

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

Service Appeal No.1184/2023

Sami-ud-Din Shah

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Appellant

**Versus**

Govt of Khyber Pakhtunkhwa  
through Secretary to Khyber Pakhtunkhwa  
C&W Department & others

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Respondents

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Deponent



Zahid Ullah

Section Officer (Litigation)  
C&W Department, Peshawar

*Date of hearing*

*18.08.2023*

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**SERVICE APPEAL NO. 1184 OF 2023**

MR. SAMI UD DIN SHAH  
SUB ENGINEER (BS-16) C&WD

--- Appellant

**VERSUS**

1. Secretary to Govt of Khyber Pakhtunkhwa C&W Department
2. Chief Engineer (Centre) C&W Peshawar.

--- Respondents

Khyber Pakhtunkhwa  
Service Tribunal

**PARA-WISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1 & 2**

Diary No. 7084

Dated 17/8/2023

**PRELIMINARY OBJECTIONS:-**

- i. That appellant herein has not come to the court with clean hands and has not stated the facts of the case.
- ii. That no **legal right** vests in the appellant which could possibly be enforced through the process of court.
- iii. That the appellant does not come within the definition of **aggrieved person** by any stretch of imagination.
- iv. Furthermore, there exists no corresponding **legal obligation** which the answering respondents could be caused of violating even remotely.
- v. That by abusing the process of this court the appellant is making a designed attempt to circumvent the statute of limitation because the only statutory remedy available to him under the KP Service Tribunal Act, 1974 has been rendered time barred. This alone disentitles the appellant to seek any respite in equity.
- vi. The appellant herein is not entitled to any of the reliefs listed in the prayer.
- vii. The appellant has got no *lucus standi* to file the service appeal.

**FACTS:-**

1. Pertains to record need no reply.
2. Pertains to record need no reply.
3. Incorrect, it is submitted that in light of Service Tribunal judgment dated **07.10.2021 (Annex-I)**, the existing 10% quota reserved for promotion of B-Tech (Hons) degree holders Sub-Engineers to Assistant Engineers /SDOs (BS-17) C&W Department, was bifurcated on **20.01.2023** at the @ of 6% and 4% share to those B-Tech (Hons) Sub Engineers who possess it before joining service in C&W department and to those who acquire it during service in the department respectively (**Annex-II**). Hence the stance taken by the appellant is not justified.
4. Incorrect, in-fact, the C&W Department was scheduled the Departmental Promotion Committee on **05.12.2022** to discuss the promotion case of B. Tech (Hons) Sub Engineers to the rank of Assistant Engineer / SDOs (BS-17), (**Annex-III**). However, Establishment Department intimated through letter dated **05.12.2022** that the scheduled meeting may be postponed till finalization of standing service rules committee. (**Annex-IV**) on the basis that Khyber Pakhtunkhwa Service Tribunal has

since been decided in their judgment dated **07.10.2021** to bifurcate the quota of B. Tech (Hons) Sub Engineers amongst pre-service B.Tech (Hons) Sub Engineers and in service B.Tech (Hons) Sub Engineers.

5. As explained in Para-4 above.
6. Incorrect, according to amended service rules, a DPC meeting held on 17.07.2023, in which the promotion cases of various cadres including B-Tech graduates also came under consideration. The DPC while pondering the promotion cases of B-Tech recommended according to the following existing scenario meaning thereby, 06 numbers Pre-Service B-Tech (Hons) Sub-Engineers considered for promotion to the rank of Assistant Engineers/SDOs (BS-17) to at par bring them.

Sr. No.	Category	Share of Each Category	Presently Working	Short Fall/ Excess
1	Pre- Service B-Tech (Hons) Sub Engineer (06%)	14.04 say = 14	00	(-) 14
2	In-Service B-Tech (Hons) Sub Engineer (04%)	9.36 say = 09	17	(+) 08

In view of above, there was no weightage in the Departmental appeal of the official, hence the same was filed.

