

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 7917/2021

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MISS FAREEHA PAUL ... MEMBER(E)

Engineer Imtiaz Khan, Deputy Director (PSU), O/O Small Dam
Directorate, Irrigation Department, Khyber Pakhtunkhwa, Peshawar.
.....(*Appellant*)

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.
2. The Secretary Irrigation Department, Government of Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Establishment Department, Government of Khyber Pakhtunkhwa, Peshawar.
4. The Secretary Law & Parliamentary Affairs Department, Government of Khyber Pakhtunkhwa, Peshawar.
5. The Secretary, Finance Department, Government of Khyber Pakhtunkhwa, Peshawar.
6. The Chief Engineer (South) Irrigation Department, Khyber Pakhtunkhwa, Peshawar.
7. Engineer Alam Zab SDO, Irrigation Department, Mardan and 03 others..... (*Respondents*)

Mr. Noor Muhammad Khattak,
Advocate

...

For appellant

Mr. Muhammad Jan,
District Attorney

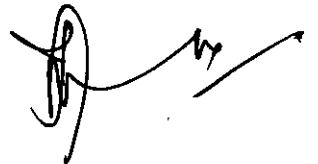
...

For official respondents

Mr. Zartaj Anwar & Mian Afrasiab Gul ...
Kakakhel, Advocates

For private respondents

Date of Institution.....21.12.2021
Date of Hearing.....13.07.2023
Date of Decision..... 13.07.2023



JUDGEMENT

FAREEHA PAUL, MEMBER (E): Through this single judgment, we intend to dispose of instant appeal as well as the connected Service Appeal No.207/2022, titled Engineer Sohail Khan, Deputy Director (Design), O/O Chief Engineer (South) Irrigation Department, Khyber Pakhtunkhwa, Peshawar and four others Vs. The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others" as in both the appeals common questions of law and facts are involved, so both can be conveniently decided together.

02. The service appeal in hand has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned Agenda Item No. 4 of the SSRC Minutes dated 29.04.2021 and notification dated 24.08.2021 whereby unjustified 20% promotion quota in BPS-18 (Executive Engineer) to B-Tech/Diploma Holders for working against the professional engineering works posts has been created by the respondents and against no action taken on the departmental appeal of appellant within the statutory period of ninety days. It has been prayed that on acceptance of this appeal the impugned agenda item No. 4 of the SSRC minutes dated 29.04.2021 and notification dated 24.08.2021 might be declared as illegal, unconstitutional and in-effective upon the rights of appellant and might be set aside and that the respondents might be directed not to issue/make promotions of B-Tech/Diploma Holders against the posts specified for professional engineers, in line with the provisions of the PIC Act, 1976 and in light of the judgment/decision dated 03.10.2018 of the august Supreme Court of Pakistan



in C.P No. 78-K/2015, alongwith any other remedy, which the Tribunal deemed fit and appropriate.

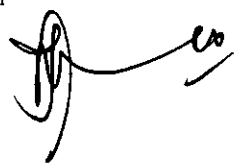
03. Brief facts, as given in the memorandum of appeal, are that the appellant was qualified Civil/Mechanical Engineer and registered with Pakistan Engineering Council. Under the existing rules of the respondent department, the appellant had better prospects of promotion and career progression. According to those rules, the post of Executive Engineer/Deputy Director/Technical Officer (BPS-18) had to be filled up 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/B.Sc Engineering (Civil or Mechanical) from a recognized University, with at least five years service as such, and who had passed the professional or Revenue Examination under the prescribed rules. Through agenda item No. 4 of the impugned minutes dated 29.04.2021 passed/issued by the Standing Service Rules Committee, which was not comprised in accordance with the notification of the Establishment Department dated 29.01.2005 and judgment dated 11.03.2021 of the august Peshawar High Court, Peshawar passed in Writ Petition No. 4378/17 titled "Manzoor Ahmad Vs. Government of Khyber Pakhtunkhwa and others", due to some malafide intentions or knowingly misinterpreted the settled law of the land, and non-qualified/non-engineers of B-Tech Technology/diploma holder persons had been granted illegal benefits in the shape of assigning Professional Engineering Works and also benefiting them by awarding promotion to Grade-17 and again a 20% quota had been proposed for promotion to Grade-18 (Executive Engineer) post which was against the Pakistan Engineering Council Act, 1976. In the



