


8th May, 2023

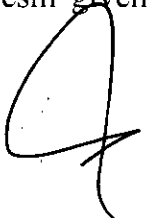
Respondent No.
4, 5, & 6 were
put on notice
through TCS
Ad
Moharir

SCANNED
KPST
Peshawar

1. Learned counsel for the appellant present. Mr. Fazal Shah, Additional Advocate General for the respondents present.

2. Learned counsel for the appellant requested for time to deposit expenses of TCS for summoning of private respondent No. 4, 5 and 6. He may do so today. To come up on 08.06.2023 before D.B. Parcha Peshi given to the parties.


(Fareeha Paul)
Member (E)


(Kalim Arshad Khan)
Chairman

Adnan Shah, P.A.

30th Jan, 2023

Appellant in person present. Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

Appellant requested for adjournment on the ground that his counsel is busy in the august Supreme Court of Pakistan. Last opportunity is extended subject to payment of costs of Rs. 10000/-. To come up for arguments on 11.04.2023 before D.B. P.P is given to the parties.

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Peshawar



(Muhammad Akbar Khan)
Member (E)



(Kalim Arshad Khan)
Chairman

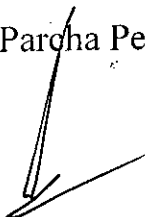
11th April, 2023

1. Learned counsel for the appellant present. Mr. Fazal Shah Mohmand, Additional Advocate General for official respondents present. Nobody is present on behalf of private respondent.

2. The private respondents were directed to be summoned through registered post A.D. although there are copies of notices alongwith postal receipts are found placed on file yet they are not in attendance. Learned counsel for the appellant says that it would be safe that they be summoned through TCS and a notice be also issued to their learned counsel. Adjourned. To come up on 08.05.2023 before D.B. Parcha Peshi given to the parties.

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Counsel/Appellant
didn't submit
expense for TCS
Prof.
Meharab



(Muhammad Akbar Khan)
Member (E)



(Kalim Arshad Khan)
Chairman

16.09.2022

Respondent No. 4 to 6
were put on notice
on 14/11/22 while
counsel was informed
telephonically.

Appellant alongwith his counsel Mr. Noor Muhammad Khattak, Advocate present, who submitted fresh Vakalatnama on behalf of the appellant which is placed on file. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for official respondents No. 1 to 3 present. None present on behalf of private respondents No. 4. to 6 and on perusal of the record, it transpired that they have not been placed ex-parte, therefore, they be summoned through registered A.D, while notice also be issued to their counsel and to come up for arguments on 28.11.2022 before the D.B. Appellant shall submit registered A.D within 03 days.

(Mian Muhammad)
Member (E)

(Salah-Ud-Din)
Member (J)

28th Nov. 2022

Clerk of learned counsel for the appellant present: Mr. Kabirullah Khattak, Addl. Advocate General for the official respondents present.

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Peshawar

Clerk of learned counsel for the appellant seeks adjournment due to non-availability of learned counsel for the appellant. This being old case of 2014, last opportunity is granted to the appellant to argue the case, failing which the case will be decided on the basis of available record without the arguments. To come up for arguments on 30.01.2023 before the D.B.

9

(Fareeha Paul)
Member (E)

(Kalim Arshad Khan)
Chairman

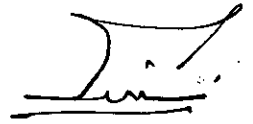
29.03.2022

Learned counsel for the appellant present. Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present. Arguments on restoration application heard and record perused.

Vide our order of today passed in restoration application bearing No. 458/2019 titled "Engineer Musharraf Shah Versus Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa Peshawar and others", the appeal in hand stands restored on its original number subject to payment of cost of Rs. 2000/-. To come up for arguments before D.B-II on 10.06.2022.




(Rozina Rehman)
Member (J)



(Salah-ud-Din)
Member (J)

10.06.2022

*Bench is incomplete, therefore
The case is adjourned to
22.07.2022 for the same as
before.*


READER

22.07.2022

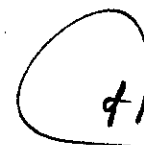
Appellant in person present.

Naseer Ud Shah, learned Assistant Advocate General for respondents present.

Former requested for adjournment as his counsel is busy before Hon'ble Peshawar High Court, Peshawar. Adjourned by way of last chance. To come up for arguments on 16.09.2022 before D.B.



(Fareeha Paul)
Member(E)



(Rozina Rehman)
Member (J)

27.11.2018

Appeal No. 1118/2014
Engg. Musharraf Shah vs Govt
Nemo for appellant.

The instant appeal was called for hearing more than ~~once~~ today. It is already 2.15 P.M and no one is present on behalf of the appellant.

Dismissed for non-prosecution. File be consigned to the record room.


Member


Chairman

Announced:
27.11.2018

06.07.2018

Counsel for the appellant present. Mr. Sardar Sfoukat Hayat, Adcl: AG for respondents present. Arguments could not be heard due to incomplete bench. To come up for arguments on 20.08.2018 before D.B.

MA

(Muhammad Amin Kundi)
Member

20.08.2018

Learned counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 12.10.2018 before D.B.

AH

(Ahmad Hassan)
Member

MA

(Muhammad Amin Khan Kundi)
Member

12.10.2018


Junior to counsel for the appellant and Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present. Private respondents no. 4 & 5 also present. Junior to counsel for the appellant seeks adjournment that his senior counsel is not in attendance. Adjourned. To come up for arguments on 27.11.2018 before D.B


MA
Member

MA
Member

08.12.2017

Junior to counsel for the appellant present. Mr. Muhammad Jan, Deputy District Attorney for the respondents also present. Junior to counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 02.02.2018 before D.B.



(Ahmad Hassan)
Member (E)


(Muhammad Amin Khan Kundi)
Member (J)

02.02.2018


Junior to counsel for the appellant and Mr. Riaz Pinda Kheil, learned Assisat Advocate General for the respondents present. Junior to counsel for the appellant seeks adjournment as senior counsel is not available. Adjourned. To come up for arguments on 03.04.2018 Before D.B

03.04.2018


(Muhammad Amin Kundi)
MEMBER


(Muhammad Hamid Mughal)
MEMBER


Clerk to counsel for the appellant and Mr. Muhammad Jan, Learned Deputy District Attorney for respondents present. Clerk to counsel for the appellant as Learned counsel for the appellant is not available. Adjourn. To come up for arguments on 01.06.2018 before D.B


(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

01.06.2018

No one present on behalf of appellant. Mr. Kabir Ullah Khattak, learned Additional Advocate General for the respondents present. Adjourned. To come up for arguments on 06.07.2018 before D.B


(Muhammad Amin Kundi)
Member


(Muhammad Hamid Mughal)
Member

Appeal No. 1118/2014

16.12.2016

Junior to counsel for the appellant and Mr. Abdur Razzaq, Assistant alongwith Mr. Muhammad Jan, GP for respondents present. Junior to counsel for the appellant seeks adjournment. To come up for arguments on 21.04.2017.

(MUHAMMAD AAMIR NAZIR)
MEMBER

(ASHFAQUE TAJ)
MEMBER

21.04.2017

Counsel for the appellant present. Mr. Ziaullah, Government Pleader for the respondents also present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 09.08.2017 before D.B.

(Ahmad Hassan)
Member

(Muhammad Amin Khan Kundi)
Member

09.08.2017

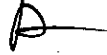
Clerk of the counsel for appellant present. Mr. Muhammad Jan, Deputy District Attorney for official respondents No. 1 to 3 and clerk of counsel for private respondents No. 4 to 6 present. Clerk of the counsel for appellant seeks adjournment on the ground that learned counsel for the appellant is not available today. Adjourned. To come up for arguments on 08.12.2017 before D.B.

(Muhammad Amin Khan Kundi)
Member (J)

(Muhammad Hamid Mughal)
Member (J)

18.04.2016

Counsel for the appellant and Mr. Ziaullah, GP for respondents present. Counsel for the appellant stated that similar nature of appeals have already been fixed for arguments on 11.05.2016, therefore, the same may also be clubbed with the said appeals. To come up for arguments on 11.05.2016 alongwith the connected appeals.



Member



Member

11.5.2016

Junior to counsel for the appellant and Addl. AG for the respondents present. Learned Senior counsel for the appellant is stated busy before the august Supreme Court of Pakistan. Adjourned for final hearing to 30.08.2016 alongwith connected appeals.



Member



Chairman

30.08.2016

Clerk to counsel for the appellant and Ziaullah, GP for respondents present. Arguments could not be heard due to incomplete bench. To come up for arguments on 16.12.2016 before D.B.



Chairman

23.06.2015

Appellant in person, Mr. Shams-ud-Din, Assistant alongwith Addl: A.G for official respondents No. 1 to 3 and private respondent No. 5 in person present. Wakalat Nama submitted on behalf of private respondents No. 4, 5 & 6. Comments by official respondents No. 1 to 3 submitted. Private respondents requested for adjournment. To come up for written reply/comments on behalf of private respondents No. 4 to 6 on 25.8.2015 before S.B.


Chairman

25.08.2015

Appellant in person, Addl: A.G for official respondents No. 1 to 3 and private respondent No. 5 in person present. Written reply on behalf of private respondents No. 4 to 6 also submitted. The appeal is assigned to D.B for rejoinder and final hearing for 3.12.2015.


Chairman

03.12.2015

Appellant with counsel, Mr. Abdul Razzaq, Assistant alongwith Mr. Ziaullah, GP for official respondents and Muhammad Arshad, Advocate for private respondents No. 4, 5 and 6 present. Arguments could not be heard due to shortage of time. To come up for rejoinder and arguments on

18.4.2016

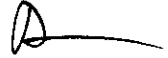

Member


Member

Appeal, No. 1181/2014
Eng. M. Shukla

19.03.2015

Counsel for the appellant present and submitted appeal in proper format with spare sets. To come up for preliminary hearing on 06.05.2015.



Member

6.
06.05.2015

Counsel for the appellant present. Preliminary arguments heard and case file perused.

Learned counsel for the appellant argued that the appellant was appointed as Assistant Engineer (BPS-17) on acting charge Basis on 13.12.2011. There-after on 25.06.2012 service rules were amended wherein quota of promotion of Sub-Engineer to the post of Assistant Engineer was reduced from 15% to 12%. Prior to that individual quota of 5 % for promotion of graduate Sub-Engineer and 10 % for in-service graduate Engineer was fixed. It is also worth mentioning that under the then service rules when case for appointment on acting charge basis was considered, the appellant stood on the top of the seniority list of in-service graduate Sub-Engineer as it stood on 31.12.2010. Counsel for the appellant further argued that the rules may not be applied retrospectively and keeping in view eligibility of the appellant he may be considered for promotion under the previous rules. That the appellant preferred departmental appeal which was not responded and hence the present service appeal on 24.09.2014. He relied on 2012 SCMR 864 and 2012 SCMR 965.

Appellant Deposited
Security & Process Fee

Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission of written reply. To come up for written reply/comments on 23.06.2015 before S.B.



Member

3.

10.10.2014

Counsel for the appellant and Mr. Niaz Badshah, private respondent No. 5 present. Counsel for the appellant requested for adjournment to file the instant appeal in proper format. Request accepted. To come up for preliminary hearing on 16.12.2014.


Member

Reader Note:

4.

16.12.2014

Clerk of counsel for the appellant and Mr. Niaz Badshah, private respondent NO. 5 present. Since the Tribunal is incomplete, therefore, case is adjourned to 17.02.2015 for the same.


Reader

5.

17.02.2015


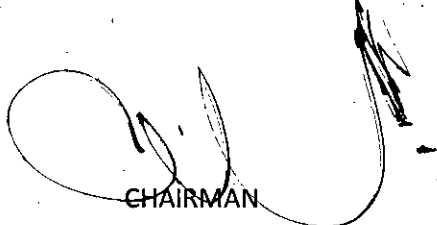
Appellant in person and Mr. Niaz Badshah, private respondent No. 5 in person present. Appellant requested for adjournment. Request accepted. To come up for preliminary hearing on 19.03.2015


Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1181/2014

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	24/09/2014	<p>The present appellant initially went in Writ Petition before the Hon'ble High Court and the Hon'ble High Court vide its order dated 04.09.2014 treated the Writ Petition into an appeal and sent the same to this Tribunal for decision in accordance with law. The same may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	24/09/2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on 10/10/2014 as per order of the Hon'ble High Court.</p> <p style="text-align: right;"> CHAIRMAN</p>

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Peshawar

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No. 1181/2014

Engineer Musharaf Shah Assistant Engineer, (Acting Charge Basis) Rehabilitation of Irrigation System of Khyber Pakhtunkhwa Directorate Peshawar.

(Appellant)

VERSUS

Govt of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa Peshawar and others.

(Respondents)

INDEX

Sr#	Description of documents	Annexure	Pages
1	Memo of Appeal with affidavit		1-5
2	Copies of the Rules	A & B	6-15
3	Copy of the notification dated 13.12.2011	C	16-18
4	Copies of the notification dated 25.6.2012	D	19-20
5	Copies of the departmental appeal	E	21-23
6	Copy of the judgment and order	F	24-45
7	Copy of the notification dated 17.5.2012	G	46-47



Appellant

Through


IJAZ ANWAR
Advocate, Peshawar
&


SAJID AMIN
Advocate, Peshawar

1

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Appeal No. 1181/2014

Engineer Musharaf Shah Assistant Engineer, (Acting Charge Basis) Rehabilitation of Irrigation System of Khyber Pakhtunkhwa Directorate Peshawar.

(Appellant)

VERSUS

1. Govt of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa Peshawar.
2. Secretary to Govt of Khyber Pakhtunkhwa Irrigation Department Peshawar.
3. Chief Engineer (South) Irrigation Department Khyber Pakhtunkhwa Peshawar.
4. Aman Ullah S/O Hamaish gul SDO Irrigation Division Swat.
5. Niaz Badshah S/O Saeed Badshah SDO Flood Division Warsak road Peshawar.
6. Saif ullah SDO OPS Peshawar Canal Division Peshawar.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the respondents may please be directed to act in accordance with law and to allow regular promotion to the appellant & to place his cases before the Departmental promotion committee for his confirmation / regular promotion against the post of Assistant Engineer BPS-17, similarly to declare the amendment introduced in the recruitment rules vide Notification No. SOE/IRR/2-3-5-2010-11 dated 25.6.2012 are inapplicable to the case of the appellant and has no retrospective effect, similarly the respondents are legally not competent to process the promotion cases on such rules to the detriment of the rights of the appellant or any other remedy deemed proper may also be allowed.

Respectfully Submitted:

1. That the appellant is serving in the Irrigation Department and was appointed as Sub- Engineer holding the prescribed qualification of diploma in Associate Engineering after qualifying the Public Service Commission on 29.11.2006.
2. That the diploma of Associate Engineering is a pre-requisite qualification for the post of Sub-Engineer (BPS-11).
3. That the appellant improved his qualification during service and obtained the Degree of B. Sc in Civil Engineering, the main aim of improving his qualification was to be better equipped with advance knowledge in the field of civil engineering and also in view of the prospects of promotions duly guaranteed in the recruitment rules notified vide notification No. SO(E) IRR: /23-5/73 dated 17.02.2011, wherein 10 % promotion quota has been prescribed "*on the basis of seniority cum fitness, from amongst the Sub-Engineer's who has acquired degree in civil or Mechanical Engineering from a recognize University*". (Copies of the Rules are attached as Annexure A &B)
4. That as per the seniority list as it stood on 31.12.2010 of in-service graduate Sub Engineers the name of the appellant was at serial No. 2 as he acquired his B. Sc Civil Engineer Degree on 28.9.2006.
5. That after years of waiting the appellant when came in the upper portions of the Seniority list and in the promotion zone, his name was duly considered for promotion by the Departmental Promotion Committee and recommended him for promotion, accordingly vide notification No. SO (E) IRR /4-5/2011 Vo-II dated 13.12.2011 the appellant was promoted to the post of Assistant Engineer BPS-17 on acting charge basis. On his promotion the Appellant was posted as Assistant Director (Design) Office of the Chief Engineer (South) Irrigation Department. (Copy of the notification dated 13.12.2011 is attached as Annexure C)
6. That recently the respondents notified the Rules vide notification **No. SOE/ IRR/2-3-5-2010-11 dated 25.6.2012**, curtailing the in-service /pre-service graduate promotion quota total 15 % 12 % thus seriously prejudicing and affecting the promotions rights of the appellant. (Copies of the notification dated 25.6.2012 is attached as Annexure D)
7. That the appellant prior to promulgation of these rules submitted representation against the proposed rules, however it was not considered while notifying the rules, similarly, the respondents proposed to make regular promotion excluding the case of the

appellant on the ground that due to curtailing the quota the appellant will not be considered, while the case of the appellant is also that the amended rules have no retrospective effect and that his promotion can neither be withdrawn or rescinded.

