BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 24/2023

Engineer Mustajab Khan **Petitioner**

VERSUS

Chief Secretary, Khyber Pakhtunkhwa & others **Respondents**

INDEX

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

SERVICE APPEAL NO. 24/2023

Engineer Mustajab Khan — **Petitioner**

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary & others — **Respondents**

AFFIDAVIT

I, Roz Amin, Superintendent Litigation Section, Irrigation Department on behalf of respondent No. 01 & 02 do hereby affirm and declare on oath that the contents of para-wise comments are true and correct to the best of my knowledge and belief that nothing has been kept concealed from this Hon'ble Tribunal. It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense/ struck off. /cost

Deponent

Roz Amin
Superintendent Litigation Section
Irrigation Department
CNIC No. **17301-1431398-7**
Cell No. **0311-9296743**

ATTESTED
LAL GUL SAFI
District Courts
OATH COMMISSIONER
Peshawar KPK Pakistan
ADVOCATE HIGH COURT

Service appeal No. 24/2023

2/

Engineer Muhammad Mustajab Khan SDO Drainage, Irrigation Sub Division, Abbottabad **Appellant**

Versus

Chief Secretary, Khyber Pakhtunkhwa and others **Respondents**

JOINT PARA-WISE COMMENTS ON BEHALF OF THE RESPONDENT NO. 01 to 04

RESPECTFULLY SHEWETH:

Preliminary objections:

1. That the appellant has got no cause of action/locus standi.
2. That the appellant has not come to this court with clean hands.
3. That the appellant has concealed some material facts from this Hon'ble Tribunal.
4. That the appellant is disentitled for the relief claimed.
5. That the appeal of the appellant is time barred.
6. That the appeal is bad for misjoinder and nonjoinder of necessary parties.

ON FACTS

1. Para-1 as drafted is correct to the extent that Appellant was appointed as Assistant Engineer on the recommendations of Khyber Pakhtunkhwa Public Service Commission vide this Department Notification dated.24.09.2021.
2. Pertains to record.
3. Para-3 is correct to the extent that meeting of the DPC was held on 23.06.2021 but the item of promotion of Graduate Sub Engineers to the post of Assistant Engineers/SDOs was deferred for some clarification from Establishment Department (Minutes dated 23.06.2021 are **Annex-I**). M/S Inamullah, Shahid Ali Khan, Javidullah, Rizwan and Wajahat Hussain filed service appeals before the Service Tribunal against the minutes of DPC. The Service Tribunal vide judgement dated 15.04.2022 allowed their appeals.
4. Para-04 is correct to the extent that after decision of the Service Tribunal dated 15.04.2022 **(Annex-II)**, meeting of the DPC was held on 19.07.2022 and in light of directions of Service Tribunal, the DPC recommended M/S Inamullah, Shahid Ali Khan, Javidullah, Rizwan and Wajahat Hussain for promotion to the post of Assistant Engineers/SDOs w.e.f 23.06.2021. Minutes of the meeting are at **(Annex-III)**
5. Para-05 is correct to the extent that appellants have filed a joint appeal/representation on 06.09.2022 which is time bared.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Grounds: -

A. Incorrect. The promotion order dated 26.08.2022 is legal in accordance with law and has been issued in light of directions of Service Tribunal dated 15.04.2022 by convening meeting of the Departmental Promotion Committee.

B. Para-B is Incorrect as explained in Para-A above.

C. Para-C is Incorrect as explained in Para-A above.

D. Para-D is Incorrect as explained in Para-A above.

E. Para-E is Incorrect as explained in Para-A above.

F. Para-F is Incorrect as explained in Para-A above.

G. Pertains to record.

H. That the respondents also seek permission of this Hon'ble Tribunal to raise further points at the time of arguments.

It is, therefore requested that the appeal being devoid of merits may be dismissed with cost, please.

Secretary to Govt. of Khyber Pakhtunkhwa,
Irrigation Department
Respondent No. 01 to 04

Annx I

4

MINUTES OF THE DEPARTMENTAL PROMOTION COMMITTEE MEETING HELD ON 23.6.2021 AT 1200 HOURS UNDER THE CHAIRMANSHIP OF SECRETARY IRRIGATION DEPARTMENT

In order to fill in the vacant posts of different categories in the Irrigation Department on regular basis, a meeting of the Departmental Promotion Committee held on 23.06.2021 under the chairmanship of Secretary Irrigation. The following attended the meeting:-

1.	Muhammad Tahir Orakzai, Secretary Irrigation	In chair
2.	Engr: Sahibzada Muhammad Shabir, C.E (South) Irrigation	Member
3.	Mr. Wasil Khan, Additional Secretary Irrigation Department.	Secretary/Member
4.	Mr. Jamshid Khan, Deputy Secretary (Reg-III), Establishment Department.	Member
5.	Mr. Niamat Khan, Section Officer (SR-III), Finance Department.	Member

2. The following agenda items were discussed in the meeting:-

i. **Promotion of Zilladar (BS-15) to the rank of Deputy Collector (BS-17).**
ii. **Promotion of Assistant (BS-16) to the rank of Superintendent (BS-17).**
iii. **Promotion of Graduate Sub Engineers to the post of Assistant Engineer/Sub Divisional Officer (BS-17).**
iv. **Promotion of Diploma Holder Sub Engineers to the post of Assistant Engineer/Sub Divisional Officer (BS-17).**
v. **Promotion of B. Tech (Hons) Degree holder Sub Engineers to the post of Assistant Engineer/Sub Divisional Officer (BS-17).**
vi. **Promotion of Superintendent (BS-17) to the post of Administrative Officer (BS-17)**
vii. **Promotion of Assistant (BS-16) to the rank of Superintendent (BS-17). Circle Cadre.**

Item No. I

3. After recitation from the Holy Quran, the chair welcomed the participants and apprised the forum about the agenda items. The Additional Secretary presented the agenda that (05) regular posts of Deputy Collector (BS-17) are lying vacant which are required to be filled in by promotion on the basis of seniority-cum-fitness from amongst the Zilldars with at least five years service as such.

4. After examining all the relevant record of the Zilladars included in the panel, the committee unanimously recommended the following eligible Zilladars (BS-15) to the post of Deputy Collector (BS-17) in Irrigation Department on regular basis:-

i. **Mr. Noor Rehman.**
ii. **Mr. Farid Ullah.**
iii. **Mr. Muhammad Saad Jan.**
iv. **Mr. Nabi Rehmat.**
v. **Mr. Abdul Wadood.**

Section Officer (Litigation)
Irrigation Department Peshawar

Item No. II

5. The Additional Secretary presented the agenda that (04) No. regular posts of Superintendent (BS-17) are lying vacant which are required to be filled in by promotion on the basis of seniority-cum-fitness from amongst the Assistants and Senior Scale Stenographers with at least five years service as such.