light of the SSRC minutes dated 29.04.2021, the respondents issued the impugned notification dated 24.08.2021 whereby amendments had been made in the service rules of the respondent department dated 17.02.2011. Feeling aggrieved from the impugned minutes of the SSRC and impugned notification dated 24.08.2021, the appellant filed departmental appeal before respondent No. 1 but no response was received, hence the present appeal.

04. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant, the learned District Attorney for the official respondents and counsels for the private respondents and perused the case file with connected documents in detail.

05. Learned counsel for the appellant after presenting the case in detail argued that the Executive Engineer (BPS-18) in Irrigation Department was a Professional Engineering post and the person who held the said post had to look into the matters which were related to the professional engineering works. He referred to Esta Code of Khyber Pakhtunkhwa, according to which the composition of Standing Service Rules Committee and its function had been given as framing of Service Rules/Recruitment Rules and that while sending proposals for framing of new Service Rules and making amendments in the existing rules, the qualifications proposed for appointment to posts should suit the requirement of the job. The learned counsel argued that in the case under reference, those instructions had been completely ignored by SSRC. According to him, neither change occurred in set job description of Executive Engineers (BPS-18) nor they changed the requirement of the job since last SSRC and still allotted 20% quota to B-Tech/Diploma holders



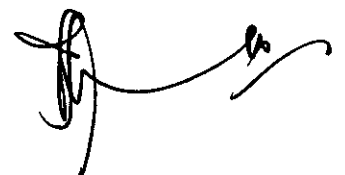
whose qualification did not meet the requirement for the job and that by doing so, the requirements of the Pakistan Engineering Council Act had been violated. He elaborated that the grievance of the appellant was that B.Sc/BE Civil Engineering was not at par with B.Tech (Hon) and that non-professional engineers with B-Tech qualification were promoted and posted against the posts of professional engineers which was against the law. He referred to the judgment of the august Supreme Court of Pakistan in C.P No. 78-K of 2015 announced on 03.10.2018 which upheld the provisions of the PEC Act 1976 in its detailed judgment and read out the operative part of the judgment, ***“Government shall not allow or permit any person to perform professional engineering work as defined in the PEC Act who does not possess accredited engineering qualification from the accredited engineering institution and his name is not registered as a registered engineer or professional engineer under the PEC Act.”*** He further contended that according to the PEC Act 1976, the management and supervision of the engineering works in respect of all engineering disciplines was “Professional Engineering Work” and that under section 27, it could only be undertaken/executed by engineers who were registered with PEC.

06. Learned District Attorney, alongwith learned counsels for the private respondents, while rebutting the arguments of learned counsel for the appellant, argued that the rules quoted by the appellant were applicable till 24.08.2021, but afterwards the Irrigation Department vide notification dated 24.08.2021, in consultation with Establishment Department and Finance Department, allocated 12% quota for promotion of SDOs having B-Tech Honor Degree and 8% quota for promotion of Diploma Holder SDOs,



through proper procedure of Standing Service Rules Committee. Regarding the composition of SSRC, the learned AAG informed that the Law Department was not its member as clarified vide letter dated 08.09.2016 of the Law Department. He argued that the B.Tech and Diploma Holder SDOs were granted quota for promotion to BS-18 in the light of recommendation of SSRC, in consultation with Establishment Department and Finance Department, and the amendment was properly vetted by the Law Department. So far as the quota granted for promotion to B.Tech and Diploma Holder Sub Engineers of Irrigation Department to BPS-17 in 2011 as well as the amendment under reference in the present service appeal was concerned, it was clarified that the civil servants were governed under Civil Servant Act, 1973 and not under PIC Act, 1976. A request was made by all of them that the appeal might be dismissed.

