

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

W.P No. 2440-P/2012

Musharaf Shah

Versus

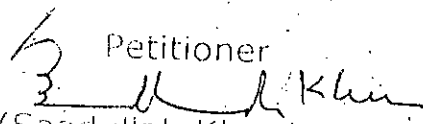
Govt. of KPK & others

I N D E X

| S.# | Description of Documents              | Annex | Page  |
|-----|---------------------------------------|-------|-------|
| 1.  | Memo of Application                   |       | 1-3   |
| 2.  | Affidavit                             |       | 4     |
| 3.  | Copy of W.P. No. 2440/2012            | "A"   | 5-8   |
| 4.  | Order , 22.11.2012                    | "B"   | 9-10  |
| 5.  | Department comments, 29.11.2012       | "C"   | 11-12 |
| 6.  | Rejection of representation, 27.09.12 | "D"   | 13-16 |
| 7.  | Notification of quota, 25.06.2012     | "E"   | 17-18 |
| 8.  | Wakalatnama                           |       |       |

Dated: 01.12.2012

Through

Petitioner  
  
(Saadullah Khan Marwat)  
Advocate  
21-A Nasir Mension,  
Shoba Bazar, Peshawar.  
Ph: 0300-5872676

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

Cm 1028-P/12

W.P No. 2440-P/2012

Musharaf Shah

Versus

Govt. of KPK & others

APPLICATION FOR IMPLEADMENT AS PARTY.

Respectfully Sheweth;

1. That petitioner filed the subject Writ Petition before this hon'ble court for enhancement of quota of Graduate Engineers from 12% to 15% for promotion to the Post of Assistant Engineers BPS-17 from the post of Sub Engineer BPS-11. (Copy of Writ Petition as annex "A")
2. That on 29/8/12, respondents were directed to file comments to the Writ Petition, yet copy of the said order was not conveyed to the department well within time, so the order of the hon'ble court was not complied with.
3. That on 22.11.2012, the said Writ Petition again came up for hearing before the hon'ble court and thereafter the following order was passed:

"The comments called for are still awaited. Reminder be issued to the respondents to do the needful within a fortnight. Adjourned to a date in office."

Interim Relief:

"Notice to the other side for a short date in office. In the meantime, status quo be maintained."

Sd/- Judge

Sd/- Judge

Which copy of the order was conveyed to the department on 27.11.2012. (Copy as annex "B")

4. That petitioner acquired the degree of BSc, Civil Engineering during service period but without getting permission of the authority which was prerequisite in such like cases.
5. That by now the department has filed the comments on 29.11.2012 for consideration in the subject matter by the hon'ble court. (Copy as annex "C")
6. That the Chief Secretary, Govt. of KPK has rejected departmental appeal of petitioner, so he shall recourse to law as per the requirement. (Copy as annex "D")
7. That petitioner is quite junior from the adding respondents as a Diploma Sub Engineer as he has joined service in the year, 2006 while the adding respondents has joined the same in the year 1987, 1990 and 1992, respectively.
8. That fixation of quota is a Policy matter for different categories of Sub Engineers which has been determined by Standing Service Rules Committee for the benefits of the servants and the competent authority then notified the same vide Notification dated 25.06.2012. (Copy as annex "E")
9. That on 14.11.2012, DPC held meeting and approved B.Tech (Hons) Sub Engineers (adding respondents) for promotion to the post of Assistant Engineers but issuance of the Notification of promotion by the department was blocked/held through the Status Quo order of this hon'ble court, thus vested rights of the adding respondents has been infringed.

10. That Notification dated 25.06.2012 has been challenged by some of the employees before the hon'ble KPK Service Tribunal, Peshawar which next date is fixed as ~~30.09.2012~~<sup>6.12</sup> 2012 for hearing by the counsel for petitioner.

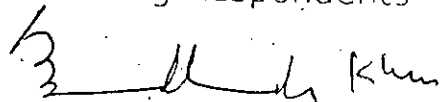
It is, therefore, most humbly requested that adding respondents be impleaded as necessary party and the status quo order be recalled henceforth with.

**ADDRESSES OF ADDING RESPONDENTS**

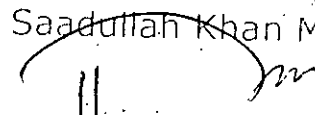
1. AMAN ULLAH S/O HAMISH GUL, SDO (OPS), SWAT IRRIGATION DIVISION, SWAT.
2. NIAZ BADSHAH S/O SAEED BADSHAH, SDO (OPS), FLOOD DIVISION, WARSAK ROAD, PESHAWAR.
3. SAIF ULLAH S/O ABDULLAH KHAN, SDO (OPS), PESHAWAR CANAL DIVISION, WARSAK ROAD, PESHAWAR.

Adding Respondents

Through

  
Saadullah Khan Marwat

&

  
Arbab Saiful Kamal  
Advocates,

Dated: 01.12.2012

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

W.P. No. 2440-P/2012

Musharaf Shah

Versus

Govt. of KPK & others

AFFIDAVIT

I, Niaz Badshah S/o Saeed Badshah, Sub Engineer, Peshawar Canal Division, Peshawar, do hereby solemnly affirm and declare on oath that contents of Application are true and correct to the best of my knowledge and belief and nothing has been kept concealed from the hon'ble court.

Identified by:



Saadullah Khan Marwat

Advocate

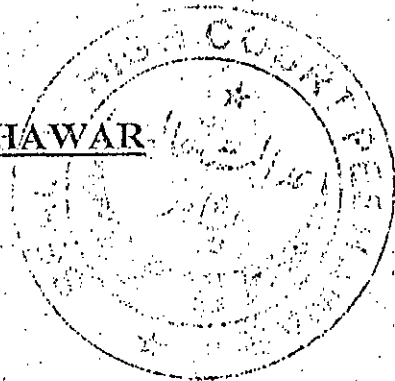
Deponent

NIC#

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-5-

IN THE PESHAWAR HIGH COURT PESHAWAR



W P No: 244/P / 2012

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

(Petitioner)

VERS JS

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

ATTESTED  
EX. [Signature]  
Peshawar High Court

REPLY  
08 AUG 2012

Interim Relief:

Attested  
by

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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: 123-5/73 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

FILED TO DAY  
Deputy Registrar  
08 AUG 2012

Annexure  
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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.

APPROVED  
JUDGE  
Punjab and Haryana High Court.

2012

Annexure  
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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 inaction / 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.

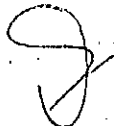
H. That the Petitioner seeks the permission of this Honourable Court to rely on additional grounds at the hearing of this writ petition.

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



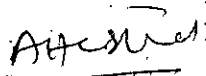
List of Books:

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.

FILED TODAY  
Deputy Registrar  
08 AUG 2012

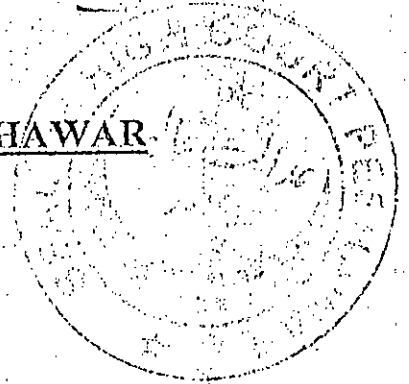
  
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-9-

IN THE PESHAWAR HIGH COURT PESHAWAR



WP No. 2440 P / 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

ATTESTED  
EXAMINER  
Peshawar High Court

Depy. Registrar  
08 AUG 2012

Interim Relief:

Granted  
by

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# PESHAWAR HIGH COURT, PESHAWAR

## FORM OF ORDER SHEET

Court of.....

Case No.....of.....

| Serial No. of Order or Proceedings | Date of Order of Proceedings | Order or other Proceedings with Signature of Judge.  |
|------------------------------------|------------------------------|--|
| 1                                  | 2                            | 3  |
|                                    | 22.11.2012                   | <p><u>Writ Petition No.2440-P/2012</u></p> <p>Present: Mr. Ijaz Anwar, Advocate,<br/>for the petitioner.</p> <p>*****</p> <p>The comments called for are still awaited.</p> <p>Reminder be issued to the respondents to do the needful within a fortnight. Adjourned to a date in office.</p> <p><u>Interim Relief.</u></p> <p>Notice to the other side for a short date in office. In the meantime, status quo be maintained.</p> |

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23/11/12 sd/ Miftah ud Din Khan  
sd/ Gushad Qaiser

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(Fayaz)

Attended  
by

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**BEFORE THE KHYBER PAKHTUNKHWA HIGH COURT PESHAWAR**

**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 1988.
- 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<sup>were</sup> 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%.