#### **GROUND:-**


- A. Incorrect. As explained in para-6 of the facts. No right of the appellant has been infringed/jeopardized.
- B. Incorrect. As explained in para-4 of the facts. The answering respondents have not violated any right of the appellant nor caused any malafide or discrimination. In fact, the Department followed rules/policy strictly in the cases of promotion of officers/officials of the Department.
- C. Incorrect. As explained in para-6 of the facts. The Department amended the existing service rules by issuance a Notification dated **20.01.2023 (Annex-II)** in light of Khyber Pakhtunkhwa Service Tribunal Judgment dated **07.10.2021** as well as recommendations of SSRC.
- D. Incorrect. As explained in para-6 of the facts. The Department amended the existing service rules by issuance a Notification dated **20.01.2023 (Annex-II)** in light of Khyber Pakhtunkhwa Service Tribunal Judgment dated **07.10.2021** as well as recommendations of SSRC.
- E. Incorrect. As explained in para-4 of the facts. The answering respondents have not violated any right of the appellant nor caused any malafide or discrimination. In fact, the Department followed rules/policy strictly in the cases of promotion of officers/officials of the Department.
- F. Incorrect. As explained in para-6 of the facts. No right of the appellant has been infringed/jeopardized.
- G. Incorrect. As explained in para-4 of the facts. The answering respondents have not violated any right of the appellant nor caused any malafide or discrimination.

In fact, the Department followed rules/policy strictly in the cases of promotion of officers/officials of the Department.

- H. Incorrect. No discrimination to any individual, including the appellant was done nor any rule or principle of law infringed, the apprehension of the appellant is misleading.
- I. Incorrect. As explained in para-6 of the facts. The Department amended the existing service rules by issuance a Notification dated **20.01.2023 (Annex-II)** in light of Khyber Pakhtunkhwa Service Tribunal Judgment dated **07.10.2021** as well as recommendations of SSRC.
- J. The Respondents would like to seek permission of this Hon'able court to advance more grounds during the time of arguments.

It is therefore, humbly prayed that the instant service appeal being devoid of any merit may kindly be dismissed with cost.

  
**Chief Engineer (Centre)**  
Communication & Works,  
Peshawar (Respondent No.2)

  
**SECRETARY TO**  
Govt. of Khyber Pakhtunkhwa  
C&W Department, Peshawar  
(Respondent No.1)

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

Service Appeal No.1184/2023

Sami-ud-Din Shah

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Appellant

**Versus**

Govt of Khyber Pakhtunkhwa  
through Secretary to Khyber Pakhtunkhwa  
C&W Department & others

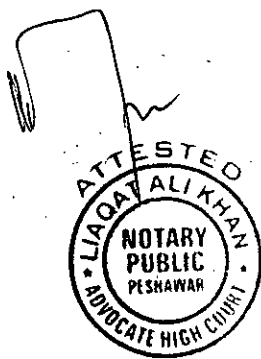
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Respondents

**AFFIDAVIT**

I, Zahid Ullah, Section Officer Litigation (BS-17) C&W Department, Peshawar hereby affirm and declare that all the contents of the Parawise comments are correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

It is further stated on oath that in this appeal, the answering respondent neither has been placed ex-party nor their defence has been struck off. /cost



17 AUG 2023

Deponent

*[Signature]*

Zahid Ullah  
Section Officer (Litigation)  
C&W Department, Peshawar

CNIC # 14203-2044698-7

Mob No # 0340-5012785

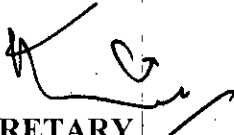


**GOVERNMENT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT**

NO. SO (Lit.)C&W/3-485/2023  
Dated Peshawar, the August 16, 2023

**AUTHORITY LETTER**

Mr. Zahid Ullah, Section Officer Litigation (BS-17), C&W Peshawar having CNIC 14203-2044698-7 is hereby authorized to file the Joint Parawise Comments in case titled "Service Appeal No. 1184 of 2023 Sami Ud Din Shah Vs Govt Through Secretary C&W Peshawar" on behalf of Secretary C&W Department.

  
SECRETARY  
to Govt of Khyber Pakhtunkhwa  
C&W Peshawar  
Secretary to Govt of  
Khyber Pakhtunkhwa  
C&W Department

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR

Appeal No. 953/2018

Date of Institution ... 02.08.2018

Date of Decision ... 07.10.2021

Mr. Awais-ur-Rehman Sub Engineer, Building FATA Division,  
Khyber Agency. \_\_\_\_\_ (Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa through Chief  
Secretary, Civil Secretariat Peshawar and two others.  
\_\_\_\_\_ (Respondents)

Present.

Mr. Muhammad Amin Ayub,  
Advocate.

... For appellant.

Mr. Muhammad Adeel Butt,  
Addl. Advocate General

... For respondents.