6. After examining all the relevant record of the Assistants (BS-16)/Senior Scale Stenographers, the forum was informed that the official included in the panel at Sr. No. 4 i.e. Mr. Nusrat Noor has not submitted his PERs. The forum agreed to defer his promotion. After detailed discussion, the committee unanimously recommended the following (03) eligible Assistants (BS-16) to the post of Superintendent (BS-17) in Irrigation Department on regular basis:-

i. **Mr. Farhad Ali.**
ii. **Mr. Liaqat Ali.**
iii. **Mr. Ghulam Farooq.**

Item No. III

7. The Agenda item was ~~differed~~ deferred for want of clarification of Establishment Department on the following:-

i. As per amended service rules of Irrigation Department notified on 25.6.2012, twelve (12) posts of Assistant Engineer (B-17) comes under 12% share quota of Graduate Sub Engineers alongwith passing of departmental grade B and A examination against which Six (06) officer are working on regular basis while Seven (07) officers, included in the panel at Sr. No. 1 to 6 & 9 are working as Assistant Engineer (BS-17) acting charge basis since 2011.

ii. Before 25.6.2012 the Passing of Grade B&A examination was not mandatory for promotion to the post of Assistant Engineer and the above mentioned seven Graduate Sub Engineers were appointed to the post of Assistant Engineer (BS-17) on acting charge basis in 2011.

iii. The Departmental B & A Examination is conducted after every two years. The last examination was held in 2020 and the next will be held in 2022. The officers of panel at Sr. No. 1 to 6 & 9 (except S.No.4 "B&A passed) have passed their mandatory Grade B examination and will appear in the A examination in 2022.

Section Officer (Litigation)
Irrigation Department Peshawar

8. The advice of the Establishment Department will be solicited through a separate letter that:-

i. As to whether the amended rules notified on 25.06.2012 are applicable to the above employees who were appointed in the year 2011 on acting charge basis or the present Service Recruitment rules will be applicable in the instant case .

ii. If the present service rules are applicable upon the officers appointed on acting charge basis then before completion of mandatory examination by these officers, the officers junior to them can be promoted to the post of Assistant Engineer on regular basis or otherwise.

Item No. IV

9. The Chief Engineer (South) Irrigation presented the agenda that (07) No. regular posts of Assistant Engineers/Sub Divisional Officer (BS-17) are lying vacant against the 15% share quota of Diploma Holder Sub Engineers which are required to be filled in by promotion on the basis of seniority-cum-fitness from amongst the Sub Engineers who hold a Diploma of Associate Engineering in Civil, Mechanical, Electrical or Auto Technology and have passed departmental Grade B and A examination with five years service as such.

10. The official mentioned at Sr. No. 1 of the seniority list has not yet passed Grade B&A examination which is pre-requisite for promotion to the post of SDO. After detailed discussion and examining all the relevant record, the committee unanimously recommended the following (07) eligible Diploma Holder Sub Engineers/SDOs acting charge basis to the post of Assistant Engineer/Sub Divisional Officer (BS-17) in Irrigation Department on regular basis:-

i. **Mr. Riaz Muhammad.**
ii. **Mr. Waqar Shah.**
iii. **Mr. Noora Jan.**
iv. **Mr. Jehanzeb.**
v. **Mr. Farman Ullah.**
vi. **Mr. Shafqat Faheem.**
vii. **Mr. Asad Ullah Jan.**

Item No. V

11. The Chief Engineer (South) Irrigation presented the agenda that (02) No. regular posts of Assistant Engineers/Sub Divisional Officer (BS-17) are lying vacant against the 8% share quota of B. Tech (Hons) Degree Holder Sub Engineers which are required to be filled in 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 examinations with five years service as such.

Section Officer (Litigation)
Irrigation Department Peshawar

12. After examining all the relevant record of the B. Tech (Hons) Degree Holder Sub Engineers, the committee unanimously recommended the following (02) eligible B. Tech (Hons) Sub Engineers to the post of Assistant Engineer/Sub Divisional Officer (BS-17) in Irrigation Department on regular basis:-

i. **Mr. Khurshid Ahmad.**
ii. **Mr. Muhammad Shoaib.**

Item No. VI

13. The Additional Secretary Irrigation Department presented the agenda that (01) No. regular post of Administrative Officer (BS-17) is lying vacant due to creation in the Office of Chief Engineer, newly Merged Areas Irrigation Department which is required to be filled in by promotion on the basis of seniority-cum-fitness from amongst the Superintendents of the Department having at least three years service.

14. After examining all the relevant record of the Superintendents (BS-17), the committee unanimously recommended **Mr. Akhtar Nawaz, Superintendent (BS-17)** to the post of **Administrative Officer (BS-17)** in Irrigation Department on regular basis.

Item No. VII

15. The Chief Engineer (South) Irrigation Department presented the agenda that (01) No. regular post of Superintendent (BS-17) is lying vacant in the office of Superintending Engineer, Irrigation Circle, D.I. Khan (Circle Cadre) which is required to be filled in by promotion on the basis of seniority-cum-fitness from amongst the Assistants and Senior Scale Stenographers with at least five years service as such.

16. After examining all the relevant record of the Assistants/Senior Scale Stenographers (BS-16), the committee unanimously recommended **Mr. Muhammad Saleem, Assistant (BS-16)** to the post of Superintendent **(BS-17)** in the Circle Cadre, D.I. Khan on acting charge basis due to lack of prescribed length of 05 years service.

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

Secretary Irrigation
Chairman

Chief Engineer (South)
Irrigation Department (Member)

Deputy Secretary (Reg-III)
Establishment Department (Member)

Additional Secretary
Irrigation Department
(Secretary/Member)

Section Officer (SR-II)
Finance Department (Member)

Section Officer (Litigation)
Irrigation Department Peshawar

Service Appeal No.7659/2021 titled "Shahid Ali Khan vs. Government of KP & others", Service Appeal No.7660/2021 titled "Rizwan versus Government of KP & others", Service Appeal No.7661/2021 titled "Wajahat Hussain versus Government of KP & others, "Service Appeal No.7662/2020] titled "Javedullah versus Government & others", and Service Appeal No.7663/20201 titled "Inamullah and Government of KP & others", decided on 15.04.2022 by Division Bench comprising Mr. Kalim Arshad Khan, Chairman and Mrs. Rozina Rehman, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

41

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

BEFORE: KALIM ARSHAD KHAN, CHAIRMAN
ROZINA REHMAN, MEMBER(J)

Service Appeal No.7659/2021

Shahid Ali Khan (Sub Divisional Officer, Shahbaz Garhi Irrigation Subdivision, District Mardan) son of Jehan Safdar.....(*Appellant*)

Versus

1. **Government** of KhyberPakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. **Secretary** to Government of Khyber Pakhtunkhwa Irrigation Department, Civil Secretariat, Peshawar.
3. **Chief Engineer (South)**, Irrigation Department, Warsak Road, Khyber Pakhtunkhwa, Peshawar.....(*Respondents*)

Present:

Mr. Amin ur Rehman Yousafzai, Advocate...For appellant.

Mr. Muhammad Riaz Khan Painda Khel,
Assistant Advocate General .....For respondents.

Date of Institution.....18.10.2021
Date of Hearing.....14.04.2022
Date of Decision.....15.04.2022

---

2. Service Appeal No.7660/2021

Rizwanullah (Sub Divisional Officer, Flood Irrigation Subdivision No.II, District DIKhan) son of Abdul Rehman.....(*Appellant*)

Versus

1. **Government** of KhyberPakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. **Secretary** to Government of Khyber Pakhtunkhwa Irrigation Department, Civil Secretariat, Peshawar.
3. **Chief Engineer (South)**, Irrigation Department, Warsak Road, Khyber Pakhtunkhwa, Peshawar.....(*Respondents*)

Present:

Mr. Amin ur Rehman Yousafzai, Advocate...For appellant.