*Assessed  
Ty*

- 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)

*Attended*  
          
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271

**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.

Cont/P 2

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reserved for pre and in service graduate Sub Engineers respectively. For diploma holders Sub Engineers was 20% while 5% and 10% quota was reserved for promotion to the post of Assistant Engineers. The original quota 20 percent quota reserved for Diploma holder Sub Engineers to 15 percent for B. Tech (Hons) degree holders sub engineers and reduction of 8% quota for B. Tech (Hons) degree holders sub engineers and reduction of 25.06.2017 (Annex-V). The appellants have challenged the provision of 8% amendments in the Service Rules of Irrigation Department notified on Sub Engineers have preferred appeals (Annex-IV) against the amendments in the Service Rules of Irrigation Department notified on 13 the petitioners namely Farid Gul, Sub Engineer & other 13

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

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

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257

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.

*Muhammad*<sup>u</sup> Sep 12, 12  
 (Khalid Pervaz)  
 Secretary Irrigation

CA/CS No. 4402  
 13-9-12  
 PS/S Irrigation Data 422  
 Diary No 12-09-2012  
 Date

USK-III E&AD  
 D.O. No 151  
 Date 11-9-12

~~CHIEF SECRETARY~~

6. Please examine.

*[Signature]*  
 CHIEF SECRETARY  
 13.09.2012

SECRETARY ESTABLISHMENT

Attested  
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*Next page*

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

*(Signature)*  
(Shahrukh Arbab)  
Secretary Establishment  
September 26, 2012

Chief Secretary  
Khyber Pakhtunkhwa.

142355  
26/9/12

9. Para 7 agreed.

*(Signature)*  
CHIEF SECRETARY  
27.09.2012

SECRETARY IRRIGATION

CA/CS Khyber Pakhtunkhwa  
No. 44 02  
Date. 28/9/12

Handled  
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A/S  
*(Signature)*  
28/9  
SA SOLE *(Signature)*  
28/9



**KEYBER PAKHTUNKHWA**

Published by Authority

PESHAWAR, MONDAY, 25TH JUNE, 2012.

**GOVERNMENT OF KHYBER PAKHTUNKHWA,  
IRRIGATION DEPARTMENT.**

**NOTIFICATION**

Dated: 25<sup>th</sup> June, 2012.

No. SO/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)/23-5/73 dated 17.02.2011, the following amendments shall be made namely:-

**AMENDMENTS**

in the Appendix,

i. 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 of such.

Note- For the purpose of Clause (b), a Joint seniority list of the Sub Engineers having Degree in Civil Engineering or Mechanical Engineering shall be maintained and their seniority is to be reckoned from the date of their 1<sup>st</sup> 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 1<sup>st</sup> 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 Engineer in Civil, Mechanical, Electrical or Auto Technology and have passed departmental Grade B and A examination, within 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 1<sup>st</sup> appointment as Sub Engineer.

*As per  
cy*

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

- ii. against serial No. 5, in column No. 5, for the existing entries in clause (b), the following shall be substituted, namely:
- "(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;
- iii. Against serial No. 7, in column No. 5, for the words "three years" the words "one year" shall be substituted;
- iv. against serial No. 9, in column No. 3, for the existing entry the following shall be substituted, namely:
- a. Bachelor Degree or equivalent qualification from a recognized University; and  
b. A speed of 80 words per minute in short hand in English and 40 words per minute in English typing; and
- v. 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.

# وکالت نامہ

بعدالت سردس ڈسٹریکٹ سیشن کورٹ  
 ایف آئی آر نمبر 1181/14

مخبر و سید ظفر نسیم نمبر 436  
 دہلی یا جرم

تھانہ \_\_\_\_\_ باعث تحریر آئیکہ ایف آئی آر \_\_\_\_\_ تاریخ \_\_\_\_\_  
 مقدمہ مندرجہ بالا عنوان میں اپنی طرف سے واسطے پیروی و جوابدہی کا مقام

## غلام محی الدین ملک ایڈووکیٹ سپریم کورٹ آف پاکستان

محمد فاروق ملک پشاور  
 کو بدیں شرط وکیل مقرر کیا ہے میں ہر پیشی پر خود یا بذریعہ مختار خاص رو برو عدالت حاضر ہوتا رہوں گا اور بروقت پکارے جانے  
 مقدمہ وکیل صاحب موصوف کو اطلاع دے کر حاضر عدالت کروں گا۔ اگر پیشی پر من مظهر 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 پکھری کے کسی اور جگہ یا پکھری کے مقررہ اوقات سے پہلے یا پیچھے یا بروز تعطیل پیروی کرنے کے ذمہ دار نہ  
 ہوں گے۔ اگر مقدمہ علاوہ صدر مقام پکھری کے کسی اور جگہ سماعت ہونے یا بروز تعطیل یا پکھری کے اوقات کے آگے پیچھے  
 پیش ہونے پر من مظهر 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 پرداختہ 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 گمرانی ہر قسم کی درخواست پر دستخط و  
 تصدیق کرنے کا بھی اختیار ہوگا اور کسی حکم یا ڈگری کے اجراءے اور ہر قسم کارروائی و پیروی دوسول کرنے اور رسید دینے اور داخل کرنے  
 اور ہر قسم کے بیان دینے اور سپرد ثالثی و راضی نامہ کو فیصلہ برخلاف کرنے، اقبال دعویٰ دینے کا بھی اختیار ہوگا اور بصورت اپیل و  
 برآمدگی مقدمہ یا منسوخ ڈگری، یکطرفہ درخواست حکم امتناعی یا قرتی یا گرفتاری قبل از اجراء ڈگری بھی موصوف کو بشرط ادا ہوگی  
 نتیجہ مختار نامہ پیروی کا اختیار ہوگا، اور بصورت ضرورت صاحب موصوف کو بھی اختیار ہوگا، یا مقدمہ مذکورہ یا انہیں کے کسی جزوی  
 کارروائی کے واسطے یا بصورت اپیل، اپیل کے واسطے کسی دوسرے وکیل یا ہیر مشرک 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 جانہ 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

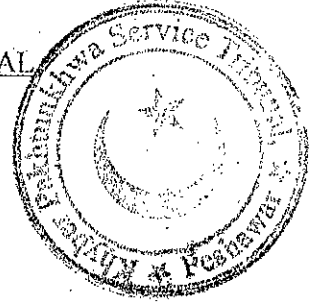
Ghulam Mohy-ud-Din Malik  
 Advocate  
 Supreme Court of Pakistan.

Muhammad Farooq Malik  
 Advocate Peshawar.

Anwarul Haq

سید ظفر نسیم

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR



SERVICE APPEAL NO. 1175/2012

Date of institution ... 25.10.2012

Date of judgment ... 26.02.2014

Muhammad Javed Sub Engineer B-11 Assistant Director  
(OPS) Small Dam Division, Peshawar.

(Appellant)

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Chief Secretary  
Khyber Pakhtunkhwa Civil Secretariat Peshawar.
2. Secretary to Govt. of Khyber Pakhtunkhwa, Irrigation Department  
Civil Secretariat, Peshawar.
3. Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department  
Civil Secretariat, Peshawar.
4. Chief Engineer (South) Irrigation Department, KPK, Peshawar.
5. Niaz Badshah S/o Saeed Badshah, Sub-Engineer,  
Office of the Executive Engineer, Peshawar Canal Division,  
Warsak Road, Peshawar and 6 others. (Respondents)

Appeal under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the Notification No. SOE/IRR/2-3-5-2010-11 dated 25.6.2012 whereby amendment has been introduced curtailing the promotion quota of the appellant to 15% against the existing quota of 20% thus seriously prejudicing and affecting the promotions rights of the appellant against which the departmental appeal dated 02.07.2012 was not replied.

M/S Ijaz Anwar & Mohammad Asif Yousafzai,  
Advocates

Mr. Muhammad Adeel Butt,  
Addl: Advocate General.

M/S Saadullah Khan Marwat, Ghulam Mohy-ud-Din Malik,

Ghulam Nabi & Sardar Shaukat Hayat,  
Advocates.

For appellant (s)

For official respondents

No.1 to 4

For private respondents

No.5 to 11

Mr. Qalandar Ali Khan

Mr. Muhammad Aamir Nazir,

Chairman

Member

JUDGMENT

QALANDAR ALI KHAN, CHAIRMAN: Since identical legal and factual questions have been raised in this appeal as well as in the connected appeals titled Mehmood Sultan-vs-Govt. of KPK through Chief Secretary etc. (Appeal No. 1176/2012), Syed Muhammad Younas-vs-Govt. of KPK through Chief Secretary etc. (Appeal No. 1177/2012), Muhammad Yaqoob vs-Govt. of KPK through Chief

Secretary etc. (Appeal No. 1178/2012), Waqar Shah-vs-Govt. of KPK through Chief Secretary etc. (Appeal No. 1179/2012), Sabir Hussain-vs-Govt. of KPK through Chief Secretary etc. (Appeal No. 1180/2012), Riaz Muhammad-vs-Govt. of KPK through Chief Secretary etc. (Appeal No. 1181/2012), Haroon-ur-Rashid-vs-Govt. of KPK through Chief Secretary etc. (Appeal No. 1182/2012), Anayatullah-vs-Govt. of KPK through Chief Secretary etc. (Appeal No. 1183/2012) and Farid Gul-vs-Govt. of KPK through Chief Secretary etc. (Appeal No. 1184/2012), this single judgment will also dispose of the said connected appeals.

