peshawar
- 84. The District Engineer, Peshawar
- 85. The District Engineer, Peshawar
- 86. The District Engineer, Peshawar
- 87. The District Engineer, Peshawar
- 88. The District Engineer, Peshawar
- 89. The District Engineer, Peshawar
- 90. The District Engineer, Peshawar
- 91. The District Engineer, Peshawar
- 92. The District Engineer, Peshawar
- 93. The District Engineer, Peshawar
- 94. The District Engineer, Peshawar
- 95. The District Engineer, Peshawar
- 96. The District Engineer, Peshawar
- 97. The District Engineer, Peshawar
- 98. The District Engineer, Peshawar
- 99. The District Engineer, Peshawar
- 100. The District Engineer, Peshawar

[Handwritten signature]

ANNEX M

101

A. Lateef Afridi
Advocate
Supreme Court of Pakistan And High Courts
Off 091-2572888
Mob: 0333-9107287 Email: lateefafриди@yahoo.com

Better copy

Ref. No. LN/01/4-2621

Dated: 6th April 2021

Sub: LEGAL NOTICE

1. Worthy Chief Secretary Khyber Pakhtunkhwa Civil Secretariat, Peshawar.
2. Secretary Irrigation Khyber Pakhtunkhwa Civil Secretariat, Peshawar.
3. Secretary Establishment Khyber Pakhtunkhwa Civil Secretariat, Peshawar.

Dear Sirs!

I have been duly authorized and instructed by officers Engineers serving in Irrigation Department (hereinafter may clients) to serve upon you the following notice

1. That my clients are registered/professional engineers having obtained their respective degrees from accredited institutions which are duly accredited courses under the Pakistan Engineering Council Act, 1976, and are aggrieved of the appointment of non-engineers against the posts which essentially pertains to engineering works. The said appointments of non-engineers not only adversely affect professional careers of my clients and manifestly affects my clients terms and conditions of service, Besides, this practice is against the public policy.
2. That the governing law and rules on the subject are clear and have attained affirmative judicial sanction through authoritative interpretation by the superior Courts including the honorable Supreme Court of Pakistan.
3. That the posts of Executive Engineers, Deputy Directors, Superintending Engineers, Chief Engineers and/or under any other nomenclature, are essentially engineering works, Reference is made to the relevant provisions for convenience. (xxiii) of Section 2 provides comprehensive definition of professional engineer "professional engineer" means a person who holds an accredited engineering qualification and after obtaining a professional experience of five years, whether working privately or in the employment of an engineering public organization, has passed the prescribed engineering practice examination and is registered as such by the Council;

Similarly Section 10011 of the Act provides that

Office: 17-G & B-7 Haroon Mansion Khyber Bazar, Peshawar

103

A. Latteef Afridi
Advocate
Supreme Court of Pakistan And High Courts
Off 091-2572888
Mob: 0333-9107287 Email: lateefafriidi@yahoo.com

Better copy

Ref. No. LN/01/4-2621

Dated: 6th April 2021

Pakistan as all executive and judicial authorities are obliged to act in this manner. Needless to overemphasize that disregard and violation of the Orders and directions passed by the honorable Apex Court is a serious contempt under the Article 204 of the Constitution and the Contempt of Court Ordinance, 2003.

6. That the provincial government has so far conveniently ignored the governing laws and the directions contained in the judgment passed by the Honorable Supreme Court of Pakistan as well as the requests of the Pakistan Engineering Council in this regard are not heeded.

You are, therefore, called upon through this Notice to immediately comply with the governing law and directions of the apex Court within two weeks positively else my clients will be constrained to initiate contempt proceedings as well as file petitions before the Courts of competent jurisdiction against for your inactions also file writs of quarranto against the non-engineers so posted.

Looking forward to your prompt action please.

Sincerely yours,

A. Latif Afridi
Advocate
Supreme Court of Pakistan.

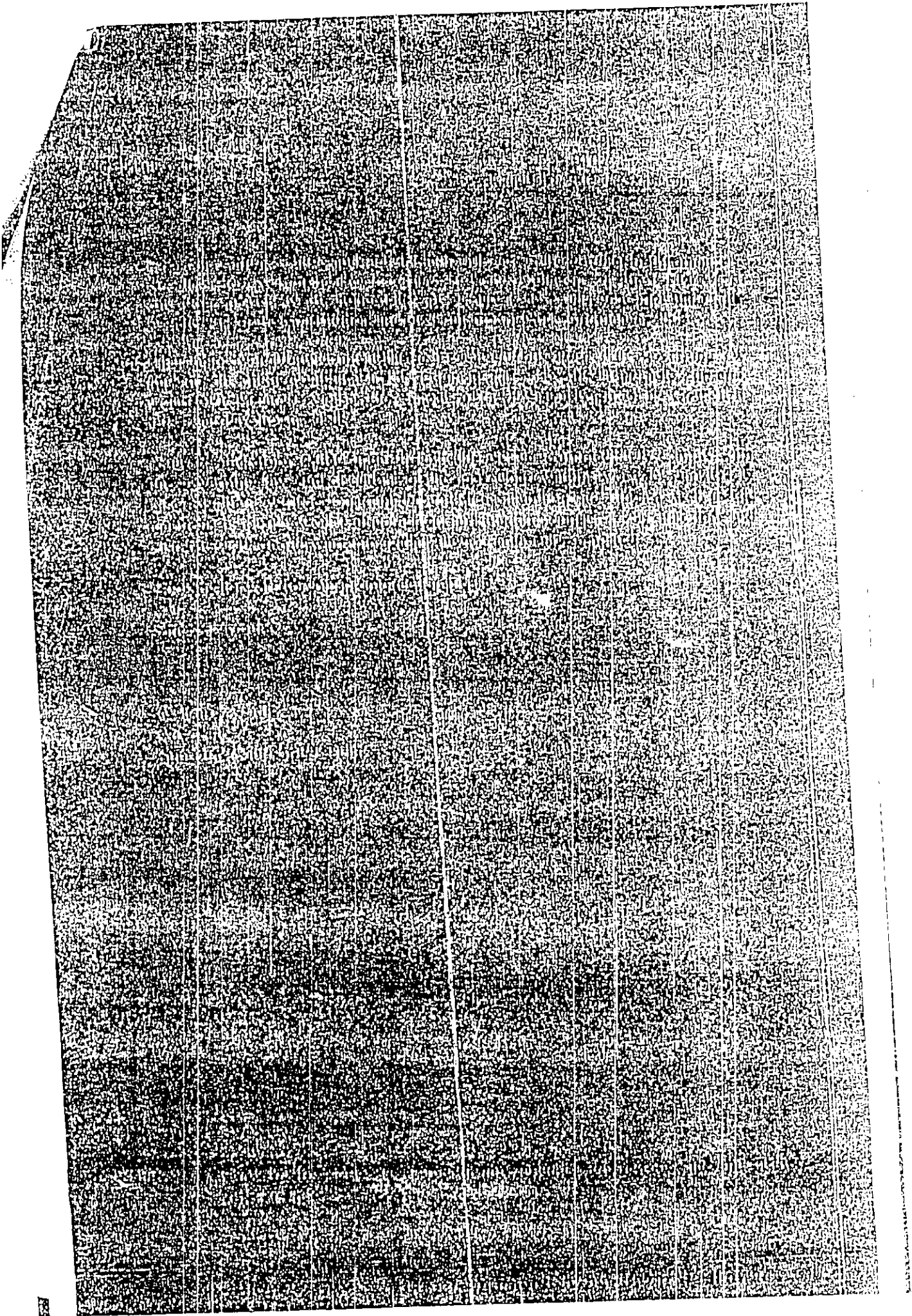
NOTE:

Copy of this Notice is retained in my office for future reference and further action if need be.