Mr. Muhammad Riaz Khan Painda Khel,
Assistant Advocate General .....For respondents.

Date of Institution.....18.10.2021
Date of Hearing.....14.04.2022
Date of Decision..... 15.04.2022

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Section Officer (Litigation)
Irrigation Department Peshawar

42

3. Service Appeal No.7661/2021

Wajahat Hussain(Sub Divisional Officer, Irrigation and Hydel Power Subdivision, Orakzai) son of Malik ur Rehman... (*Appellant*)

Versus

1. **Government** of KhyberPakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. **Secretary** to Government of Khyber Pakhtunkhwa Irrigation Department, Civil Secretariat, Peshawar.
3. **Chief Engineer (South)**, Irrigation Department, Warsak Road, Khyber Pakhtunkhwa, Peshawar.....(*Respondents*)

Present:

Mr. Amin ur Rehman Yousafzai, Advocate...For appellant.

Mr. Muhammad Riaz Khan Painda Khel,
Assistant Advocate General .....For respondents.

Date of Institution.....18.10.2021
Date of Hearing.....14.04.2022
Date of Decision..... 15.04.2022

---

4. Service Appeal No.7662/2021

Javedullah(Assistant Engineer OPS, Irrigation and Hydel Power Subdivision, Jamrud and Landi Kotal, District Khyber) son of Asad Malook Khan..... (*Appellant*)

Versus

1. **Government** of KhyberPakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. **Secretary** to Government of Khyber Pakhtunkhwa Irrigation Department, Civil Secretariat, Peshawar.
3. **Chief Engineer (South)**, Irrigation Department, Warsak Road, Khyber Pakhtunkhwa, Peshawar.....(*Respondents*)

Present:

Mr. Amin ur Rehman Yousafzai, Advocate...For appellant.

Mr. Muhammad Riaz Khan Painda Khel,
Assistant Advocate General .....For respondents.

Date of Institution.....18.10.2021
Date of Hearing.....14.04.2022
Date of Decision..... 15.04.2022

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Section Officer (Litigation)
Irrigation Department Peshawar

5. Service Appeal No.7663/2021

Inamullah(Sub Divisional Officer, Irrigation Subdivision, Tehsil Shangla District Swat) son of Purdil Khan..... *(Appellant)*

Versus

1. **Government** of KhyberPakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. **Secretary** to Government of Khyber Pakhtunkhwa Irrigation Department, Civil Secretariat, Peshawar.
3. **Chief Engineer (South)**, Irrigation Department, Warsak Road, Khyber Pakhtunkhwa, Peshawar.....*(Respondents)*

Present:

Mr. Amin ur Rehman Yousafzai, Advocate...For appellant.

Mr. Muhammad Riaz Khan Painda Khel,
Assistant Advocate General .....For respondents.

Date of Institution.....18.10.2021
Date of Hearing.....14.04.2022
Date of Decision..... 15.04.2022

****

APPEALS UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE DECISION/RECOMMENDATION OF THE DEPARTMENTAL PROMOTION COMMITTEE, IN ITS MEETING DATED 23.06.2021, REGARDING AGENDA ITEM NO.III, ON THE BASIS OF WHEREOF, CASE OF PROMOTION OF THE APPELLANTS OF ALL THE APPEALS AS ASSISTANT ENGINEER/SUB-DIVISIONAL OFFICERS (BS-17) WAS DEFERRED

CONSOLIDATED JUDGEMENT

KALIM ARSHAD KHAN CHAIRMAN. Through this single Judgment the instantService Appeal No.7659/2021 titled *"Shahid Ali Khan vs Government of KP & others"*, Service Appeal No.7660/2021 titled *"Rizwan versus Government of KP & others"*, Service Appeal No.7661/2021 titled *"Wajahat Hussain versus*

Section Officer (Litigation) Irrigation Department Peshawar

ATTESTED
EXAMINER
Khyber Pakhtunkhwa Service Tribunal Peshawar

Government of KP & others,"Service Appeal No.7662/20201 titled "*Javedullah versus Government & others*" and Service Appeal No.7663/20201 titled "*Inamullah and Government of KP & others*" are decided because all are similar in nature and outcome of the same decision.

2. Facts, surrounding the appeals, are that the appellants were serving as Sub-Engineers in BPS-11 (upgraded to BPS-16 on 07.03.2018) in the Irrigation Department; that they passed departmental examination Grade-A & Grade-B and became eligible for promotion to the post of Assistant Engineer (BS-17), as per the rules in vogue; that the respondents initiated the cases of the appellants along with others for promotion and prepared working paper, alongwith panel of eligible Graduate Sub engineers, for consideration against 12% quota reserved for the holders of BSc Engineering Degree; that synopses of the appellants were placed before the Departmental Promotion Committee (DPC), in its meeting held on 23.06.2021, under Agenda Item No.III, but the appellants were not recommended for promotion rather the Agenda Item No.III was deferred on the pretext to seek guidance from the Establishment Department, on the following:

Section Officer (Litigation)
Irrigation Department, Peshawar
ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

i. As per amended service rules of Irrigation Department notified on 25.06.2012, twelve posts of Assistant Engineer (BS-17) come under 12% share quota of Graduate Sub Engineers along with passing of departmental grade B and A examination against which

45

six officers are working on regular basis while seven officers, included in the panel at serial No.1 to 6 & 9 are working as Assistant Engineer (BS-17) on acting charge basis since 2011.

ii. *Before 25.06.2012 the passing of grade B&A examination was not mandatory for promotion to the post of Assistant Engineer and the above mentioned seven Graduate Sub Engineers were appointed to the post of Assistant Engineer (BS-17) on acting charge basis in 2011.*

iii. *The departmental B&A examination is conducted after every two years. The last examination was held in 2020 and the next will be held in 2022. The officers of panel at serial No.1 to 6 & 9 (except No.4 B&A passed) have passed their mandatory grade B examination and will appear in the A examination in 2022.*

3. The DPC in paragraph 8 of the minutes sought advice of the establishment through a separate letter that:

a. As to whether the amended rules notified on 25.06.2012 are applicable to the above employees who were appointed in the year 2011 on acting charge basis or the present Service Recruitment rules will be applicable in the instant case.

b. If the present service rules are applicable upon the officers appointed on acting charge basis then before

Section Officer (Litigation)
Irrigation Department Peshawar

ATTESTED

EXAMINER
Khyber Pakhtukhwa
Service Tribunal
Peshawar

completion of mandatory examination of these officers,the officers junior to them can be promoted to the post of Assistant Engineer on regular basis or otherwise.

4. It was then all the appellants preferred departmental appeals on 13.07.2021 to Respondent No.1 against the decision dated 23.06.2021 of the DPC, which, according to them was not responded within statutory period, compelling them to file these appeals.

5. It was mainly urged in the grounds of all the appeals that the appellants had been deprived of their right of promotion without any deficiency; that the department had no right to keep the promotion case pending for indefinite period; that the appellants were not treated in accordance with law; that the DPC departed from the normal course of law, which was malafide on their part; that the appellants were deferred for no plausible reasons.