MR. AHMAD SULTAN TAREEN  
MR. MIAN MUHAMMAD

... CHAIRMAN  
... MEMBER(E)

JUDGEMENT

AHMAD SULTAN TAREEN, CHAIRMAN:- Through the above titled ap  
described in the heading and six other appeals as enclosed in brackets-(Appeals  
954/2018, 955/2018, 956/2018, 957/2018, 958/2018, 959/2018), the jurisdiction of  
Tribunal has been invoked by the appellants with the prayer as copied below:-

"On acceptance of the instant appeal, the impugned Notification dated  
26.03.2018 may graciously be modified to the extent of joint promotion  
quota for B.Tech (Hons) Degree holder Sub-Engineers by separating  
the same from those Sub-Engineers who were in possession of B.Tech  
(Hons) Degree at the time of joining service and for those who had

attested  
Section Officer (Litigation)  
Khyber Pakhtunkhwa  
C&W Department

Certified to be true copy

CHAIRMAN  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

acquired the same qualification during service on the analogy of B.E/B.Sc. Engineer Degree Holder with all back benefits."

2. This single judgement shall stand to dispose of all the seven appeals in one place as they all are verbatim in facts and grounds giving rise to common questions of facts and law.
3. The factual account given in Service Appeal No. 953/2018 and copies of supporting documents annexed therewith would reveal that all the appellants are incumbents of the post of Sub Engineer in the Respondent Department. Their case in nutshell is that the Provincial Government vide Notification dated 13.01.1980 reserved 10% quota for promotion to the post of Assistant Engineer from amongst the holders of the post of Sub-Engineer possessing the degree as higher qualification. May be, due to vagueness of expression "degree" simply used in the previous notification, need was felt to specify the name of degree and vide Notification dated 18.10.1986, 10% separate promotion quota reserved for those Sub-Engineers who held a degree was restricted by naming degree being in Engineering and also the mode of determination of inter-se seniority was prescribed by the same amendment. This practice remained in field till 1992 when through amendments vide Notification dated 12.04.1992, 05% separate quota was reserved for promotion of those Sub Engineers who acquired Degree before joining the service and for those who acquired the requisite qualification during service. Vide Notification dated 12.01.1999, 05% promotion quota was also reserved for Sub Engineers who had joined the Service as Engineering Graduates and those who had acquired the same Degree during service. Vide Notification dated 16.12.2011, 20% promotion quota was reserved for promotion of Sub-Engineers holding Diploma (Civil/Mechanical/Electrical) and 08% promotion quota was reserved for those holding Degree of B.E/B.Sc. Engineering (Civil/Mechanical/Electrical) at the time of joining service and 07% quota for those who had acquired the Degree

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during service. It was for the first time that through an amendment vide Notification dated 14.10.2014, the category of the appellants i.e. B.Tech (Hons) Degree holders, a quota of 03.5% promotion was reserved including both who acquired such degree before service or who got it during service. In light of the judgement of the Hon'ble Peshawar High Court and after observing all the codal formalities, recommendation was made for reservation of 10% quota for promotion to the post of SDO/Assistant Engineer (BS-17) in respect of B.Tech.(Hons) Degree holder Sub Engineers. There are two categories of B.Tech. (Hons) Degree Holder Sub Engineers i.e one those who have acquired B.Tech (Hons) Degree before joining service and the other is that who have obtained the said degree during service. Vide impugned notification dated 26.03.2018, a separate quotas has been notified for promotion of other cadre of Graduate Sub Engineers holding Degree of B.E/B.Sc. Engineering to the post of SDO/Assistant Engineer proportionately 05% by promotion, on the basis of seniority of the Sub Engineers who acquired/possessed Degree of B.E or B.Sc. Engineering (Civil, Mechanical or Electrical) at the time of their joining service; and 03.5% for Sub-Engineers who acquired similar Degree during service. On the other hand, vide the same Notification, a different yardstick has been used for promotion quota in respect of Sub Engineers who acquired B.Tech. (Hons) Degree during service and who were in possession of such degree before joining their service; and combined 10% quota was reserved for their promotion to the post of SDO/Assistant Engineer. The appellant being aggrieved of the Notification dated 26.03.2018 ibid, preferred Departmental Representation dated 16.04.2018 before the competent authority but the same was not responded within the statutory period of 90 days, and in follow up, they have preferred the instant appeals.

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C&W Department

The respondents were put on notice after admission of the appeals for regular hearing. They joined the proceedings and submitted joint parawise

comments with legal as well as factual objections and prayed for dismissal of the appeal with cost.