2. The appellants are Sub-Engineers (B-11) in the Irrigation Department of Khyber Pakhtunkhwa, and are aggrieved of Notification No. SOE/IRR/2-3-5-2010-11 dated 25.6.2012 whereby amendments have been introduced thereby curtailing the promotion quota of the appellants to 15% from existing quota of 20%. The appellants preferred departmental appeals against the impugned notification but to no avail, hence these appeals.

3. The appellants having joined the Irrigation Department as Sub-Engineers (BPS-11) while possessing the qualification of Diploma of Associate Engineering were enjoying 20% quota for promotion to the post of Assistant Engineer (BPS-17), ever since the provision incorporated to this effect in the Recruitment Rules, 1979; and subsequently retained in Recruitment Rules notified vide notification dated 17.2.2011.

The case of the appellants is that the Diploma holder Sub-Engineers were large in number while having limited quota in promotion, therefore, they were posted against the posts of Assistant Engineers (BPS-17) either on acting charge basis or in their own pay and scales despite having more than 20 years of service. They felt aggrieved when after years of waiting they reached the promotion zone, but their quota for promotion was abruptly curtailed from 20% to 15% vide the impugned notification, thereby seriously prejudicing and affecting prospects of their promotion. The appellants alleged that they submitted representations to the department prior to the promulgation of the rules and also preferred departmental appeals after the impugned amendments to the

detriment of their vested rights, but neither any heed was paid to their representations prior to the promulgation of the amended rules nor they received any response to their departmental appeals within the statutory period prescribed for the purpose; and, instead, the amended rules were given retrospective effect thereby adversely affecting the right of promotion already accrued to the appellants under the un-amended rules. In this connection, the appellants initially lodged writ petition and then lodged these appeals.

4. The appellants have assailed the amendments in the rules through the impugned notification, inter-alia, on the grounds that they have not been treated in accordance with law and while amending the rules, the strength of Sub-Engineers of different categories has not been kept in view, as the total strength of in-service Engineering Graduates was about 13 while they have been allowed 12% quota in promotion, Sub-Engineers holding qualification of B.Tech(Hons) have been allowed 8% quota as against their total strength of 10; while Diploma holder Sub-Engineers (appellants) were 130 in number but their quota has been curtailed from 20% to 15%; that the Degree holders initially took the benefit of their B.Sc Engineering at the time of initial recruitment through Public Service Commission and then on the basis of the same degree they are allowed promotion, thus availing double benefit on the same qualification; that sudden curtailing of quota for promotion at the time when the appellants had already reached the promotion zone amounted to denying vested rights of promotion to the appellants and snatching the rights already accrued to them; that amended rules are against the service structure of the Sub-Engineers as they tend to create cadre within cadre without hearing the stake holders, hence against the principle of natural justice; that promotion on the basis of only higher qualification under the amended rules amount to out of turn promotion, which has consistently been deprecated by the superior courts; and that the appellants were fit and eligible for promotion to the rank of Assistant Engineers BPS-17 and failure on the part of the respondent-

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department to follow the law and make promotions is seriously affecting rights of the appellants.

5. The appeals have been vehemently resisted by the official, as well as private respondents, who joined the proceedings later on. In their separate written replies, they contested case of the appellants against amendments in the promotion rules, mainly, on the grounds that some of the B.Tech(Hons) Degree holder Sub-Engineers were also serving the department for the last 24 years, while at the same time admitting that some of the aggrieved civil servants had been appointed in the year 1987. They claimed that 20% quota for promotion of Diploma holder Sub-Engineers was fixed in the Recruitment Rules, 1979 as well as in the rules of 1994, but in the rules of 1999 the quota was fixed at 15% and later on in the rules of 2011 the quota was re-fixed at 20%. However, in the rules of 2012, the quota was re-fixed at 15% because B.Tech (Hons) Degree holder Sub-Engineers were merged in the quota of promotion for the post of Assistant Engineer (BS-17) as quota of Diploma holders for promotion at the ratio of 20% had already been utilized/exhausted. They disputed claim of the appellants that they were serving the department for longer period on the ground that some of the B.Tech (Hons) Degree holders were also serving the department for the past 24 years in BS-11. The respondents alleged that representations of the appellants have since been rejected. They maintained that the amended rules have legal sanctity and cannot be questioned under any law and that cases of the appellants for promotion will be dealt with in accordance with law on the basis of seniority-cum-fitness. The respondents also defended the amended rules on the ground that the same were for the betterment of all categories of employees.

6. Arguments of learned counsel for the appellants, learned AAG and learned counsel for private respondents heard, and record perused.

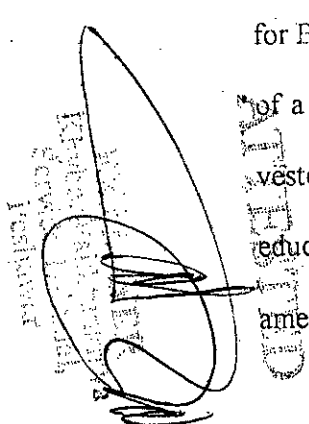
7. The main thrust of the arguments of learned counsel for the appellants was that the act of the respondent-department to abruptly introduce amendment in the promotion

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 DISTRICT  
 CIVIL SUPPLY  
 DISTRICT



rules thereby curtailing quota of Diploma holder Engineers and creating a distinct quota of 8%, though not commensurate with number of B.Tech (Hons) Degree holders, was tainted with malice, as neither the appellants were provided opportunity to defend their vested rights for promotion nor actual strength of different categories of Sub Engineers was taken into consideration at the time of amendments in the rules. It was alleged on behalf of the appellants that no sooner the private respondents acquired the qualification of B.Tech (Hons), they manoeuvred to ~~secure~~ <sup>Carve</sup> a distinct quota for themselves to secure out of turn promotion on the one hand and deprive the other eligible candidates for promotion at the time when they had reached the promotion zone after waiting since long, on the other. The appellants challenged the retrospective application of the amended rules on the ground that right of promotion had accrued to the appellants under the rules before amendments, therefore, the amended rules could not take away vested rights from the appellants.

8. The respondents, on the other hand, raised objection to the maintainability of appeals and jurisdiction of the Tribunal against rule making powers of the Government, and to entertain appeals for promotion to a higher grade/pay scale; and at the same time defended application of the amended rules to the case of the appellants on the grounds that, firstly, the Diploma holders had already secured promotions and had exhausted their quota under the rules before the impugned amendments and, secondly, the amendments were challenged by those Diploma holders who were not yet in the promotion zone, for instance, the appellant in the instant appeal stood at S.No.37 of the seniority list. It was urged on behalf of the respondents that the B.Tech (Hons) Degree was declared equivalent to B.Sc Engineering, hence need for creation of separate quota for B.Tech (Hons) Degree holders. The learned counsel for the respondents, on the basis of a number of judgments of the superior courts, contended that promotion was not a vested right and that the Government is always competent to prescribe or enhance educational qualification for the purpose of promotion against a particular post through amendment in relevant rules, which was not challengeable. The learned counsel further

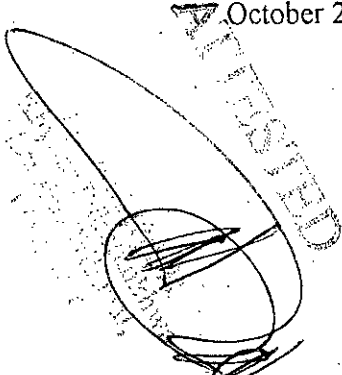

  
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 BANGALORE

contended that promotion on acting charge basis could not be equated to regular promotion and did not confer any right of regular promotion.

9. It would be appropriate to first deal with the objection of the respondents with regard to jurisdiction of the Service Tribunal and maintainability of appeals against amendment in rules and for the purpose of promotion. The question of jurisdiction of the Tribunal to entertain and adjudicate upon an appeal against rules/statute has been laid at rest by the august Supreme Court of Pakistan in the oft quoted judgment in the case of Muhammad Mubeen-us-Salam and others---Appellants-versus-Federation of Pakistan through Secretary, Ministry of Defence and others---Respondents, reported as PLD 2006 SC 602. When confronted with the dictum laid down by the august Supreme Court of Pakistan in the said judgment, the respondents could not controvert the principle of law established by the above referred judgment. As regards appeals for promotion, there are no two opinions that appeals for promotion simplicitor are not competent under section 4 (b) (i) of the NWFP (KPK) Service Tribunal Act, 1974; but these appeals have primarily been lodged against amendments in the rules, thereby, allegedly, seriously prejudicing and affecting the promotion right of the appellants; and relief of promotion has been sought so as to say as a 'consequential relief'.