8. That the appellant also submitted his departmental appeal dated / /2012 however it was not replied despite the lapse of 90 days. (Copies of the departmental appeal is attached as annexure E)
9. That the above acts and omission of the respondents in not allowing regular promotion and applying the amended rules to the case of the appellant, and processing the promotion cases depriving the appellant of his due rights are illegal, unlawful in violation of the rules, the appellant along with other affectees initially filed writ petition No. 2440-P/2012 for restraining the respondents from processing the promotion cases however vide judgment and order dated 4.9.2014, the writ petition was sent to this Honourable Tribunal for decision on merit, hence this appeal. (Copy of the judgment and order dated 4.09.2014 is attached as Annexure F)

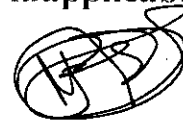
GROUND OF APPEAL:

- a. That the acts and omission of the respondents in excluding the name of the appellant from the working paper for regular promotion is illegal, in violation of law, without lawful authority and against the rights of the appellant.
- b. That the amendment introduced in the rules notified vide notification No. SOE/IRR/2-3-5-2010-11 dated 25.6.2012, curtailing the in-service/pre-service graduate promotion quota total from 15 % to 12 % have no applicability to the case of the appellant and has got no retrospective effect.
- c. That the appellant was fit and eligible for promotion as per the rules applicable at the relevant time, accordingly he was considered form promotion committee vide notification NO. SO (E) IRR/4-5/2011 Vo-II dated 13.12.2011 the appellant was promoted to the post of Assistant Engineer BPS-17 however on acting charge basis, thus the respondents have got no option now except to process the case of the appellant for promotion and to promote him w.e.f 13.12.2011 on regular basis, however, in the instant case the department is not following the law and creating complication and illegally alleging applicability of the amended rules to the case of the appellant.
- d. That vide notification dated 17.5.2012 the respondents department has made direct appointment to the post of Assistant Engineer

BPS-17 thus ripped the case of the appellant for regular promotion however quite illegally this aspect has been ignored by the department. (Copy of the notification dated 17.5.2012 is attached as annexure G).

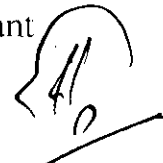
- e. That on his promotion vested rights have been created in favor of the appellant and the same can neither be withdrawn nor rescinded illegally.
- f. That the appellant has not treated been in accordance with law and he remained throughout deprived of his regular promotion due to in action/ slackness of the respondents thus they are bound to follow the law and to act in accordance with law.
- g. That the appellant is fit and eligible for the post of Assistant Engineer BPS-17 similarly he is holding this post on acting charge basis therefore failure on the part of the respondent to follow the law and make regular promotion as per laid down criteria is seriously affecting the rights of the appellant.
- h. That the appellant seeks the permission of this Honourable Tribunal to rely on additional grounds at the hearing of this appeal.

It is, therefore, humbly prayed that on acceptance of this appeal respondents may please be directed to act in accordance with law and to allow regular promotion to the appellant & to place his cases before the Departmental promotion committee for his confirmation / regular promotion against the post of Assistant Engineer BPS-17, similarly to declare the amendment introduced in the recruitment rules vide Notification No. SOE/IRR/2-3-5-2010-11 dated 25.6.2012 are inapplicable to the case of the appellant.

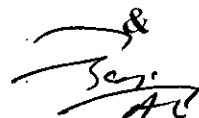


Appellant

Through



IJAZ ANWAR
Advocate Peshawar



SAJID AMIN
Advocate Peshawar

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Appeal No. _____/2014

Engineer Musharaf Shah Assistant Engineer, (Acting Charge Basis) Rehabilitation of Irrigation System of Khyber Pakhtunkhwa Directorate Peshawar.

(Appellant)

VERSUS

Govt of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa Peshawar and others.

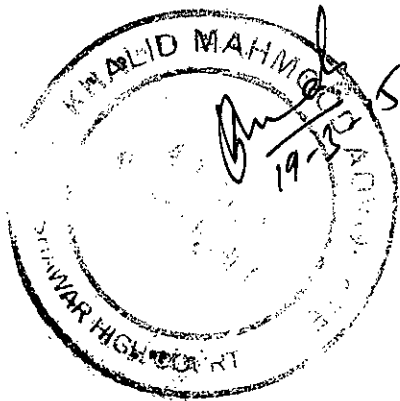
(Respondents)

AFFIDAVIT

I, Engineer Musharaf Shah Assistant Engineer, (Acting Charge Basis) Rehabilitation of Irrigation System of Khyber Pakhtunkhwa Directorate Peshawar, do hereby solemnly affirm and declare on oath that the contents of the titled appeal as well as application are true and correct to best of my knowledge and believe and that nothing has been kept back or concealed from this Honourable Tribunal.



DEPONENT



NOTIFICATION

Dated Peshawar, the 30th April, 1979.

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

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

1. (1) These rules may be called the North-West Frontier Province Irrigation and Public Health Engg; Department (Recruitment and Appointment) Rules, 1979.
(2) They shall come into force at once.
2. The method of recruitment, minimum qualifications, age limit and other matters related thereto for the posts specified in column 2 of the Schedule annexed shall be such as given in column 3 to 7 of the said Schedule.

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

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

Copy forwarded to the -

- All Administrative Secretaries to Government of NWFP.
- All Divisional Commissioners in N.W.F.P.
- Secretary to Governor, NWFP.
- Secretary, NWFP Public Service Commission, Peshawar.
- All heads of Attached Departments in NWFP.
- All Deputy Commissioners/Political Agents in NWFP.
- All District & Sessions Judges in NWFP.
- Registrar, High Court, NWFP, Peshawar.
- All Section officers in the S&GAD.
- Manager, Government Printing Press Peshawar for publication in the Government Gazette. He is to supply 50 copies of the printed notification.

Syad Noor B

(Syad Noor B)
Section officer

96M

M/2

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NS/79

2/5 Adl

7/5
CH
7/5

(7)

SCHEDULE

IRRIGATION AND PUBLIC HEALTH ENGINEERING DEPARTMENT.

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

POSTS COMMON TO IRRIGATION AND PUBLIC HEALTH ENGG. DEPARTMENT.

1. Chief Engineer.

By selection on merit from amongst four senior most officers in each of Irrigation Deptt; and three in case of Public Health Engrs; Deptt; with at least seventeen years experience as Government servants, seniority being considered only in the case of officers of practically the same standard of merit.

Degree in Engineering from a recognised University.

2. Superintending Engineer.

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

3. Executive Engineer.

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

Handwritten initials

1.	2.	3.	4.	5.	6.	7.
4. Assistant Engineer.	Degree in Civil/ Electrical or Mechanical Engineering from a recognised University, as may be specified by Government for the respective post.	Degree or diploma in Engineering from a recognised University or Institute, as specified in column 6.		21 years	30 years	(a) Seventy per cent by initial recruitment; and (b) <u>ten per cent by selection on merit with due regard to seniority from amongst Sub-Engineers of the Department concerned in which the vacancy occurs, who hold a degree; and</u> (c) twenty per cent by selection on merit with due regard to seniority from amongst officiating Assistant Engineers of the Department concerned in which the vacancy occurs, who hold a diploma.
5. Officiating Assistant Engineers/ Sub-Divisional officer.		Diploma in Engineering from a recognised Institute.				Twenty-five per cent of the total number of posts of the diploma holders Sub-Engineers shall form the posts of Officiating Assistant Engineers/ Sub-Divisional officers and shall be filled by selection on merit with due regard to seniority from amongst Sub-Engineers of the Department concerned in which the vacancy occurs, who have passed the Departmental Examination and have at least ten years service as such. By selection on merit with due regard to seniority from amongst holders of the posts of senior Superintendents/ Superintendents, in the Department in which the vacancy occurs.
6. Administrative officer/ Budget & Accounts officer.						

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POSTS IN IRRIGATION DEPARTMENT:

7. Canal Collector.

7A) *AAH had Reclamation Dept*

8. Deputy Collector.

9. Assistant Accounts officer.

10. Sub-Engineer.

Diploma in Engineering from a recognised Institute of Pakistan.

18 years

25 years.

POSTS IN PUBLIC HEALTH ENGINEERING DEPARTMENT.

11. Research officer.

M.Sc in Microbiology & Chemistry from recognised University.

21 years

30 years.

12. Assistant Research officer.

cl (165)

9A) Zilladars

B.Sc. in Microbiology & Chemistry from a recognised University.

21 years

30 years.

By initial recruitment.

(i) 75% by initial recruitment and
(ii) 25% by promotion on the basis of seniority & fitness from amongst the holders of the posts of Assistant Research officer, with at least 5 years service as such.

By selection on merit with particular reference to fitness for higher responsibilities from amongst Dy. Collectors of the Irrigation Department.

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

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

By initial recruitment.

(i) Fifty per cent by initial recruitment; and

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

(1) For vacant the holders of the post of...
(2) For vacant the holders of the post of...
(7A) By selection on merit with due regard to seniority from amongst the holders of the post of Deputy Collectors of the Dept.

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GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

ARRIVED: B

NO.SO(E)IRR:/23-5/73
Dated Peshawar the 17th February, 2011

NOTIFICATION

NO.SO(E)IRR:/23-5/73: In pursuance of the provisions contained in sub rule (2) of Rule-3 of the North-West Frontier Province Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 and in supersession of all previous rules and notifications, issued in this behalf, except Notification No.SO(E)IRR:/23-5/73 dated 20-12-2006, the Irrigation Department, in consultation with the Establishment Department and the Finance Department hereby lays down, the method of recruitment, qualification and other conditions specified in columns No. 3 to 5 of the Appendix (pages 1 to 5) to this Notification which shall be applicable to the posts in column No. 2 of the Appendix.

Secretary to Government of the Khyber Pakhtunkhwa Province
Irrigation Department.

Endst: NO.SO(E)IRR:/23-5/73 dat: 17th February, 2011

Copy is forwarded to the :-

1. All Administrative Secretaries to the Govt of Khyber Pakhtunkhwa.
2. Secretary to Governor, Khyber Pakhtunkhwa.
3. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
4. All Commissioners in Khyber Pakhtunkhwa.
5. Registrar Peshawar High Court Peshawar.
6. Accountant General, Khyber Pakhtunkhwa, Peshawar.
7. Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar.
8. Additional Accountant General (PR) Sub-Office Peshawar.
9. Chief Engineer (D&M), Irrigation Department, Peshawar.
10. Chief Engineer (Dev), Irrigation Department, Peshawar.
11. Director General, Small Dams Organization Peshawar.
12. All District Coordination Officers in Khyber Pakhtunkhwa.
13. Secretary, Public Service Commission, Peshawar.
14. All-Superintending Engineers in Irrigation Department.
15. Canal Collector, Irrigation Department, Peshawar.
16. All Executive Engineers in Irrigation Department.
17. PS to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
18. PS to Secretary, Irrigation Department, Peshawar.
19. Manger Government Printing Press, Khyber Pakhtunkhwa Peshawar. He is requested to supply 200 copies of the printed gazette for further distributions.
20. Office order/Master File.


(MISAL KHAN)

Section Officer (Establishment)

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APPENDIX

Sl. No.	Nomenclature of Post	Qualification for appointment	Age Limit	Method of recruitment
1	2	3	4	5
PART-I-ENGINEERING STAFF				
1.	Chief Engineer/ Director General (BPS-20)			By selection, on merit from amongst the Senior Superintending Engineers and Directors with at least seventeen years service in BPS-17 and above, possessing Degree in B.E/BSc Engineering (Civil) from a recognized University.
2.	Superintending Engineer/Director (BPS-19)			By promotion, on the basis of seniority-cum-fitness, from amongst the Executive Engineers/Deputy Directors with at least twelve years service in BPS-17 and above.
3.	Executive Engineer/ Deputy Director (BPS-18)			By promotion, on the basis of seniority cum fitness, from amongst the Sub Divisional Officers, 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.
4.	Assistant Engineer/Sub Divisional Officer/ Assistant Director (BPS-17)	BE/BSc Degree in Civil/Mechanical Engineering from a recognized University	21 to 32 years	<p>a. Sixty five percent by initial recruitment.</p> <p>b. ten percent by promotion, on the basis of seniority cum fitness, from amongst the Sub Engineer's who has acquired during service degree in Civil or Mechanical Engineering from a recognize university.</p> <p>c. five percent by promotion, on the basis of seniority cum fitness, from amongst the Sub Engineer's who joined service as degree holders in Civil/Mechanical Engineering and</p> <p>d. twenty percent by promotion, on the basis of seniority-cum-fitness from amongst the Sub Engineer's, who hold a diploma of Civil, Mechanical, Electrical or Auto Technology and have passed Departmental Grade A examination with ten years service as such.</p> <p>Note: - Provided that where candidate under Clause (b) & (c) above is not available for promotion, the vacancy shall be filled in by initial recruitment.</p>
5.	Sub Engineer (BPS-11)	Diploma of Associate Engineering in Civil/Mechanical/Auto/Electrical Technology from a recognized Institute.	18 to 30 years	<p>a. Eighty percent by initial recruitment; and</p> <p>b. twenty percent by promotion, on the basis of seniority-cum-fitness, from amongst the Canal Inspectors, Work Takers, Gauge Readers, Surveyors and other establishments having Diploma of Associate Engineering in Civil, Mechanical, Electrical or Auto Technology from a recognized institute or Board of Technical Education of Government with at least ten years service, and have passed the departmental Grade B and Grade A examination.</p>

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6.	Geologist (BPS-17)	MSc. Geology from a recognized University with 03 years experience in the relevant field.	18 to 32 years	By initial recruitment.
PART-II-MINISTERIAL ESTABLISHMENT				
7	Administrative Officer/ Budget and Accounts Officer (BPS-16)			By promotion, on the basis of seniority-cum-fitness, from amongst the Superintendents of the Department having at least three years service.
8	Superintendent (BS-16)			By promotion, on the basis of seniority-cum-fitness, from amongst the Assistants, Head Clerks and Senior Scale Stenographers with at least five years service as such. Note 1: - For the purpose of promotion, a joint seniority list of Assistants and Senior Scale Stenographers shall be maintained. If the date of appointment of both the officials is the same, then Assistant shall rank senior. Note 2. Promotion to the post of Superintendents in Regional Office cadre shall be considered from amongst the Assistants, Head Clerks and Senior Scale Stenographers of Regional Office cadre and that of Circle Office Cadre from the Assistants, Head Clerks and Senior Scale Stenographers of Circle Office Cadre.
9.	Senior Scale Stenographer (BPS-15)	a. Bachelor's Degree/ B.Com from a recognized University; and b. A speed of 100 words per minute in short hand in English and 40 words per minute in English typing.	18 to 30 years	a. Forty percent by initial recruitment; and b. sixty percent by promotion, on the basis of seniority-cum-fitness, from amongst the Junior Scale Stenographers with at least three years service as such.
10	Assistants/Head Clerk (BPS-14)	Second Class Bachelor's Degree with Economics/ Statistics as one of the subject or B.Com, from a recognized University.	18 to 30 years	In Regional Office Cadre a. Twenty five percent by initial recruitment; and b. seventy five percent by promotion, on the basis of the seniority cum fitness, from amongst Accounts Clerks and Senior Clerks in Regional Office Cadre with at least 5 years service as such. In Circle Office Cadre By promotion, on the basis of seniority cum fitness, from among the Accounts Clerks and Senior Clerks with at least 5 years service as such, in the Circle where the vacancies occurs.