Office: 17-G & B-7 Haroon Mansion Khyber Bazar, Peshawar

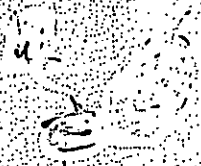
~~_____~~

103



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

- (a) railways, aerodromes, bridges, tunnels and metalled roads;
- (b) dams, canals, harbours, light houses;
- (c) works of an electrical, mechanical, hydraulic, communication, aeronautical power engineering, geological or mining character;
- (d) waterworks, sewers, filtration, purification and incinerator works;
- (e) residential and non-residential buildings, including foundations framework and electrical and mechanical systems thereof;
- (f) structures accessory to engineering works and intended to house them;
- (g) imparting or promotion of engineering education, training and planning, designing, development construction, commissioning, operation, maintenance and management of engineering works in respect of computer engineering, environmental engineering, chemical engineering, structural engineering, industrial engineering, production engineering, marine engineering and naval architecture, petroleum and gas engineering, metallurgical engineering, agricultural engineering, telecommunication engineering, avionics and space engineering, transportation engineering, air-conditioning ventilation, cold storage works, system engineering, electronics, radio and television engineering, civil engineering, electrical engineering, mechanical engineering and biomedical engineering etc.



W
T-c



- (h) organizing, managing and conducting the teaching and training in engineering universities, colleges, institutions; Government colleges of technology, polytechnic institutions and technical training institutions;
- (i) preparing standard bidding or contract documents, construction cost data, conciliation and arbitration procedures; guidelines for bid evaluation, prequalification and price adjustments for construction and consultancy contracts; and
- (j) any other work which the Council may, by notification in the official Gazette, declare to be an engineering work for the purposes of this Act;

(xxvi) "Register" means the Register maintained under section 15;

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

(xxviii) "registered" means registered under this Act;

(xxix) "Registrar" means the Registrar of the Council;

(xxx) "Senior Vice-Chairman" means the Senior Vice-Chairman of the Council;

(xxxi) "Think Tank" means a creative and innovative body to advise on engineering and national development plans;

(xxxii) "Think Tank Committees" means bodies of eminent engineers constituted by the Council to assist in formulation of relevant policies relating to national development;

*ms
T.C.*

ANNEX "O"

106

<http://www.plsbeta.com/LawOnline/law/casedescription.asp?cased...>

Judgement

2018 S C M R 2098

[Supreme Court of Pakistan]

Present: Gulzar Ahmed, Qazi Faez Isa and Sardar Tariq Masood, JJ

MAULA BUX SHAIKH and others—Petitioners

Versus

CHIEF MINISTER SINDH and others—Respondents

C.P. No. 78-K of 2015, decided on 3rd October, 2018.

(On appeal against order dated 21.11.2014 passed by the Sindh Service Tribunal, Karachi, in Appeal No. 195 of 2014)

Pakistan Engineering Council Act, 1975 (V of 1976)—

—Ss. 2(ii), 2(xxiii), 2(xxv), 2(xxvii) & 10(1) & First and Second Sched.—Sindh Civil Servants (Appointment, Promotion and Transfer) Rules 1974, R. 3(2)—Promotion—Criteria/education qualification for promotion to next grade—Domain of Executive—Notification for promotion to post of Executive Engineer (BS-18)—Said notification provided 13% promotion quota to Diploma holders and 7% promotion quota to B.Tech (Hons.) degree holders—Plea of petitioner/Assistant Engineer (BS-17) that work of Executive Engineer BS-18, was strictly that of a Professional Engineer, who had an engineering degree from an Accredited Engineering Institution in the country or abroad as included in the First and Second Schedule of the Pakistan Engineering Council Act, 1975, and that Diploma holders and B.Tech (Hons.) degree holders were not professional engineers and could not perform work of a Professional Engineer—Validity—Deciding whether a particular academic qualification of a civil servant/employee was sufficient for promotion from one grade to another higher grade fell under the domain of the Government, whereas it is in the domain of the Pakistan Engineering Council to decide whether a particular academic qualification could be equated with another academic qualification but it had no power to say that a civil servant/employee holding particular academic qualification could not be promoted from a particular grade to a higher grade—Impugned notification could not be validly or justifiably challenged on the ground that it impinged or infringed upon any of the provisions of the Pakistan Engineering Council Act, 1975, and thus would be ultra vires—Provisions of said Act nor the rules and regulations made under it would operate as bar on Government to prescribe for qualification and other conditions of service of civil servants/employees for promotion to higher grade—Supreme Court dismissed the petition and refused leave with the direction that the Government shall not allow or permit any person to perform professional engineering work as defined in the Pakistan Engineering Council Act, 1975, who did not possess accredited engineering qualification from the accredited engineering institution and his name was not registered as a registered engineer or professional engineer under the said Act.

Pakistan Diploma Engineers Federation (Registered) through its Chairman v. Federation of Pakistan through Secretary Ministry of Water and Power, Government of Pakistan, Islamabad and 9 others 1994 SCMR 1807; Muhammad Azim Jamali and 11 others v. Government of Pakistan through Secretary/Chairman, Ministry of Railways and 33 others 1992 PLC (C.S.) 637; Fida Hussain v. The Secretary, Kashmir Affairs and Northern Affairs Division, Islamabad and another PLD 1995 SC 701; Muhammad Younus Aarain v. Province of Sindh through Chief Secretary, Sindh, Karachi and 10 others 2007 SCMR 134 and Nazir-ul-Hasan and 2 others v. Syed Anwar Iqbal and others 2014 SCMR 1827 ref.

Salah-ud-Din Ahmed, Advocate Supreme Court for Petitioner No. 1.

Rasheed A Rizvi, Senior Advocate Supreme Court for Petitioner Nos. 2 - 3.

Sabtain Mehmood, Assistant A.-G. Sindh for Respondent Nos. 1 - 4.

Ghulam Haider Shaikh, Advocate Supreme Court for Respondent No. 5.

Nemo for Respondents Nos. 6, 7 and 9.

29-Oct-21, 10:04 AM

107

Judgement

Dr. Muhammad Farough Naseem, Advocate Supreme Court for Respondents Nos. 8 and 12.

M. Aqil Awaz, Senior Advocate Supreme Court for Respondents Nos. 10, 11, 13 to 17.

Date of hearing: 24th April, 2018.

JUDGMENT

GULZAR AHMED, J.—Maula Bux Shaikh, Petitioner No.1, (the Petitioner) had filed a Service Appeal before the Sindh Service Tribunal, Karachi, (the Tribunal) challenging Notification No.SOI(W&S)E/12-1/2005 dated 19.03.2014 to be ultra vires the Pakistan Engineering Council Act, 1976 (PEC Act). The circumstance under which the Service Appeal was filed by the Petitioner are that he was employed as Sub-Engineer BS-11 in the year 1985 in the Work and Services Department, Government of Sindh, Karachi. He was promoted as Assistant Engineer BS-17 in the year 1997 and since then has been serving in such post in his said department. The case of the Petitioner is that he is a qualified engineer holding degree of Bachelor of Engineering. He has unblemished service record and is eligible for promotion to the post of Executive Engineer BS-18 but on account of the notification, referred to above, his chance for promotion as Executive Engineer BS-18 has been gravely diminished for the reason that said notification has provided 13% promotion quota to Diploma holders and 7% promotion quota to B.Tech (Hons.) Degree holders for the post of Executive Engineer BS-18. The grievance of the Petitioner is that the post of Executive Engineer BS-18 being that of a purely professional engineering work could only be performed by a professional engineer holding accredited engineering qualification, as provided in the PEC Act.