6. On receipt of the appeals and their admission to full hearing, the respondents were directed to file reply/comments, which they did.

7. In the replies it was admitted that the appellants had passed Grade B&A examinations and had also completed 5 years' service for promotion as Assistant Engineer subject to considering their eligibility by the DPC and availability of posts as per service rules; that the agenda item for promotion was dropped due to non-availability of vacancies under 12% quota for promotion of Graduate Sub Engineers to the rank of Assistant Engineers BS-17

Section Officer (Litigation)
Irrigation Department Peshawar

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(i.e. 6 Nos Sub Engineers are working on regular basis while 7 Nos Sub Engineers are working on Acting Charge basis against 12 posts in the share quota of Graduate Sub Engineers which already exceeds by one number).

8. We have heard learned counsel for the appellants and learned Assistant Advocate General for the respondents and have also gone through the record.

9. Learned counsel for the appellants reiterated the facts and grounds detailed in the appeal and referred to above and submitted that the appellants had a genuine case to be considered for promotion and they had legitimate expectancy for the same. He prayed for acceptance of the appeals.

10. On the contrary the learned Assistant Advocate General opposed the arguments advanced by the learned counsel for the appellants and supported the stance taken by the respondents.

11. There is no dispute that the working paper, for promotion from the post of Sub Divisional Officers (BPS-16) to the post of Assistant Engineer (BPS-17), was prepared on proforma-I, wherein the details of the posts were given. According to the working paper six posts were shown vacant for making promotion under 12% Graduate quota. Along with the working paper, a panel of Graduate Engineers for consideration was also annexed on proforma-II (Annexure-J). The officers at serial number 1 to3, 5 to 7, 9, 12 to 14 were shown in the panel to be not eligible while the appellants' names figure at serial No.8, 10, 11, 13 and 15 of the panel. The panel bears

Section Officer (Litigation)
Irrigation Department Peshawar

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

48

signature of the Additional Secretary, Irrigation Department, at the end of list and the appellants were shown in the working paper to be eligible for promotion. Similarly, the officer at serial No.4 named Bakhtiar was also shown to be eligible for promotion. The DPC held on 23.06.2021 recorded the minutes of the proceeding, which have been detailed in the preceding paragraphs and sought clarification from the Establishment Department vide letter No.SO(E)/Irr/4-3/DPC/2019/Vol-IX dated 04.10.2021, which was responded by the Establishment Department vide letter No.SOR-V(E&AD)/7-1/Irrig: dated 23.11.2021, instead seeking the clarification from the Secretary Government of Khyber Pakhtunkhwa, Irrigation Department on the following observations:

i. Why the employees were appointed on acting charge basis under APT Rules, 1989?

ii. Why the matter remained linger on for more than ten years?

iii. For how many times the departmental B&A exams for these employees in the intervening period were arranged by the Administrative Department and whether they appeared, availed opportunity of appearing the examination or deliberately avoid the opportunity of appearing in the subject examination or failed these examination?

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

12. Additional documents were placed during the pendency of the appeals, whereby working paper was prepared for considering one

Section Officer (Litigation)
Irrigation Department Peshawar

Mr. Bakhtiar (at serial No.4 of the panel for consideration, wherein the names of the appellants also figured) for promotion, who was also deferred with the appellants. The DPC was stated to be held on 13.01.2022 and vide Notification No.SO(E)/IRRI:/4-3/DPC/2019/Vol-IX: dated 28.03.2022, Mr. Bakhtiar was promoted.

13. At this juncture it seems necessary to observe regarding the above referred advice sought by the DPC. As regards first query, whether the amended rules notified on 25.06.2012 were applicable to the employees who were appointed in the year 2011 on acting charge basis or the present Service Recruitment rules will be applicable in the instant case, it is observed that the administrative rules cannot be given retrospective effect. As regards the second query whether the junior officers could be promoted when the seniors already appointed on acting charge basis could not qualify either of departmental B&A examinations, it is in this respect found that the basic qualification for eligibility to be considered for promotion to the post of Assistant Engineer (BPS-17), is passing of departmental B&A examinations and when the seniors could not get through the both or any of them, they are not eligible and obviously next in the line were to be considered.

Section Officer (Litigation)
Irrigation Department Peshawar

14. As to the observation of the Establishment Department:-

(i) Why the employees were appointed on acting charge basis under the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989?

ATTESTED

(ii) Why the matter remained linger on for more than ten years?

(iii) For how many times the departmental B&A examinations for these employees in the intervening period were arranged by the Administrative Department and whether they appeared, availed opportunity of appearing in the examination or deliberately avoided the opportunity of appearing in the examination or deliberately avoided the opportunity of appearing in the subject examination or failed these examination,

it is observed that no reply of the Administrative Department in this respect is found placed on the record. Whereas without replying the queries the Administrative Department promoted one Bakhtiar, referred to above.

15. There seems lot of conflict in the working paper and minutes of the meeting of the DPC held on 23.06.2021 and that of the replies submitted by the respondents. In the working paper and the minutes six posts were shown vacant for filling, of which the DPC was convened and lengthy exercise of preparation of working paper, panel of officers for consideration and holding of DPC was undertaken, whereas in the replies the respondents took a U-turn and contended that the posts were not vacant. If the posts were not vacant then why the lengthy exercise of preparing working paper, panel of officers and above all holding of DPC was done? This is a question which could not have been answered by the respondents in their replies or for that matter during the course of arguments. It was

Section Officer (Litigation)
Irrigation Department Peshawar

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

the stance of the respondents in the replies that the Agenda Item No.III was dropped due to non-availability of vacancies under 12% quota for promotion of Graduate Sub Engineers to the rank of Assistant Engineers BS-17 (i.e. 6 Nos. Sub Engineers are working on regular basis while 7 Nos. Sub Engineers are working on Acting Charge basis against 12 posts in the share quota of Graduate Sub Engineers which already exceeds by one number). This stance is in clear negation to the working paper, panel list of the officers and minutes of the DPC wherein these 6 posts are shown vacant and were intended to be filled in by promotion. So far as contention of the respondents that the seats were occupied by the officers on acting charge basis, so those were not vacant, it is observed in this regard that rule9 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 (***the Rules***) is quite clear and is reproduced below for facile reference: -

> *"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:*
> *Provided that no such appointment shall be made, if the prescribed length of service is short by more than [three years].*
> ***[(2)]. Sub rule (2) of rule-9 deleted vide by Notification No. SOR-VI(E&AD)1-3/2009/Vol-VIII, dated 22-10-2011.***
> *(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*

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Section Officer (Litigation)
Irrigation Department Peshawar

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."

(Underlining is ours)

16. Sub rule (2) of the above rule was deletedvide Notification No.SOR-VI(E&AD)1-3/2009/Vol-VIII, dated 22-10-2011. The deleted sub-rule is also reproduced as under:

"*((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.)*"

17. Before deletion of sub rule (2) of the rules, a junior officer to a senior civil servant,so long as he (the senior) holds the acting charge appointment, could not be considered for regular promotion to a higher post. The provisions of Rule 9 of the rules though empowers the Appointing Authority to make appointment of a senior civil servant on acting charge basis but, even after deletion of sub rule (2) of the ibid rules, that will not disentitle a junior officer to be considered for regular promotion to a higher post.