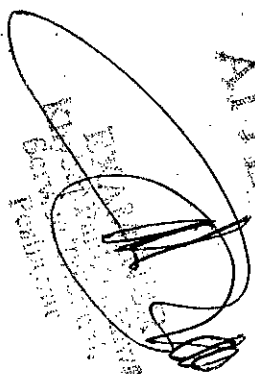
10. The record would show that 'in order to examine and dispose of the appeals preferred by M/S Saifullah Khan and Amanullah Khan, Sub-Engineers, on merit basis', the Government of Khyber Pakhtunkhwa, Irrigation Department, constituted a committee comprising Engr. Sahibzada Muhammad Shabir, Superintending Engineer, Peshawar Irrigation Circle, Peshawar, as Chairman and M/S Misal Khan, Section Officer(Establishment), Irrigation Department, and Javed Ali, Admn Officer, office of Chief Engineer (South), Irrigation Department, as Members, vide Notification dated 6<sup>th</sup> October 2011, with following terms of reference (TORs):

- \* To examine equivalency of B.Tech (Hons) with that of BE/B.Sc Engineering in light of the references quoted in the appeals of the Sub-Engineers.



- To consult Irrigation Department, Govt. of Punjab, Lahore for obtaining legible copy of their notification of September, 2001 alongwith other connected documents, whereby B.Tech(Hons) Sub Engineers are considered for promotion to the posts of Assistant Engineers (BS-17).
- To give specific recommendation as to whether fixation of quota for B.Tech (Hons) degree holder Sub Engineers on the analogy of B.E/B.Sc degree holder Sub Engineers for promotion to the posts of Assistant Engineers (BS-17) is feasible for placing before the SSRC to amend the Service Recruitment Rules of Irrigation Department or otherwise.'

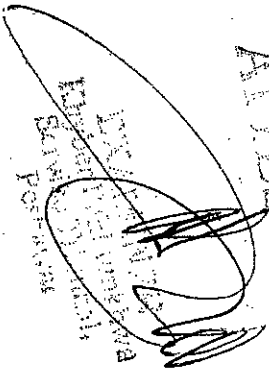
In its report dated 19.11.2011, it was clearly stated that the committee was constituted 'in order to examine appeals of M/S Saifullah Khan and Amanullah Khan, B.Tech (Hons) Degree holder Sub Engineers, requesting therein to consider B.Tech (Hons) degree at par with the B.E/B.Sc Engineering Degree and include the same in the quota reserved for graduate Sub Engineers for promotion to the rank of Assistant Engineer'. It may be observed here that contrary to the <sup>stated</sup> object for which the committee was constituted, and itself explained by the committee in its report, the committee recommended creation of 8% separate quota for B.Tech (Hons) instead of including B.Tech(Hons) in quota reserved for graduate Sub Engineers. Needless to say that 8% separate quota for B.Tech (Hons) was created after curtailing the existing quota of Diploma holders from 20% to 15%. It appears from the report of the committee that the consideration of equivalency of B.Tech (Hons) with B.Sc Engineering for the purpose of grades, pay and promotions weighed heavily with the committee for recommending creation of a separate quota for B.Tech (Hons); but it may be remarked here that equivalency of B.Tech(Hons) to B.Sc Engineering for the purposes of the grades, pay and promotions, has never remained a bone of contention in the light of communication of the Higher Education Commission. However, the question is that whether equivalency of B.Tech(Hons) to B.Sc Engineering, per se, could be a ground for creation of a separate quota for B.Tech(Hons), without taking into consideration the entire


  
 IRRIGATION DEPARTMENT  
 GOVERNMENT OF PUNJAB  
 LAHORE

service structure of the department, rights accrued to members of the service under the existing rules, and concerns of those employees who were likely to be adversely affected by the proposed amendments. To say the least, the committee, as its report shows, did not attend to any of the above necessary prerequisite for amendments in the existing rules.

11. The committee failed to take into consideration the existing strength of different categories and the quota reserved for their promotion. The record would show that initially 70% quota was reserved for initial recruitment, 10% for selection on merits with due regard to seniority from amongst Sub Engineers who hold a degree, and 20% for selection on merit with due regard to seniority from amongst officiating Assistant Engineers holding a diploma, vide notification dated 30<sup>th</sup> April 1979. In the year 2011, vide notification dated 17<sup>th</sup> February 2011, 65% quota was reserved for initial recruitment, 10% for promotion amongst Sub Engineers who acquired degree in Civil or Mechanical Engineering during service, 5% by promotion for Sub Engineers who joined service as degree holders in Civil/Mechanical Engineering, and 20% by promotion for diploma holder Engineers who passed departmental Grade-A examination with 10 years service as such. It was pointed out by the respondents that once before, in the rules of 1999, the quota for diploma holders was fixed at 15%; but the fact remains that before the impugned amendments, the quota for diploma holders was re-fixed at 20% in the rules of 2011.

12. The main grievance of the appellants is that curtailing their quota from 20% to 15% and creating 8% separate quota for B.Tech(Hons) will place them in a disadvantageous position as against holders of degree of B.Tech(Hons), who, according to the appellants, are 10 in number while there are around 130 diploma holders Sub Engineers in the department. In order to further augment their arguments, the appellants have brought on record documents showing holders of B.Tech(Hons) degree, who were initially diploma holders, to have acquired degree of B.Tech (Hons) afterwards during the year 2010 onwards, with the exception of Khurshid Ahmad, who acquired the



degree on 5.12.2005, but has joined the appellants in filing his own appeal against the impugned amendments. It has been vehemently stressed on behalf of the appellants that they joined service much earlier than the degree holders of B.Tech (Hons) and thus ranked senior to them and most of them reached the promotion zone when the promotion rules were suddenly and unilaterally amended to their detriment, depriving them of their vested rights to promotion; and <sup>also</sup> to the unfair advantage of degree holders of B.Tech(Hons) who otherwise could not qualify for promotion being junior in the seniority list. They, allegedly, therefore, manoeuvred to carve a separate quota for promotion for themselves, detrimental to the interest of other senior employees in the department.

13. In the report, the committee concluded that 'considering the re-adjustment of Sub Engineers strength the committee recommends.....'. In other words, the committee was largely influenced by the re-adjustment of Sub-Engineers prior to the impugned amendments. The learned counsel for private respondents also urged that even otherwise the diploma holders had secured promotion and exhausted their erstwhile quota of 20%, therefore, they had no cause of action to challenge amendments in the rules, which were not going to affect their promotion rights which they had availed under 20% quota. The argument is, prima facie, far-fetched for the reason that the dispute is not with regard to who got how much share under the quota existing before the impugned amendments, rather the issue is whether amendments in the rules are in the interest of service and all the employees, and not to the detriment of any segment of the civil servants and to the unfair advantage of a particular class of government employees. The report of the committee speaks otherwise and reveals that no such considerations prevailed with the committee, which acted unilaterally, without affording a chance of putting forth their case to those employees who were likely to be affected by the impugned amendments.

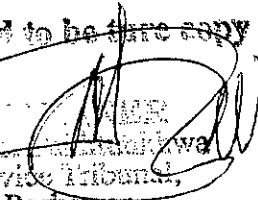
14. Having said that, there can possibly be no cavil with the legal propositions that the Government has the authority to frame rules and also introduce amendments in the

relevant rules to enhance qualification for a particular post, but the issue here is not that of amendments in the rules for enhancement of the qualification, rather dispute is with regard to unilaterally curtailing of quota of a particular class of employees to their detriment. One can also make no bones about the fact that jurisdiction of the Service Tribunal is barred in cases of promotion; but primarily the appeals have been lodged against amendments introduced in the service rules, which, according to the appellants, did not meet the ends of law and justice.

15. As a sequel to the foregoing discussion, on the partial acceptance of the appeals, the case of amendments in-question is referred to the competent authority i.e Secretary to Government of KPK, Irrigation Department (Respondent No.2) for reconsideration of the impugned amendments in the light of above discussion and observations made in the judgment for a just decision and further necessary action, under intimation to the Registrar of the Tribunal, within reasonable time. In order to avoid further legal complications and frustration of the spirit of this judgment, promotions under the amended rules be put on hold in the meantime. There shall, however, be no order as to costs.