2. We have heard learned ASCs for the parties at length and have gone through the record of the case. The learned ASCs for the parties have also filed their written note of arguments, which too have been perused by us.

3. The notification dated 19.03.2014 is as follows:

"NOTIFICATION"

No.SOI(W&S)E.W/12-1/2005: In pursuance of Sub-Rule (2) of Rule-3 of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules 1974 and in consultation with the Services, General Administration and Coordination Department, Government of Sindh, and in-partial modification of this Department's Notification No. EI(C&W)1-34/81-84(86) dated 14.01.1987, the method, qualification and other conditions for appointment in respect of the post of Executive Engineer (BPS-18) (Civil/Mechanical/Electrical) in Works and Services Department, Government of Sindh mentioned in column-2 of the table below:-

TABLE

Name of the post with BS	METHOD OF APPOINTMENT
1	2
Executive Engineer (Civil/Mechanical and Electrical) (BPS-18)	i) Eighty percent by promotion from amongst the Assistant Engineers B.E. in Civil, Electrical or Mechanical Engineering with atleast five years service in BPS-17 on seniority-cum-fitness basis with their respective ii) Thirteen percent by promotion from amongst the Diploma holder Assistant Engineers having Diploma in Civil, Electrical or Mechanical Engineering with atleast five years service in BPS-17 on seniority-cum-fitness basis with their respective technology and iii) Seven percent by promotion from amongst the Assistant Engineers having B.Tech (Hons.) degree in Civil, Electrical or Mechanical Engineering with atleast five years service in BPS-17 on seniority-cum-fitness basis with their respective technology

M
AC

QAZI SHAHID PERVEZ

108

<http://www.plsbeta.com/LawOnline/law/casedescription.asp?case=>

Case Judgement

SECRETARY TO GOVT. OF SINDH

4. In order to regulate the engineering profession, the Parliament has passed PEC Act on 10.01.1976. Section 2(ii) of the PEC Act defines accredited engineering qualification, which is as follows:

"accredited engineering qualification" means any of the qualification included in the First Schedule or the Second Schedule."

5. It is common ground that neither Diploma nor B.Tech (Hons.) Degree are accredited engineering qualification for the reason that there is no reference to the Diploma and B.Tech (Hons.) Degree in the accredited engineering qualification provided in the first and second schedule of the PEC Act. Thus, accredited engineering qualification is ascribed to those who hold Bachelor Degree in Engineering from accredited Engineering Universities/Institutions in Pakistan and abroad.

6. Professional Engineer is defined in section 2(xxiii), which is as follows:

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

7. Professional Engineering Work is defined in section 2(xxy) as follows:

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

- (a) railways, aerodromes, bridges, tunnels and metalled roads;
- (b) dams, canals, harbours, light houses;
- (c) works of an electrical, mechanical, hydraulic, Communication, aeronautical power engineering, geological or mining character;
- (d) waterworks, sewers, filtration, purification and incinerator works;
- (e) residential and non-residential buildings, including foundations framework and electrical and mechanical systems thereof;
- (f) structures accessory to engineering works and intended to house them;
- (g) imparting or promotion of engineering education, training and planning, designing, development construction, commissioning, operation, maintenance and management of engineering works in respect of computer engineering, environmental engineering, chemical engineering, structural engineering, industrial engineering, production engineering, marine engineering and naval architecture, petroleum and gas engineering, metallurgical engineering, agricultural engineering, telecommunication engineering, avionics and space engineering, transportation engineering, air-conditioning ventilation, cold storage works, system engineering, electronics, radio and television engineering, civil engineering, electrical engineering, mechanical engineering and biomedical engineering etc;
- (h) organizing, managing and conducting the teaching and training in engineering universities, colleges, institutions, Government colleges of technology, polytechnic institutions and technical training institutions;
- (i) preparing standard bidding or contract documents, construction cost data, conciliation and arbitration procedures, guidelines for bid evaluation, pre-qualification and price adjustments for construction and consultancy contracts; and
- (j) any other work which the Council may, by notification in the official Gazette, declare to be an engineering work for the purposes of this Act;

29-Oct-21, 10:04 A

~~SECRETARY TO GOVT. OF SINDH~~

109

Judgement

8. Registered Engineer is defined in section 2(xxvii) as follows:

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

9. Section 10(1) of the PEC Act provides:

"The engineering qualifications granted by engineering institutions in Pakistan which are included in the First Schedule shall be the accredited engineering qualifications for the purposes of this Act."

10. While section 11(1) provides:

"The engineering qualifications granted by engineering institutions outside Pakistan which are included in the Second Schedule shall be accredited engineering qualifications for the purposes of this Act."

11. Section 27 of the PEC Act provides for penalties and procedure, which is as follows:

"27. Penalties and procedure.—(1) After such date as the Federal Government may, after consultation with the Council, by notification in the official Gazette, appoint in this behalf, whoever undertakes any professional engineering work shall, if his name is not for the time being borne on the Register, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both, and, in the case of a continuing offence, with a further fine which may extend to two hundred rupees for every day after the first during which the offence continues."

(2) After the date appointed as aforesaid, whoever employs for any professional engineering work any person whose name is not for the time being borne on the Register shall be punishable, on first conviction, with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both, and on a second or subsequent conviction, with imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both.

(3) Whoever willfully procures or attempts to procure himself or itself to be registered under this Act as a registered engineer, professional engineer, consulting engineer, constructor or operator by making or producing or causing to be made or produced any false or fraudulent representation or declaration, either orally or in writing, and any person who assists him therein shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(4) Whoever falsely pretends to be registered under this Act, or not being registered under this Act, uses with his name or title any words or letters representing that he is so registered, irrespective of whether any person is actually deceived by such pretence or representation or not, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(5) No person undertaking any professional engineering work shall, unless he is registered under this Act, be entitled to recover before any court or other authority any sum of money for services rendered in such work.

(5A) No person shall, unless registered as a registered engineer or professional engineer, hold any post in an engineering organization where he has to perform professional engineering work.

(6) No court shall take cognizance of any offence punishable under this Act save on complaint made by, or under the authority of, the Council.

(7) No court inferior to that of a Magistrate of the first class shall try any offence punishable under this Act."

12. The main gist of the arguments of the learned ASC appearing for the petitioners is that the work of

[Handwritten signature]
[Handwritten scribble]

Executive Engineer BS-18 is strictly that of a Professional Engineer and it can only be performed by a Professional Engineer, who has engineering degree from an Accredited Engineering Institution of Pakistan or abroad as included in the first and second schedule of the PEC Act, Diploma holders and B.Tech (Hons.) Degree holders are not professional engineers and cannot perform work of a Professional Engineer and that law specifically provides penalties to those who perform professional engineering work without possessing accredited engineering qualification and registered as Professional Engineer by the Pakistan Engineering Council (the Council).

13. On the other hand, learned ASC appearing for the respondents have contended that this very issue has come up before this Court number of times and this Court has dealt with it time and again and held that in the matter of employment and promotion etc, the Government Institutions are legally entitled to take decisions as a matter of policy to grant promotion to employees in Engineering Public Organization who are Diploma holders in engineering and B.Tech (Hons) Degree holders.