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11	Junior Scale Stenographer (BPS-12)	(a). Intermediate or D.Com From a recognized Board; and c. A speed of 50 words per minute in Short hand in English and 35 words per minute in English typing with computer knowledge of Microsoft Words and Excel.	18 to 30 years	By Initial Recruitment
12	Accounts Clerk/ Senior Clerk (BPS-9)			By promotion, on the basis of seniority cum fitness, from among the Junior Clerks with atleast 5 years service in the respective regional or Circle cadre as such; Note. Promotion to the post of Accounts Clerk or Senior clerk in Regional Office cadre shall be considered from amongst the Junior Clerks of Regional Office Cadre and that of Circle Office Cadre from amongst the Junior Clerks of Circle Office Cadre).
13	Junior Clerk (BPS-7)	(a) Secondary School Certificate from a recognized Board; and (b) A speed of 30 words per minute in English typing.	18 to 30 years	(a) Sixty Seven percent by initial recruitment; and (b) Thirty three percent by promotion; from amongst the Daftaries, Record Lifters, Naib Qasids, Chowkidars and other equivalent posts who have Secondary School Certificate and are under 45 years of age and have at least two years service as such in the respective Regional and Circle Office Cadre Note For the purpose of promotion, there shall be maintained a joint seniority list of Daftaries, Record Lifters, Naib Qasids, Chowkidars with reference to the date of regular appointment to the post or that of acquiring the Secondary school certificate which ever is later, provided that if two dates are the same, the person older in age or having longer service, whichever is more beneficial to him, shall rank senior.
PART-III COMPUTER ESTABLISHMENT				
14	Data Processing Supervisor (BPS-14)	Bachelor's Degree from a recognized University with 03 years Diploma in Computer Science, from recognize.	18 to 30 years	(a). Twenty five percent by initial recruitment; and (b). Seventy five percent by promotion, on the basis of seniority cum fitness, from amongst the

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		institute		Data Entry Operators and Key Punch Operators with five years service as such.
15	Data Entry Operator/Key Punch Operator (BPS-12).	Intermediate with one year Diploma in computer science from a recognized institute with speed of 10000 key depression per hour.	18 to 30 years	By initial recruitment.
PART-IV REVENUE ESTABLISHMENT				
16	Canal Collector (BPS-18)			By promotion, on the basis of seniority cum fitness, from amongst the Deputy Collectors and Assistant Land Reclamation Officers with five years service as such.
17	Deputy Collector / Assistant Land Reclamation officer (BPS-17)			By promotion, on the basis of seniority-cum-fitness, from amongst Zilladars with atleast five years service as such.
18	Zilladar (BPS-14)	Bachelor's degree or equivalent qualification from a recognized University.	21 to 30 years	(a) Seventy percent by initial recruitment; and (b) thirty percent by promotion, on the basis of seniority-cum-fitness, from amongst the Head Vernacular Clerks with six years experience and Vernacular Clerk/Revenue Inspector with ten years service and having passed Secondary School Certificate Examination from recognized Board. Note: Promotion of Head Vernacular Clerks (BPS-7) to the post of Zilladar (BPS-14) shall be considered only in the circle where no post of Head Vernacular Clerk (BPS-10) exist
19	Revenue Inspector (BPS-10)	Intermediate or equivalent qualification from a recognized Board.	18 to 30 years	By initial recruitment.
20	Head Vernacular Clerk (BPS-10)			By promotion, on the basis of seniority-cum-fitness, from amongst the Vernacular clerks in the circle where the vacancies occur.
21	Vernacular Clerk (BPS-7)	Secondary School Certificate, from a recognized Board.		By promotion, on the basis of seniority-cum-fitness, from amongst the Patwaris having five years service as such in the Circle where the vacancies occur.
22	Patwari (BPS-5)	Secondary School Certificate from a recognized Board with one year Patwar training in Irrigation Department and have passed Irrigation Patwar Examination.	18 to 35 years	By initial recruitment.
PART-V DRAWING ESTABLISHMENT.				
23	Chief Draftsman (BPS-17)			By promotion, on the basis of seniority-cum-fitness, from amongst the Circle Head Draftsman with three years service as such.

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24	Circle Head Draftsman (BPS-16)			By promotion, on the basis of seniority-cum-fitness, from amongst the Divisional Head Draftsman with three years service as such.
25	Divisional Head Draftsman (BPS-13)			By promotion, on the basis of seniority-cum-fitness, from amongst the Draftsman, who have passed the prescribed departmental examination for appointment as Head Draftsman with three years service as such.
26	Draftsman (BPS-10)	(a). Secondary School Certificate from a recognized Board; and (b). Two years Certificate course in Civil Draftsmanship from a recognized institute/Board of Technical Education.	18 to 30 years.	a. Fifty percent by initial recruitment; b. twenty five percent 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. twenty five percent by promotion, on the basis of seniority-cum-fitness, from amongst the Tracers 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 be filled-in by the way as prescribed at (c) and Vice Versa.
27	Tracer (BPS-5)	(a) Secondary School Certificate from recognized Board; and (b) Tracer Course of at least six months duration from a recognized Institute or Board of Technical Education.	18 to 30 years	By Initial Recruitment.

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IRRIGATION DEPARTMENT KHYBER PAKHTUNKHWA

Final Seniority List of in Service Graduate Sub Engineers Irrigation Department Khyber Pakhtunkhwa as stood on 31/12/2010.

S#	Name of Sub Engineer with Academic Qualification	Date of Birth	Domicile	Date of 1 st entry into Govt: Service	Regular Appointment/Promotion			Present Appointment	Remarks
					Date	BPS	Method of Recruitment		
1.	Mr. Fazle Mula S/O Ghulam Yahya BSc Civil Engineering from Saratov Stae Tech: University Russia	20-01-1969	Malakand Agency	19-01-1995	05-06-2006	11	By promotion	Sub Engineer	Acquired BSc Civil Engineering on 22-06-2001
2.	Mr. Mushraf Shah S/O Yousaf Shah BSc Civil Engineering from University of Engineering & Technology Peshawar	04-08-1982	Mohmand Agency	29-11-2006	29-11-2006	11	By initial recruitment	Sub Engineer	Acquired BSc Civil Engineering on 28-08-2009

Yousaf Shah promoted

[Signature]
SUPERINTENDING ENGINEER
(Head Quarter)

No. 6854-59 /IB/A/3-E(iii)

Dated Peshawar the 21 /03/2011.

Copy to the above is forwarded to the: -

1. Secretary to Govt. of Khyber Pakhtunkhwa, Irrigation Department Peshawar.
2. Chief Engineer (Dev.), Irrigation Department Peshawar.
3. Director General Small Dams Organization Peshawar.
4. Project Director, Bezai Irrigation Project Mardan.
5. Official Concerned.
6. *AEN MKOI Imq: Dim + MKd.*

SUPERINTENDING ENGINEER

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ANNEX C



GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

NOTIFICATION

Dated Peshawar 13th Dec, 2011

NO. SO(E)/IRR/14-5/2011, Vol-II: Consequent upon the recommendations of the Departmental Promotion Committee, the Competent Authority is pleased to appoint the following Sub Engineers to the posts of Assistant Engineers / Sub Divisional Officers (BS-17) of Irrigation Department on acting charge basis with immediate effect: -

- i. Mr. Muhammad Sadiq
- ii. Mr. Muhammad Parwish
- iii. Mr. Farid Gul
- iv. Mr. Abdur Rahim
- v. Mr. Shabaz Khan
- vi. Mr. Muhammad Akhtar Jan
- vii. Mr. Inayatullah Jan
- viii. Mr. Fatihullah
- ix. Mr. Riaz Muhammad
- x. Mr. Waqar Shah
- xi. Mr. Musharaf Shah
- xii. Mr. Fazli Subhan
- xiii. Mr. Roshul Amin
- xiv. Mr. Shoukat Badshah
- xv. Mr. Saeedullah
- xvi. Mr. Bakhtiar
- xvii. Mr. Farid Ullah
- xviii. Mr. Asif Khair

2- Upon their appointment on acting charge basis as Assistant Engineers / Sub Divisional Officers (BS-17), the competent authority is further pleased to order the transfers / postings of the following officers of Irrigation Department with immediate effect, in the public interest: -

Sr. No.	Name of Officer	From	To	Remarks
1.	Mr. Muhammad Sadiq	Sub Engineer, Irrigation Sub Division, Kohistan	Sub Divisional Officer, Hydrology Abbottabad	Relieving Mr. Abdur Rahim, SDO Irrigation Sub Division, Abbottabad from additional charge of the post.
2.	Mr. Muhammad Parwish	Sub Engineer, Balochistan Irrigation Sub Divn: Timergore	Sub Divisional Officer, Irrigation Sub Div: Chitral	Vice at Sr. No. 19
3.	Mr. Farid Gul	Assistant Engineer (OPS) Leave Reserve Post in Peshawar Canal Divn	Assistant Engineer, Leave Reserve Post in Peshawar Canal Divn	The officer will continue to perform the duties of AD-IV, FDRD

4	Mr. Abdur Rahim	Sub Divisional Officer (OPS), Irr: Sub Divn: Abbotabad	Sub Divisional Officer, Irr: Sub Divn: Abbotabad	The officer will continue to perform his duties against his existing posting.
5	Mr. Shabaz Khan	Sub Divisional Officer (OPS), Flood Sub Divn: No. 2, Flood Divn: Peshawar	Sub Divisional Officer, Flood Sub Divn: No. 2, Flood Divn: Peshawar	The officer will continue to perform his duties against his existing posting.
6	Mr. Muhammad Akhtar Jan	Sub Divisional Officer (OPS), Mech: Irr: Sub Divn: D. I. Khan	Sub Divisional Officer, Mech: Irr: Sub Divn: D. I. Khan	The officer will continue to perform his duties against his existing posting.
7	Mr. Inayatullah Jan	Sub Engineer, Tube Well Irr: Divn: Peshawar	Sub Divisional Officer, Mech: Irr: Sub Divn: Mardan	Relieving SDO Workshop Sub Divn: Peshawar from looking after duties of the post.
8	Mr. Fatihullah	Sub Divisional Officer (OPS), Hydrology Irr: Sub Divn: Bannu	Sub Divisional Officer, Hydrology Irr: Sub Divn: Bannu	The officer will continue to perform his duties against his existing posting.
9	Mr. Muhammad Riaz	Sub Engineer, Warsak Canal Irr: Divn: Peshawar	Assistant Director, Office of the P. D, Rehabilitation of Irr: System, Pesh.	Against the vacant post.
10	Mr. Waqar Shah	Sub Engineer, Flood & Drainage Divn: Peshawar	Assistant Director, Office of the P. D, Rehabilitation of Irr: System, Pesh.	Relieving Miss. Tabinda Nosheen, AD (Rehab:) from looking after charge of the post.
11	Mr. Musharaf Shah	Sub Engineer, Mkd: Irr: Diy: Mkd.	Assistant Director (Design), Office of the Chief Engineer (South), Irrigation Department.	Vice at Sr. No. 22
12	Mr. Fazli Subhan	Sub Divisional Officer (OPS), Tube Well Irr: Sub Divn: Pabbi	Sub Divisional Officer, Tube Well Irr: Sub Divn: Pabbi	The officer will continue to perform his duties against his existing posting.
13	Mr. Roohul Amin	Sub Divisional Officer (OPS), Irr: Sub Divn: Gohati, Swabi	Sub Divisional Officer, Irr: Sub Divn: Gohati, Swabi	The officer will continue to perform his duties against his existing posting.
14	Mr. Shoukat Badshah	Assistant Director (OPS), Bazai Irr: Project Marden	Assistant Director, Bazai Irr: Project Mardan	The officer will continue to perform his duties against his existing posting.
15	Mr. Saeedullah	Sub Engineer, Irr: Sub Divn: Civil Canal: Bannu	Sub Divisional Officer, Irr: Sub Divn: Shangla	Relieving SDO, Irr: Sub Divn: Swat from additional charge of the post.
16	Mr. Bakhtiar	Sub Divisional Officer (OPS), Swat Irr: Sub Divn: Swat	Sub Divisional Officer, Swat Irr: Sub Divn: Swat	The officer will continue to perform his duties against his existing posting.
17	Mr. Farid Ullah	Sub Divisional Officer (OPS), Jani Khel Irr: Sub Divn: Bannu	Sub Divisional Officer, Jani Khel Irr: Sub Divn: Bannu	The officer will continue to perform his duties against his existing posting.

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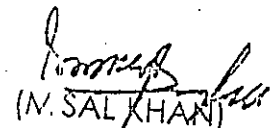
18	Mr. Asif Khan	Sub Divisional Officer (OPS), Shahbz Ghari Irr: Sub Divn: Swabi	Sub Divisional Officer, Shahbz Ghari Irr: Sub Divn: Swabi	The officer will continue to perform his duties against his existing posting.
19	Mr. Faiz ur Rehman	Sub Divisional Officer, Irr: Sub Divn: Chitral	Assistant Director (Design), Office of the Chief Engineer (South)	Against the vacant post.
20	Mr. Muhammad Idrees	Asstt. Director (Rehabilitation),	Assistant Engineer (leave reserve) Office of the Chief Engineer (South).	The officer will continue to perform his duties as Assistant Director-V, FDRD
21	Mr. Wasim Malik	Sub Divisional Officer, Hydrology, Abbottabad	Assistant Engineer (leave reserve) attached with Dy: Director (Plg) O/O Chief Engineer (North).	The officer will continue to perform his duties as Dy: Project Director-II, FDRD.
22	Mr. Hazrat Hassan	Assistant Director (Design), Office of the Chief Engineer (South), Irrigation Department.	Sub: Divisional Officer, Hydrology Irr: Sub Divn: Pesh	Against the vacant post.

SECRETARY TO GOVT: OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

Endst: No. & date as above.

Copy of the above is forwarded to:

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Chief Engineer (South), Irrigation Department, Peshawar.
3. The Chief Engineer (North), Irrigation Department, Peshawar.
4. The Director General, Small Dams Organization, Peshawar.
5. The Director General, Flood Damages Restoration, Khyber Pakhtunkhwa, Peshawar.
6. The Project Director Baizai Irrigation Project, Mardan.
7. The Project Director, Rehabilitation of Irrigation System, Peshawar.
8. All Superintending Engineers of Irrigation Department.
9. All the Districts Accounts Officer, in Khyber Pakhtunkhwa.
10. The Manager, Govt. Stationery & Printing Department, Peshawar.
11. PS to Minister for Irrigation Khyber Pakhtunkhwa, Peshawar.
12. PS to Chief Secretary, Khyber Pakhtunkhwa.
13. PS to Secretary, Establishment & Administration Department.
14. PS to Secretary, Irrigation Department, Peshawar.
15. Officer concerned.
16. Personal File.
17. Master File.


(M. SAL KHAN)
Section Officer (Establishment)



Annex B (19)
GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

Dated Peshawar 25th June, 2012

NOTIFICATION

No. SOE/IRRI/23-5/2010-11: 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 the Finance Department, hereby directs that in this Department's Notification No. SO(E)irr:/23-5/73 dated 17.02.2011, the following amendments shall be made namely: -

AMENDMENTS

In the Appendix,

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 by promotion, on the basis of seniority-cum-fitness, from amongst the Sub Engineers, having degree in Civil Engineering or Mechanical Engineering from a recognized university and have passed departmental grade B&A examination with five year service as 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 (Hons) and have passed departmental Grade B and A examination with five years service as such; and

Note: For the purpose of clause (c), a seniority list of Sub Engineers having Degree in B. Tech (Hons) shall be maintained and their seniority is to be reckoned from the date of their 1st appointment as Sub Engineer.

(d) fifteen percent by promotion, on the basis of seniority-cum-fitness, from amongst the Sub Engineers, who hold a Diploma of Associate Engineering in Civil, Mechanical, Electrical or Auto Technology and have passed departmental Grade B and A examination, with five years service as such.

Note: For the purpose of clause (d), a seniority list of Sub Engineers having Diploma of Associate Engineering, in Civil, Mechanical, Electrical or Auto Technology shall be maintained and their seniority is to be reckoned from the date of their 1st appointment as Sub Engineer.

Note- The quota of clause (b), (c) and (d), above respectively shall be filled in by initial recruitment, if no suitable Sub Engineers available for promotion;

against serial No. 5, in column No. 5 for the existing entries in clause (b), the following shall be substituted, namely:

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(b) fifteen percent by promotion, on the basis of seniority-cum-fitness, from amongst the Canal Inspectors, Work Takers, Gauge Readers, Surveyors, having Diploma of Associate Engineering in Civil, Mechanical, Electrical or Auto Technology from a recognized Board of Technical Education, having passed the departmental Grade - B and Grade- A examination, with at-least seven years service as such; and

(c) five percent by promotion, on the basis of seniority-cum-fitness, from amongst the Canal Inspectors, Work Takers, Work Munshi, Surveyors, and work superintendent, having passed the departmental Grade B examination with at least ten years service as such;

Against serial No. 7, in column No. 5, for The words "three years" the words "one year" shall be substituted;

against serial No. 9, in column No. 3, for the existing entry the following shall be substituted, namely:

Bachelor Degree or equivalent qualification from a recognized University; and

a speed of 80 words per minute in short hand in English and 40 words per minute in English typing; and

against serial No. 13, in column No. 5, in clause (b), the words and figures "and are under 45 years of age" shall be deleted.

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Encl. No. & Date as above

Copy of the above is forwarded to the:-

1. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. Secretary to Governor, Khyber Pakhtunkhwa.
3. Principal Secretary, Chief Minister, Khyber Pakhtunkhwa.
4. Accountant General, Khyber Pakhtunkhwa.
5. Additional Accountant General (PR, Sub Office), Peshawar.
6. All Commissioners in Khyber Pakhtunkhwa.
7. All Heads of Irrigation Department, Khyber Pakhtunkhwa.
8. All District Coordination Officers / P.As in Khyber Pakhtunkhwa.
9. Registrar, Peshawar High Court, Peshawar.
10. Secretary, Board of Revenue, Khyber Pakhtunkhwa.
11. Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
12. Secretary, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
13. All Superintending Engineers in Irrigation Department.
14. All Executive Engineers in Irrigation Department.
15. PS to Minister for Irrigation, Khyber Pakhtunkhwa.
16. PS to Chief Secretary, Khyber Pakhtunkhwa.
17. PS to Secretary to Govt. of Khyber Pakhtunkhwa, Irrigation Department.
18. Manager Govt. Printing Press, Khyber Pakhtunkhwa, Peshawar. He is requested to supply 200 copies of the printed gazette, for further distributions.
19. Master File.