*Sd/- Golandaz Ali Khan*  
Chairman  
*Sd/- Muhammad Aramis Nozai*  
Member

**ANNOUNCED**  
26.02.2014

**Certified to be true copy**  
  
Registrar  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Application 3.3.2014  
Number of Petitions 4000  
Copying Fee 22  
Urgent 1  
Total 22  
Name of Copy \_\_\_\_\_  
Date of Copy 5.3.2014  
Date of Entry 5.3.2014

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

**Service Appeal No. 1181/2014**

Engineer Musharaf Shah, Assistant Engineer (Acting Charge) (Appellant)

**VERSUS**

Government of Khyber Pakhtunkhwa through Chief Secretary & others.

(Respondents)

**JOINT PARA WISE COMMENTS ON BEHALF OF OFFICIAL RESPONDENTS**

Respectfully Sheweth:

**Preliminary Objections.**

1. The appellant has got not cause of action.
2. The appellant is estopped by his own conduct.
3. The appeal is bad for mis-joinder/non-joinder of necessary parties.
4. The case of amendment in the service rules has gained finality as the Supreme Court of Pakistan has already set aside the judgment date 26.02.2014 of this Hon'able Tribunal and has also dismissed all the pending appeals which were filed against the said amendments.

**ON FACTS**

1. Para-1 pertains to record, hence no comments.
2. Para-2 pertains to record, hence no comments.
3. Incorrect, because the appellant joined the department through Public Service Commission as Sub Engineer on the basis of Diploma of Associate Engineering. The appellant acquired degree of B. Sc. Civil Engineering during service but without informing the authority which is pre-requisite in such cases.
4. Para- 4 pertains to record, hence no comments.
5. Incorrect, being in-service graduate Sub Engineer he along with other were appointed as Assistant Engineer on acting charge basis as provided under Rule-9 Sub Rule 4 of Appointment, Promotion and Transfer, Rules, 1989. Moreover, as provided under Sub Rule 6 of the said rules, acting charge appointment shall not confer any vested right for regular promotion to the post held on acting charge basis (**Annex-I**).

6. Correct to the extent that in pursuance of Supreme Court of Pakistan decision etc, after observing all codal formalities amendment in the Service Rules of Irrigation Department were notified on 25.06.2012. It is pointed out that against the quota of 12% for Pre-Service/In-Service Graduate, there are 13 No. Sub Engineers, whereas against the 8% quota for B. Tech (Hons) the No of Sub Engineers is 12.
7. That on receipt of representation from the appellant and others, the respondent Department called them through Chief Engineer (South) to attend the office of Secretary Irrigation (**Annex-II**). Moreover, after hearing them, the proposed amendments were processed and notified in the public interest. Furthermore the plea of promotion of the appellant is not based on facts, as per provision of the Rules referred in Para- 5 above.
8. Correct to the extent that the appellant submitted departmental appeal but the same was considered by the competent authority and filed having no solid grounds. The appellant alongwith others have been informed accordingly through Chief Engineer (South Irrigation (**Annex-III**)).
9. Incorrect, sufficient promotion quota i.e. 12% has been allocated to the Graduate Sub Engineers (Pre-Service/In-Service). The appellant is junior most amongst the Graduate Sub Engineers as he joined the Department on 17.11.2006; his promotion will be considered under the rules on his turn. Seniority list attached at (**Annex-IV**). Furthermore the case with regard to the amendment in the rules in question has gained finality as the Supreme Court of Pakistan has set aside the judgment dated 26.02.2014 of this honourable court vide short order dated 11.11.2014 and detailed judgment dated 24.11.2014 by dismissing the pending appeals in the Service Tribunal and validated the Notification dated 25.06.2012 (**Annex-V**).



GROUNDS:-

- a. Incorrect, the name of the appellant was not excluded in the working paper, rather his name was not even considered while preparing working papers. The case for promotion will be considered on his turn.
- b. Incorrect. Pursuant to the decision of Supreme Court of Pakistan in Suo Moto Petition No. 52 of 1993 whereby the August Court considered the B. Tech (Hons) Degree at par with B.E/B.Sc Engineering Degree and the University Grant Commission whereby they treated the degree of B. Tech (Hons) at par and compatible with B.F/B. Sc Engineering Degree holders only for the purpose of grades, pay and promotion, the competent authority in consultation with the Standing Service Rules Committee notified 85% quota for B. Tech (Hons) Degree Holder Sub Engineers and 12% for Graduate Sub Engineers.
- c. Incorrect, the plea of the appellant 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% quota reserved for direct recruitment (**Annex-VI**).
- e. Incorrect, the appellant has not been promoted so far, rather he was appointed on acting charge basis.
- f. Incorrect, the case of the appellant for promotion will be considered in due course of time on his turn.
- g. Incorrect, as laid in Para- f above.
- h. That the respondents seek permission to raise additional grounds and prayers at the time of arguments.

In view of the facts, it is very humbly prayed that the appeal of the appellant is devoid of merit and without substance, may be dismissed with costs.



Chief Secretary, Khyber Pakhtunkhwa  
(Respondent No. 1)



Secretary to Govt. of KP,  
Irrigation Department  
(Respondent No. 2)



Chief Engineer (South) Irrigation,  
(Respondent No. 3)

(3) It will be the sole discretion of the appointing authority to accept or refuse a request for transfer under this rule and any decision made in this behalf shall be final and shall not be quoted as precedence in any other case.

9. **Appointment on Acting Charge or current Charge Basis.** (1) Where the appointing authority considered it to be in the public interest to fill a post reserved under the rules for departmental promotion and the most senior civil servant belonging to the cadre or service concerned, who is otherwise eligible for promotion, does not possess the specified length of service the authority may appoint him to that post on acting charge basis;

<sup>37</sup>Provided that no such appointment shall be made, if the prescribed length of service is short by more than <sup>38</sup>[three years].

(2) So long as a civil servant holds the acting charge appointment, a civil servant junior to him shall not be considered for regular promotion but may be appointed on acting charge basis to a higher post.

(3) In the case of a post in Basic Pay Scale 17 and above, reserved under the rules to be filled in by initial recruitment, where the appointing authority is satisfied that no suitable officer drawing pay in the basic scale in which the post exists is available in that category to fill the post and it is expedient to fill the post, it may appoint to that post on acting charge basis the most senior officer otherwise eligible for promotion in the organization, cadre or service, as the case may be, in excess of the promotion quota.

(4) Acting charge appointment shall be made against posts which are likely to fall vacant for period of six months or more. Against vacancies occurring for less than six months, current charge appointment may be made according to the orders issued from time to time.

(5) Appointment on acting charge basis shall be made on the recommendations of the Departmental Promotion Committee or the Provincial Selection Board, as the case may be.

(6) Acting charge appointment shall not confer any vested right for regular promotion to the post held on acting charge basis.

### PART-III

#### INITIAL APPOINTMENT

10. **Appointment by Initial Recruitment :-**(1) Initial appointment to posts <sup>39</sup>[in various basic pay scales] shall be made-

(a) if the post falls within the purview of the Commission, on the basis of Examination or test to be conducted by the Commission; or

<sup>37</sup> Full stop at the end of Rule 9 (1) replaced with colon and proviso added by Notification No. SOR-I (S&GAD)4-1/80/Vol-II, dated 20-10-1993.

<sup>38</sup> The words one year substituted by Notification No. SOR-I(S&GAD)4-1/80/III, dated 14.3.96.

<sup>39</sup> The words in basic pay scale-16 to 21 substituted by Notification No. SOR-I(S&GAD)1-117/91 (C), dated 12-10-1993.

Most Immediate.



**GOVERNMENT OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT**

No. SO(E)/Irr:/23-5/2010-11  
Dated Peshawar the 2<sup>nd</sup> 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)

*Qulam*  
13/7/12  
02 Copies

*Misai Khan*  
(Misai Khan)  
Section Officer (Estt:)

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.

*Misai Khan*  
Section Officer (Estt:)



GOVERNMENT OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT

292

No. SO(E)/Irr/23-5/73/2012  
Dated Peshawar the 11<sup>th</sup> Jan, 2013

To  
The Chief Engineer (South),  
Irrigation Department.

Subject: APPEAL AGAINST THE AMENDMENTS IN SERVICE RULES NOTIFIED  
ON 25.06.2012

I am directed to refer to the subject noted above and to state that Mr. Musharaf Shah, Assistant Engineer (Acting Charge) preferred an appeal against the amendments in the Service Rules notified on 25.06.2012, whereby 8% quota has been provided to the Sub Engineers having B. Tech (Hons) degree (copy attached).

It is pointed out that earlier similar nature appeals of the Diploma holder Sub Engineers were sent to the Chief Secretary (competent authority) for consideration and appropriate orders. The competent authority considered the appeals and filed the same having no tenable justification.

I am, therefore directed to request you to please inform the applicant that the competent authority has already filed similar appeals, having no tenable justification therein.