14. We have noted that the Tribunal in the impugned judgment has referred to number of judgments of this Court and the point in issue in those judgments substantially also deals with the present controversy before us. Thus before dilating upon the matter, it is essential that we examine the judgments, which this Court has already delivered and are also referred in the impugned judgment of the Tribunal. The first case in line is a judgment of three members bench of this Court in the cases of Pakistan Diploma Engineers Federation (Registered) through its Chairman v. Federation of Pakistan through Secretary Ministry of Water and Power, Government of Pakistan, Islamabad and 9 others (1994 SCMR 1807). In this case the question involved was whether the Diploma Engineers employed in Pakistan Railways can be debarred from promotion to Grade-18 on the ground that they are not registered as "professional engineers and consulting engineers" with Pakistan Engineering Council even though they were otherwise by reasons of their seniority etc eligible for promotion to Grade-18. While referring to the case of Muhammad Azim Jamali and 11 others v. Government of Pakistan through Secretary/Chairman, Ministry of Railways and 33 others (1992 PLC (C.S.) 637), where split decision was given by two Hon'ble Judges of Sindh High Court and ultimately it was referred to a Referee Judge for his opinion. This Court in dealing with the case before it relied upon the conclusion reached by the Referee Judge and quoted the same in the judgment as follows:

"16. The conclusion of the learned Chief Justice was expressed as follows:

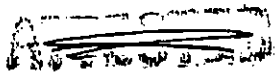
"A careful reading of subsections (1) and (2) of section 27 of the Act will show that the penalties prescribed in the section are attracted only against those persons who are not registered under the Act but undertake any professional engineering work as defined in the Act. Similarly, the person who employs a person who is not registered under the Act, on a professional engineering work, is equally liable for punishment under the Act. The above provisions are wide enough to include the cases of those persons who may be employed in any private or Governmental organization and are called upon to undertake any professional engineering work. The provisions of the Act, regarding registration of professional engineer and consulting engineer, therefore, in my view, would not be applicable to the persons serving as engineer with the Railways, as in course, of their such employment they neither act as 'professional engineer' nor as 'consulting engineer'. However, if such persons undertake any professional engineering work as defined under the Act, then the provisions regarding registration under the Act will be attracted and they could also be punished in accordance with the provision of section 27 of the Act for violating the provision of the Act."

15. On the basis of such conclusion of the Referee Judge, this Court proceeded to make its own observation, which is as follows:

17: The above judgment of the High Court was not challenged either by the qualified engineers who held degrees from recognized Institutions of Pakistan nor by the diploma-holders but only by the Pakistan Engineering Council (which was one of the respondents in the Constitution Petition filed in the High Court). According to the Pakistan Engineering Council, the provisions of the Pakistan Engineering Council Act had not been correctly interpreted because the judgment of the majority in the High Court, it appeared to the Council had laid down that the Act applied to engineers engaged in professional engineering works in the private sector whereas the application of provisions of the Act according to them, could not be restricted only to the private practitioners alone.

18. We on the other hand after hearing Mr. Abid Hassan Minto learned Advocate for the appellant at

M T



///

Judgement

considerable length consider that this is not a correct interpretation of the judgment of the High Court. The High Court has clearly stated that the provisions of the Act were wide enough to include cases of those persons engaged in professional engineering works whether employed in any private or Governmental organization, if they are called upon to undertake any professional engineering work, as defined under the Act. In fact in the connected case C.A. No.31 of 1992 a Committee of Secretaries constituted by the Punjab Government correctly summed up the true position obtaining in the Act as follows:--

"The Committee was of the view that the Government could appoint a non-graduate engineer to a post in any grade but if the post involved performance of professional engineering work such appointment would attract penalties prescribed in the Act.

The finding of the Referee Judge in this case is to the same effect and in our opinion this finding is quite correct."

16. The next case in line is a judgment of five member bench of this Court in the case of Fida Hussain, The Secretary, Kashmir Affairs and Northern Affairs Division, Islamabad and another (PLD 1995 Supreme Court 701). In this case facts were that petitioner was appointed as Overseer/Sub-Engineer in northern area PWD in 1971. The Federal Government, in order to encourage the diploma holders to improve their academic qualification, resolved to prescribe courses namely E.Tech (Pass) and B.Tech (Hons.), The later was treated as equivalent to B.Sc. (Engineering) and Bachelor of Engineering for the purpose of promotion. Petitioner having passed B.Tech (Pass) and B Tech (Hons.) was denied promotion in BPS-17 for the reasons that B.Tech (Hons.) was not recognized by Pakistan Engineering Council as equivalent to B.Sc. (Engineering) Degree. Petitioner filed Service Appeal, which was dismissed. The Appeal filed by the petitioner before this Court was also dismissed. The petitioner then applied for review, which was allowed and the judgment dismissing the Civil Appeal was recalled and his appeal was allowed with directions to consider the petitioner's case of promotion to BS-17. The Court while allowing relief to the petitioner observed as follows:

"9. In this regard, we may point out that it is the domain of the Government concerned to decide whether a particular academic qualification of a civil servant/employee is sufficient for promotion from one Grade to another higher Grade and whereas it is in the domain of the Pakistan Engineering Council to decide, as to whether a particular academic qualification can be equated with another academic qualification, but it has no power to say that the civil servants/employees holding particular academic qualification cannot be promoted from a particular Grade to a higher Grade. The main object of the Act as pointed out by one of us (Ajmal Kan, J.) and Saiduzzaman Siddiqui, C.J. (as he then was) in the above High Court judgment is to regulate the working of professional engineers and consulting engineers and not to regulate the qualification or the working of the engineers in the Government or semi-Government departments. The definitions of the terms "professional engineer;" and "professional engineering work" given in clauses (j) and (k) of section 2 of the Act are to be read together and, therefore, as a corollary to the same, it must follow that the term "professional engineering work" as defined in clause (k) of section 2 of the Act is to be performed by a professional engineer as defined in clause (j) thereof, which is evident from section 8 of the Act, which defines the functions of the Pakistan Engineering Council as under:-

8. Functions of the Council.—The following shall be the functions of the Council, namely:--

- (a) maintenance of a Register of person qualified to practice as professional engineers and consulting engineers;
- (b) recognition of engineering qualifications for the purpose of registration of professional engineers and consulting engineers;
- (c) removal of names from the Register and restoration to the Register of names which have been removed;
- (d) laying down of standards of conduct for the members;
- (e) safeguarding the interest of the members;
- (f) promotion of reforms in the engineering profession;

[Handwritten signature]

[Handwritten scribble]

Judgement

- (g) management of the funds and properties of the Council;
- (h) Promotion of engineering education and review of courses of studies in consultation with the Universities;
- (i) levy and collection of fees from applicants for registration or temporary licences and members;
- (j) exercise of such disciplinary powers over the members and servants of the Council as may be prescribed;
- (k) formation of such committees as may be prescribed; and
- (l) performance of all other functions connected with, or ancillary or incidental to, the aforesaid functions."

A perusal of the above quoted section shows that the Pakistan Engineering Council is vested with the functions to regulate the persons qualified to practice as professional engineers and consulting engineers and not persons who are employed in the Government or semi-Government organisations. If the Government employs a professional engineer as defined in the Act for performing professional engineering work as envisaged by the Act in above clause (k) of section 2, the provisions of the Act would be attracted and not otherwise.