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Misal Khan
(MISAL KHAN)
SECTION OFFICER (ESTT:)

(3)

ANNEX: E

(21)

To

1. The Secretary
Government of Khyber Pakhtunkhwa,
Irrigation Department, Peshawar
2. The Additional Secretary
Government of Khyber Pakhtunkhwa,
Irrigation Department, Peshawar
3. The Section Officer (Establishment),
Government of Khyber Pakhtunkhwa

Through Proper Channel

Subject:- Appeal Against the Implementation of Amended Service Rules 2012 Under References Below for the Promotion of Sub Engineers to the Post of Assistant Engineer in Irrigation Department Government of Khyber Pakhtunkhwa Peshawar

Reference:- Notification No: SOE/IRRI/23-5/2010-11 dated: 25th June 2012

NO. KPK / PSC / Lit / F-8 / 2012 / 030290

Dear Sir,

It is submitted that appointment to the post of Sub Engineer BPS-11 in Irrigation Department is being made through Khyber Pakhtunkhwa Public Service Commission from amongst the Diploma Holders/Degree Holders. I possessing Diploma of Associate Engineering in Civil Technology also appeared in Khyber Pakhtunkhwa Public Service Commission for recruitment as Sub Engineer BPS-11 and succeeded to qualify the same and as such joined Irrigation Department. Then I acquired the degree in civil Engineering from the University of Engineering & Technology Peshawar 2009 during Service.

2. It is submitted that at the time of my acquiring the Engineering Degree the rules issued vide notification No: SO (E) IRRI / 23-5/73 dated: 27-2-99 (Copy enclosed) was operative under which the recruitment for the post of Assistant Engineer BPS-17 in Irrigation department was made as under:

- i) 65% by initial recruitment.
- ii) 10% by Promotion from in service graduate Sub Engineer
- iii) 10% by Promotion from pre-service graduate Sub Engineer
- iv) 15% by Promotion from Diploma Holder Sub Engineer



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3. At the passage of time, the very service rules were amended vide notification No: SO(E)IRR:/23-5/73 dated: 17/02/2011 (Copy attached) and the method of recruitment for the post of Assistant Engineer BPS-17 was re-fixed as under:-

- a) 65% by initial recruitment.
- b) 10% by Promotion from in service graduate Sub Engineer
- c) 05% by Promotion from pre-service graduate Sub Engineer
- d) 20% by Promotion from Diploma Holder Sub Engineer

4. In pursuance of the above and keeping in view the seniority position of the promotion of in-service/pre-service graduate as well as Diploma Holder Sub Engineers, were made vide notification No: SO(E)IRR:/4-5/2011 Vol-II dated: 13/12/2011 (Copies enclosed) in the department. I was also promoted as Assistant Engineer BPS-17 on acting charge base.

5. Now the very rules have again been modified under vide notification under reference and the recruitment /promotion criteria has been disturbed seriously as under:

- a. 65% by initial recruitment.
- b. 12% by Promotion from in service / pre-service graduate Sub Engineer
- c. 08% by Promotion from B-Tech(Hons) Sub Engineer
- d. 15% by Promotion from Diploma Holder Sub Engineer

Besides passing of departmental grade B&A examinations as well as fixation of seniority on the basis of date of appointment for degree holders have also been determined which seems unjustified as under:

- I) Passing of above examination are not meant for the degree holders as these are not at par or superior than the registered Engineering course
 - II) Fixation of seniority is to be considered on the basis of acquiring Engineering Degree
 - III) Service rules of C&W/PHE being works department are also needs to be followed.
 - IV) Course/Classes as well as duration of BSc Engineering/B.Tech (Hons) are also to be considered.
- JK

(22)

(23)

6. The position explained above indicates that besides snatching of 3% quota from degree holders, the in service/pre-service graduate have been merged each together due to which my seniority / promotion will be badly suffered.

It is humbly prayed & requested that 10% reserve quota for in service graduate may kindly be restored and amendment so made may be struck down.

Yours Obediently,



Engr. Musharaf Shah
Assistant Engineer
(Acting Charge Base)
Rehabilitation of
Irrigation System in
Khyber Pakhtunkhwa
Directorate Peshawar

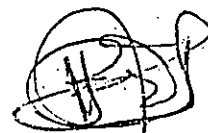
Copy in advance forwarded to:

1. The Secretary
Government of Khyber Pakhtunkhwa,
Irrigation Department, Peshawar
2. The Additional Secretary
Government of Khyber Pakhtunkhwa,
Irrigation Department, Peshawar
3. The Section Officer (Establishment),
Government of Khyber Pakhtunkhwa

Handwritten signature and date: 25/7/12

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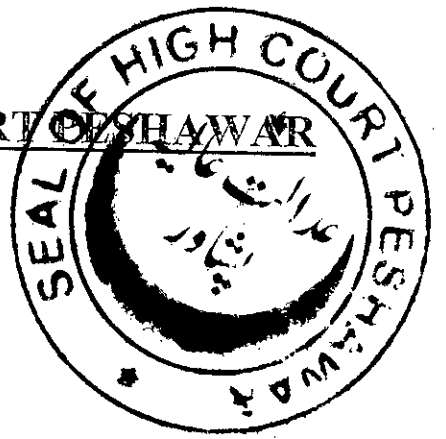
Engr. Musharaf Shah
Assistant Engineer
(Acting Charge Base)
Rehabilitation of
Irrigation System in
Khyber Pakhtunkhwa
Directorate Peshawar

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ANNAH F

IN THE PESHAWAR HIGH COURT PESHAWAR



W P No. 2440 F / 2012

Engineer Musharaf Shah Assistant Engineer, (Acting Charge Basis) Rehabilitation of Irrigation System of Khyber Pakhtunkhwa Directorate Peshawar.

(Petitioner)

VERSUS

- 1. Govt of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa Peshawar.
- 2. Secretary to Govt of Khyber Pakhtunkhwa Irrigation Department Peshawar.
- 3. Chief Engineer (South) Irrigation Department Khyber Pakhtunkhwa Peshawar.

(Respondents)

Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973

Prayer in Writ Petition:

On acceptance of this Writ petition an appropriate Writ may please be issued directing the respondents to act in accordance with law and to allow regular promotion to the Petitioner & to place his cases before the Departmental promotion committee for his confirmation / regular promotion against the post of Assistant Engineer BPS-17, similarly to declare the amendment introduced in the recruitment rules vide Notification No. SOE/ IRR/2-3-5-2010-11 dated 25.6.2012 are inapplicable to the case of the petitioner and have no retrospective effect, similarly the respondents are legally not competent to process the promotion cases on such rules to the detriment of the rights of the petitioner or any other remedy deemed proper may also be allowed

Handwritten notes:
1. Amrullah s/o Haris s/o SDO COPS Swat Division
2. Naz Badshah s/o Saeed Badshah s/o SDO COPS Flood Division
3. Waheed Prasad s/o Waheed Prasad s/o SDO COPS Peshawar
has been promoted vide order dt 15-1-2013

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08 AUG 2012

Interim Relief:

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Temporary injunction restraining the respondents not to process cases of promotion to the post of Assistant Engineer (BPS-17) under the amended rules till the decision of this writ petition.

Respectfully Submitted:

1. That the petitioner is serving in the Irrigation Department and was appointed as Sub- Engineer holding the prescribed qualification of diploma in Associate Engineering after qualifying the Public Service Commission on 29.11.2006.
2. That the diploma of Associate Engineering is a pre-requisite qualification for the post of Sub-Engineer (BPS-11).
3. That the petitioner improved his qualification during service and obtained the Degree of B. Sc in Civil Engineering, the main aim of improving his qualification was to be better equipped with advance knowledge in the field of civil engineering and also in view of the prospects of promotions duly guaranteed in the recruitment rules notified vide notification No. SO(E) IRR: /23-5/73 dated 17.02.2011, wherein 10 % promotion quota has been prescribed "*on the basis of seniority cum fitness, from amongst the Sub-Engineer's who has acquired degree in civil or Mechanical Engineering from a recognize University*". (Copies of the Rules are attached as Annexure A &B)
4. That as per the seniority list as it stood on 31.12.2010 of in-service graduate Sub Engineers the name of the petitioner was at serial No. 2 as he acquired his B. Sc Civil Engineer Degree on 28.9.2006. (Copy of the seniority list is attached as Annexure C)
5. That after years of waiting the petitioner when came in the upper portions of the Seniority list and in the promotion zone, his name was duly considered for promotion by the Departmental Promotion Committee and recommended him for promotion, accordingly vide notification No. SO (E) IRR /4-5/2011 Vo-II dated 13.12.2011 the petitioner was promoted to the post of Assistant Engineer BPS-17 however on acting charge basis. On his promotion the Petitioner was posted as Assistant Director (Design) Office of the Chief Engineer (South) Irrigation Department. (Copy of the notification dated 13.12.2011 is attached as Annexure D)
6. That recently the respondents notified the Rules vide notification **No. SOE/ IRR/2-3-5-2010-11 dated 25.6.2012**, curtailing the in-service /pre-service graduate promotion quota total from 15 % to 12 % thus seriously prejudicing and affecting the promotions rights of

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the petitioner. (Copies of the notification dated 25.6.2012 is attached as Annexure E)

7. That the petitioner prior to promulgation of these rules submitted his representation against the proposed rules, however it was not considered while notifying the rules, similarly, the respondents proposed to make regular promotion excluding the case of the petitioner on the ground that the case of the petitioner is not covered under the fresh rules, while the case of the petitioners is that the amended rules have no retrospective effect and that his promotion can neither be withdrawn nor rescinded. (Copy of the representation is attached as Annexure F)
8. That the above acts and omission of the respondents in not allowing regular promotion and applying the amended rules to the case of the petitioner, and processing the promotion cases depriving the petitioner of his due rights are illegal, unlawful in violation of the rules, the Petitioner being aggrieved of the same and having no other adequate remedy available in law is constrained to invoke the constitutional jurisdiction of this Honourable Court inter alia on the following grounds:

Grounds of Writ Petition:

- A. That the acts and omission of the respondents in excluding the name of the Petitioner from the working paper for regular promotion is illegal, in violation of law, without lawful authority and against the rights of the Petitioner.
- B. That the amendment introduced in the Rules notified vide notification No. SOE/ IRR/2-3-5-2010-11 dated 25.6.2012, curtailing the in-service /pre-service graduate promotion quota total from 15 % to 12 % have no applicability to the case of the petitioner and has got no retrospective effect.
- C. That the Petitioner was fit and eligible for promotion as per the rules applicable at the relevant time, accordingly he was considered for promotion and on the recommendation of the departmental promotion committee vide notification No. SO (E) IRR /4-5/2011 Vo-II dated 13.12.2011 the petitioner was promoted to the post of Assistant Engineer BPS-17 however on acting charge basis, thus the respondents have got no option now except to process the case of the petitioner for promotion and to promote him w.e.f from 13.12.2011 on regular basis, however, in the instant case the department is not following the law and creating complication and illegally alleging applicability of the amended rules to the case of the petitioner.

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- D. That vide notification dated 17.5.2012 the respondent department has made direct appointments to the post of Assistant Engineer BPS-17 thus ripped the case of the petitioner for regular promotion however quite illegally this aspect has been ignored by the department. (Copy of the notification dated 17.5.2012 is attached as Annexure G)
- E. That on his promotion vested rights have been created in favour of the petitioner and the same can neither be withdrawn nor rescinded illegally.
- F. That the Petitioner has not treated been in accordance with law and he remained throughout deprived of his regular promotion due to in action / slackness of the respondents, thus they are bound to follow the law and to act in accordance with law
- G. That the Petitioner is fit and eligible for the post Assistant Engineer (BPS-17) similarly he is holding this post on acting charge basis therefore failure on the part of the respondents to follow the law and make regular promotion as per laid down criteria is seriously affecting the rights of the petitioner.
- H. That the Petitioner seeks the permission of this Honourable Court to rely on additional grounds at the hearing of this writ petition.

It is therefore prayed that on acceptance of this Writ Petition an appropriate Writ as prayed for may please be issued Or Any other remedy deemed proper in the circumstances of the case may also be allowed


Petitioner

Through


IJAZ ANWAR
Advocate Peshawar

List of Books:

1. Constitution of the Islamic Republic of Pakistan, 1973.
2. Civil Servant Act, 1973.
3. APT Rules 1989.

Certificate:

Certified that no writ petition on the same subject and between the same parties has ever been filed.

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08 AUG 2012

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JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT



Writ Petition No.2440-P/2012

JUDGMENT

Date of hearing.....4.9.2014.....

Petitioner(s) by *Mr. Ijaz Anwar, Advocate.*

Respondent(s) by *Syed Qaiser Ali Shah, Advocate, M/s Abdul Latif Afridi, Ghulam Mohyeddin Malik and Saadullah Khan Murad, Advocates.*

YAHYA AFRIDI, J. Through this single judgment, we propose to dispose of three Writ Petitions, as common questions of law. The particulars of the said writ petitions are as under:-

1. *W.P.No.2440-P/2012 (Engineer Musharaf Shah, Assistant Engineer (Acting Charge Basis) Rehabilitation of Irrigation System of Khyber Pakhtunkhwa Directorate Peshawar vs. Govt. of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa Peshawar and other).*
2. *WP No. 3388-P/2012 (Asif Khan, Sub-Divisional Officer (Irrigation) Shahbaz Garhi, Mardan and others vs. The Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and others).*

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petition", the petitioner is seeking essentially the following:-

- I. *Direct the authority /department to issue Notification of Promotion of the petitioner, etc to the post of Assistant Engineer, BPS-17 with all service benefits; and/or*
- II. *Any other writ/ order/direction deemed proper and just in the circumstances of the case, be also issued/ ordered/given".*

3. Before this Court considers the petitions on merits, it would be essential to first decides the preliminary jurisdictional objection raised by the respondent department in view of the express bar provided in Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 ("Constitution").

4. The constitutional bar imposed upon this Court under Sub-Article (2) of Article 212 of the Constitution reads as under:-

"212. Administrative Courts and Tribunals.

(1) Notwithstanding anything hereinbefore contained the appropriate Legislature may by Act provide for the establishment of one or more Administrative Courts or Tribunals to exercise

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exclusive jurisdiction in respect of—

- (a) matters relating to the terms and conditions of persons who are or have been in the service of Pakistan, including disciplinary matters;
- (b) matters relating to claims arising from tortuous acts of Government, or any person in the service of Pakistan, or of any local or other authority empowered by law to levy any tax or cess and any servant of such authority acting in the discharge of his duties as such servant; or
- (c) matters relating to the acquisition, administration and disposal of any property which is deemed to be enemy property under any law.

(2) Notwithstanding anything hereinabove contained, where any Administrative Court or Tribunal is established under clause (1), no other court shall grant an injunction, make any order or entertain any proceedings in respect of any matter to which the jurisdiction of such Administrative Court or Tribunal extends:

Provided that the provisions of this clause shall not apply to an Administrative Court or Tribunal established under an Act of a Provincial Assembly unless, at the request of that Assembly made in the form of a resolution, Parliament by law extends the provisions to such a Court or Tribunal.

(3)

(Emphasis provided)

5. The above constitutional provision, opening with the "non-obstante" clause, expressly bars all Courts, including the High Court to take cognizance

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of matters, which can be agitated and adjudicated before an administrative tribunal constituted and functioning under the law. This essential principle has been eloquently explained in the authoritative judgment of this Court in Mian Amanul Mulk's case (PLD 1981 Peshawar 1) and the decision of full bench Court of the Sindh High Court in Abdul Bari's case (PLD 1987 Karachi 290).

6. Now, in order to appreciate the scope of matters, which can be adjudged exclusively by an administrative tribunal, we will have to refer to section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 ("Act of 1974"), which reads as under:-

4. Appeal to Tribunals.

Any civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him or within six months of the establishment of the appropriate Tribunal, whichever is later, prefer an appeal of the Tribunal having jurisdiction in the matter:

Provided that:-

(a).....

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(b) *no appeal shall lie to a Tribunal against an order or decision of a departmental authority determining..*

(i) *the fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher post or grade; or*

(ii) *the quantum of departmental punishment or penalty imposed on a civil servant as a result of a departmental inquiry, except where the penalty imposed is dismissal from service, removal from service or compulsory retirement; and*

(c) *no appeal shall lie to a Tribunal against an order or decision of a departmental authority made at any time before the 1st July, 1969.*

(Emphasis provided)

7. In view of the above provision of the Act of 1974, the condition precedents for invoking the jurisdiction of the Tribunal are as under:-

- i. *Civil servant is to be aggrieved of a final order;*
- ii. *The said order has to be passed by the departmental authority; and*
- iii. *finally, the said order is to relate to terms and conditions of service of the aggrieved civil servant.*

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8. When we consider the circumstances leading to the filing of the "*first set of petitions*", it is noted that the same fulfils the three essential conditions of invoking the jurisdiction of the Tribunal, which are explained as under;

Condition No.I

As far as the first condition precedent is concerned, no doubt, prior to the filing of the "*first set of petitions*", there was no "*final order*" passed by the departmental authority, denying the rights of the petitioners to be "*eligible*" for promotion to a higher post. However, after the institution of "*first set of petitions*", the respondent department, *inter-alia*, has denied and disputed the "*eligibility*" of the petitioner to be considered for promotion. The said denial in writing, duly supported by an affidavit of a responsible competent officer would, thus, be deemed a "*final order*", as envisaged under Section 4 of the Act of 1974.