18. Regarding the acting charge appointment, the august Supreme Court of Pakistan has a consistent view that such posts being a stopgap arrangement, could not be a hurdle for promoting the deserving officers on their availability. Reliance in this respect is placed on PLC 2015 (CS) 151 titled "*Province of Sindh and others Versus Ghulam Fareed and others*", wherein the august Supreme Court was pleased to hold as under:

"*12. At times officers possessing requisite experience to qualify*

Section Officer (Litigation)
Irrigation Department Peshawar

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

for regular appointment may not be available in a department. However, all such exigencies are taken care of and regulated by statutory rules. In this respect, Rule 8-A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, empowers the Competent Authority to appoint a Civil Servant on acting charge and current charge basis. It provides that if a post is required to be filled through promotion and the most senior Civil Servant eligible for promotion does not possess the specific length of service, appointment of eligible officer may be made on acting charge basis after obtaining approval of the appropriate Departmental Promotion Committee/Selection Board. Sub-Rule (4) of the afore-referred Rule 8 further provides that appointment on acting charge basis shall be made for vacancies lasting for more than 6 months and for vacancies likely to last for less than six months. Appointment of an officer of a lower scale on higher post on current charge basis is made as a stop-gap arrangement and should not under any circumstances, last for more than 6 months. This acting charge appointment can neither be construed to be an appointment by promotion on regular basis for any purposes including seniority, nor it confers any vested right for regular appointment. In other words, appointment on current charge basis is purely temporary in nature or stop-gap arrangement, which remains operative for short duration until regular appointment is made against the post. Looking at the scheme of the Sindh Civil Servants Act and Rules framed thereunder, it is crystal clear that there is no scope of appointment of a Civil Servant to a higher grade on OPS basis except resorting to the provisions of Rule 8-A, which provides that in exigencies appointment on acting charge basis can be made, subject to conditions contained in the Rules."

19. The august Supreme Court of Pakistan in another judgment reported as 2022 SCMR 448 titled "*Bashir Ahmed Badini, D&SJ, Dera Allah Yar and others Versus Hon'ble Chairman and Member of Administration Committee and Promotion Committee of hon'ble High Court of Balochistan and others*", vis-à-vis the 'stopgap', '*ad hoc*' and temporary nature, graciously observed that:

"This stopgap arrangement as a temporary measure for a particular period of time does not by itself confer any right on the incumbent for regular appointment or to hold it for indefinite period but at the same time if it is found that incumbent is qualified to hold the post despite his appointment being in the nature of precarious tenure, he would carry the right to be considered for permanent appointment through the process of selection as the continuation of ad hoc appointment for considerable length of time would create an impression in the mind of the employee that he was being really considered to be retained on regular basis. The ad hoc appointment by its

Section Officer (Litigation)
Irrigation Department Peshawar

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

very nature is transitory which is made for a particular period and creates no right in favour of incumbent with lapse of time and the appointing authority may in his discretion if necessary, make ad hoc appointments but it is not open for the authority to disregard the rules relating to the filling of vacancies on regular basis in the prescribed manner. In the case of Tariq Aziz-ud-Din and others: (in re: Human Rights Cases Nos. 8340,9504-G, 13936-G, 13635-P and 14306-G to 143309-G of 2009) (2010 SCMR 1301), this Court held that in case where the appointing authority is satisfied that no suitable officer is available to fill the post and it is expedient to fill the same, it may appoint to that post on acting charge basis the most senior officer otherwise eligible for promotion in the cadre or service as the case may be. It is the duty and obligation of the competent authority to consider the merit of all the eligible candidates while putting them in juxtaposition to isolate the meritorious amongst them. Expression 'merit' includes limitations prescribed under the law. Discretion is to be exercised according to rational reasons which means that; (a) there be finding of primary facts based on good evidence; and (b) decisions about facts be made for reasons which serve the purposes of statute in an intelligible and reasonable manner. Actions which do not meet these threshold requirements are considered arbitrary and misuse of power [Director Food, N.W.F.P v. Messrs Madina Flour and General Mills (Pvt.) Ltd. (PLD 2001 SC 1)."

20. Similarly, in 2016 SCMR 2125 titled "Secretary to Government of the Punjab, Communication and Works Department, Lahore and others Versus Muhammad Khalid Usmani and others" the august Supreme Court was pleased to have observed as follows:

"15. As is evident from the tabulation given in the earlier part of this judgment, we have also noted with concern that the respondents had served as Executive Engineers for many years; two of them for 21 years each and the two others for 12 years each. The concept of officiating promotion of a civil servant in terms of rule 13 of the Rules is obviously a stopgap arrangement where posts become available in circumstances specified in Rule 13(i) of the Rules and persons eligible for regular promotion are not available. This is why Rule 13(iii) of the Rules provides that an officiating promotion shall not confer any right of promotion on regular basis and shall

Section Officer (Litigation)
Irrigation Department Peshawar

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

55

be liable to be terminated as soon as a person becomes available for promotion on regular basis."

The august Apex Court in paragraphs 20, 21 & 22 ruled as under:

"20. The record produced before us including the working paper produced before the DPC held on 11.08.2008 shows that the sanctioned strength of XENs in the appellant- Department at the relevant time was 151; out of which 112 were working on regular basis and 47 on officiating basis. It is also evident that 39 Executive Engineers' posts were available for regular promotion. This clearly shows that 39 Executive Engineers were working on officiating basis against regular vacancies. We have asked the learned Law Officer to justify such a practice. He has submitted that this modus operandi is adopted by most Government Departments to ensure that corruption and unprofessional conduct is kept under check. We are afraid the justification canvassed before us is not only unsupported by the law or the rules but also lends ample support to the observations made in the Jafar Ali Akhtar's case reproduced above. Further, keeping civil servants on officiating positions for such long periods is clearly violative of the law and the rules. Reference in this regard may usefully be made to Sarwar Ali Khan v. Chief Secretary to Government of Sindh (1994 PLC (CS) 411), Punjab Workers' Welfare Board v. Mehr Din (2007 SCMR 13), Federation of Pakistan v. Amir Zaman Shinwari (2008 SCMR 1138) and Government of Punjab v. Sameena Parveen (2009 SCMR 1).

21. During hearing of these appeals, we have noted with concern that the device of officiating promotion, ad hoc promotion/appointment or temporary appointment etc. is used by Government Departments to keep civil servants under their influence by hanging the proverbial sword of Damocles over their heads (of promotion 'on officiating basis' liable to reversion). This is a constant source of insecurity, uncertainty and anxiety for the concerned civil servants for motives which are all too obvious. Such practices must be seriously discouraged and stopped in the interest of transparency, certainty and predictability, which are hallmarks of a system of good governance. As observed in Zahid Akhtar v. Government of Punjab (PLD 1995 SC 530) "a tamed subservient bureaucracy can neither be helpful to the Government nor it is expected to inspire public confidence in the administration".