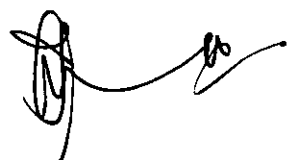
07. Arguments and record presented before us transpire that the appellants are aggrieved with the amendment in the Service Rules of the Irrigation Department. According to the old rules, for promotion to the post of Executive Engineer/Director/Technical Officer (BS-18), 100% quota was allocated on the basis of seniority-cum-fitness from amongst the Sub Divisional Officers, Assistant Engineers and Assistant Directors possessing Degree in BE/B.Sc Engineering (Civil & Mechanical) from a recognized University, with at least five years service as such, and who had passed the professional or Revenue Examination under the prescribed rules. The Standing Service Rules Committee in its meeting held on 29.04.2021, recommended amendment in the existing rules as follows:



- i. **80% 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/B.Sc Engineering (Civil or Mechanical) from a recognized University with at least five years service as such, and have passed the professional or Revenue Examination under the prescribed rules.**
- ii. **12% by promotion, on the basis of seniority-cum-fitness from amongst the Sub Divisional Officers, Assistant Engineers and Assistant Directors possessing Degree in B.Tech (Hons) from a recognized University, with at least five years service as such, and have passed the professional or Revenue Examination under the prescribed rules.**
- iii. **08% by promotion, on the basis of seniority-cum-fitness from amongst the Sub-Divisional Officers, Assistant Engineers and Assistant Directors possessing Diploma of Associate Engineering from a recognized Board, with at least five years service as such, and have passed the professional or Revenue Examination under the prescribed rules.”**

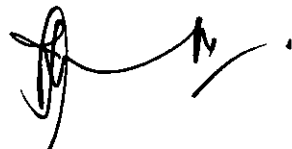
08. The above amendment was approved by the Provincial Government and notified in the official gazette on 24.08.2021. Against that amendment, the appellants preferred departmental appeals with the prayer for setting aside the notification and when those were not honoured they filed these service appeals.

09. There is no dispute on the fact that setting criteria for appointment and promotion for the provincial civil servants is the domain of the Provincial Government. Similarly the quotas allocated to different categories of officers and officials and their qualification, to make them eligible for such appointments and promotions, is also the domain of provincial government. The question raised before us is that the post of Executive Engineer is a



professional engineering post and a person holding that post has to look into such matters which are related to the professional engineering work and those having professional qualification of BI/B.Sc Civil/Mechanical Engineering qualify and that no B.Tech or Diploma holder is suitable for that position. While presenting this argument, the learned counsel for the appellant has tried to gain strength from the Pakistan Engineering Council Act 1976 which has clearly defined the terms “professional engineering work”, “registered engineer”, “accredited engineering qualification”, “engineering institution” and so on. By referring to PEC, one must not forget that it is meant to regulate the engineering profession and maintain realistic and internationally relevant standards of professional competence and ethics of engineers, license them and professionally promote and uphold the standards. As far as determining the academic and professional qualification of an engineer, who is a civil servant also, and his promotion from one grade to the next is concerned, it is the sole prerogative of the provincial government.

10. Appellants have not only relied on the judgment reported as 2018 SCMR 2098 titled “Maula Bux Shaikh and others versus Chief Minister Sindh and others” but have also annexed the same with their appeal as annex-“O”. The learned counsel for the respondents and learned District Attorney also relied on the same. The august Supreme Court of Pakistan, while hearing CP No. 78- K of 2015 filed against the judgment passed by Sindh Service Tribunal Karachi, dismissing the appeals of petitioners, has also dismissed the Civil Petition and refused the leave by discussing in detail every aspect of the matter, which is quite similar to these appeals, in the following manner:-



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

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



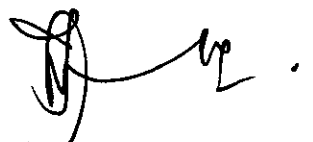
issued under sub-rule (2) of Rule 3 of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, which rules have been made under section 26 of Sindh Civil Servants Act, 1973. Neither rule 3(2) of the said rules nor section 26 of the Act, 1973 have been challenged nor their vires called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