Condition No.II

As the respondent department has responded in the negative to the claim of the petitioners, the second condition is also fulfilled.

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Condition No.III

Before we discuss the third condition precedent, it would be pertinent to understand the true import of the term; "*terms and conditions of service*" of a civil servant. The said term has been defined in Section 3 of the Khyber Pakhtunkhwa Civil Servants Acts, 1973 ("*Act of 1973*"), which reads as under:-

"3. Terms and conditions.—The terms and conditions of service of a civil servant shall be as provided in this Act and the rules".

It is by now a settled principle of administrative and service laws that a civil servant has no "*right to promotion*" to a higher post. However, a "*right to be considered for promotion*" would accrue in favour of the civil servant on his fulfilling the requisite prescribed qualification. The basic decision on this issue was rendered in *Fida Muhammad Khan's case (PLD 1960 S.C. 45)* and later in *Muhammad Akbar Oureshi's case (PLD 1962 S.C. 428)* and thereafter, consistently followed in various decisions including that of *M.A. Rafique's case (1990 SCMR 927)* and *Fazali Rahmani's case (PLD 2008 S.C. 769)*.

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9. In addition to the above-stated general principles concerning the civil servant's right to promotion and to be considered for promotion, the statutory service provisions also supplements the said principles.

Firstly, it is noted that there is no express statutory "*right to promotion*" vested in a civil servant. However, every civil servant, when he joins the civil service has a "*legitimate expectation*" to rise up the rungs of the service structural ladder. This "*legitimate expectation*" is not legally enforceable.

Secondly, it is only when the civil servant fulfills the essential prescribed qualifications for promotion that his "*legitimate expectation*" matures into a "*vested right*".

Thirdly, the civil servant's "*vested right*" to be considered for promotion to a higher post, has been expressly provided under Section 9 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 ("Act of 1973") read with sub-rule (3) of Rule-7 of Khyber Pakhtunkhwa Civil Servants (Appointments, Promotion and Transfer) Rules, 1989 ("Rules of 1989"). The said provisions read as follows:



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Act of 1973

“9. Promotion. (1) A civil servant possessing such minimum qualifications as may be prescribed shall be eligible for promotion to a higher post for the time being reserved under the rule for departmental promotion in the service or cadre to which he belongs.

Rules of 1989.

7. Appointment by Promotion or Transfer.

(1)

(2)

(3) Persons possessing such qualifications and fulfilling such conditions as laid down for the purpose of promotion or transfer to a post shall be considered by the Departmental Promotion Committee or the Provincial Selection Board for promotion or transfer, as the case may be”.

10. In order to appreciate the true scope of the right of a civil servant to be considered for promotion, it would be appropriate to review the various stages his promotion case proceeds. The promotion process generally takes the following course:-

PROMOTION PROCESS.

Eligibility Test (First Stage).

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Jashwanth High Court.
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On creation of a new post or availability of a vacancy in a higher post, civil servants, who are "*eligible*" under the prescribed rules to be promoted to the said higher post, are shortlisted by the department, keeping in view the number of post; thereafter, the department prepares the list of eligible officers for its placement before the competent promotion authority/Board for its decision.

Fitness Test (Second Stage).

On receipt of the shortlisted eligible civil servants for promotion, the competent promotion authority/Board, in cases of selection posts, considers the "*fitness*" of all short listed eligible civil servants placed before it for promotion to the higher grade, keeping in view the criteria prescribed under the relevant rules of promotion.

What is crucial to understand is that in the First Stage, the essential and determining factor is the "*eligibility*" of the civil servant. While in the second stage, in cases of selection posts, it is "*fitness*" of the civil servant, which is the determining factor for promotion of the civil servant to the higher post.

11. Now, let us move on to the legal forums available to a civil servant for redressal of his



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grievance during the various stage his promotion case proceeds. The competent forum for redressal during each stage of the promotion process can be explained as under:

LEGAL FORUMS.

Pre-eligibility stage.

In case the departmental authority, despite clear availability of vacancies in the higher post is not processing the promotion case of the eligible civil servants, they cannot seek "*mandamus*" from the Tribunal, as aptly explained by the Apex Court in Qamar Dost Khan's case (2006 SCMR 1630). In such circumstances, the aggrieved civil servant may seek the indulgence of the constitutional Court under Article 199 of the Constitution. The writ so issued by the Constitutional Court would only be to the extent of directing the departmental authority to act in accordance with law and to initiate the process of promotion.

Eligibility Stage. Once the departmental authority proceeds with the promotion process and decides on the "*eligibility*" of the civil servants and shortlists the candidates to be placed before the competent departmental promotion authority/Board, the issue would transform from inaction of the department to



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Peshawar High C.
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that of "*terms and conditions*" of the aggrieved civil servant. In such circumstances, the legal forum for redressal of a grievance of the said aggrieved civil servant would then only be entertained and determined by a validly constituted and functioning Tribunal. The order of referring the promotion case of others to the departmental promotion authority/Board would be the "*final order*", as envisaged under Section 4 of the Act of 1974.

Fitness stage. The legal forum for redressal of a civil servant aggrieved of the decision of the promotion authority/Board on his lack of "*fitness*" to be promoted to a higher post would not be the Tribunal. No doubt, the subject-matter of promotion falls within the scope of "*terms and conditions*" of his service; as the process and criteria of promotion has been provided under the Act of 1973 and the relevant Rules. However, the "*proviso*" to subsection (2) of Section 4 of the Act 1974, has expressly barred the Tribunal to entertain any such grievance of a civil servant. In addition thereto, Section 23B of the Act of 1973 also bars the ordinary Courts of civil jurisdiction from entertaining any matters relating to the "*terms and*



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conditions of service" of a civil servant. Thus, a civil servant's grievance regarding the decision of the competent departmental promotion authority/Board on his lack of "*fitness*" to be promoted to a higher post cannot be agitated before a civil Court or the Tribunal. Faced with having no alternative remedy, the aggrieved civil servant may approach the constitutional Court for redressal of his grievance by invoking Article 199 of the Constitution.

12. The jurisprudential distinctions in regard to maintainability of petitions before the constitutional Courts and the Tribunals have by now been settled. While dealing with maintainability of petitions filed by a civil servant relating to "*terms and conditions*" of his service, it is settled that the exclusive jurisdiction to decide the same vests in the Service Tribunal and not the constitutional Courts. The leading pronouncements on the matter have been explained in Muhammad Anis and others v. Abdul Haseeb and others (PLD 1994 SC 539), Muhammad Iqbal v Executive District Officer (Revenue) (2007 SCMR 682), Syed Abdul Oadir Shah v. Government of Punjab (1972 SCMR 323),



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Mian Abdul Malik v. Dr. Sabir Zameer Siddiqui and others (1991 SCMR 1129), Muhammad Akram and others v. The State and others (1996 SCMR 324), Muhammad Rehman Khan v. Chief Secretary, NWFP and others (2004 PLC (C.S) 62), Abdul Ghafoor, Supervisor/Inspector, NHA v. National Highway Authority and others (2002 SCMR 574) and Zafarullah Baloch v. Government of Balochistan and others (2002 SCMR 1056).

13. It would be interesting to note that the apex Court has in some cases clearly vested the Tribunal with exclusive jurisdiction on matters relating to terms and conditions of a civil servant, wherein the impugned action or inaction of the departmental authority did not have a formal "final order". Some of the leading cases are as follows:-

Vires of Rules.

Service Tribunal was competent to adjudicate on the question of "vires" of rules framed by the department, even if the same were challenged on the basis of violating fundamental rights of the civil servant. The very rules were deemed to be the "final order". Cases in point are Iqan Ahmed Khurram's case (PLD 1980 S.C. 153) and I.A. Sharwani's case (1991 SCMR 1041).

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Departmental Inquiry Proceedings

A challenge was made to the enquiry proceedings before the constitutional Court, where it was argued that as there is no "final order", the enquiry proceedings could be challenged before a constitutional Court. The apex Court in Abdul Wahab Khan's case (PLD 1989 S.C. 508), while dealing with matter held otherwise with the following observations:

"Even without such observation, the petitioner is entitled to seek remedy in accordance with the law applicable to the tribunal concerned with regard to the filing of appeals. The petitioner would have to satisfy all the conditions for filing such an appeal. One of the conditions being that the order impugned before the Tribunal should be such which is appealable in accordance with the relevant Service Tribunals Act. But the order impugned before the High Court vis-à-vis the stage at which it has been passed, is not appealable, the petitioner would have to wait till such an order is passed against him which is appealable before the tribunal".

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14. In view of the above legal discourse, it can safely be stated that the right to be considered for promotion to a higher post by a civil servant is a matter, which relates to the "*terms and conditions of service*" and the Services Tribunal has to decide the same. It is an admitted position that the Administrative Service Tribunal has been duly constituted and is presently functioning in Khyber Pakhtunkhwa under the enabling provision of the Act of 1974.

15. Having reached the conclusion that this constitutional Court lacks the jurisdiction to entertain the petitions, it would not be appropriate to pass any finding on merits and the challenge made to *vires* of the impugned rules in both sets of petitions.

16. Accordingly, for the reasons stated above, this Court:

- i. *Declare grievance of the petitioners relating to their rights to be eligible for promotion to a higher post are "vested right" provided and protected under Section 9 of the Khyber Pakhtunkhwa Civil Servants Acts, 1973 and hence, are terms and conditions of service of the petitioners.*
- ii. *Declare that as the respondents have refused the right of*

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petitioners to be considered for promotion in their comments, the same are deemed as final order provided under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

iii. Declare that the exclusive jurisdiction to entertain and adjudicate upon the matters relating to the right to be considered for promotion to a higher grade vested in the Khyber Pakhtunkhwa Service Tribunal Act, 1974 and that this Court is constitutionally barred under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 to take cognizance thereof.

iv. Direct the office to retain copies of memo of Writ Petitions bearing No. 2440-P and 3388-P/2012 and transmit the same to the Khyber Pakhtunkhwa Services Tribunal for decision in accordance with law. Parties are directed to appear before the Services Tribunal on 10th October, 2014.

Sd/- Yalaya Alzidi

Sd/- Ghulamullah Khan

In view of the above directions, Writ Petition NO. 3595-P/2012 having become infructuous is disposed of, accordingly.

[Signature]
JUDGE

[Signature]
JUDGE

2856

Date of Presentation of Application 08-9-14

No of Pages: 22

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Examiner
Peshawar High Court, Peshawar
Authorized Under Article 87 of
the Constitution of Pakistan 1973

20 SEP 2014

(25) (46) (60)
GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

Dated Peshawar 17th May, 2012

NOTIFICATION

NO. SO(E)/IRR/4-14/73/Vo-II: On the recommendation of the Public Service Commission, Khyber Pakhtunkhwa and in pursuance of the provisions contained in sub-section (2) of section-19 of the NWFP, Civil Servants Act, 1973 (NWFP Act No. XVIII of 1973), as amended by the NWFP, Civil Servants (Amendment) Act, 2005 (NWFP Act No. IX of 2005) the competent authority is pleased to order appointment of the following candidates as Assistant Engineer (Civil), BS-17 in the Irrigation Department subject to the terms and condition mentioned hereunder:-

S.No	Name with F's/Name	Postal Address	Permanent Address
01	Anwar Ullah Khan S/o Hidayat Ullah Khan.	C/o OCS, NHA Camp Office Bara Banda Distt: Nowshera	Vill: Hurmaz, Tehsil & P. O. Mir Ali.
02	Syed Ahmad Amin Shah S/o Syed Muhammad Amin Shah	132 D.V Grid Station Dalazak Vill: Muhammad Zai; P. O. Gulozai, Peshawar	Vill: merzai, Mohalla Miangan Tehsil. Shabqadar, District Charsadda.
03	Mamraiz Khan S/o Ibadat Gul	Vill: Daman Afghani, P. O., Nahaqi, Peshawar	Vill: Daman Afghani, P. O. Nahaqi, Peshawar
04	Ayasha Amir D/o Amir Ali	Tajik Brothers, Rati Bazar, Peshawar.	P. O. Ghanj, House No. 333/1013/618, Essa-nal-band, Peshawar.
05	Mustafa Ali S/o Murtaza Hussain	House #: 241-0, Street #: 12, Sector K-4, Phase-III, Hayatabad	Near Girls Degree College, Parachinar, Kurram Agency
06	Hassan Khan S/o Gul Nawaz Khan	V.P.O Maini Teh & District Swabi, Mohallah Koz Khac ar Khar Khel.	V.P.O Maini Teh: & District Swabi, Mohallah Koz Khadar Khan Khel.
07	Mazhar Hussain S/o Sadiq Hussain	Vill: & P. O. Chikar Kot Bala, Teh: & Distt: Kohat.	Vill: & P. O. Chikar Kot Bala, Teh: & Distt: Kohat.
08	Sherin Khan S/o Hassan Khan	C/o Awar Khan, OHS Nasir Kali, Mardan	Kallang Road Chikil, Mardan.
09	Kamar Shahzad Hussain Shah S/o Riaz Hassan Shah	C/o Al-Shifa Homeo Clinic Kashmir Road, Mansehra	Vill: Tori, P. O. Bai, Tehsil & District Abbottabad.
10	Syed Suliman S/o Syed Salar	Zafar Hayat C/o Hidayat Medicos, Mullah Baba Road Mingora, Swat	Vill: Gogdara, P. O. Tariqabad, Mohalla Syed Abad, Swat.
11	Rajab Ali s/o Habib Khan	Vill: & P. O. Kokarai, Mohalla Janamkhel, District Swat.	Vill: & P. O. Kokrai, Mohalla Janamkhel District Swat.
	Habia Abbasi D/o Abdul Qayyum Abbasi	Abbasi Medical Store. Khaki Road. College Chowk, Doraha District Mansehra.	Abdul Qayyum Abbasi, Vill & P. O. Gandhian, Tehsil & District Mansehra.
	Shakoor S/o Abdul Qadeer Qureshi	House No. 21, Main Street Tatara, Rahatabad, Peshawar	House No. 21, Main Street Tatara, Rahatabad, Peshawar

ICE OF C. 12 IRR
 Date: 23-5-12
 Rate:
 B. No:
 S/O:
 A.O:

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TERMS AND CONDITIONS


- a) They shall for all intents and purposes, be Civil Servants except for the purpose of pension & 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) alongwith 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 TA/DA 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.

Chief Secretary

Ends: No and date even.

- 1. The Accountant General, Khyber Pakhtunkhwa.
- 2. The Chief Engineer (South), Irrigation Department.
- 3. The Chief Engineer (North), Irrigation Department.
- 4. The Director General, Small Dams Organization, Peshawar.
- 5. Deputy Secretary-III, Khyber Pakhtunkhwa, Public Service Commission, Peshawar. w/r to his letter No. KPK-PSC-SR-VI/090073 dated 02.01.2012.
- 6. PS to Chief Secretary, Khyber Pakhtunkhwa.
- 7. PS to Secretary, Establishment Department, Peshawar.
- 8. PS to Secretary, Irrigation Department, Peshawar.
- 9. PA to Additional Secretary, Irrigation Department, Peshawar.
- 10. Manager, Govt. Printing Press, Peshawar.
- 11. All candidates concerned.
- 12. Personal files.
- 13. Master Files.


 (MISAL KHAN)
 Section Officer (Estt.)