5. It was argued on behalf of the appellant that the impugned Notification dated 26.03.2018 is in violation of Section 8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule 17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989; that the department discriminated the appellant on one hand vis-a-vis similarly placed persons while on the other hand, their colleagues acquiring B. Tech qualification during service were bestowed with double chance of the career progression both in terms of seniority and in terms of qualification due to introduction of the 10% combined promotion quota for B.Tech (Hons) Degree Holders including those who were possessing the said qualification at the time of joining the service and those who later on acquired such qualification during service; that discriminatory treatment meted out to the appellants is in conflict to the fundamental rights provided under Article 4 and 25 of the Constitution of Islamic Republic of Pakistan; that the respondents in the same impugned rules set a precedent of providing separate 05% promotion quota for those Sub Engineers who possessed the degree of B.E or B.SC. Engineering (Civil, Mechanical or Electrical) at the time of joining their service, and separate 03.5% quota for those Sub Engineers who acquired the Degree of B.E or B.Sc. Engineer (Civil/Mechanical/Electrical) during service; and despite the said precedent was brought into practice in case of Sub Engineers possessing the qualification of B.E or B.Sc. Engineering was not followed in the case of appellants who having possessed the Degree of B.Tech (Hons) at the time of joining the service were at par for reservation of quota with those Sub Engineer who possessed B.E or B.Sc. Engineering at the time of joining the service. The learned counsel for the appellant concluded his arguments with the submission that 10% quota reserved collectively for holders of the Degree of B.Tech

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Khyber Pakhtunkhwa  
C&W Department

(Honors) in the category of Sub Engineers is liable to bifurcation in line with the separate quota in other categories of Sub Engineers possessing the Degree of B.E or B.Sc. Engineering and prayed for issuance of appropriate direction for separation of 10% quota fixed under Clause (e) of the Appendix to the impugned rules in relation to Degree holders of B. Tech. (Honors).

6. Conversely, it was argued on behalf of the respondents that there is no final order in case of the appellants making their appeals not maintainable under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. It was the argument on factual side that Sub Engineers having B.Tech. (Honors) Degree submitted a joint application for reservation of quota for their promotion to the post of SDO BS-17. In this connection a Committee was constituted to submit recommendations. The committee proposed 03.5% share for Sub Engineers having B. Tech (Hons) on the basis of seniority-cum-fitness by curtailing 07% share quota reserved for Sub Engineer who acquired Degree of B.Sc. Engineering (Civil/Mechanical/Electrical) during service. The Establishment Department placed the case before the SSRC for consideration on 19.06.2013. As per Law Department advice the case was referred to Public Service Commission for requisite NOC who agreed with the proposed amendments for the post of Assistant Engineer/SDO/Junior Engineer/Assistant Research Officer BS-17. In view of SSRC recommendations, draft Notification was forwarded to Law Department for vetting before circulation. Law Department vetted the notification with the observations and advised for minute examination. Consequently, a note was submitted to the Chief Secretary for approval of the Notification regarding the said amendment in the existing service rules but the case was returned from the said quarter with direction to submit a revised working paper highlighting the observations of Law Department for placement before the SSRC for consideration/concurrence. It was in this background that the revised Working Paper was placed before the

10/11/13

*[Signature]*  
 Section Officer (Litigation)  
 Khyber Pakhtunkhwa  
 C&W Department

SSRC on 16.04.2014 which decided that the seniority in all cadres shall be determined from the date of initial appointment, therefore, the Department again submitted a note to the Chief Secretary for proper approval of the notification which was approved and after completion of all codal formalities, the notification dated 14.10.2014 was issued with necessary amendments duly recommended by SSRC and approved by the Chief Secretary. It was further pointed out on behalf of the respondents that Writ Petition No. 1320-P/2017 was filed seeking enhancement of the share for promotion as Assistant Engineers/SDOs in BS-17 in which direction was issued though for instant notice to Addl. AG who was present in the Court accepted the same without consultation of the department; but in pursuance to the direction of the Hon'ble Court to consider the grievance of the petitioner, the quota fixed as 03.5% earlier was enhanced to 10% vide notification dated 26.03.2018 as impugned before this Tribunal. So, it was argued that the appellants are stopped by their conduct to seek further changes *inter-se* in quota reserved in pursuance to direction of Hon'ble Peshawar High Court vide the impugned notification. While concluding the arguments, learned AAG submitted that the Government is empowered to frame or amend the service rules of the department and in case of the appellant was nothing beyond the authority of the government and the rules were rightly amended by reservation of the 10% quota which the appellants have impugned without any justification. He submitted that the appeals are liable to dismissal with costs.