21. The PEC Act as its preamble itself shows so also reading of the whole Act shows that it essentially deals with regulations of engineering profession in it, inter alia, it prescribes for qualification of professional engineers, maintenance of register of professional engineers and accrediting of engineering universities etc and not as a regulator of employment be that be of government service or in the private service. The reasons for it could be found that all sort of engineering work could not be and may not be a professional engineering work for performance of which professional engineers are required. For example, technician, mechanic, draftsman, foreman, supervisor and overseer etc at best could be a skilled Workman who may work independently or under the supervision of professional engineer and for such technician, mechanic, draftsman, foreman, supervisor and overseer, the employer may not require holding of professional engineering degree. However, if the person is required to perform any of professional engineering work as defined under the PEC Act, the provisions of this Act will come into operation for ensuring as the work of professional engineer can and only be performed by professional engineer as recognized by PEC Act. The professional

engineering work has been clearly defined under section 2(xxv) of the PEC Act which has already been reproduced above and lays down in sufficient details the works which are noted to be as professional engineering works and such works as mandatorily required by the PEC Act to be performed by a professional engineer possessing accredited engineering qualification from accredited engineering institutions in Pakistan and abroad with experience and passing of test of the Council and no other person is allowed to perform professional engineering works be that be a diploma holder or B.Tech. degree holder. This aspect of the matter has been substantially addressed by the PEC Act itself when making provision of section 27(5A) that "no person shall unless registered as a registered engineer or professional engineer, hold any post in an engineering organization where he has to perform professional engineering work." Thus professional engineering work can only be performed by a person who is registered as registered engineer or professional engineer and both registered engineer and professional engineer in terms of the PEC Act are by law required to possess accredited engineering qualification as prescribed by the PEC Act from accredited engineering institution

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

23. *The net result of above discussion is that this petition fails. It is dismissed and leave refused, however with note of caution that*



government shall not allow or permit any person to perform professional engineering work as defined in the PEC Act, who does not possess accredited engineering qualification from the accredited engineering institution and his name is not registered as a registered engineer or professional engineer under the PEC Act."

11. Another point raised by the learned counsel for the appellant was regarding the composition of Standing Service Rules Committee. He referred to a notification dated 29 January 2005, according to which the composition of SSRC was as follows:-

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

12. It was clarified that at a later stage, the Additional Secretary, Law Department was deleted from the Committee. Based on the record, the learned counsel for the appellant raised an observation that the minutes of the meeting of SSRC held for amending the impugned service rules, were signed by the Deputy Secretary, Establishment Department and Section Officer, Finance Department instead of Additional Secretaries of those two departments. Moreover, the Deputy Secretary of Irrigation Department, who was a member-cum-Secretary of the Committee, did not sign the minutes. Copy of minutes provided with the appeal indicate that the Additional Secretary of Irrigation Department was in attendance during the meeting as



member-cum-secretary of the Committee. As far as the representative of Establishment Department is concerned, a letter of clarification was produced by the learned counsel for private respondents, which was issued to the appellant answering his queries under the RTI Act, according to which the Deputy Secretary, Mr. Muhammad Yusuf, who attended the meeting, was holding the charge of Additional Secretary also. This leaves only the Finance Department from where representation was not according to the notified composition; this alone will not be a sole ground for declaring the impugned rules as invalid because majority of the members of the SSRC had attended and decided the matter before them. Moreover, if the government, which was the approving authority of Service Rules, had no objection on the representation viz-a-viz the notified composition of the committee on that particular day, then this Tribunal does not find any objection on it.

13. In view of the above discussion, both the service appeals are dismissed with cost. Copy of this judgment be placed in the file of connected appeal. Consign.

14. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 13th day of July, 2023.*


(FAREEHA PAUL)
Member(I)


(KALIM ARSHAD KHAN)
Chairman