وکالت نامہ

بعدالت سروس ٹریسٹوں کے بارے میں

ریجنسٹر مشرف مساد نام گورنمنٹ ٹریسٹ

منجانب رسالہ ٹریسٹ نمبر 1181/14 دعویٰ یا جرم Appeal no

تھانہ _____ باعث تحریر آنکہ ایف آئی آر _____ تاریخ _____
مقدمہ مندرجہ بالا عنوان میں اپنی طرف سے واسطے پیروی و جوابدہی بمقام کے لیے

غلام محی الدین ملک ایڈووکیٹ سپریم کورٹ آف پاکستان

محمد فاروق ملک و دیگر کنٹریبیوٹرز

کو بدین شرط وکیل مقرر کیا ہے میں ہر پیشی پر خود یا بذریعہ مختار خاص رد برد عدالت حاضر ہوتا رہوں گا اور برحمت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دے کر حاضر عدالت کروں گا۔ اگر پیشی پر من مظہر حاضر نہ ہوا اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور میرے برخلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام کچہری کے کسی اور جگہ یا کچہری کے مقررہ اوقات سے پہلے یا پیچھے یا برد تعطیل پیروی کرنے کے ذمہ دار نہ ہوں گے۔ اگر مقدمہ علاوہ صدر مقام کچہری کے کسی اور جگہ سماعت ہونے یا برد تعطیل یا کچہری کے اوقات کے آگے پیچھے پیش ہونے پر من مظہر کو کوئی نقصان پہنچے تو اس کی ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختار نامہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پر داختمہ صاحب موصوف مثل کردہ ذات خود منظور و قبول ہوگا اور صاحب موصوف کو عرضی دعوے و جواب دعویٰ اور درخواست اجراءے ڈگری و نظر ثانی اپیل و نگرانی ہر قسم کی درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا اور کسی حکم یا ڈگری کے اجراء کرانے اور ہر قسم کا رد پیہ وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور سپرد تالی و راضی نامہ کو فیصلہ برخلاف کرنے، اقبال دعویٰ دینے کا بھی اختیار ہوگا اور بصورت اپیل و برآمدگی مقدمہ یا مندرجہ ذمہ داری، یکطرفہ درخواست حکم امتناعی یا قرتی یا گرفتاری قبل از اجراء ڈگری بھی موصوف کو بشرط ادا ہوگی علیحدہ مختار نامہ پیروی کا اختیار ہوگا، اور بصورت ضرورت صاحب موصوف کو بھی اختیار ہوگا، یا مقدمہ مذکورہ یا اس کے کسی جزوی کاروائی کے واسطے یا بصورت اپیل، اپیل کے واسطے کسی دوسرے وکیل یا بیرسٹر کو بجائے اپنے یا پانے ہمراہ مقرر کریں، اور ایسے مشیر قانون کو ہر امر میں وہی اور ویسے ہی اختیارات حاصل ہوں گے، جیسے کہ صاحب موصوف کو حاصل ہیں اور دوران مقدمہ میں جو کچھ ہر جائزہ التواء پڑے گا وہ صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ بھی صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا یہ مختار نامہ لکھ دیا تاکہ سند رہے۔

مورخہ _____ مضمون مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

العبد

العبد

Ghulam Ahsan-ud-Din Malik
Advocate
Supreme Court of Pakistan.

Muhammad Farooq Malik
Advocate Peshawar.

**THE
PESHAWAR HIGH COURT
PESHAWAR**



Ph: No. 091-9210149-158
Ext: No. 364

No. 16595 /Judl:

Dated Peshawar the 23/9 2014

From

The Additional Registrar (J),
Peshawar High Court,
Peshawar.

821
24-9-14

To

✓
The Registrar,
KPK Service Tribunal,
Peshawar.

Subject

Writ Petitions Nos. 2440-P & 3388-P of 2012.

Engineer Musharaf Shah (Asst. Engineer)
Asif Khan (SDO) & others

-----Petitioners

Versus

Govt. of Khyber Pakhtunkhwa & others

-----Respondents

Memo:

I am directed to send herewith the titled cases in original
alongwith all annexures & copies of judgments dated 04-09-2014, passed
by Division Bench of this Court, for compliance.

ADDITIONAL REGISTRAR (J)

23/9/14

Encl:

As above.

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JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

Writ Petition No.2440-P/2012

JUDGMENT

Date of hearing.....4.9.2014.....

Petitioner(s) by *Mr. Ijaz Arwat, Advocate*

Respondent(s) by *Syed Qaiser Ali Shah, M.A. & M/S Abdul Latif Afridi,
Ghulam Mohyuddin Malik and Saadullah Khan Marnat,
Advocates*

YAHYA AFRIDI, J.- Through this single judgment,
we propose to dispose of three Writ Petitions, as
common questions of law. The particulars of the
said writ petitions are as under:-

1. *W.P.No.2440-P/2012 (Engineer
Musharaf Shah, Assistant
Engineer (Acting Charge Basis)
Rehabilitation of Irrigation
System of Khyber Pakhtunkhwa
Directorate Peshawar vs. Govt.
of Khyber Pakhtunkhwa
through Chief Secretary Khyber
Pakhtunkhwa Peshawar and
other).*
2. *WP No. 3388-P/2012 (Asif
Khan, Sub-Divisional Officer
(Irrigation) Shahbaz Garhi,
Mardan and others vs. The
Govt. of Khyber Pakhtunkhwa
through Chief Secretary, Civil
Secretariat, Peshawar and
others).*

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3. WP No. 3595-P/2012 (Saifullah S/o Abdullah Khan, Sub-Divisional Officer (OPS), Peshawar vs. Secretary, Govt. of KPK, Irrigation Department, Peshawar and others).

2. In the first two petitions (Writ Petitions No. 2440-P & 3388-P/2012), hereinafter referred to as "first set of petitions, the petitioners are seeking the following common relief:

Firstly, to direct the respondents to act in accordance with law and to allow regular promotion to the petitioner & to place his cases before the Departmental Promotion Committee for his confirmation/regular promotion against the post of Assistant Engineer BPS-17;

Secondly, to declare the amendment introduced in the recruitment rules vide Notification NO. SOE/IRR/2-3-5-2010-11 dated 25.6.2012 are inapplicable to the case of the petitioner and have no retrospective effect;

Thirdly, the respondents are legally not competent to process the promotion cases on such rules to the detriment of the rights of the petitioner or any other remedy deemed proper may also be allowed.

While in the third petition (Writ Petition No. 3595-P/2012), hereinafter referred to as "third

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petition", the petitioner is seeking essentially the following:-

I. *Direct the authority /department to issue Notification of Promotion of the petitioner, etc to the post of Assistant Engineer, BPS-17 with all service benefits; and/or*

II. *Any other writ/order/direction deemed proper and just in the circumstances of the case, be also issued/ordered/given".*

3. Before this Court considers the petitions on merits, it would be essential to first decides the preliminary jurisdictional objection raised by the respondent department in view of the express bar provided in Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 ("Constitution").

4. The constitutional bar imposed upon this Court under Sub-Article (2) of Article 212 of the Constitution reads as under:-

"212. Administrative Courts and Tribunals.

(1)Notwithstanding anything hereinbefore contained the appropriate Legislature may by Act provide for the establishment of one or more Administrative Courts or Tribunals to exercise

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exclusive jurisdiction in respect of—

- (a) matters relating to the terms and conditions of persons who are or have been in the service of Pakistan, including disciplinary matters;
 - (b) matters relating to claims arising from tortuous acts of Government, or any person in the service of Pakistan, or of any local or other authority empowered by law to levy any tax or cess and any servant of such authority acting in the discharge of his duties as such servant; or
 - (c) matters relating to the acquisition, administration and disposal of any property which is deemed to be enemy property under any law.
- (2) Notwithstanding anything hereinabove contained, where any Administrative Court or Tribunal is established under clause (1), no other court shall grant an injunction, make any order or entertain any proceedings in respect of any matter to which the jurisdiction of such Administrative Court or Tribunal extends:

Provided that the provisions of this clause shall not apply to an Administrative Court or Tribunal established under an Act of a Provincial Assembly unless, at the request of that Assembly made in the form of a resolution, Parliament by law extends the provisions to such a Court or Tribunal.

(3)

(Emphasis provided)

5. The above constitutional provision, opening with the "non-obstante" clause, expressly bars all Courts, including the High Court to take cognizance

of matters, which can be agitated and adjudicated before an administrative tribunal constituted and functioning under the law. This essential principle has been eloquently explained in the authoritative judgment of this Court in Mian Amanul Mulk's case (PLD 1981 Peshawar 1) and the decision of full bench Court of the Sindh High Court in Abdul Bari's case (PLD 1987 Karachi 290).

6. Now, in order to appreciate the scope of matters, which can be adjudged exclusively by an administrative tribunal, we will have to refer to section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 ("*Act of 1974*"), which reads as under:-

4. Appeal to Tribunals.

Any civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him or within six months of the establishment of the appropriate Tribunal, whichever is later, prefer an appeal of the Tribunal having jurisdiction in the matter:

Provided that:-

(a).....

(b) *no appeal shall lie to a Tribunal against an order or decision of a departmental authority determining..*

(i) *the fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher post or grade; or*

(ii) *the quantum of departmental punishment or penalty imposed on a civil servant as a result of a departmental inquiry, except where the penalty imposed is dismissal from service, removal from service or compulsory retirement; and*

(c) *no appeal shall lie to a Tribunal against an order or decision of a departmental authority made at any time before the 1st July, 1969.*

(Emphasis provided)

7. In view of the above provision of the Act of 1974, the condition precedents for invoking the jurisdiction of the Tribunal are as under:-

- i. *Civil servant is to be aggrieved of a final order;*
- ii. *The said order has to be passed by the departmental authority; and*
- iii. *finally, the said order is to relate to terms and conditions of service of the aggrieved civil servant.*



8. When we consider the circumstances leading to the filing of the "*first set of petitions*", it is noted that the same fulfils the three essential conditions of invoking the jurisdiction of the Tribunal, which are explained as under;

Condition No.I

As far as the first condition precedent is concerned, no doubt, prior to the filing of the "*first set of petitions*", there was no "*final order*" passed by the departmental authority, denying the rights of the petitioners to be "*eligible*" for promotion to a higher post. However, after the institution of "*first set of petitions*", the respondent department, *inter-alia*, has denied and disputed the "*eligibility*" of the petitioner to be considered for promotion. The said denial in writing, duly supported by an affidavit of a responsible competent officer would, thus, be deemed a "*final order*", as envisaged under Section 4 of the Act of 1974.

Condition No.II

As the respondent department has responded in the negative to the claim of the petitioners, the second condition is also fulfilled.

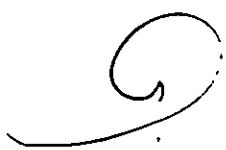


Condition No.III

Before we discuss the third condition precedent, it would be pertinent to understand the true import of the term; "*terms and conditions of service*" of a civil servant. The said term has been defined in Section 3 of the Khyber Pakhtunkhwa Civil Servants Acts, 1973 ("*Act of 1973*"), which reads as under:-

"3. Terms and conditions.—The terms and conditions of service of a civil servant shall be as provided in this Act and the rules".

It is by now a settled principle of administrative and service laws that a civil servant has no "*right to promotion*" to a higher post. However, a "*right to be considered for promotion*" would accrue in favour of the civil servant on his fulfilling the requisite prescribed qualification. The basic decision on this issue was rendered in *Fida Muhammad Khan's case* (PLD 1960 S.C. 45) and later in *Muhammad Akbar Oureshi's case* (PLD 1962 S.C. 428) and thereafter, consistently followed in various decisions including that of *M.A. Rafique's case* (1990 SCMR 927) and *Fazali Rahmani's case* (PLD 2008 S.C. 769).



9. In addition to the above-stated general principles concerning the civil servant's right to promotion and to be considered for promotion, the statutory service provisions also supplements the said principles.

Firstly, it is noted that there is no express statutory "*right to promotion*" vested in a civil servant. However, every civil servant, when he joins the civil service has a "*legitimate expectation*" to rise up the rungs of the service structural ladder. This "*legitimate expectation*" is not legally enforceable.

Secondly, it is only when the civil servant fulfills the essential prescribed qualifications for promotion that his "*legitimate expectation*" matures into a "*vested right*".

Thirdly, the civil servant's "*vested right*" to be considered for promotion to a higher post, has been expressly provided under Section 9 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 ("Act of 1973") read with sub-rule (3) of Rule-7 of Khyber Pakhtunkhwa Civil Servants (Appointments, Promotion and Transfer) Rules, 1989 ("Rules of 1989"). The said provisions read as follows:



Act of 1973

"9. Promotion. (1) A civil servant possessing such minimum qualifications as may be prescribed shall be eligible for promotion to a higher post for the time being reserved under the rule for departmental promotion in the service or cadre to which he belongs.

Rules of 1989.

7. Appointment by Promotion or Transfer.

(1)

(2)

(3) Persons possessing such qualifications and fulfilling such conditions as laid down for the purpose of promotion or transfer to a post shall be considered by the Departmental Promotion Committee or the Provincial Selection Board for promotion or transfer, as the case may be".

10. In order to appreciate the true scope of the right of a civil servant to be considered for promotion, it would be appropriate to review the various stages his promotion case proceeds. The promotion process generally takes the following course:-

PROMOTION PROCESS.

Eligibility Test (First Stage).



On creation of a new post or availability of a vacancy in a higher post, civil servants, who are "*eligible*" under the prescribed rules to be promoted to the said higher post, are shortlisted by the department, keeping in view the number of post; thereafter, the department prepares the list of eligible officers for its placement before the competent promotion authority/Board for its decision.

Fitness Test (Second Stage).

On receipt of the shortlisted eligible civil servants for promotion, the competent promotion authority/Board, in cases of selection posts, considers the "*fitness*" of all short listed eligible civil servants placed before it for promotion to the higher grade, keeping in view the criteria prescribed under the relevant rules of promotion.

What is crucial to understand is that in the First Stage, the essential and determining factor is the "*eligibility*" of the civil servant. While in the second stage, in cases of selection posts, it is "*fitness*" of the civil servant, which is the determining factor for promotion of the civil servant to the higher post.

11. Now, let us move on to the legal forums available to a civil servant for redressal of his




grievance during the various stage his promotion case proceeds. The competent forum for redressal during each stage of the promotion process can be explained as under:

LEGAL FORUMS.

Pre-eligibility stage.


In case the departmental authority, despite clear availability of vacancies in the higher post is not processing the promotion case of the eligible civil servants, they cannot seek "*mandamus*" from the Tribunal, as aptly explained by the Apex Court in Qamar Dost Khan's case (2006 SCMR 1630). In such circumstances, the aggrieved civil servant may seek the indulgence of the constitutional Court under Article 199 of the Constitution. The writ so issued by the Constitutional Court would only be to the extent of directing the departmental authority to act in accordance with law and to initiate the process of promotion.

Eligibility Stage. Once the departmental authority proceeds with the promotion process and decides on the "*eligibility*" of the civil servants and shortlists the candidates to be placed before the competent departmental promotion authority/Board, the issue would transform from inaction of the department to




that of "*terms and conditions*" of the aggrieved civil servant. In such circumstances, the legal forum for redressal of a grievance of the said aggrieved civil servant would then only be entertained and determined by a validly constituted and functioning Tribunal. The order of referring the promotion case of others to the departmental promotion authority/Board would be the "*final order*", as envisaged under Section 4 of the Act of 1974.

Fitness stage. The legal forum for redressal of a civil servant aggrieved of the decision of the promotion authority/Board on his lack of "*fitness*" to be promoted to a higher post would not be the Tribunal. No doubt, the subject-matter of promotion falls within the scope of "*terms and conditions*" of his service, as the process and criteria of promotion has been provided under the Act of 1973 and the relevant Rules. However, the "*proviso*" to sub-section (2) of Section 4 of the Act 1974, has expressly barred the Tribunal to entertain any such grievance of a civil servant. In addition thereto, Section 23B of the Act of 1973 also bars the ordinary Courts of civil jurisdiction from entertaining any matters relating to the "*terms and*



conditions of service" of a civil servant. Thus, a civil servant's grievance regarding the decision of the competent departmental promotion authority/Board on his lack of "*fitness*" to be promoted to a higher post cannot be agitated before a civil Court or the Tribunal. Faced with having no alternative remedy, the aggrieved civil servant may approach the constitutional Court for redressal of his grievance by invoking Article 199 of the Constitution.

12. The jurisprudential distinctions in regard to maintainability of petitions before the constitutional Courts and the Tribunals have by now been settled. While dealing with maintainability of petitions filed by a civil servant relating to "*terms and conditions*" of his service, it is settled that the exclusive jurisdiction to decide the same vests in the Service Tribunal and not the constitutional Courts. The leading pronouncements on the matter have been explained in *Muhammad Anis and others v. Abdul Haseeb and others* (PLD 1994 SC 539), *Muhammad Iqbal v Executive District Officer (Revenue)* (2007 SCMR 682), *Syed Abdul Qadir Shah v. Government of Punjab* (1972 SCMR 323),



Mian Abdul Malik v. Dr. Sabir Zameer Siddiqui and others (1991 SCMR 1129), Muhammad Akram and others v. The State and others (1996 SCMR 324), Muhammad Rehman Khan v. Chief Secretary, NWFP and others (2004 PLC (C.S) 62), Abdul Ghafoor, Supervisor/Inspector, NHA v. National Highway Authority and others (2002 SCMR 574) and Zafarullah Baloch v. Government of Balochistan and others (2002 SCMR 1056).

13. It would be interesting to note that the apex Court has in some cases clearly vested the Tribunal with exclusive jurisdiction on matters relating to terms and conditions of a civil servant, wherein the impugned action or inaction of the departmental authority did not have a formal "final order". Some of the leading cases are as follows:-


Vires of Rules.