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7. Having heard the arguments on behalf of the parties and perused the record in light of pro and contra arguments, we deem it appropriate to dilate upon the method of appointment of the post of Assistant Engineer. According to the Communication & Works Department (Recruitment and Appointment) Rules, 1979 notified on 13.01.1980, besides the conditions prescribed in other columns of Schedule I of the said rules, proportion of quota for initial

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 Khyber Pakhtunkhwa  
 C&W Department

recruitment and for proportion was also prescribed in the last column of said schedule. Accordingly, 75% quota was reserved for initial recruitment, 10% by selection on merit with due regard to seniority from amongst Sub Engineers of the Department who hold a degree; and 20% by selection on merit with due regard to seniority from amongst Senior Scale Sub Engineers of the Department, who hold a Diploma and have passed Departmental Professional Examination. As discussed in the factual part herein above, the basic quota reserved for promotion of In-service Sub Engineers was altered time and again through different amendments in the entries in the last column meant to prescribe quota relating to the post of Assistant Engineer at Serial No. 4 of Appendix to the basic rules. However, all the amendments in the appendix relating to said post were to provide variation in ratio of quota for promotion including quota for graduate engineers holding the post of Sub Engineer. In the series of amendments, in one made vide notification dated 16.12.2011, besides certain other additions it was also prescribed that the higher qualification for the purpose of promotion against particular quota will be the B.E/B.Sc. Engineering(Civil/Mechanical/Electrical). Before the amendment made vide notification dated 14.10.2014 whereby 03.5% quota was provided for promotion of Sub Engineers having Degree of B.Tech (Hons), the quota as reserved previously pertained only for graduate Sub Engineers in possession of Engineering degree. Lastly, 03.5% quota as reserved vide entry in clause (e) in column No. 5 against Serial No. 4 in the Appendix in 2014, was enhanced upto 10% by promotion keeping the other conditions intact. The prayer of the appellants in plain terms reveals that they claim the modification in clause (e) pertaining to 10% quota exclusively reserved for B-Tech (Hons) Degree holders seeking its separation into two sub categories of the Sub Engineers, one comprising those who were in possession of B-Tech (Hons) degree at the time of joining service and the other, who acquired the same qualification during

*Altaf*  
Section Officer (Litigation)  
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C&W Department

service, on analogy of B.E/B.Sc. Engineering Degree Holders, with all back benefits.

8. Needless to say that holders of the post of Sub Engineers, as far as their original post is concerned, are required at the time of initial appointment to possess minimum qualification as prescribed in relevant column of the appendix but they after regular appointment are separately dealt for appointment through promotion and have been placed differently in the matter of quota reserved for promotion having regard to the minimum qualification and the higher relevant qualification. So, they from their origin were categorized in two main categories: "one comprising those who possess only basic qualification prescribed for the post and the second including those Sub Engineers who possess the degree of BE/BSc Engineering or they are holders of B.Tech (Hons) degree. The matter in issue before us relates to a part of second category covering the Sub Engineers who happen to have possessed the degree of B.Tech (Hons). Although there is no issue about part of the second category comprising Sub Engineers who happen to have possessed the degree of BE/BSc. Engineering but for the sake of understanding the grievance of appellants, it is useful to mention that this part of the second category has been further divided in to two sub categories: "one comprising those Sub Engineers who happened to have possessed the degree of BE/B.Sc. Engineering at the time of their initial recruitment and other comprising of those Sub Engineers who happened to have acquired such degree during service after their initial appointment. The appellants, making part of the second category in main categories discussed before, are aggrieved that when one sub category making part of the second main category has been divided further into two sub categories for proportional quota on subject of the BE/BSc. Engineering degree with reference to the timeline of its acquisition, the same treatment was befitting for the other part including holders of the B. Tech (Hons) degree. Contrarily, Sub

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Khyber Pakhtunkhwa  
C&W Department