10. Reverting to the merits of the present case, as pointed out hereinabove, that the petitioner pursuant to the above decision of the Government of Pakistan dated 26.10.1973 passed his B.Tech (Pass) in 1977 and B.Tech (Honours) in March, 1981, from the NED University Karachi, and, therefore, acted upon the above representation of the Government. In this view of the matter, it is not just and fair not to consider the petitioner for promotion to BPS-17 keeping in view the admitted fact that a number of other civil servants/employees in the same department in the same position have been promoted by the departments/organisations concerned. In this behalf, it may be pertinent to refer to the case of Mukhtar Ahmad and 37 others v. Government of West Pakistan through the Secretary, Food and Agriculture, Civil Secretariat, Lahore and another (PLD 1971 SC 846). The fact of the above case were that the persons possessing the qualifications mentioned in Rule 7 of the West Pakistan Agricultural Engineering Service (Class II) Rules, 1963 were not available. The Government launched a scheme for training of Assistant Agricultural Engineers, whereunder 46 Graduates in B.Sc. Agriculture were to be selected for appointment as Assistant Agricultural Engineers after their successful completion of two years' diploma course at an Agricultural University. The above scheme was discussed by the government with the Public Service Commission. The candidates selected by the Public Service Commission, who were about to complete their training of two years, were informed by the government that they would have to appear again before the Public Service Commission to be selected for appointment to the posts of Assistant Agricultural Engineers (Class-II). The candidates asserted that after the completion of their training they were entitled to be appointed as Assistant Agricultural Engineers (Class-II) in terms of the offer made to them and they could not be required to appear again before the Public Service Commission for such appointment. On the other hand, the Government contended that the candidates did not possess the qualification prescribed by Rule 7 of the West Pakistan Agricultural Engineering Service (Class II) Rules, 1963, for appointment to such posts. The matter came up for hearing before this Court in the form of an appeal with the leave of this Court filed by the candidates against the judgment of a Division Bench of the erstwhile High Court of West Pakistan. The same was allowed and inter alia the following was concluded:-

"The offer of the Government and its acceptance by the appellants constituted a valid agreement and they Governor's order dated the 1st July, 1965 provided the authority for such an agreement. This agreement is capable of being enforced in law. The Government was both competent and obliged to implement that agreement. When the Governor's order, dated the 1st July, 1965, provided a special authority for recruitment to the 46 posts of Assistant Agricultural Engineers, rule 7 of the Recruitment Rules was not applicable in this case."

11. The above case supports the petitioner's stand. Another aspect which escaped notice of this Court in the judgment under review is that some of the other civil servants/employees placed in the same position as the petitioner was had been considered for promotion to BPS-17 and in fact were promoted, whereas

113

Judgement

the petitioner was denied the above benefit which amounted to violation of inter alia Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973. In this regard, reference may be made to the case of I. A. Sherwani and others v. Government of Pakistan through Secretary, Finance Division, Islamabad and others (1991 SCMR 1041).

12. The judgment of this Court in the case of Muhammad Siddique Nasim (supra) relied upon by the Tribunal is distinguishable for more than one reason, firstly, in the above case the notification of the Government of Punjab dated 8.2.1961 equalling B.Tech (Honours) with B.Sc Engineering degree was withdrawn on 15.03.1985, whereas the petitioner received degree of B. Tech (Honours) in June, 1985, i.e. after the withdrawn of the notification whereas in the present case, admittedly the petitioner passed his B.Tech (Honours) in March, 1981, before the Pakistan Engineering Council through its Registrar's above letter dated 24.4.1984 stated that there was typographical error in the above quoted portion of its Registrar's letter dated 30.04.1981. Secondly, in the judgment in the case of Pakistan Diploma Engineers Federation (Registered) through its Chairman (supra), this Court affirmed the majority view of the High Court of Sindh in the case of Muhammad Azim Jamali (supra), in which it has been held that the provisions of the Act are applicable only to professional engineers and consulting engineers who are in practice and not to the persons working in the Government departments, autonomous bodies, local authorities and private firms or companies.

13. We may again observe that it is exclusively within the domain of the Government, to decide whether a particular qualification will be considered sufficient for promotion from a particular Grade to a higher Grade and it is also within the domain of the Government to change the above policy from time to time as nobody can claim any vested right in the policy. However, it cannot abdicate its power to decide the above question in favour of a corporate body which is not in its control nor it can act in a manner which may be violative of Article 25 of the Constitution on account of being discriminatory. It is still open to the Government for future to provide that academic qualification of B.Tech (Honours) will not be considered sufficient for promotion from BPS-16 to BPS-17 if the same does not violate the above principle.

17. Next case is a judgment of two members bench of this Court in the case of Muhammad Younus Aarain v. Province of Sindh through Chief Secretary, Sindh, Karachi and 10 others (2007 SCMR 134). The case before the Court was of promotion to BS-20 by a Diploma holder employee. The Court dealt with the subject and observed as follows:

"7. The basic qualification for a professional engineer under the law is B.Sc. degree in engineering from a recognized institution in Pakistan and diploma in engineering is not a recognized qualification for a professional engineer in terms of PEC Act, 1976. The service rules governing the service of the petitioner (SCUG Service Rules, 1982) and the promotion policy of the Government of Sindh, would neither override the provisions of the above Act nor relax the requirement of basic qualification of professional engineer for a promotion to BPS-20 in the engineering branch of Government of Sindh. The relevant provision of SCUG Service Rules, 1982, is reproduced hereunder:-

"V-Engineering Branch.

- Grade 20 By selection on merit from among the members of the service in Grade-19 of the Engineering Branch with at least 17 years experience as such in Grade-17 and above."

8. The above rule envisages clearly that a person can be considered for promotion to BPS-20 in the Engineering Branch of Government of Sindh, subject to fulfilment of the condition of basic qualification of a professional engineer prescribed under Pakistan Engineering Council Act, 1976 and a diploma holder being not a professional engineer in terms of PEC Act, 1976 cannot hold a post carrying responsibilities of a qualified professional engineer. The eligibility of a person for promotion from BPS-19 to BPS-20 in the Engineering Department of Government of Sindh is subject to the fulfilment of the requirement of basic qualification with requisite experience as provided in SCUG Service Rules, 1982 in the relevant field therefore, neither any concession could be given to the petitioner in the matter of his eligibility to hold the post in BPS-20 nor the requirement of basic qualification could be relaxed by the Court or by Selection Board. The careful examination of rules on the basis of which petitioner asserted the claim of promotion to BPS-20 against the post carrying responsibilities of a professional engineer, would show that his claim was without any substance and that a diploma holder on the basis of his experience alone,

Handwritten signature

Handwritten text

114

<http://www.plsbeta.com/LawOnline/law/casedescription.asp?cased...>

Case Judgement

would stand at par to a person registered as professional engineer with Pakistan Engineering Council."

18. The other case is a judgment of three members bench of this Court in the case of Nazir-ul-Hasan and 2 others v. Syed Anwar Iqbal and others (2014 SCMR 1827). In this case, respondent No.1 was working as an Assistant Director BS-17. The petitioners were senior to him and were promoted to BS-18 despite the fact that petitioners were holding qualification of Diploma whereas respondent No.1 was Bachelor of Engineering (Electrical). The respondent No.1 challenged the promotions of petitioners in the High Court. The High Court set aside all promotions of petitioners on the ground that they did not hold valid engineering degree. This Court in the reported judgment has dealt with the matter and observed as follows:-

"6. Admittedly the petitioners were Assistant Directors in the respondent Authority with at least 5 years service in the relevant field and hence in our opinion they fulfill the requirement. It would be seen that when the petitioners were considered for promotion in 2012 the rules in force were the Pakistan Standards Institution Recruitment Rules for class one posts wherein per rule 5 the post of deputy Directors to be filled in by promotion could be done from amongst Assistant Directors category one with at least 5 years service in the Institution. Nowhere in the said rules was it provided that they would be professional engineers or for that matter even diploma holders. If fact such condition is prescribed in rule 6 which provides for direct appointments whereby per the schedule to the same an Assistant Director must hold a Master's Degree in Science, or Bachelors Degree in Engineering in the specified field from a recognized university with at least 3 years experience in that field etc. Admittedly, the petitioners were appointed by promotion and hence in our opinion no such condition can be placed upon them as in the case of a direct appointees. Insofar as the case of Muhammad Younus Aarain (supra) is concerned, the same is distinguishable on facts as therein it was found that under Sindh Council Unified Grades-Services Rules the basic qualification for promotion to BS-20 was that the candidates should have B.Sc. Degree in Engineering. As observed above this is not the case in the present matter. It would further be seen that now per section 26 of the Pakistan Standards and Quality Control Authority Act, 1996 rules have been framed which have been notified in the official gazette on 15th May, 2013. Under Rule 5 promotion to the post in BS-1 to 19 shall be made on the basis of seniority-cum--fitness etc. and he or she should also fulfil the conditions contained in schedule to the rules according to which for promotion to the post of Deputy Director Technical the eligible person would be an Assistant Director Technical and he should have 5 years experience in BS-17 in technical matters. Nowhere has it been prescribed that he or she should be a qualified engineer.