Service Tribunal was competent to adjudicate on the question of "vires" of rules framed by the department, even if the same were challenged on the basis of violating fundamental rights of the civil servant. The very rules were deemed to be the "final order". Cases in point are Iqan Ahmed Khurram's case (PLD 1980 S.C. 153) and I.A. Sharwani's case (1991 SCMR 1041).

Departmental Inquiry Proceedings

A challenge was made to the enquiry proceedings before the constitutional Court, where it was argued that as there is no "final order", the enquiry proceedings could be challenged before a constitutional Court. The apex Court in Abdul Wahab Khan's case (PLD 1989 S.C. 508), while dealing with matter held otherwise with the following observations:

"Even without such observation, the petitioner is entitled to seek remedy in accordance with the law applicable to the tribunal concerned with regard to the filing of appeals. The petitioner would have to satisfy all the conditions for filing such an appeal. One of the conditions being that the order impugned before the Tribunal should be such which is appealable in accordance with the relevant Service Tribunals Act. But the order impugned before the High Court vis-à-vis the stage at which it has been passed, is not appealable, the petitioner would have to wait till such an order is passed against him which is appealable before the tribunal".



14. In view of the above legal discourse, it can safely be stated that the right to be considered for promotion to a higher post by a civil servant is a matter, which relates to the "*terms and conditions of service*" and the Services Tribunal has to decide the same. It is an admitted position that the Administrative Service Tribunal has been duly constituted and is presently functioning in Khyber Pakhtunkhwa under the enabling provision of the Act of 1974.

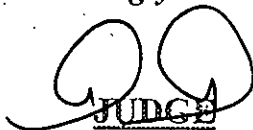
15. Having reached the conclusion that this constitutional Court lacks the jurisdiction to entertain the petitions, it would not be appropriate to pass any finding on merits and the challenge made to *vires* of the impugned rules in both sets of petitions.

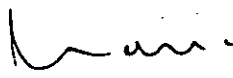
16. Accordingly, for the reasons stated above, this Court:

- i. *Declare grievance of the petitioners relating to their rights to be eligible for promotion to a higher post are "vested right" provided and protected under Section 9 of the Khyber Pakhtunkhwa Civil Servants Acts, 1973 and hence, are terms and conditions of service of the petitioners.*
- ii. *Declare that as the respondents have refused the right of*

petitioners to be considered for promotion in their comments, the same are deemed as final order provided under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

- iii. *Declare that the exclusive jurisdiction to entertain and adjudicate upon the matters relating to the right to be considered for promotion to a higher grade vested in the Khyber Pakhtunkhwa Service Tribunal Act, 1974 and that this Court is constitutionally barred under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 to take cognizance thereof.*
- iv. *Direct the office to retain copies of memo of Writ Petitions bearing No. 2440-P and 3388-P/2012 and transmit the same to the Khyber Pakhtunkhwa Services Tribunal for decision in accordance with law. Parties are directed to appear before the Services Tribunal on 10th October, 2014.*
- v. *In view of the above directions, Writ Petition NO. 3595-P/2012 having become infructuous is disposed of, accordingly.*


JUDGE


JUDGE

Nawab Shah

17/9/14
22/9/14

IN THE PESHAWAR HIGH COURT PESHAWAR

W P No. 2440 / 2012

Engineer Musharaf Shah Assistant Engineer, (Acting Charge Basis) Rehabilitation of Irrigation System of Khyber Pakhtunkhwa Directorate Peshawar.

(Petitioner)

VERSUS

Govt of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa Peshawar and others.

(Respondents)

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Petitioner

Through


IJAZ ANWAR
Advocate Peshawar

FILED TODAY
Deputy Registrar
08 AUG 2012

RE-FILED TODAY
Deputy Registrar
23 AUG 2012

IN THE PESHAWAR HIGH COURT PESHAWAR

Appeal No. 1181/2014

W P No. 2440 P / 2012

Engineer Musharaf Shah Assistant Engineer, (Acting Charge Basis) Rehabilitation of Irrigation System of Khyber Pakhtunkhwa Directorate Peshawar.

(Petitioner)

VERSUS

- (4) Amanullah S/O Hamish Gul SDO COPS Swat Emigration Division Swat
Govt of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa Peshawar.
2. Secretary to Govt of Khyber Pakhtunkhwa Irrigation Department Peshawar.
3. Chief Engineer (South) Irrigation Department Khyber Pakhtunkhwa Peshawar.

(Respondents)

- (5) Niaz Badshah S/O Saeed Badshah SDO COPS Flood Division
Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973

Prayer in Writ Petition:

On acceptance of this Writ petition an appropriate Writ may please be issued directing the respondents to act in accordance with law and to allow regular promotion to the Petitioner & to place his cases before the Departmental promotion committee for his confirmation / regular promotion against the post of Assistant Engineer BPS-17, / similarly to declare the amendment introduced in the recruitment rules vide Notification No. SOE/ IRR/2-3-5-2010-11 dated 25.6.2012 are inapplicable to the case of the petitioner and have no retrospective effect, similarly the respondents are legally not competent to process the promotion cases on such rules to the detriment of the rights of the petitioner or any other remedy deemed proper may also be allowed

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Deputy Registrar

08 AUG 2012

Interim Relief:

Temporary injunction restraining the respondents not to process cases of promotion to the post of Assistant Engineer (BPS-17) under the amended rules till the decision of this writ petition.

Respectfully Submitted:

1. That the petitioner is serving in the Irrigation Department and was appointed as Sub- Engineer holding the prescribed qualification of diploma in Associate Engineering after qualifying the Public Service Commission on 29.11.2006.
2. That the diploma of Associate Engineering is a pre-requisite qualification for the post of Sub-Engineer (BPS-11).
3. That the petitioner improved his qualification during service and obtained the Degree of B. Sc in Civil Engineering, the main aim of improving his qualification was to be better equipped with advance knowledge in the field of civil engineering and also in view of the prospects of promotions duly guaranteed in the recruitment rules notified vide notification No. SO(E) IRR: /23-5/73 dated 17.02.2011, wherein 10 % promotion quota has been prescribed "*on the basis of seniority cum fitness, from amongst the Sub-Engineer's who has acquired degree in civil or Mechanical Engineering from a recognize University*". (Copies of the Rules are attached as Annexure A &B)
4. That as per the seniority list as it stood on 31.12.2010 of in-service graduate Sub Engineers the name of the petitioner was at serial No. 2 as he acquired his B. Sc Civil Engineer Degree on 28.9.2006. (Copy of the seniority list is attached as Annexure C)
5. That after years of waiting the petitioner when came in the upper portions of the Seniority list and in the promotion zone, his name was duly considered for promotion by the Departmental Promotion Committee and recommended him for promotion, accordingly vide notification No. SO (E) IRR /4-5/2011 Vo-II dated 13.12.2011 the petitioner was promoted to the post of Assistant Engineer BPS-17 however on acting charge basis. On his promotion the Petitioner was posted as Assistant Director (Design) Office of the Chief Engineer (South) Irrigation Department. (Copy of the notification dated 13.12.2011 is attached as Annexure D)
6. That recently the respondents notified the Rules vide notification **No. SOE/ IRR/2-3-5-2010-11 dated 25.6.2012**, curtailing the in-service /pre-service graduate promotion quota total from 15 % to 12 % thus seriously prejudicing and affecting the promotions rights of

the petitioner. (Copies of the notification dated 25.6.2012 is attached as Annexure E)

7. That the petitioner prior to promulgation of these rules submitted his representation against the proposed rules, however it was not considered while notifying the rules, similarly, the respondents proposed to make regular promotion excluding the case of the petitioner on the ground that the case of the petitioner is not covered under the fresh rules, while the case of the petitioners is that the amended rules have no retrospective effect and that his promotion can neither be withdrawn nor rescinded. (Copy of the representation is attached as Annexure F)
8. That the above acts and omission of the respondents in not allowing regular promotion and applying the amended rules to the case of the petitioner, and processing the promotion cases depriving the petitioner of his due rights are illegal, unlawful in violation of the rules, the Petitioner being aggrieved of the same and having no other adequate remedy available in law is constrained to invoke the constitutional jurisdiction of this Honourable Court inter alia on the following grounds:

Grounds of Writ Petition:

- A. That the acts and omission of the respondents in excluding the name of the Petitioner from the working paper for regular promotion is illegal, in violation of law, without lawful authority and against the rights of the Petitioner.
- B. That the amendment introduced in the Rules notified vide notification No. SOE/ IRR/2-3-5-2010-11 dated 25.6.2012, curtailing the in-service /pre-service graduate promotion quota total from 15 % to 12 % have no applicability to the case of the petitioner and has got no retrospective effect.
- C. That the Petitioner was fit and eligible for promotion as per the rules applicable at the relevant time, accordingly he was considered for promotion and on the recommendation of the departmental promotion committee vide notification No. SO (E) IRR /4-5/2011 Vo-II dated 13.12.2011 the petitioner was promoted to the post of Assistant Engineer BPS-17 however on acting charge basis, thus the respondents have got no option now except to process the case of the petitioner for promotion and to promote him w.e.f from 13.12.2011 on regular basis, however, in the instant case the department is not following the law and creating complication and illegally alleging applicability of the amended rules to the case of the petitioner.

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Deputy Registrar
08 AUG 2012

- D. That vide notification dated 17.5.2012 the respondent department has made direct appointments to the post of Assistant Engineer BPS-17 thus ripped the case of the petitioner for regular promotion however quite illegally this aspect has been ignored by the department. (Copy of the notification dated 17.5.2012 is attached as Annexure G)
- E. That on his promotion vested rights have been created in favour of the petitioner and the same can neither be withdrawn nor rescinded illegally.
- F. That the Petitioner has not treated been in accordance with law and he remained throughout deprived of his regular promotion due to in action / slackness of the respondents, thus they are bound to follow the law and to act in accordance with law
- G. That the Petitioner is fit and eligible for the post Assistant Engineer (BPS-17) similarly he is holding this post on acting charge basis therefore failure on the part of the respondents to follow the law and make regular promotion as per laid down criteria is seriously affecting the rights of the petitioner.
- H. That the Petitioner seeks the permission of this Honourable Court to rely on additional grounds at the hearing of this writ petition.

It is therefore prayed that on acceptance of this Writ Petition an appropriate Writ as prayed for may please be issued Or Any other remedy deemed proper in the circumstances of the case may also be allowed


Petitioner

Through


IJAZ ANWAR
Advocate Peshawar

List of Books:

1. Constitution of the Islamic Republic of Pakistan, 1973.
2. Civil Servant Act, 1973.
3. APT Rules 1989.

Certificate:

Certified that no writ petition on the same subject and between the same parties has ever been filed.

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Deputy Registrar

08 AUG 2012

IN THE PESHAWAR HIGH COURT PESHAWAR

Musharaf
W P No. / 2012

Engineer Musharaf Shah Assistant Engineer, (Acting Charge Basis)
Rehabilitation of Irrigation System of Khyber Pakhtunkhwa Directorate
Peshawar. **(Petitioner)**

VERSUS

Govt of Khyber Pakhtunkhwa through Chief Secretary Khyber
Pakhtunkhwa Peshawar and others.

(Respondents)

ADDRESSES OF PARTIES**Petitioner**

Engineer Musharaf Shah Assistant Engineer, (Acting Charge
Basis) Rehabilitation of Irrigation System of Khyber
Pakhtunkhwa Directorate Peshawar.

Respondents

1. Govt of Khyber Pakhtunkhwa through Chief Secretary Khyber
Pakhtunkhwa Peshawar.
2. Secretary to Govt of Khyber Pakhtunkhwa Irrigation Department
Peshawar.
3. Chief Engineer (South) Irrigation Department Khyber
Pakhtunkhwa Peshawar.


Petitioner

Through



IJAZ ANWAR
Advocate Peshawar

FILED TODAY
Deputy Registrar
08 AUG 2012

IN THE PESHAWAR HIGH COURT PESHAWAR

WP No. 2440 / 2012

Engineer Musharaf Shah Assistant Engineer, (Acting Charge Basis) Rehabilitation of Irrigation System of Khyber Pakhtunkhwa Directorate Peshawar.

(Petitioner)

VERSUS

Govt of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa Peshawar and others.

(Respondents)

AFFIDAVIT

I, Engineer Musharaf Shah Assistant Engineer, (Acting Charge Basis) Rehabilitation of Irrigation System of Khyber Pakhtunkhwa Directorate Peshawar do hereby solemnly affirm and declare on oath that the contents of the above application are true and correct and that nothing has been kept back or concealed from this Honourable Court.



Deponent

17102-1139666-1

Identified by



IJAZ ANWAR
Advocate, Peshawar.

No: <u>1127</u> Certified that the above was verified on solemnly affirmation before me in office, this <u>8th</u> day of <u>August</u> 200 by <u>Eng. Musharaf Shah</u> s/o <u>Musharaf Shah</u> who was identified by <u>Ijaz Anwar</u> who is personally known to me: <p style="text-align: right;"> Oath Commissioner Peshawar High Court, Peshawar.</p>

FILED TODAY
Deputy Registrar
08 AUG 2012

BEFORE THE PESHAWAR HIGH COURT PESHAWAR

Writ Petition No. 2440-P/2012

Musharaf Shah

.....VS.....

Govt. of Khyber Pakhtunkhwa Etc.

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Respondents

Through

Advocate General
Khyber Pakhtunkhwa

Writ petition No.2440-P/2012

Mr. Musharaf Shah
Assistant Engineer (Acting Charge Basis)
Rehabilitation Project Peshawar

(Petitioner)

VERSUS

1. Chief-Secretary Govt: of Khyber Pakhtunkhwa,
Peshawar.
2. Secretary to Govt of Khyber Pakhtunkhwa,
Irrigation Department, Peshawar.
3. Chief Engineer (South), Irrigation Department,
Peshawar.

(Respondents)

**Subject: - JOINT PARA WISE COMMENTS ON BEHALF OF RESPONDENTS
NO.2 & 3**

Respectfully Sheweth,

Preliminary objections.

- 1) The petitioner has got no cause of action.
- 2) The petitioner is estopped by his own conduct.
- 3) Since the matter pertains to terms and condition of Civil Servant, therefore in terms of Article 212 of the constitution of Islamic Republic of Pakistan, Khyber Pakhtunkhwa Service Tribunal is the only competent forum to adjudicate upon the matter.
- 4) The petitioner is bad for mis joinder/ non joinder of necessary parties.

FACT

- 1) Para-1 pertains to record hence no comments.
- 2) Para-2 pertains to record hence no comments.
- 3) Incorrect, because the petitioner joined the department through Public Service Commission as Sub Engineer on the basis of Diploma of Associate Engineering. The petitioner acquired degree of B.Sc.Civil Engineer during Service but without informing the authority which is pre-requisite in such like cases.
- 4) Para-4 pertains to record hence no comments.
- 5) Incorrect, being senior in service graduate Sub Engineer he alongwith other were appointed as Assistant Engineer on acting charge basis as provided under Rule 9 sub Rule 4 and 6 of appointment promotion and transfer Rules 1989.
- 6) Correct, to the extent that in pursuance of Supreme Court of Pakistan decision etc, observing of codal formalities amendment in the Service Rules in Irrigation Department ^{well} notified on 25-6-2012. It is pointed out that at present total Nos of Graduate Sub Engineer is only 13 whereas 11 Nos Sub Engineer having B-Tech (Hons) Degree are working in the department. Hence 12% share quota for pre-service/ in service Graduate is sufficient and more than the quota reserved for B-Tech (Hons) Sub Engineers which is 8%.

- 7) The representation of the petitioner has been filed by the competent authority vide (Annex-I). Further more the plea of promotion of the petitioner is not based on facts, as per provision of the Rules referred in Para-5 above.
- 8) Incorrect, sufficient promotion quota i.e 12% has been allocated to the Graduate Sub Engineers (Pre-Service/In-Service). The petitioner is most junior amongst the Graduate Sub Engineer as he joined the Department on 17-11-2006, his promotion will be considered under the rules on his turn. (As per Seniority list attached at (Annex-II).

GROUNDS

- a. Incorrect, the name of the petitioner was not excluded in the working paper, however on his turn the case will be considered accordingly.
- b. Keeping in view the strength of Graduate Sub Engineers i.e 11 Nos 12 % share quota of promotion is sufficient.
- c. Incorrect, the plea of the petitioner is denied on the basis of provision of relevant Rules as he was appointed on acting charge basis. There is difference between promotion and appointment on acting charge basis.
- d. Incorrect, direct recruitment of Assistant Engineer was made in accordance with the provision of 65% share quota for direct recruitment.(Annex-III)
- e. In Correct, the petitioner has not been promoted so far, rather he was appointed on acting charge basis.
- f. Incorrect, the case of the petitioner for promotion will be considered in due course of time on his turn.
- g. Incorrect, as laid in Para-F above.
- h. No comments.

In view of the above facts it is very humbly prayed to dismiss the petition with cost and also withdraw the status quo, ordered by the august court.