Engineers possessing B.Tech (Hons) Degree have been kept combined for quota on the subject of their degree irrespective of the timeline of its acquisition. According to the impugned notification dated 26.03.2018 in respect of the amendment in the Appendix of the department Notification dated 25.03.2010, the Sub Engineers who possessed the B.E or B.SC. Engineering degree at the time of joining the service were separately dealt with for the purpose of quota while those who albeit have happened to possess the same degree but acquired later on during service have been dealt separately with a proportional quota in the same category. The substituted entries under Clause (b) and clause (c) against Serial No. 4 in Column No. 05 in the Appendix respectively provide 05 % quota for those Sub Engineers who happened to have possessed the B.E or B.Sc. Engineering degree at the time of appointment while 03.5 % for others in the same category who happened to have acquired such degree during service. However, by the substituted entry vide Clause (e) in the same Appendix against S.No. 4 in Column No. 05, the Sub Engineers possessing the Degree of B.Tech (Hons) were held entitled for 10% quota without making distinction between the Sub Engineers who were in possession of such degree at the time of joining the service and who acquired such degree during service. The appellants purport to have possessed the degree of B.Tech (Hons) at the time of their joining the service. The accumulation of the Sub Engineers having the Degree of B.Tech (Hons) in a single queue for 10% promotion quota, irrespective of distinction between holders of said qualification at the time of induction into service and the holders of the degree who acquired such degree after joining the service, is perceptibly not efficacious for the appellants; when they are always exposed to a risk of thumping from behind to leave place to one who comes forward from the sideways after acquiring B.Tech (Hon) Degree during service. Needless to say that the apportionment of quota between the Sub Engineers, who happened to have possessed the degree of BE or BSC Engineering at the time of appointment and who happened to have acquired the

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C&W Department

same during service, has emboldened the appellants for the claim of apportionment of the 10% quota of their category in the similar manner as applied for the category of holders of the degree of BE or BSC Engineering. The claim of appellants for the treatment alike for bifurcation of quota within limits of 10% quota on the subject of degree of B.Tech (Hons) is not unreasonable when juxtaposed to bifurcation of quota on the subject of degree of BE/BSc. Engineering degree with reference to the timeline of its acquisition. If date of appointment of some Sub Engineers not in possession of B.Tech (Hons) degree is the same or earlier than the appellants but they i.e. the former happen to have acquired the relevant degree at any stage during service, there will always be a room for customization and readjustment of the seniority list of the competitors for 10% quota on the subject of B.Tech (Hons) degree because of difference in the order of their merit in one selection or difference in dates of their appointment. The date of regular appointment among other points is a significant factor for determination of seniority within the meaning of Rule 17 Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. The seniority of the appellants will remain fluctuating in case of the combined category of Sub Engineers for competition within limits of 10% quota on the subject of B.Tech (Hons) degree. It is not difficult to assume that if a Sub Engineer having been appointed on the basis of his original qualification earlier than the appellants, happens to have acquired the Degree of B.Tech (Hons) during service after appointment of the appellants, he will stand senior to them on the strength of prior date of appointment irrespective of the fact that he was not possessing such qualification when the appellants holding the same had joined the service. So, the appellants were entitled to be treated alike with the categories of Sub Engineers who were provided separate quota within their own category because of their possessing of B.E or B.Sc Engineer (Civil/Mechanical/Electrical) degree at the time of joining the service. A copy of the tentative seniority list of B.Tech Degree Holders Sub Engineers (BPS-16/12) of

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 Section Officer (Litigation)  
 Khyber Pakhtunkhwa  
 C&W Department



C&W Department Khyber Pakhtunkhwa as stood on 31.03.2021 was produced at the bar on behalf of the appellants. It was contended that according to the said seniority list, the B.Tech (Hons) Degree Holder Sub Engineers are 70 in number; and all among them except the appellants (07 in numbers) and some others if any, are those who acquired the qualification of B.Tech (Hons) after joining the service but having the date of their appointment prior in time to that of the appellants; and they have got senior number in the seniority list than the appellants.

9. In view of the foregoing discussion, if the appellant having possessed B.Tech Honors Degree at the time of joining their service are not treated distinctively than those Sub Engineers possessing the similar qualification but having acquired the same during service, they i.e. appellants will always remain not only caught up in uncertainty in the matter of seniority but also prone to the risk of relegation in the seniority for the reason already discussed herein above. When a particular treatment has been meted out to a class of Sub Engineers by separation of their inter-se quota proportionately with reference to timeline of acquisition of BE/BSc. Engineering degree, the appellants for bifurcation of quota on the subject of their degree with reference to timeline of its acquisition are similarly placed. If the appellants are not treated in the said manner, the infringement of their fundamental rights of equality of the treatment with similarly placed persons will perpetuate. Certainly, the amendments made by the impugned notification for 10% quota on the subject of B.Tech(Hons)degree irrespective of the timeline as to acquisition of such qualification, has deprived the appellants from protection as granted to the Sub Engineers with separate quota who at the time of joining the service have held the Degree of B.E/B.Sc. Engineering (Civil/Mechanical/Electrical). Needless to say that the rules as impugned in the appeals have got the force of law and by virtue of sub article (1) of Article 25 of the Constitution of Islamic Republic of Pakistan, all citizens

Section Officer (Litigation)  
Khyber Pakhtunkhwa  
C&W Department

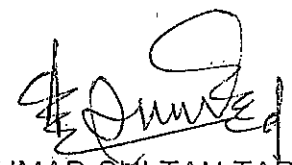
are equal before law and are entitled to equal protection of law. So, we hold that the appellants have got a good case for the relief as prayed for.