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Section Officer (Litigation)
Irrigation Department Peshawar

56

22. This issue was earlier examined by this Court in Federation of Pakistan v. Rais Khan (1993 SCMR 609) and it was held that "it is common knowledge that in spite of institution of ad hoc appointments unfortunately being deeply entrenched in our service structure and the period of ad hoc service in most cases running into several years like the case of the respondent (8 years' ad hoc service in BPS-17), ad hoc appointees are considered to have hardly any rights as opposed to regular appointees though both types of employees may be entrusted with identical responsibilities and discharging similar duties. Ad hoc appointments belong to the family of "officiating", "temporary" and "until further orders" appointments. In Jafar Ali Akhtar Yousafzai v. Islamic Republic of Pakistan (PLD 1970 Quetta 115) it was observed that when continuous officiation is not specifically authorized by any law and the Government/competent authority continues to treat the incumbent of a post as officiating, it is only to retain extra disciplinary powers or for other reasons including those of inefficiency and negligence, e.g. failure on the part of the relevant authorities to make the rules in time, that the prefix "officiating" is continued to be used with the appointment and in some case for years together. And in proper cases, therefore, Courts (at that time Service Tribunals had not been set up) are competent to decide whether for practical purposes and for legal consequences such appointments have permanent character and, when it is so found, to give legal effect to it." In Pakistan Railways v. Zafarullah (1997 SCMR 1730), this Court observed that, "appointments on current or acting charge basis are contemplated under the instructions as well as the Rules for a short duration as a stop-gap arrangement in cases where the posts are to be filled by initial appointments. Therefore, continuance of such appointees for a number of years on current or acting charge basis is negation of the spirit of instructions and the rules. It is, therefore, desirable that where appointments on current or acting charge basis are necessary in the public interest, such appointments should not continue indefinitely and every effort should be made to fill posts through regular appointments in shortest possible time."

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

By way of the stated valuable judgment referred to above, the august Supreme Court maintained the decision of the Punjab Service Tribunal, Lahore, whereby the appeals filed by the

Section Officer (Litigation)
Irrigation Department Peshawar

19

respondents were allowed and the order, impugned before the Service Tribunal dated 25.08.2008 passed by the Secretary, Communication and Works Department, Government of the Punjab, Lahore, reverting them to their original ranks of Assistant Engineers, was set aside to their extent. As a consequence, all the respondents were deemed to have been promoted as Executive Engineers on regular basis with effect from the respective dates on which they were promoted 'on officiating basis' with all consequential benefits. It was further held that the condition of 'on officiating basis' contained in promotion orders of all the respondents shall stand deleted but it was a case where the persons promoted 'on officiating basis' were duly qualified to be regularly promoted against the promotion posts, therefore, wisdom is derived that in a case; like one in hand, where the persons promoted 'on acting charge basis' did not possess the requisite qualification or other prescribed criteria for promotion, should remain 'on acting charge basis' i.e. that made for stopgap arrangement till their qualifying for their eligibility and suitability for regular promotion or till the availability of the suitable and qualified officers. The officers promoted 'on acting charge basis' could not, unfortunately pass the requisite either grades B&A both examinations or any of the two grades' examination, therefore, they were not found eligible as per the working paper. And as they were 'on acting charge basis' for more than a decade, the

ATTESTED

Section Officer (Litigation)
Irrigation Department Peshawar

department seems reluctant to fill the vacancies, (occupied by them 'on acting charge basis') by regular promotion despite availability of suitable and qualified officers.

21. The honourable High Court of Sindh in a case reported as 2019 PLC (CS) 1157 titled "*Attaullah Khan Chandio versus Federation of Pakistan through Secretary Establishment and another*" observed as under:

> "16. Admittedly, the Petitioner was encadered in Police Service of Pakistan on 19.10.2010 and his seniority would be reckoned from that date. **We are mindful of the fact that acting charge promotion is virtually a stopgap arrangement, where selection is made pending regular promotion of an officer not available at the relevant time of selection and creates no vested right for promotion against the post held.**"
>
> *(Underlining is ours)*

22. Proceeding ahead, Rule 3 of the rules pertains to method of appointment. Sub rule (2) of rule 3 of the rules empowers the department concerned to lay down the method of appointment, qualifications and other conditions applicable to a post in consultation with the Establishment and Administration Department and the Finance Department.

23. While Rule 7 of the rules is regarding appointment by promotion or transfer. Sub rule (3) of rule 7 of the rules states that:

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

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Section Officer (Litigation)
Irrigation Department Peshawar

59

This means only the persons possessing the qualifications and fulfilling such conditions as laid down for the purpose of promotion shall be considered for promotion because it does not leave room for the persons, who do not possess such qualification and fulfilling such conditions, to be also considered for such promotion. Vide Notification No.SO(E)/IRR:/23-5/73 dated 17.02.2011, the Irrigation Department of the Khyber Pakhtunkhwa, in consultation with the Establishment & Administration Department and Finance Department, laid down, the method of recruitment, qualification and other conditions specified in columns No.3 to 5 of Appendix (pages 1 to 5) to the above notification, made applicable to the posts in column No.2 of the Appendix. At serial No.4 of the Appendix the post of Assistant Engineer/Sub Divisional Officer/Assistant Director (BPS-17) is mentioned. The qualification for appointment is prescribed to be BE/BSc Degree in Civil/Mechanical Engineering from a recognized University. Sixty-five percent of the posts were to be filled in through initial recruitment. Ten percent by promotion on the basis of seniority cum fitness from amongst the Sub Engineers who acquired, during service, degree in Civil or Mechanical Engineering from a recognized University. Five percent by promotion, on the basis of seniority cum fitness, from amongst the Sub Engineers who joined service as degree holders in Civil/Mechanical Engineering. Vide Notification

Section Officer (Litigation)
Irrigation Department Peshawar

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

No.SOE/IRRI/23-5/2010-11 dated 25.06.2012, the notification of 2011 was amended. The amendments, relevant to these appeals, are reproduced as under:

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 years' service as such.

Note:- For the purpose of clause (b), a joint seniority list of the Sub Engineers having degree in Civil Engineering or Mechanical Engineering shall be maintained and their seniority is to be reckoned from the date of their appointment as Sub Engineer.

Section Officer (Litigation)
Irrigation Department Peshawar

24. The working paper also contained the requirement of the rules and in view of the same, the panel of officers was prepared on proforma-II, which clearly shows that all the appellants were eligible and the officers, who were allegedly holding acting charge

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

of the posts, were not eligible. Neither any deficiency of any of the appellants could be pointed out in the replies nor argued before us rather in paragraph 6 of the replies, the eligibility and fitness of the appellants was admitted in unequivocal terms. The only reason which was stated in the replies, the non-availability of the posts because the vacant posts detailed in the working paper and in the minutes of the DPC, were occupied by the ineligible officers on acting charge basis since 2011 in utter violation of the rules and the method laid down by the department concerned.