Secretary to Govt
Secretary to Govt:
of Khyber Pakhtunkhwa
Irrigation Department Peshawar.
(Respondent No. 2)

Chief Engineer (South)
Chief Engineer (South)
Irrigation Department Peshawar
(Respondent No. 3)

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

W.P No.2440-P/2012

Musharaf Shah

..... Petitioner

Versus

Chief Secretary Govt: of Khyber Pakhtunkhwa & others Respondents

AFFIDAVIT

I, Misal Khan Section Officer (Establishment) Irrigation Department, do hereby solemnly affirm and declare that the contents of the parawise comments submitted by respondent No.2&3 are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Court.

Misal Khan
DEPONENT

C.N.I.C No.17301-1605462-1

Identified by

[Signature]
Advocate General
Khyber Pakhtunkhwa,
Peshawar

No. <i>5275</i>
Certified that the above was verified on solemnly affirmation before me in office, this <i>28th</i> day of <i>Nov</i> 200 by <i>M. Misal Khan</i> who was identified by <i>A.G. Officer</i> who is personally known to me:
<i>[Signature]</i> <i>28/11/2012</i> Oath Commissioner Peshawar High Court, Peshawar



**GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT**

NOTE FOR CHIEF SECRETARY, KHYBER PAKHTUNKHWA

Subject:- **WRIT PETITION NO. 2098-P/2012 WITH INTERIM RELIEF- FILED BY FARID GUL, ASSISTANT DIRECTOR, FDRD IRRIGATION & OTHERS V/S GOVT. OF KPK & OTHERS**

The Additional Registrar (Judicial) Peshawar High Court, Peshawar has forwarded a copy of order dated 08.08.2012 passed by division bench of the Peshawar High Court, Peshawar regarding Writ Petition No. 2098-P/2012, filed by Farid Gul, Sub Engineer Irrigation and others V/s Govt. of Khyber Pakhtunkhwa and others (**Annex-I**). The Peshawar High Court Peshawar has disposed of the writ petition with direction to the respondents to dispose of the appeals/representations of the petitioner before initiating any process of promotion to the post of Assistant Engineer (BS-17), within a fortnight.

2. Briefly, background of this case is that for promotion to the post of Assistant Engineer (BS-17), earlier, the quota of different streams of services was fixed as under:-

- a. 65% by initial recruitment.
- b. 10% by promotion, on the basis of seniority cum- fitness, from amongst the Sub Engineers who have acquired during service degree in Civil or Mechanical Engineering from a recognize University.
- c. 5% by promotion, on the basis of seniority cum-fitness, from amongst the Sub Engineers who joined service as degree holders in Civil/Mechanical Engineering and
- d. 20% by promotion, on the basis of seniority cum-fitness from amongst the Sub Engineers who hold a diploma of Civil, Mechanical, Electrical or Auto Technology and have passed Departmental Grade A examination with ten years service as such.

Conl/P-2

Conl/P-3

3. Sequel to a decision of Higher Education Commission, duly upheld by the courts, B.Tech (Hons) degree was recognized only for the purpose of pay, grade and promotion (**Annex- II & III**), some of the B. Tech (Hons) degree holder Sub Engineers preferred representations with the request that they may be included in the panel of In-service graduate sub engineers on the basis of acquiring B. Tech (Hons) degree for availing promotion chance to the post of Assistant Engineer (BS-17). In order to dispose of the appeals, a Sub Committee under the chairmanship of Superintending Engineer Irrigation Department was constituted to examine the appeals with all the references quoted above and give specific recommendations with regard to the equivalency of B. Tech (Hons) degree with that of B.E/B.Sc Engineering degree for promotion to the post of Assistant Engineer. (BS-17) or otherwise. The committee recommended that B. Tech (Hons) is not equivalent to B. Sc engineering but is at par and compatible with B.E/B.Sc engineering for the purpose of grade, pay and promotion.

4. In view of the recommendation of the Sub Committee, amendments in the Service Rules of Irrigation Department 2011 were carried out by providing 8 percent quota for promotion to the post of Assistant Engineer (BS-17) to the B. Tech (Hons) degree holder Sub Engineers. Hence the long standing issue of B. Tech (Hons) degree holder sub engineers was disposed of.

5. The petitioners namely Farid Gul, Sub Engineer & other 13 Sub Engineers have preferred appeals (**Annex-IV**) against the amendments in the Service Rules of Irrigation Department notified on 25.06.2012 (**Annex-V**). The appellants have challenged the provision of 8% quota for B. Tech (Hons) degree holders sub engineers and reduction of 20 percent quota reserved for Diploma Holder Sub Engineers to 15 percent for promotion to the post of Assistant Engineers. The original quota for diploma holders Sub Engineers was 20% while 5% and 10% quota was reserved for pre and in service graduate Sub Engineers respectively.

Cont/P 3

Next Day

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6. In order to accommodate the B. Tech (Hons) Degree Holders Sub Engineers 8% quota has been allocated in the said service rules for promotion to the post of Assistant Engineers. Hence 5% share from diploma holders and 3% from degree holders have been apportioned and allocated for B. Tech (Hons) degree holders.

7. In view of the above, if deemed appropriate, the Chief Secretary may like to file the appeals having no tenable justification please.

C.A.C.S. No. 4402
PF Secy Irrigation Data 13-9-12
Dry No. 422
Date 12-09-2012

Khalid Pervéz
(Khalid Pervéz)
Secretary Irrigation

USK-III E&AD
D.O. No. 151
Date 17-9-12

~~CHIEF SECRETARY~~

6. Please examine.

Amir
CHIEF SECRETARY
13.09.2012

SECRETARY ESTABLISHMENT

1723-5
19/9/12

1768-3
14/9/12

Next page

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8. The matter has been examined. The proposal contained in para-7/n is supported.

MS
(Shahrukh Arbab)
Secretary Establishment
September 26, 2012

Chief Secretary
Khyber Pakhtunkhwa.

142375
26/9/12

9. Para 7 agreed.

Jan
CHIEF SECRETARY
27.09.2012

SECRETARY IRRIGATION

G.A.C.S. Khyber Pakhtunkhwa
No. 4402
Date. 27/9/12

A.S

Pr
28/9
SA *SOLE* 28/9

Most Immediate.



GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

No. SO(E)/Irr/23-5/2010-11
Dated Peshawar the 2nd July, 2012

To

The Chief Engineer (South),
Irrigation Department, Peshawar.

Subject: APPEAL AGAINST THE AMENDED SERVICE RULES OF IRRIGATION DEPARTMENT

I am directed to refer to the appeals submitted by different Sub Engineers against the recent amendments in the existing service rules of Irrigation Department and to request that the following Sub Engineers may be directed to attend office of the Secretary Irrigation on 06.07.2012 at 10.30 A.M:-

- i. Mr. Farid Gul
- ii. Waqar Ali Shah (Diploma Holder)
- iii. Mr. Bakhtyar
- iv. Mr. Shoukat Badshah (Pre-service graduates)
- v. Mr. Musharaf Shah, (in-service graduate)
- vi. Mr. Amanullah
- vii. Mr. Saifullah (B. Tech Hons Sub Engineers)

Endst: No and date even.

Copy to PS to Secretary Irrigation Department, Peshawar he is requested to reflect the above meeting in the schedule of Secretary Irrigation, please.


(Misal Khan)
Section Officer (Estt:)

IN THE PESHAWAR HIGH COURT
PESHAWAR

Writ Petition No. 2440-P of 2012

Engineer Musharaf Shah.(PETITIONER)

VERSUS

Govt: of KPK through Chief Secretary &
others.....(RESPONDENTS)

I N D E X

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Respondents

Through



Ghulam Nabi Khan

Advocate Supreme Court

Address: Haroon Mansion,
Khyber Bazar, Peshawar
City.

Cell No. 0300-5845943

Dated: 12/03/2013

IN THE PESHAWAR HIGH COURT
PESHAWAR

Writ Petition No. 2440-P of 2012

Engineer Musharaf Shah.(PETITIONER)

VERSUS

Govt: of KPK through Chief Secretary &
others.....(RESPONDENTS)

Written statement on behalf of private
replying respondents arrayed as party.

Respectfully Sheweth:

PRELIMINARY OBJECTIONS:

1. That the petitioner has got no cause of action.
2. That the petition is not maintainable in its present form.
3. That the matter being pertaining to terms and conditions of the service, hence, as according to Article-212 of the Constitution of Islamic Republic of Pakistan, 1973, the jurisdiction exists only before the Honourable Service Tribunal, hence, this Honourable Court has got no jurisdiction in

2

connection with the amendments of rules/regulations which has already been declared as a matter of terms and conditions by the Apex Courts.

4. That the petition is based on the malafide intentions of the petitioner at the sense that the replying respondents have never been considered for promotion in quota system by the department after going through a detailed litigation process, the respondent's department has fixed their quota for the promotion.
5. That the petition is bad in the eyes of law for misjoinder/nonjoinder of necessary parties.
6. That the petition is time barred.

FACTS:

1. Admitted correct to the extent that the petitioner was appointed on 09/11/2006 at the post mentioned therein whereas the replying respondents have also been appointed much earlier than the petitioner i.e. in the years 1987, 1990 & 1992.
2. Pertains to the record, hence, no comments.

3. Correct to the extent that the petitioner made have improved his qualification to the extent of getting B.Sc (Engg) during his service. It is also correct that according to the Notification dated: 17/11/2011, 10% promotion quota has been prescribed which has already been exhausted by the senior incumbents of the respective cadre of the petitioner, however, the said rules were amended as according to the requirements of the respondent's department as the replying respondents have also improved their qualification by acquiring B.Tech (Honors) degree. This by all means at par with B.Sc (Engg) for the purpose of pay and promotion (Copy of the recognition letter of the HEC is attached and marked as R/1).

4. Pertained to the office record, however, the seniority of the petitioner is not to be considered at this stage for the simple reason that the replying respondents as well as the petitioner have not challenged the seniority list, however, if a combine seniority list is to be prepared on the basis of date of appointment, all the replying respondents are on very much higher pedestal than the petitioner,

however, the petitioner is dragging all the rules and regulations in his favour instead of applying them equally to all the employees of the respondent's department.

5. Correct to the extent that the petitioner was promoted on acting charge basis as according to his statement in the said para, however, such an acting charge does not create any right of regular promotion to the petitioner.
6. Admitted correct to the extent that the rules with regard to the respondent's department through a Notification dated: 25/06/2012 whereby the in service/pre service graduate quota was fixed from 15% to 12% so as to accommodate the B.Tech (Honors) Degree Holders, however, the strength of the petitioner's cadre is 11 in number.
7. Correct. This fact has been concealed from this Honourable Court with regard to the seniority of the employees of the respondent's department was passed by the Honourable Service Tribunal which duly upheld by the Supreme Court of Pakistan wherein it was directed that the seniority of all the employees of the respondent's department must be

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kept in a combine seniority list considering his promotion from the date of initial appointment, besides from the above noted position, the combine list was drafted by the respondent's department on the basis of date of initial appointment of the employees and on the basis of said decision/judgment, the petitioner was dragged to the lower position from the highest position of the seniority, however, without challenging the said seniority list, the petitioner has come forward to challenge the rules of the promotion whereby in the first time, the B.Tech (Honors) graduates have been given 8% quota in the promotion to whom are about 20 in numbers whereas the cadre of the petitioner has got only 11 number in strength. Furthermore, no representation whatsoever has been considered prior to the promulgation of the above rules and as stated by the petitioner in this para, if the petitioner claims to be eligible for the promotion than on the other hand, all the replying respondents have also been eligible through the process of the promotion and have also been recommended for the said promotion which has already been accorded approval by the competent authority, however, the

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final signature of the competent authority has not been made for the simple reason that the petitioner along with his colleagues are successful after getting interim relief from this Honourable Court and whatsoever the same relief is vacated on the same date, the replying respondents will be getting the benefit of their promotion, hence, in this manner, the replying respondents are much more aggrieved by the above said writ petition than the petitioner himself is aggrieved from the said rules being hurdle in his promotion.

8. Incorrect, the petitioner himself has been in hindrance in the way of promotion of the replying respondents which have also be recommended by the Departmental Promotion Committee (DPC) and have been approved by the competent authority, however, as mentioned above, their promotion has been stopped on the basis of interim relief granted by this Honourable Court, otherwise, no hindrance whatsoever in their promotion is there but only the final signature of the competent authority has to be made.

GROUND:

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A. Wrong and denied. No illegality whatsoever has been committed by the respondent's department, however, it is the petitioner who is bent upon to get the illegal, unlawful benefit by bulldozing the prevailing rules and regulations of the promotion without being eligible for the said promotion.

B. Wrong and denied. The rules under question are applicable to all the employees, however, if according to the petitioner, the said rules are not applicable to his case, then under what reason he has stopped the genuine and lawful promotion of the replying respondents by getting interim relief from this Honourable Court, hence, the petitioner is stopped by his own conduct to file the present petition.

C. Correct to the extent that the petitioner was promoted to the post of Assistant Engineer (BPS-17), however, it was on acting charge basis as according to the observations of the apex courts, the acting charge does not create any vested right of promotion as he has not been regularly promoted on the above said post, hence, no liability of the respondent's department fall to

promote him from 13/12/2011 on regular basis and it is the petitioner to bulldoze all the law and rules to extract some benefits from his own.

D. Correct to the extent that on 17/5/2012, some direct appointments of Assistant Engineer (BPS-17) have been made by the Public Service Commission, KPK, however, the petitioner did not apply to the said posts nor he is eligible through the promotion for the above said posts, hence, the said para is wrong and is hereby denied.

E. Wrong and denied. It is unanimously held by the apex courts that the promotion is not a vested right created in favour of the any person, however, it will be pertinent to mention here that the petitioner was still not promoted on regular basis, hence, he has no vested right of promotion.

F. Wrong and denied. The petitioner has been treated as according to law, however, it is the petitioner himself to challenge the prevailing law and on the one way, he is denying the present law and on the other way, he is extracting the benefits of prevailing law.

9.

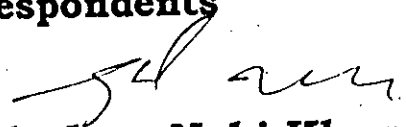
G. Wrong and denied. It is not only the petitioner but also other persons who are eligible for the post of Assistant Engineer (BPS-17), however, without going through the proper procedure and process, no such promotion could be granted to any person.

H. Needs no comments.

In the aforesaid circumstance, it is, therefore, respectfully prayed that on acceptance of this written statement, the Writ Petition of the petitioner may please be dismissed with costs.

Respondents

Through


Ghulam Nabi Khan
Advocate Supreme Court

Dated: 12/03/2013

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IN THE PESHAWAR HIGH COURT
PESHAWAR

Writ Petition No. 2440-P of 2012

Engineer Musharaf Shah,(PETITIONER)

VERSUS

Govt: of KPK through Chief Secretary &
others.....(RESPONDENTS)

AFFIDAVIT

I, Niaz Badshah (Respondent), SDO OPS, Flood Division, Irrigation Department, Warsak Road, Peshawar do hereby solemnly affirm and declare that the contents of the accompanying written statement are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Honourable Court.

Niaz Badshah
DEPONENT
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Identified by:

Ghulam Nabi Khan
Ghulam Nabi Khan
Advocate, Supreme Court

11201-9775878-9

9467

I, *Niaz Badshah*, do hereby affirmed on solemn affirmation before me in office, this *12/16* day of *March*, 2012, at *Peshawar*, who was identified by *Syed Badshah* who is personally known to me: *Sheraz Akbar*

[Signature]
12/2/2012
Court Commissioner
Peshawar



ہائیر ایجوکیشن کمیشن

HIGHER EDUCATION COMMISSION

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MUHAMMAD JAVED KHAN
Director General (Attestation & Accreditation)
mj Khan@hec.gov.pk

No.8-36/HEC/A&A/2007
May 21, 2007

Mr. Majid Rafi,
Block # 12-D, Flat # 02,
Cat-IV, I-9/4 Islamabad

Subject: Equivalence of Bachelor of Technology (Hons) in Electrical
Technology degree awarded by the Preston University Kohat.

Dear Sir,

With reference to your application dated May 21, 2007 on the subject, the decision regarding equivalence of B.Tech (Hons) degree was taken in its 39th meeting of Equivalence Committee of erstwhile UGC held on 12.2.1998 had declared B.Tech (Hons) degree as compatible and at par to BE/B.Sc Engineering for purpose of employment. The decision of the Committee is reproduced below for your information:

"The degree of B.Tech (Hons) is not similar to B.E/B.Sc Engineering degree. Both the degrees of B.E/B.Sc Engineering and B.Tech (Hons) be considered as two distinct disciplines of knowledge in the field of Engineering and Technology and should run parallel to each other. However, B.Tech (Hons) may be treated at par and compatible with B.E/B.Sc. Engineering degree holders as far as grades, pay and promotions and other benefits are concerned.

Yours faithfully,

M. J. Khan
23/5/07
Muhammad Javed Khan

sub
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