10. For what has gone above, all the appeals enumerated above at the outset are accepted as prayed for. Consequently, the respondents are directed to proceed under due course for substitution of Clause (e) of the Appendix against Serial No. 4 in Column No. 5 to provide for separation of 10% quota with appropriate proportion having regard to the number of Sub Engineers who happened to have possessed the Degree of B.Tech (Hons) at the time of their joining the service and those who happened to have acquired such degree while in service after their appointment. There is no order as to cost. File be consigned to record room.



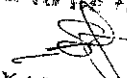
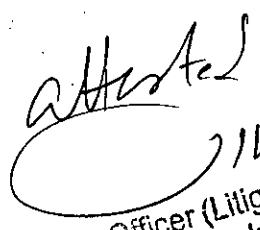
(MIAN MUHAMMAD)  
Member(E)

**ANNOUNCED**  
07.10.2021

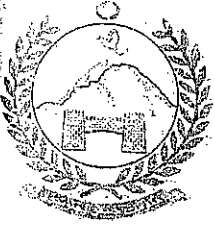


(AHMAD SULTAN TAREEN)  
Chairman

*Certified to be true copy*

  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Section Officer (Litigation)  
Khyber Pakhtunkhwa  
C&W Department.



Annex-II

18

GOVERNMENT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar, the Jan 20, 2023

**NOTIFICATION:**

No.SOE/C&WD/8-12/2023: In pursuance of the provision contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Communication & Works Department, in consultation with the Establishment Department and the Finance Department, hereby direct that in this Department Notifications' No.SOE/C&WD/8-12/2009, dated 25<sup>th</sup> March, 2010, the following further amendments shall be made, namely:

**AMENDMENTS**

In the APPENDIX, against serial No.4, in column No.5, for the existing entries, the following shall respectively be substituted, namely:

- (i) Sixty five percent (65%) by initial recruitment; and
  - (ii) thirty five (35%) by promotion, on the basis of seniority-cum-fitness, in the following manner, namely:
    - (a) sixteen and half percent (16.50%) by promotion, from amongst the holders of the posts of Sub-Engineer who hold a Diploma of (Civil, Mechanical or Electrical) and have passed Departmental Professional Examination, with ten (10) years service as such;
    - (b) five percent (5%) by promotion, from amongst the holders of the posts of Sub-Engineer who possess Degree of B.E or B.Sc Engineering (Civil, Mechanical or Electrical) at the time of their joining service and have passed Departmental Professional Examination, with 03 (three) years service as such;
    - (c) three and half percent (3.5%) by promotion, from amongst the holders of the posts of Sub-Engineer who acquired Degree of B.E or B.Sc Engineering (Civil, Mechanical or Electrical) during service and have passed Departmental Professional Examination, with 03 (three) years service as such;
- Provided that if no suitable candidate is available for promotion, then the post shall be filled in the manner, as prescribed at clause (b) and vice-versa;
- (d) four percent (4%) by promotion, from amongst the holders of the posts of Sub-Engineer who have acquired B.Tech (Hons) four (04) years degree during service and have passed Departmental Professional Examination, with five (05) years service as such;
  - and
  - (e) six percent (6%) by promotion, from amongst the holders of the post of Sub-Engineers who possesses B.Tech (Hons) four (04) years degree at the time of appointment and have passed Departmental Professional Examination, with five (05) years service as such.”;

The seniority in all cases shall be determinate from the date of Initial appointment:

Provided that for the purpose of promotion to the post of Sub Divisional Officer, Assistant Engineer, Junior Engineer and Assistant Research Officer, the seniority of Sub Engineers, mentioned in the clause (c), shall be determined from the date of acquiring the Degree in B.E/B.Sc Engineering (Civil, Mechanical or Electrical) from a recognized University.