Encl: as above

(MISAK KHAN)  
Section Officer (Estt.)

99

IRRIGATION DEPARTMENT KHYBER PAKHTUNKHWA  
TENTATIVE SENIORITY LIST OF GRADUATE SUB-ENGINEER (PRE SERVICE / IN SERVICE) AS STOOD ON 31-12-2014.

| Notification No. IB/A/3-E(iii) dated Peshawar the 10/4/2014 |   |               |                 |                                      |                               |     |                                    |                     |   |
|---|---|---------------|-----------------|--------------------------------------|-------------------------------|-----|------------------------------------|---------------------|---|
| S#  | Name of Sub Engineer with Academic Qualification  | Date of Birth | Domicile        | Date of 1st Entry into Govt. Service | Regular Appointment/Promotion |     |                                    | Present Appointment | Remarks   |
|   |   |               |                 |                                      | Dated                         | BPS | Method of Recruitment/ Appointment |                     |   |
| 1   | 2   | 3             | 4               | 5                                    | 6                             | 7   | 8                                  | 9                   | 10  |
| 1   | Mohammad Hayat BSc Engg: (Civil) Pesh: University   | 01/02/1960    | Malakand        | 28/8/1990                            | 28/08/1990                    | 11  | By initial recruitment             | Sub Engineer        |   |
| 2   | Mr. Roothul Amin BSc Civil Pesh: University   | 03/03/1964    | Swabi           | 12/12/1990                           | 12/12/1990                    | 11  | -do-                               | -do-                | SDO on acting charge basis in PHLC S/Divn: Swabi                    |
| 3   | Mr. Shoukat Badshah BSc (Civil) Engg: Pesh: University  | 10/02/1963    | Mardan          | 09/12/1990                           | 09/12/1990                    | 11  | -do-                               | -do-                | Assistant Engineer Bajai Irr. Project Mardan on acting charge basis |
| 4   | Mr. Saeedullah BSc (Civil) Engg: Nawab Shah University  | 05/03/1962    | FR Bannu        | 19/03/1992                           | 19/03/1992                    | 11  | -do-                               | -do-                | SDO on acting charge basis in Shangla S/Divn: Dattu                 |
| 5   | Mr. Bakhtiar BSc (Civil) Engg: Pesh: University   | 07/05/1964    | Swat            | 19/03/1992                           | 19/03/1992                    | 11  | -do-                               | -do-                | SDO on acting charge basis on Swat Irr: S/Divn: Swat.               |
| 6   | Mr. Abdul Sadiq BSc (Civil) Engg: Exm: on 28/12/98 Grade B Exm: 6/6/2000 Grade A Professional 24/4/2002 | 2/1/1969      | Dir             | 28/03/1992                           | 28/03/1992                    | 11  | -do-                               | -do-                | Working as SDO (OPS)  |
| 7   | Mr. Farid Ullah BSc (Civil) Engg: Pesh: University  | 01/05/1966    | FR Bannu        | 16/08/1992                           | 16/08/1992                    | 11  | -do-                               | -do-                | SDO on acting charge basis Jani khel S/Divn: Bannu                  |
| 8   | Mr. Asif Khan BSc (Civil) Engg: Kabul University  | 01/02/1969    | Malakand Agency | 24/4/1995                            | 24/4/1995                     | 11  | -do-                               | -do-                | SDO on acting charge basis Shahbz Garhi S/Divn: Mardan              |
| 9   | Mr. Yahya Hameed BSc (Civil) Engg: Pesh: University   | 07/04/1968    | DI Khan         | 04/03/1996                           | 04/03/1996                    | 11  | -do-                               | -do-                |   |
| 10  | Mr. Musharaf Shah BSc (Civil) Engg: from UET Peshawar   | 04/08/1982    | Mohmand Agency  | 17/11/2006                           | 17/11/2006                    | 11  | -do-                               | -do-                | Working as SDO on acting charge basis in Rehabilitation Project     |
| 11  | Mr. Jamshaid Akram BSc (Civil) Engg: from Preston University Peshawar                                   | 20-02-1978    | Tank            | 17-11-2006                           | 17-11-2006                    | 11  | -do-                               | -do-                |   |
| 12  | Mr. Aftab Alam BSc (Civil) Engg: Pesh: University   | 01/01/1981    | Charsadda       | 17/11/2006                           | 17/11/2006                    | 11  | -do-                               | -do-                |   |
| 13  | Mr. Inamullah BSc (Civil) Engg: Pesh: University  | 15/01/1982    | Swat            | 19/11/2011                           | 19/11/2011                    | 11  | -do-                               | -do-                |   |
| 14  | Mr. Sahid Ali Khan BSc (Civil) Engg: from CECOS University Peshawar.                                    | 14/03/1983    | Dir.Lower       | 16/09/2013                           | 16/09/2013                    | 11  | -do-                               | -do-                |   |
| 15  | Mr. Rizwan BSc Engg: from UET Peshawar  | 12/3/1988     | D.I. Khan       | 16/09/2013                           | 16/09/2013                    | 11  | -do-                               | -do-                |   |

No. 107 IB/A/3-E(iii)

dated Peshawar the 5/01/2015

Copy to the:-

- Secretary to Govt: of Khyber Pakhtunkhwa Irrigation Department Peshawar.
  - Chief Engineer (North) Irrigation Department Khyber Pakhtunkhwa Peshawar
  - All Superintending Engineer in Irrigation Department Khyber Pakhtunkhwa Peshawar
  - DG Small Dam Organization Peshawar
  - All Executive Engineers (concerned) Irrigation Department Khyber Pakhtunkhwa
  - PD Beza Irrigation scheme Mardan
- There requested to note the seniority from all concern, any objection error and omission should be intimated with in 30 days.

SUPERINTENDING ENGINEER  
(HEAD QUARTER)

SUPERINTENDING ENGINEER  
(HEAD QUARTER)

(Att:)

1265

19/11/2014

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

**PRESENT:** Mr. Justice Anwar Zaheer Jamali  
Mr. Justice Iqbal Hameedur Rahman  
Mr. Justice Qazi Faez Isa

Civil Appeals No.795 to 805/2014  
(On appeal from the judgment dated 26.02.2014 passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeals No.1175 to 1184/12)

Govt. of KPK through  
Chief Secretary and others

(In CA 795/14)

Aman-Ullah and others

(In CAs 796-805/14)

Appellants

Versus

Muhamunad Javed and others

(In CA 795/14)

Govt. of KPK through Chief  
Secretary, Peshawar and others

(In CAs 796-805/14)

Respondents

In C.A. No.765/14:  
For the Appellants:

Mian Arshad Jan, Addl.A.G. KPK

For Respondents No.2-4:  
For Respondents No.1,5-8:

Mr. Ghulam Mohy ud Din Malik, ASC  
N.R.

In C.As. No.796, 797, 799-801, 804 and 805/14:  
For the Appellants:

Mr. Ghulam Mohy ud Din Malik, ASC

For Respondents No.1-4:  
For Respondent No.5:

Mian Arshad Jan, Addl.A.G. KPK  
Mr. Ijaz Anwar, ASC  
Mr. M.S.Khattak, AOR

For Respondents No.6-9:

N.R.

In C.As. No.798, 802 and 803/14:  
For the Appellants:

Mr. Ghulam Mohy ud Din Malik, ASC

For Respondents No.1-4:  
For Respondents No.5-9:

Mian Arshad Jan, Addl.A.G. KPK  
N.R.

Date of Hearing:

11.11.2014

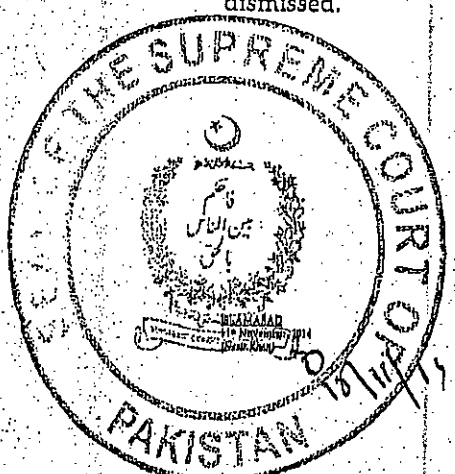
ORDER

Anwar Zaheer Jamali, J.- We have heard the arguments of the learned ASCs representing different parties in these connected appeals. For the reasons to be recorded separately, these appeals are allowed, the judgment dated 26.2.2014 is set aside and consequently the service appeals filed by the respondents before the Service Tribunal are dismissed.