25. In a recent judgment reported as 2022 SCMR 448 titled "*Bashir Ahmed Badini, D&SJ, Dera Allah Yar and others Versus Hon'ble Chairman and Member of Administration Committee and Promotion Committee of hon'ble High Court of Balochistan and others*", the august Supreme Court of Pakistan has held as under:

> *"13. According to Section 8 of the Civil Servants Act, 1973, for proper administration of a service, cadre or post, the appointing authority is required to make out a seniority list of the members, but no vested right is conferred to a particular seniority in such service, cadre or post. The letter of the law further elucidates that seniority in a post, service or cadre to which a civil servant is appointed shall take effect from the date of regular appointment to that post, whereas Section 9 is germane to the promotion which prescribes that a civil servant possessing such minimum qualifications as may be prescribed shall be eligible for promotion to a higher post under the rules for departmental promotion in the service or cadre to which he belongs. However, if it is a Selection Post then promotion shall be granted on the basis of selection on merit and if the post is Non- Selection Post then on the basis of seniority-cum-fitness. A quick look and preview of Rule 8-B of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 ('1973 Rules') shows that an Acting Charge Appointment can be made against the posts which are likely to fall vacant for a period of six months or*

Section Officer (Litigation)
Irrigation Department Peshawar

ATTESTED
EXAMINER
Khyber Pakhtukhwa
Service Tribunal
Peshawar

62

more which appointment can be made on the recommendations of Departmental Promotion Committee or the Selection Board. The acting charge appointment does not amount to an appointment by promotion on regular basis for any purpose including seniority and also does not confer any vested right for regular promotion to the post held on acting charge basis. Under Rule 18, the method of making Ad-hoc Appointments is available with the procedure that if any post is required to be filled under the Federal Public Service Commission (Function) Rules, 1978, the appointing authority shall forward a requisition to the Commission immediately. However, in exceptional cases ad-hoc appointment may be made for a period of six months or less with prior clearance of the Commission as provided in Rule 19 wherein if the appointing authority considers it to be in public interest to fill a post falling within the purview of Commission urgently pending nomination of a candidate, it may proceed to fill it on ad-hoc basis for a period of six months. The reading of Balochistan Civil Servants Act, 1974 also reveals that the provisions made under Section 8 are similar to that of Civil Servants Act, 1973. Here also in Section 8, it is clarified that the seniority in the post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post and the criteria for promotion is also laid down with like prerequisites for the selection post and or non-selection post as provided in Civil Servants Act, 1973. So far as ad-hoc and temporary appointments are concerned, Rules 16 to 18 of Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009 also enlightened that in case a post is required to be filled through Commission, the Administrative Secretary of the Department shall forward a requisition in the prescribed form to the Commission, however, when an Administrative Department considers it to be in public interest to fill in a post falling within the purview of Commission urgently, it may, pending nomination of a candidate by the Commission, with prior approval of the competent authority, proceed to fill such post on ad-hoc basis for a period not exceeding six months by advertising the same. The Acting Charge appointment is encapsulated under Rule 8 with the rider that appointment on acting charge basis shall neither amount to a promotion on regular basis for any purpose including seniority, nor shall it confer any vested right for regular promotion to the post held on acting charge basis."

ATTESTED

EXAMINER
Khyber Pakhtukhwa
Service Tribunal
Peshawar

Section Officer (Litigation)
Irrigation Department Peshawar

26. Last but not the least, it seems quite astonishing that, while negating their own stance that there was no vacancy available so that the appellants could be promoted, the respondents, vide Notification No.SO(E)/IRRI:/4-3/DPC/2019/Vol-IX dated 28.03.2022, promoted Engr. Bakhtiar, (only one of the eligible) Graduate Sub-Engineer/Assistant Engineer BS-17 (ACB means acting charge basis), to the post of Assistant Engineer (BS-17) on regular basis. This action of the respondents not only speaks volumes about their malafide but also proves the stance taken by the appellants that they were being discriminated and were not being dealt with equally or in accordance with law.

27. Before parting with the judgment we deemed it appropriate to address a possible question and that is whether the minutes of the meeting of the DPC, deferring the Agenda item-III pertaining to promotion, whereby the appellants were, in a way, ignored from promotion on the pretext discussed hereinabove, could be termed as 'final order' enabling the appellants to file appeal before this Tribunal. In this respect we will refer and derive wisdom from the judgment of the august Supreme Court of Pakistan reported as PLD 1991 SC 226 titled "*Dr Sabir Zameer Siddiqui versus Mian Abdul Malik and 4 others*". It was found by the honourable Supreme Court that:

> *"5. There is no requirement of law provided anywhere as to how a final' order is to be passed in a departmental proceeding. **In the present case, not only the representative of the competent authority considered the comments offered in the High Court to be the final***

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Section Officer (Litigation)
Irrigation Department Peshawar

64

order but the High Court itself acted on such representation thereby inducing the appellant to seek further relief in accordance with law. *The appellant could, in the circumstances, approach the Service Tribunal for the relief."*

(Underlining is ours)

28. We also refer to the judgment of the honourable High Court of Sindh reported as 2000 PLC CS 206 titled "*Mian Muhammad Mohsin Raza versus Miss Riffat Shiekh First Senior Civil Judge and others*", wherein the honourable High Court of Sindh, while dealing with the term 'final order' observed as under:

> *"It would not be out of place to mention that appeals before the Service Tribunal are provided by section 4 of the Sindh Service Tribunals Act, 1973, against any "final order".* ***The term "order" cannot be given any restricted connotation and as held in Muhammad Anis Oureshi v. Secretary Ministry of Communication 1986 PLC (C.S.) 664, the word "order" as used in section 4 of the Service Tribunals Act, 1973, is used in a wider sense to include any communication which adversely affects a civil servant.*** *"*
>
> *(Underlining is ours)*

For the foregoing reasons, we hold that the minutes of the meeting of the DPC dated 23.06.2021, deferring the Agenda item No.III relating to promotion would amount to depriving/ignoring the appellants from promotion and is thus a communication adversely affecting them, therefore, it would be considered a 'final order' within the meaning of section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Section Officer (Litigation)
Litigation Department Peshawar

29. In the given circumstances, we allow these appeals and direct the respondents to consider the appellants for promotion against the

vacant posts. The DPC shall be held at the earliest possible, but not later than a month of receipt this judgment. Copies of this judgment be placed on all the connected appeal files. Consign.

30. ***Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 15th day of April, 2022.***

KALIM ARSHAD KHAN
Chairman

ROZINA REHMAN
Member Judicial

Section Officer (Litigation)
Irrigation Department Peshawar

Khyber Pakhtunkhwa Service Tribunal Peshawar

(Approved for Reporting)

15/4/22

Certified to be ture copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application
Number of Words
Copying Fee
Urgent
Total
Name of Copyist
Date of Completion of Copy
Date of Delivery of Copy

Annex IV

MINUTES OF THE DEPARTMENTAL PROMOTION COMMITTEE MEETING HELD ON 19.07.2022 AT 1400 HOURS UNDER THE CHAIRMANSHIP OF SECRETARY IRRIGATION DEPARTMENT

In order to fill in the vacant posts of different categories in the Irrigation Department on regular and acting charge basis, a meeting of the Departmental Promotion Committee held on 19.07.2022 under the chairmanship of Secretary Irrigation. The following attended the meeting: -

1.	Muhammad Ayaz, Secretary Irrigation	**In chair**
2.	Engr: Ghulam Ishaq Khan, C.E (North) Irrigation	Member
3.	Mr. Muhammad Nawaz, Additional Secretary Irrigation Department.	Secretary/Member
4.	Mr. Sultan Wazir, Section Officer (Reg-V), Establishment Department.	Member
5.	Mr. Niamat Khan, Section Officer (SR-III), Finance Department.	Member

2. The following agenda items were discussed in the meeting: -

i. **Promotion of Diploma Holder Sub Engineers to the post of Assistant Engineer/Sub Divisional Officer (BS-17).**
ii. **Promotion of Graduate Sub Engineers to the post of Assistant Engineer/Sub Divisional Officer (BS-17).**
iii. **Promotion of Assistant/Stenographer to the post of Superintendent (BS-17) (Regional office Cadre).**

3. After recitation from the Holy Quran, the chair welcomed the participants and apprised the forum about the agenda items. The Additional Secretary, Irrigation Department presented the agenda Items.