Note-II:

- (a) For the purpose of promotion to the post of Sub Divisional Officer, Assistant Engineer, Junior Engineer and Assistant Research Officer, the seniority of Sub Engineers under clause (d) in case of service graduates shall be determined from the date of acquiring B.Tech (Hons) four (04) years Degree; and

*Handwritten signature*  
Section Officer (Litigation)  
Khyber Pakhtunkhwa  
C&W Department

- (b) For the purpose of promotion to the post of Sub Divisional Officer, Assistant Engineer, Junior Engineer and Assistant Research Officer, the seniority of Sub Engineers under clause (e) shall be determined from the date of their regular appointment:

Provided that, if two or more officials have acquired B.Tech (Hons) four years Degree on the same date or two or more Sub Engineers are appointed on the same date, then their seniority shall be determined from the order of merit in the final merit list."

SECRETARY TO  
Government of Khyber Pakhtunkhwa  
Communication & Works Department

Endst of even number and date

Copy is forwarded to the:-

1. All Administrative Secretaries, Govt of Khyber Pakhtunkhwa
2. Secretary to Governor Khyber Pakhtunkhwa, Peshawar
3. Principal Secretary to Chief Minister Khyber Pakhtunkhwa, Peshawar
4. All Chief Engineers C&W C&W Department
5. Managing Director PKHA Peshawar
6. Secretary Khyber Pakhtunkhwa Public Service Commission Peshawar
7. All Superintending Engineers C&W Department
8. PS to Chief Secretary Khyber Pakhtunkhwa, Peshawar
9. All Executive Engineers C&W/Building/Highway Divisions
10. Section Officer (R-VI) Establishment Department, Peshawar
11. Assistant Legal Drafter-I, Law Department, Peshawar
12. Managing Printing Press for publication in the issue of next Govt gazette
13. PS to Secretary, C&W Department, Peshawar
14. PA to Addl: Secretary (Admn/Tech), C&W Department, Peshawar
15. PA to Deputy Secretary (Admn/Tech), C&W Department, Peshawar
16. Office File

*Zahoor Shah*  
*Zahoor Shah*  
(ZAHOOR SHAH)  
SECTION OFFICER (Estb)



GOVERNMENT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT

No. SOE/C&WD/4-2/2022  
Dated Peshawar, the Dec 01, 2022

To

1. The Chief Engineer (Centre)  
C&W Peshawar
2. The Special Secretary (Regulation)  
Establishment & Admn Department  
Peshawar
3. The Additional Secretary (Regulation)  
Finance Department Peshawar

Subject: **MEETING OF THE DEPARTMENTAL PROMOTION COMMITTEE**

Dear Sir,

I am directed to refer to the subject noted above and to forward herewith working papers duly signed and to state that the Secretary C&W being chairman of the Departmental Promotion Committee has desired to convene meeting of Departmental Promotion Committee (DPC) on **05.12.2022 at 11:00 Hours** under his chairmanship in the Committee Room of C&W Secretariat to discuss the promotion case of B-Tech (Hons) Sub Engineers to the rank of Assistant Engineer/SDO (BS-17). Working papers are enclosed.

2. It is requested to kindly make it convenient to attend the subject meeting on the scheduled date, time and venue, please.

Yours' faithfully

*Ijaz Khan*  
(IJAZ KHAN)  
SECTION OFFICER (Estb)

Endst even No. & date

Copy forwarded to the:

1. PS to Secretary C&W Department, Peshawar
2. PA to Additional Secretary C&W Department, Peshawar
3. PA to Deputy Secretary (Admn) C&W Department, Peshawar.

*Ijaz Khan*  
SECTION OFFICER (Estb)

*attested*  
*Ok*  
Section Officer (Litigation)  
Khyber Pakhtunkhwa  
C&W Department



Annex - IV

21

GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT & ADMN: DEPARTMENT  
(REGULATION WING)

No.SOR-V(E&AD)/1-978/C&W/2022  
Dated 5<sup>th</sup> December, 2022.

AS(A)

To

The Secretary to Govt: of Khyber Pakhtunkhwa,  
C&W Department.

Diary No: 11680  
Date: 5-12-2022  
Secretary C&W Dept.

Subject: MEETING OF THE DEPARTMENTAL PROMOTION COMMITTEE

Dear Sir,

I am directed to refer to your letter No.SOE/C&WD/4-2/2022 dated 01-12-2022 on the subject noted above and to state that the subject meeting scheduled for 05-12-2022 may be postponed till finalization of the Standing Service Rules Committee, please.

Your faithfully,

*[Signature]*

For. SECTION OFFICER (REG-V)

Endst: of even No. & Date.

Copy forwarded to the PA to Deputy Secretary Reg-III, Establishment Department.

SECTION OFFICER (REG-V)

60 (E)

2/6/12

*[Signature]*  
Section Officer (Litigation)  
Khyber Pakhtunkhwa  
C&W Department