Sd/- Anwar Zaheer Jamali, J  
Sd/- Iqbal Hameedur Rahman, J  
Sd/- Qazi Faez Isa, J

Certified to be True Copy

*[Signature]*  
Superintendent  
Supreme Court of Pakistan  
Islamabad



P.u on file.  
CA 19/11

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

MR. JUSTICE ANWAR ZAHEER JAMALI  
MR. JUSTICE IQBAL HAMEEDUR RAHMAN  
MR. JUSTICE QAZI FAEZ ISA

CIVIL APPEALS NO.795 TO 805 OF 2014

(On appeal from the judgment passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeals No.1175 to 1184/12)

Civil Appeal No. 795 of 2014

Government of KPK through Chief Secretary, Peshawar and others

.... Appellants

Versus

Muhammad Javed and others

.... Respondents

AND

Civil Appeal Nos. 796 to 805 of 2014

Aman Ullah and others

.... Appellants

Versus

Government of KPK through Chief Secretary, Peshawar and others

.... Respondents

In Civil Appeal No. 795 of 2014:

For the Appellants: Mian Arshad Jan, Addl.A.G. KPK

For Respondents No.2-4: Mr. Ghulam Mohy-ud-Din Malik, ASC


For Respondents No.1, 5-8: Not represented.

In Civil Appeal Nos.796, 797, 799-801, 804 & 805 of 2014:

For the Appellants: Mr. Ghulam Mohy-ud-Din Malik, ASC

For Respondents No.1-4: Mian Arshad Jan, Addl.A.G. KPK

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Superintendent  
Supreme Court of Pakistan  
Islamabad

For Respondent No.5: Mr. Ijaz Anwar, ASC  
Mr. M.S. Khattak, AOR

For Respondents No.6-9: Not represented.

In Civil Appeal Nos.798, 802 and 803 of 2014:

For the Appellants: Mr. Ghulam Mohy-ud-Din Malik, ASC

For Respondents No.1-4: Mian Arshad Jan, Addl.A.G. KPK

For Respondents No.5-9: Not represented.

Date of Hearing: 11<sup>th</sup> November 2014

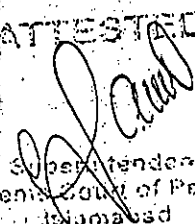
JUDGMENT

QAZI FAEZ ISA, J- These appeals arise out of a judgment dated 26<sup>th</sup> February 2014 of the Hon'ble Khyber Pakhtunkhwa Service Tribunal ("Tribunal") whereby through a common judgment ten service appeals were disposed of in the following terms:

"14. Having said that, there can possibly be no cavil with the legal propositions that the Government has the authority to frame rules and also introduce amendments in the relevant rules to enhance qualification for a particular post; but the issue here is not that of amendments in the rules for enhancement of the qualification, rather dispute is with regard to unilaterally curtailing of quota of a particular class of employees to their detriment. One can also make no bones about the fact that jurisdiction of the Service Tribunal is barred in cases of promotion; but primarily the appeals have been lodged against amendments introduced in the service rules, which, according to the appellants, did not meet the ends of law and justice.

15. As a sequel to the foregoing discussion, on the partial acceptance of the appeals, the case of amendments in question is referred to the competent authority i.e. Secretary to Government of KPK,

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Islamabad



reconsideration of the impugned amendments in the light of above discussion and observations made in the judgment for a final decision and further necessary action, under intimation to the Registrar of the Tribunal, within reasonable time. In order to avoid further legal complications and frustration of the spirit of this judgment, promotions under the amended rules be put on hold in the meantime. There shall, however, be no order as to costs."

2. That in the appeals before the Tribunal it was contended that the appellants therein were working in the Irrigation Department as Sub-Engineers (BPS-11) and were appointed on the basis of having a diploma in Associate Engineering and enjoyed 20% reserved quota for promotion to the post of Assistant Engineer (BPS-17) as provided in the Khyber Pakhtunkhwa Irrigation and Public Health Engineering Department (Recruitment and Appointment) Rules, 1979 ("the Rules"), which were amended by reducing their stipulated quota as a new category was created for those Sub-Engineers who possessed a degree in B.Tech (Hons) and who had passed Grade A and Grade B examinations with a minimum service of five years. It is stated that carving out of this new 'category' of degree holders had reduced the promotion prospects of the appellants who were diploma holders.

3. That with regard to the post of Assistant Engineers, both in respect of initial recruitment and promotion, it would be appropriate to reproduce the applicable requirements

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mentioned in the Appendix of the Rules as it originally stood and as it was amended from time to time, as under:

As originally stood vide Notification dated 30<sup>th</sup> April 1979:

- "a) Seventy per cent by initial recruitment and
- b) Ten per cent by selection on merit with due regard to seniority from amongst sub-engineers of the Deptt: concerned in which the vacancy occurs, who hold a degree; and
- c) Twenty per cent by selection on merit with due regard to seniority from amongst officiating Assistant Engineers of the vacancy occurs, who hold a diploma."

As amended vide Notification dated 27<sup>th</sup> February 1999:

- "(a) Sixty five percent of the total posts by initial recruitment;
  - (b) Ten percent of the total posts by promotion, on the basis of seniority-cum-fitness from amongst the Sub Engineers possessing Diploma at the time of their induction into service but acquired degree in Engineering during service;
  - (c) Ten percent of the total posts by Promotion, on the basis of seniority-cum-fitness, from amongst the Sub Engineers who joined service as Degree holders in Engineering; and
  - (d) Fifteen percent of the total posts by selection on merit with due regard to seniority, from amongst the officiating Assistant Engineers/ Senior Scale Sub engineers who have passed Departmental Examination; and have passed Departmental Examination;
- Provided that where a candidate under clause (b) above is not available, the vacancy shall be filled from [redacted] etc.
- Provided further that where a candidate under clause (c) above is not available, the vacancy shall be filled by initial recruitment."

As further amended by Notification dated 17<sup>th</sup> February 2011:

- "a. Sixty five percent by initial recruitment.

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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.

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

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.

Note: Provided that where candidate under Clause (b) & (c) above is not available for promotion, the vacancy shall be filled in by initial recruitment."

As finally amended by Notification dated 25<sup>th</sup> June 2012:

"(b) twenty 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 of such.

Note:- For the purpose of Clause (b), a Joint seniority list of the Sub Engineers having Degree in Civil Engineering or Mechanical Engineering shall be maintained and their seniority is to be reckoned from the date of their 1<sup>st</sup> 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 1<sup>st</sup> appointment as Sub Engineer.

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Supreme Court of Pakistan  
Islamabad

(d) fifteen percent by promotion, on the basis of seniority-cum-fitness, from amongst the Sub Engineers, who hold a Diploma of Associate Engineer in Civil, Mechanical, Electrical or Auto Technology and have passed departmental Grade B and A examination, within 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 1<sup>st</sup> 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 Engineer is available for promotion;"

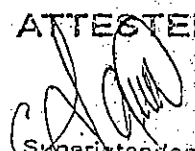
The grievance of the appellants before the Tribunal was that their promotion quota had been curtailed from 20% to 15% vide clause (d) of the Notification dated 25<sup>th</sup> June 2012. They had further prayed that the Government be restrained from processing the promotion cases on the basis of such Notification and in particular of those who had obtained the B.Tech (Hons) degree.

4. Mr. Arshad Jan, Additional Advocate General, Khyber Pakhtunkhwa, and Mr. Ghulam Mohy-ud-Din Malik, ASC (on behalf of private appellants who possessed B.Tech (Hons) degree) have assailed the impugned judgment on the following grounds:

- (1) That the Hon'ble Tribunal had no jurisdiction as the Rules were amended by the Government and not by any 'departmental authority' and in this regard

balance was placed upon section 4 read with section

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7 of the Khyber Pakhtunkhwa Service Tribunals Act, 1974;

- (2) That the amendment was made to ensure that the higher positions are held by those who were competent and possessed the requisite qualifications;
- (3) That the diploma holders could also obtain degree in B.Tech (Hons) and then they too could also avail of the benefit of clause (c) as lastly amended;
- (4) That the amendment made in the Rules was not person specific nor had any element of mala fide;
- (5) That promotion or reserving a certain quota for promotion cannot be claimed as a vested right; and
- (6) That the matter was within the domain of policy and beyond the jurisdiction of the Tribunal.

Reliance was also placed upon the following precedents:

Dr. Alyas Qadeer Tahir v. Secretary M/o Education  
(2014 SCMR 997)

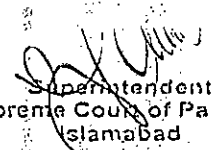
Executive District Officer (Revenue) v. Ijaz Hussain  
(2012 PLC (C.S.) 917)

Zafar Iqbal v. Director, Secondary Education  
(2006 SCMR 1427)

Fida Hussain v. The Secretary, Kashmir Affairs and Northern Affairs Division (PLD 1995 SC 701)

5. That Mr. Ijaz Anwar, learned counsel appearing for the respondents (appellants before the Service Tribunal), urged that the Tribunal had jurisdiction to decide the matter as the amendment to the Rules had affected their terms and

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Supreme Court of Pakistan  
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conditions of service and in this regard placed reliance upon the cases of Muhammad Mubeen-us-Salam v. Federation of Pakistan (PLD 2006 SC 602) and I. A. Sharwani v. Government of Pakistan (1991 SCMR 1041).