Agenda Item No. I

Promotion of Diploma Holder Sub Engineer to the post of Assistant Engineer/Sub Divisional Officer (BS-17).

4. The Additional Secretary informed the forum that three (03) No. posts of Assistant Engineers/Sub Divisional Officers (BS-17) are lying vacant in the Department which are required to be filled in under 15% quota by promotion on the basis of seniority-cum-fitness from amongst the Sub Engineers who hold a Diploma in Associate Engineer in Civil, Mechanical, Electrical or Auto Technology and have passed Departmental Grade B & A examination with five (05) years service as such.

5. After threadbare discussion and scrutinize all the credentials of the officials/officers included in the panel, the committee unanimously recommended the following Diploma Holder Sub Engineers to the Post of Assistant Engineer/Sub Divisional Officer (BS-17) on regular basis.

i. **Mr. Khawar Nadeem.**
ii. **Mr. Habib-ur-Rehman.**
iii. **Mr. Daud Khan**

Section Officer (Litigation)
Irrigation Department Peshawar

6. The Additional Secretary informed the forum that four (04 No.) ex-cadre/project posts of Assistant Engineers/Sub Divisional Officers (BS-17) are lying vacant due to posting of regular SDOs which are required to be filled in under rule 09(4) of the Appointment, Promotion and Transfer Rules, 1989.

7. The committee after detailed discussion and examine the service record and synopsis of the officials included in the panel. The officials at Sr. No. 06 and 07 i.e. Muhammad Imran and Mr. Nisar Ahmad, Sub Engineers have not submitted PERs for the period from 11.12.1988 to 31.12.2021 and from 01.01.2011 to 31.12.2021 respectively, hence the committee not considered their appointment/promotion. The committee further recommended the following eligible Diploma Holder Sub Engineers to the Post of Assistant Engineer/Sub Divisional Officer (BS-17) on acting charge basis.

i. **Mr. Qudratullah.**
ii. **Mr. Maqsood Ali.**
iii. **Mr. Muhammad Iqbal**
iv. **Mr. Muhammad Yaqoob**

Agenda Item No. II

Promotion of Graduate Sub Engineer to the post of Assistant Engineer/Sub Divisional Officer (BS-17).

8. The committee was apprised that Five (05) No. regular posts of Assistant Engineers/Sub Divisional Officers (BS-17) are lying vacant in the Department which are required to be filled in under 12% quota by promotion on the basis of seniority-cum-fitness from amongst the Sub Engineers having Degree in Civil Engineering or Mechanical Engineering from recognized University and have passed Departmental Grade B&A Examinations with five (05) year service as such. The Representative of Establishment Department raised observation that Five (05) No. Acting Charge Sub Engineers are already working against the post of SDOs and they are drawing salaries against the regular post of SDOs. However, it has been clarified by the forum that the already Acting Charge SDOs are drawing Salaries against the Project Posts. The committee examined the case of the officers/officials included in the panel at Sr. No. 1 to 3, 5 to 7, 9,12,14,15 and 16, who have not passed the Departmental examination(s).

9. The committee was informed that the Graduate Sub Engineers who have passed the Departmental Grade B&A examination have filed a Service Appeals No. 7659-7663/2021 with the prayer that on acceptance of the instant appeal, impugned decision/recommendations of the Departmental Promotion Committee (DPC) meeting held on 23.06.2021 may be declared illegal and unlawful in which promotion of the appellants was deferred. The aggrieved official filed an appeal in Service Tribunal and the Service Tribunal in its judgment dated 15.04.2022 allow the appeals/prayers and directed the respondents as under: -

"To consider the appellants for promotion against the vacant posts. The DPC shal be held at the earliest possible, but not later than a month of receipt this judgment"

10. The Department refer the case of appellants alongwith judgment of the Service Tribunal dated 15.04.2022 to the Law Department for consideration of the scrutiny committee meeting. In turn the Law Department held meeting of the said committee on 29.06.2022, advised that the Administrative Department may consider the case of appellants for promotion, instead of filling of CPLA **(Annex-I)**.

Section Officer (Litigation)
Establishment Department Peshawar

11. After examining all the relevant record and judgment of Service Tribunal dated 15.04.2022 in Service Appeals filled by appellants, the committee unanimously recommended the following (05) eligible Graduate Sub Engineers to the post of Assistant Engineer/ Sub Divisional Officer (BS-17) who have passed Departmental Grade B&A examination in Irrigation Department on regular basis w.e.f the date of deferment of the previous DPC meeting i.e. 23.06.2021

33

i. **Mr. Inamullah.**
ii. **Mr. Shahid Ali Khan.**
iii. **Mr. Rizwan.**
iv. **Mr. Javedullah Khan.**
v. **Mr. Wajahat Hussain.**

Agenda Item No. III

Promotion of Assistant/Stenographer to the post of Superintendent (BS-17) (Regional office Cadre).

12. The forum was informed that one (01) No. regular post of Superintendent (BS-17) is lying vacant which is required to be filled in by promotion on the basis of seniority-cum-fitness from amongst the Assistants and Senior Scale Stenographers with at least five-year service as such. The committee was further apprised that three (03) No. ex-cadre/project Post of Superintendent are lying vacant in the Department which are required to be filled in on appointment on acting charge basis.

13. After examining all the relevant record of the Assistants (BS-16)/ Senior Scale Stenographers included in the panel, recommended **Mr. Nazir Ali, Assistant (BS-16)** to the post of **Superintendent (BS-17)** in Irrigation Department on regular basis and deferred the case of acting charge Superintendents.

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

Secretary Irrigation
Chairman

Chief Engineer (North)
Irrigation Department
(Member)

Additional Secretary
Irrigation Department
(Member/Secretary)

Section Officer (R-V)
Establishment Department
(Member)

Section Officer (SR-III)
Finance Department
(Member)

Section Officer (Litigation)
Irrigation Department Peshawar

AUTHORITY LETTER

I, Additional Secretary to Govt. of Khyber Pakhtunkhwa Irrigation Department do hereby authorize Mr. Roz Amin, Superintendent (BS-17) Litigation Section, Irrigation Department to file Para-wise comments and make statement before the Khyber Pakhtunkhwa Service Tribunal, Peshawar in connection with Service Appeal No.24/2023 filed by Engr. Muhammad Mustajab Khan SDO Drainage, Vs Government of Khyber Pakhtunkhwa through Chief Secretary & others.

ADDITIONAL SECRETARY,
IRRIGATION DEPARTMENT