7. In the circumstances, we find that the impugned order has unnecessarily been influenced by the comments of the Pakistan Engineering Council that no post carrying any Engineering responsibility could be entrusted to non-engineering graduates. In our opinion, it is for the department/institution itself to determine as to whether the persons in its service are fit to hold a particular position. In the present case it has been done by the authority and rules have been framed thereunder which have been followed by the promotes/petitioners. Consequently the impugned order is set aside and the promotion of the petitioners is upheld."

19. On examination of above case law, we note that nowhere in the judgments, the government power to prescribe for qualification and other conditions of service for promotion to a post has been assailed nor the judgments have put any sort of embargo on the government in prescribing the qualification and other conditions of service for a post for the purpose of promotion. Having said this, the judgments as discussed above, have rather focused on the government power in this regard to be unfettered to the extent that it is not in derogation of any law or provisions of the Constitution.

20. Further, the main principle that is deductible from the above judgments of this Court is that it is the domain of the Government to decide whether a particular academic qualification of a civil servant/ employee is sufficient for promotion from one grade to another higher grade and whereas it is in the domain of the Pakistan Engineering Council to decide whether a particular academic qualification can be equated with another academic qualification but it has no power to say that the civil servants/employees holding particular academic qualification cannot be promoted from a particular grade to a higher grade. Thus on the basis of above pronouncements of this Court, it is clear that the notification dated 19.03.2014 cannot be validly or justifiably challenged on the ground that it impinges or infringes upon any of the provisions of PEC Act, 1976 and thus would be ultra vires. No such finding can justifiably be recorded in that as it has been laid down quite emphatically that the government exercises its own power under the domain of law with regard to promotion of civil servants/employees under Sindh Civil Servants Act, 1973 and Rules made thereunder while PEC Act does

29-Oct-21, 10:04 A



115

Judgement

<http://www.plsbeta.com/LawOnline/law/casedescription.asp?caseid>

not overreach or put an embargo upon the government in the matter of prescribing of qualification and other conditions of service of civil servants/employees for their promotion to higher grade. Yet again, we note that although the vires of notification dated 19.03.2014 has been challenged but we observe that this very notification has been issued under sub-rule (2) of Rule 3 of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, which rules have been made under section 26 of Sindh Civil Servants Act, 1973. Neither rule 3(2) of said rules nor section 26 of the Act, 1973 have been challenged nor their vires called in question before us. Thus from this also it is quite apparent that the petitioner does not challenge the government power for prescribing qualification and conditions of service of civil servants/ employees for their promotion to higher grade. In any case, we note that the provisions of PEC Act nor the rules and regulations made under it will operate as bar on government to prescribe for qualification and other conditions of service of civil servants/employees for promotion to higher grade.

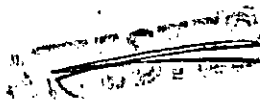
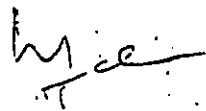
21. The PEC Act as its preamble itself shows so also reading of the whole Act shows that it essentially deals with regulations of engineering profession in it, inter alia, it prescribes for qualification of professional engineers, maintenance of register of professional engineers and accrediting of engineering universities etc and not as a regulator of employment be that be of government service or in the private service. The reasons for it could be found that all sort of engineering work could not be and may not be a professional engineering work for performance of which professional engineers are required. For example, technician, mechanic, draftsman, foreman, supervisor and overseer etc at best could be a skilled Workman who may work independently or under the supervision of professional engineer and for such technician, mechanic, draftsman, foreman, supervisor and overseer/ the employer may not require holding of professional engineering degree. However, if the person is required to perform any of professional engineering work as defined under the PEC Act, the provisions of this Act will come into operation for ensuring as the work of professional engineer can and only be performed by professional engineer as recognized by PEC Act. The professional engineering work has been clearly defined under section 2(xxv) of the PEC Act which has already been reproduced above and lays down in sufficient details the works which are noted to be as professional engineering works and such works as mandatorily required by the PEC Act to be performed by a professional engineer possessing accredited engineering qualification from accredited engineering institutions in Pakistan and abroad with experience and passing of test of the Council and no other person is allowed to perform professional engineering works be that be a diploma holder or B.Tech. degree holder. This aspect of the matter has been substantially addressed by the PEC Act itself when making provision of section 27(5A) that "no person shall unless registered as a registered engineer or professional engineer, hold any post in an engineering organization where he has to perform professional engineering work. Thus professional engineering work can only be performed by a person who is registered as registered engineer or professional engineer and both registered engineer and professional engineer in terms of the PEC Act are by law required to possess accredited engineering qualification as prescribed by the PEC Act from accredited engineering institution.

22. We may further observe that section 27 of the PEC Act provides for penalty for a person who undertakes any professional engineering work if his name is not borne on the Register but it also makes the employer who employs for any professional engineering work any person whose name is not, for the time being, borne on the Register to perform professional engineering work, shall also be liable for penalty as prescribed in the PEC Act itself. Thus both civil servant/employee and their employer would be liable to penalty as provided under section 27 if they undertake or allow a person to undertake professional engineering work whose name is not borne on register under PEC Act.

23. The net result of above discussion is that this petition fails. It is dismissed and leave refused, however, with note of caution that government shall not allow or permit any person to perform professional engineering work as defined in the PEC Act, who does not possess accredited engineering qualification from the accredited engineering institution and his name is not registered as a registered engineer or professional engineer under the PEC Act.

MWAM-25/SG

Petition dismissed.



116

Better copy

SUPREME COURT OF PAKISTAN
(Review Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed
Mr. Justice Faisal Arab
Mr. Justice Ijaz ul Ahsan

**CMA Nos. 10514, 10517, 10520, 10524, 10688, 10984 of 2018 AND CRP
No. 824 of 2018 & CrI.O.P.No.11 of 2019**
(For review of judgment dated 03.10.2018 passed by this Court in C.P.No.78-K of 2015)

Shaukat Ullah Shah
Muhammad Farooq Azam
Muhammad Ehsan
Muhammad Farooq
Muneer Ahmed & others
Abid Ali & others
Mushtaq Ahmed Mangi
Syed Kashif Ali Shah & others

(in CMA 10514)
(in CMA 10517)
(in CMA 10520)
(in CMA 10524)
(in CMA 10688)
(in CMA 10984)
(in CRP 824)
(in CrI.O.P 11)
.....Petitioner(S)

VERSUS

Moula Bux Sheikh & others
Chief Minister Sindh & others
Qasim Samad Khan, Secretary Sindh
Worker Welfare Fund, Islamabad

.....Respondent(s)

For the Applicant(s)

[in CMA 10514]
in CMA 10517 & 10688
in CMA 10520 & 10984
[in CMA 10524]

: Nemo
: Mr. Zulfiqar AKhalid Maluka, ASC
: Mr. Mudassar Khalid Abbasi, ASC
: In person

For the Petitioner(s)
in CRP 824
in CrI.O.P.11]

: Malik Naeem Iqbal ASC
: Mian Abdul Rauf, ASC

For the Respondent(s)

: N.P

Date of Hearing

: 05.03.2019

ORDER

Gulzar Ahmed, J.- It seems that out of six applications Four are time barred. As the applicants were not a party in the

[Signature]

117

Best copy

2.CMA Nos 10114-10517,10520,10524, 10688,10944 of 2018 and CRPN. 824 of 2018 & Cr.L.O.P No. 11 of 2019

petition which has been decided by the judgment under review, this for reason mentioned in this application, the condonation applications are allowed.