He further stated that, at the time when the appellants before the Tribunal joined service the Rules prescribed a certain quota for promotion to the next higher grade of Assistant Engineer and such quota could not be reduced as it would adversely affect their prospects of advancement. It was lastly contended that there were a large number of diploma holder Sub-Engineers whereas only a few possessed B. Tech (Hons) degree.

6. That the appeal against the judgment of the Tribunal lies to this Court if it involves a substantial question of law of public importance (sub-article (3) of Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973) and if leave has been granted. In these cases leave was granted by this Court vide order dated 29<sup>th</sup> May 2014, relevant portion whereof is reproduced hereunder:

"Having heard the learned counsel for the petitioners in Civil Petitions No.592 to 601 of 2014 and learned Advocate General, Khyber Pakhtunkhwa in Civil Petition No.230-P of 2014, leave to appeal is granted in all these petitions inter alia to consider whether the rules for promotion of Assistant Engineers (BS-17), Irrigation Department, could be subjected to judicial review before the Service Tribunal... "

ATTESTED


Superintendent  
Supreme Court of Pakistan

The question whether the Tribunal can impinge upon the right of the Government to make rules stipulating the criteria for promotion, and having done so the Government cannot change the same, is undoubtedly a substantial question of law of public importance.

7. With the help of the learned counsel we have examined the Appendix to the Rules and we have not been able to detect that the amendment finally made thereto was with a view to accommodate specific individuals or for any other ulterior motive. We have also gone through the contents of the service appeals wherein no allegation of mala fide was leveled. Therefore, the only questions for our consideration are, firstly, whether the Hon'ble Tribunal exceeded its jurisdiction and, secondly, whether the quota of any class of employees (diploma holders herein) could not be reduced, and to create from amongst them a separate quota of degree holders who would also be eligible for promotion as Assistant Engineers.

8. The Tribunal appears to have been impressed that there were one hundred and thirty diploma holders whereas there were only thirteen graduates having B. Tech (Hons) degrees, therefore, in the opinion of the Hon'ble Tribunal it was necessary to preserve the quota of the diploma holders. The concern of the Tribunal effectively meant that if there are many less qualified persons they should have greater prospects for advancement and those who had higher qualifications or who had improved their qualifications should not have an advantage.

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Superintendent  
Supreme Court of Pakistan  
Islamabad

The anxiety of the Tribunal in this regard was misplaced. In the reported case of Dr. Alyas Qadeer Tahir v. Secretary M/o Education (2014 SCMR 997), it was held:

"Its right to improve and update its service structure to keep pace with modern age which is indisputably the age of specialization cannot be restrained or restricted on the ground that at the time of appointment of one or a few civil servants, such qualification was not a requirement for promotion. Higher qualification or a more specialized qualification for a post in a higher scale is a need of the hour which has to be taken care of. The vices of validity of Rules or amendments therein attending to such aspects, cannot, therefore, be looked askance at. The more so when there is absolutely nothing in the Rules to show that they are either person specific or an off shoot of mala fides."

9. That where talent, skill and capability is rewarded it provides opportunity to ambitious employees and if those amongst them who are better qualified receive a differential focus it benefits the department and the people of Pakistan, as all civil servants are there to serve the people. Similarly, if the bar to aspire to higher positions is raised it encourages and motivates employees to take ownership of their careers and personal development. Moreover, when higher educational qualification and talent is appreciated it makes for a more transparent system of advancement and may also help to retain talented individuals in an organization.

10. That it was not a case of the appellants before the Tribunal that they were prevented from improving their

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qualifications, therefore, if the government, as a policy matter, wants to restrict promotion to those having degrees, or create another category of such persons it is not ultra vires of any law (even though no law was cited in this regard) nor is it unreasonable. The matter fell within the exclusive domain of the Government, which, in the absence of demonstrable mala fides could, not be assailed as held in the case of Executive District Officer (Revenue) v. Ijaz Hussain and another (2012 PLC (C.S.) 917), as under:

"If the said power is exercised in a mala fide manner, it is the particular mala fide act which can be challenged and struck down."

"The framing of the recruitment policy and the rules thereunder, admittedly, fall in the executive domain. The Constitution of Islamic Republic of Pakistan is based on the well known principle of trichotomy of powers where legislature is vested with the function of law making, the executive with its enforcement and judiciary of interpreting the law. The Court can neither assume the role of a policy maker or that of a law maker."

Similarly, in the case of Fida Hussain v. The Secretary, Kashmir Affairs and Northern Affairs Division (PLD 1995 SC 701), it was held, that:

"It is exclusively within the domain of the government to decide whether a particular qualification will be considered for promotion from a particular Grade to a higher Grade and it is also within the domain of the Government to change the above policy from time to time as nobody can claim any vested right in the policy."

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11. That neither promotion nor the criteria set out to aspire for promotion can be categorized as a 'right' that could be justiceable. In this regard reference may be made to Zafar Iqbal v. Director, Secondary Education (2006 SCMR 1427), wherein we had held, that:

"The Government is always empowered to change the promotion policy and the domain of the Government to prescribe the qualification for a particular post through amendment in the relevant rules, is not challengeable. This is also a settled law that notwithstanding fulfillment of the requirement qualification and other conditions contained in the rules, the promotion cannot be claimed as a vested right."

12. The Tribunal had directed the Government, "for reconsideration of the impugned amendments" and further directed that, "promotions under the amended rules be put on hold in the meantime." The Hon'ble Tribunal had clearly exceeded its jurisdiction in issuing such directions.

13. In conclusion, since it was a policy matter the Government was empowered to reduce the said quota of diploma holder Sub-Engineers for promotion to the post of Assistant Engineers and also to create a separate quota of B. Tech (Hons) degree holders for promotion to the post of Assistant Engineers. The same was not justiciable, and in directing the Government to reconsider the same and to hold in abeyance the promotions made in accordance with the Rules as finally amended the Tribunal exceeded its jurisdiction.

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Supreme Court of Pakistan

14. That we had allowed these appeals vide our short order dated 11<sup>th</sup> November 2014 reproduced hereunder:

"We have heard the arguments of the learned ASCs representing different parties in these connected appeals. For the reasons to be recorded separately, these appeals are allowed, the judgment dated 26.2.2014 is set aside and consequently the service appeals filed by the respondents before the Service Tribunal are dismissed."

The aforesaid are the reasons for doing so.

Sd/- Anwar Zaheer Jamali, J  
Sd/- Iqbal Hameedur Rahman, J  
Sd/- Qazi Faez Isa, J



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Superintendent  
Supreme Court of Pakistan  
Islamabad

APPROVED FOR REPORTING

26/11/14

EXTRAORDINARY

GOVERNMENT



REGISTERED NO. PIII

G A Z E T T E

## KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, SATURDAY, 2ND APRIL, 2011.

### GOVERNMENT KHYBER PAKHTUNKHWA IRRIGATION DEPARTMENT,

#### NOTIFICATION

Dated Peshawar the 17<sup>th</sup> February, 2011.

**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.

688

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**APPENDIX**

| S#                              | Nomenclature of Post   | Qualification for appointment  | Age Limit      | Method of recruitment  |
|---------------------------------|--|--|----------------|--|
| 1                               | 2  | 3  | 4              | 5  |
| <b>PART-I-ENGINEERING STAFF</b> |  |  |                |  |
| 1.                              | Chief Engineer/<br>Director General<br>(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<br>(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<br>Director<br>(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<br>Officer/ Assistant Director<br>(BPS-17) | BE/BSc Degree in Civil/Mechanical<br>Engineering from a recognized<br>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) &amp; (c) above is not available for promotion, the vacancy shall be filled in by initial recruitment.</p> |
| 5.                              | Sub Engineer<br>(BPS-11)   | Diploma of Associate<br>Engineering in<br>Civil/Mechanical/Auto/Electrical<br>Technology from a recognized<br>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>  |

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

APPEAL NO: 1181 OF 2022/19

Engr Musharaf Shah

(APPELLANT)  
(PLAINTIFF)  
(PETITIONER)

**VERSUS**

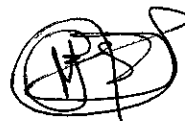
Govt of KP & others

(RESPONDENT)  
(DEFENDANT)

I/We Engr Musharaf Shah (Appellant)

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

Dated. 16 / 09 / 2022



**CLIENT**

**ACCEPTED**

**NOOR MOHAMMAD KHATTAK**  
&

  
**UMAR FAROOQ**

  
**WALEED ADNAN**

  
**M AYUB**

  
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