2. We have heard learned counsel for the applicants. It seems that the issue is with regard to the interpretation of judgment sought to be reviewed and applicants claim that some action have been taken by their respective employers pursuant to the judgment under review. The counsel for the applicants' state that they have no cavil with the judgment itself but that the Pakistan Engineering Council Act, 1976 (the Act) applies only to the consultant engineers and there is no provision in the Act laying down its application to the government employees. The judgment under review has dealt with all the aspects of the matter including the previous judgments of this Court and quotations wherefrom have also been mentioned therein, and ultimately the Court reached to the conclusion that where government has to appoint the professional engineers for doing the professional engineering work (as defined in the Act), then it has to ensure that the person is a professional engineer (as defined in the Act). Such being the position and nothing having been shown to us on the basis of which the judgment under review can be reviewed, we find no reason to allowed the applicants to file these review petitions. The CMAS are, therefore, dismissed.

3 There is a written application for adjournment in CMA No.10514/2018, on the ground that Raja Muhammad Ibrahim Satti, Sr. ASC is not well and thus unable to appear before the Court. Adjourned.

C.R.P.No.824/2018.

4 We have heard learned counsel for the petitioner. He has referred to the provision of Section 28(b) of the Act, which provides for certain savings and under the said provision Notification dated 14.12.1977 has been issued by the Council. We note that the Notification referred to above does not pertain to any of the accredited institutions but it relates to some polytechnic institutions and pursuant to the letter of Chairman, Pakistan



...under review
 ...the condition
 ...it seems
 ...of judgment
 ...that some action have
 ...to the judgment
 ...state that they have
 ...the Palestine
 ...the consultant
 ...Act laying down
 ...the judgment
 ...including the
 ...whereof have
 ...the duty
 ...to appoint
 ...work
 ...the person
 ...being the
 ...basis of
 ...with no
 ...the
 ...OMA
 ...Mouhammad Ibrahim
 ...to appear before the
 ...he has
 ...which provides
 ...notified
 ...that the
 ...of the
 ...polytechnic
 ...Pakistan

ATTESTED

118

Beata LPy

2. CMA No1-10514-10517.10520, 10524, 10688.10984 of 2015 and CRP No 824 of 2018 CLO.P.No.11 of 2019

Engineering Council dated 04.01.1978, the Diploma Engineers possessing qualification from these institutions have been allowed to perform their work and duties notwithstanding the relevant provisions of the Act noted above. Neither the Notification nor the letter, mentioned above, deals with the qualification of professional engineers and thus apparently has no application to the case in hand, more particularly, the judgment under review. Consequently, no ground for review is made out. The review petition is, therefore, dismissed.

Criminal Original Petition No.11/2019.

5. After arguing the matter at some length, petitioner's counsel does not press this petition in order to avail remedy with law. Dismissed as not pressed.

Sd/- J

Sd/- J

Sd/- J

Sd/- J

Ministry of Education, Government of Punjab, Lahore



Subject: Diploma Engineers
Reference: P.O. No. 12345 of 2019
The Ministry of Education, Government of Punjab, Lahore, has been allowed to conduct the examination for the relevant diploma courses. The verification of the results with the institutions of professional education has been completed in the case of the relevant institutions. The review of the results has been made and the review report is being submitted for the approval of the Government.

Dated: 10/11/2019

Minister of Education, Government of Punjab, Lahore

Confidential to be True Copy



Court of Justice
Supreme Court of Pakistan
Islamabad

Note
a.

[Handwritten mark]

119

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO: _____ OF 2022

Sohail Khan & Others (APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Immigration Deptt. (RESPONDENT)
(DEFENDANT)

I/We Sohail Khan & Others
Do hereby appoint and constitute **NOOR MUHAMMAD KHATTAK Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.
Dated. ____/____/2022

Approved.
②
③
④

⑤
Ali

[Signature] ①
CLIENTS

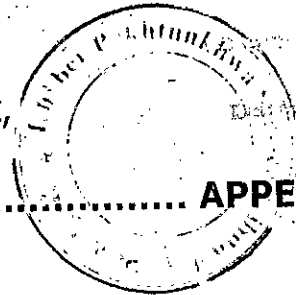
ACCEPTED
NOOR MUHAMMAD KHATTAK
UMER FAROOQ MOHMAND
KAMRAN KHAN
SAID KHAN
MOHAMMAD MAAZ MADNI
&
ADVOCATES

Haider Ali
HAIDER ALI
KHANZAD GUL

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO. 7917 /2021

Engineer Imtiaz khan, Deputy Director (PSU),
O/O Small Dam directorate Irrigation Department,
Khyber Pakhtunkhwa, Peshawar.



2021
21-12-2021

APPELLANT

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary Irrigation Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The Secretary Law & Parliamentary Affairs Department, Khyber Pakhtunkhwa, Peshawar.
- 5- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 6- The Chief Engineer (South) Irrigation Department, Khyber Pakhtunkhwa, Peshawar.

RESPONDENTS

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED AGENDA ITEM NO.4 OF THE SSRC MINUTES DATED 29.4.2021 AND NOTIFICATION DATED 24.8.2021 WHEREBY UNJUSTIFIED 20% PROMOTION QUOTA IN BPS-18 (EXECUTIVE ENGINEER) TO B-TECH/DIPLOMA HOLDERS FOR WORKING AGAINST THE PROFESSIONAL ENGINEERING WORKS POSTS HAS BEEN CREATED BY THE RESPONDENTS AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

RESPECTFULLY SHEWETH:

FACTS:

Brief facts giving rise to the present writ petition is as

Under:
Khyber Pakhtunkhwa

1. That the appellant is the employee of respondent Department and is performing duty quite efficiently and up to the entire satisfaction of his superiors. Copy of the service record/appointment order is attached as annexure A.
2. That the appellant is highly qualified Civil/Mechanical Engineer and registered with Pakistan Engineering Council and having command and experience over the services in respect of Professional Engineering Work. That under the existing rules of the respondent

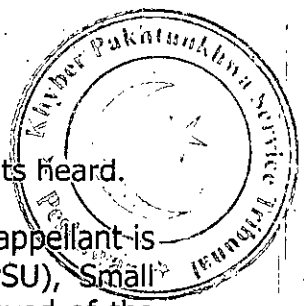
21/12/2021

Original to be returned copy

25/12/21

31.01.2022

Counsel for the appellant present. Preliminary arguments heard.



Learned counsel for the appellant contended that the appellant is degree holder Engineer and serving as Deputy Director (PSU), Small Dam Directorate of the respondent-department. He is aggrieved of the minutes of SSRC meeting dated 29.04.2021 whereby earlier Service Rules/notification dated 17.02.2011 was amended vide notification dated 24.08.2021. Through Agenda item No.4 of SSRC, the 100% quota earlier reserved for promotion, was now bifurcated and distributed in three categories (a) 80% for promotion to the BE/B.Sc degree holders, (b) 12% for degree holders B.Tec (Honors) and (c) 8% for Diploma Holders. Learned counsel for appellant further argued and assailed the constitution of SSRC because it did not include Additional Secretary (Regulation) E&A Department and Additional Secretary Law department as its members as per requirement under E&A Department circular dated 29.01.2005. To strengthen his arguments he relied on the judgement of Peshawar High Court, dated 03.11.2020 when the notification based on an in appropriately constituted/composed SSRC, was declared as illegal, void ab-initio and set aside. The appellant submitted departmental appeal on 07.09.2021 but no written order was passed within the statutory period and resultantly the instant service appeal was instituted under Section-4 of the Khyber Pakhtunkhwa Service Tribunal 1974 on 21.12.2021. Learned counsel for the appellant was asked to indicate the original notification dated 17.02.2011 (now amended) to have not been submitted with the memorandum of service appeal. He admitted that the same is not included with the attached documents and will be provided as rejoinder.

The appeal is admitted to regular hearing subject to all just legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to respondents for submission of reply/comments. To come up for reply/comments on 11.02.2022 before S.B.

An application for suspension of impugned order dated 24.08.2021 is also submitted with the memorandum of appeal which shall be served on the respondents to submit reply thereon. Status-quo be maintained till the date fixed.

Date of Presentation of Application 01/02/22
Number of Words 800
Copying Fee 20/-
Urgent 4/7
Total 14/-
Name of Applicant _____
Date of Preparation of Copy 01/02/22
Date of Delivery of Copy 01/02/22

(Mian Muhammad)
Member(E)

Certified to be true copy
EKAJINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Appeal No. 7917/2021
Imtiaz Khan vs Govt

- 22nd April, 2022
1. Learned counsel for the appellants present. Mr. Kabirullah Khattak, Addl. AG alongwith Zafrullah, Superintendent for the official respondents present. Mr. Afrasiab Gul, Advocate on behalf of applicant Niaz Badshah, submitted Wakalatnama which is placed on file.
 2. Two applications, one by Mr. Adnan Aman, Advocate and another by Zartaj Anwar, Advocate have been submitted for impleadment of applicants Engr. Alamzeb Khan, Sub Divisional Officer Irrigation Department, Mardan Circle and Saifullah Khan, Deputy Director (OPS) P&C Small Dams Peshawar, Aman Ullah, Executive Engineer (OPS) Tube Well Division, Peshawar and Niaz Badshah, Sub Divisional Officer Charsadda Irrigation Sub Division, Charsadda respectively. Both the C.Ms be placed on file.
 3. Learned counsel for the appellants and learned AAG for the respondents, while accepting the notice of this application have expressed no objection on impleadment of the applicants as contesting respondents. Learned counsel for the appellant states that there will be no need to amend the appeal even if the newly applicants are added as respondents. Names of the applicants be added in the panel of respondents and the relevant register with red ink. All the respondents i.e. contesting as well as official respondents shall file reply within two days before the date fixed. Copy of the same be provided to the appellants, who may file rejoinder on the date fixed.

4. There is an application for initiating Contempt of Court Proceedings filed by the appellants, which has been given a separate number. When confronted with the situation whether any contempt could be initiated against any of the respondents regarding violation of an order of the Tribunal when in fact the order was not communicated rather no notice regarding that order was issued to the respondents. Learned counsel for the appellant was very fair and frank to make submission that the C.O.C might be converted into Execution Petition for execution of initial order of the Court or an application for seeking suspension of the order of transfer dated 13.04.2022 issued after the order dated 31.01.2022 passed by the Tribunal whereby status quo was directed to be maintained. Learned counsel on behalf of private respondents as well as learned AAG accepted notice of the application and argued the application.

5. The learned counsel appearing on behalf of the appellants/applicants submitted that on 31.01.2022 the Tribunal had granted interim injunction in the shape of maintaining '*status quo*' till the date fixed i.e. 10.02.2022. It was argued that during the interim order the official respondents issued Notification No.SO(E)/IRR/4-9/77/Vol-IV dated 13.04.2022 whereby posting/transfer order of some officers, was made, which was violation of the order dated 31.01.2022 passed by this Tribunal. It was also argued that the official respondents could not issue the above Notification when there was an injunction order in the field


2-2-03-22

passed by this Tribunal, therefore, the same was prayed to be suspended. He also prayed for extension of the interim order passed on 31.01.2022.

6. On the contrary the learned AAG for the official respondents and learned counsel for the private respondents refuted the arguments of the learned counsel for the appellants and submitted that the Notification, sought to be suspended, was just a posting/transfer order and not a promotion to the next grade, therefore, terming the application to be misconceived, they prayed for dismissal of the same.

7. It is observed that the Tribunal did not function since 02.02.2022 till 22.03.2022 due to the retirement of the then worthy Chairman on 02.02.2022. The Tribunal then started functioning on 22.03.2022 after appointment of the new Chairman. Therefore, the matter could not be placed before the Tribunal since 31.01.2022 till 20.04.2022, whereas the interim order in the shape of maintenance of *status quo* was till 10.02.2022. Be that as it may the interim order granted on 31.01.2022 was to the extent of maintenance of *status quo* i.e. to keep the situation as it was at the time of issuance of the order. The application on which the interim order was passed, was with the prayer to suspend the operation of the impugned Notification No.SO(E)/IRRI/23-5/73/Vol-VI: dated 24.08.2021, a notification making further amendments in the earlier Notification No.SO(E)IRR/23-5/73 dated 17.02.2011 pertaining to qualification/criteria and quota for promotions and issuance of

Handwritten signature
22/4/22

'status quo' by the Tribunal could, at the most, mean that promotion might not be made on the basis of the impugned Notification whereas vide Notification dated 13.04.2022, the department made posting/transfer of some officers, which is not yet challenged by the appellants by making any departmental representation or appeal etc nor the same could be termed a violation of the order of maintenance of *'status quo'* ordered by the Tribunal on 31.01.2022.

8. Even otherwise, the file reflects that the *'status quo'* order was not communicated to the official respondents as there is no copy of the notice or for that matter copy of any communication showing that the *'status quo'* order dated 31.01.2022, was served upon any of the respondents. Therefore, the application for initiating contempt proceedings or considering the same as temporary injunction application or execution application is not worth consideration. The same is, therefore, dismissed. Copy of this order be placed in the COC file. Similarly, copy of the application (COC) be placed on this file, while the original application (COC) be consigned.

9. We have observed that the processes of the Tribunal are not being issued nor served/executed in accordance with the relevant provisions of Code of Civil Procedure, 1908, which provisions could be invoked by the Tribunal under section 9 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. This not only delays proceedings of the different matters before the Tribunal but also does not serve any purpose. Similarly, on the basis of such defective processes/service of the processes, there are difficulties in

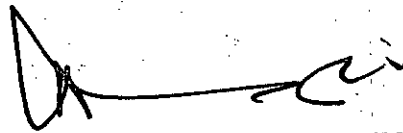
22.5.22
 EC

execution/implementation of the interim injunctions granted by the Tribunal. The office is, therefore, directed to pass on directions to the process issuing and serving agency to properly issue and serve the processes of the Tribunal.

10. Regarding the suspension of the operation of the Notification; impugned in the main appeal, it is directed that let the same may not be acted upon till the date fixed.

11. To come up for reply/comments on 11.05.2022 before S.B.

12. *Pronounced in open court at Peshawar and given under my hand and seal of the Tribunal this 22nd day of April, 2022.*



(KALIM ARSHAD KHAN)
Chairman