

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.867/2023

Sher Wali Jhang

Appellant

Versus

Govt of Khyber Pakhtunkhwa
through Chief Secretary Khyber Pakhtunkhwa
& others

Respondents

INDEX

S.NO.	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGE
1	Joint Parawise Comments on behalf of Respondent No.1 to 4	-	1-3
2	Affidavit	-	4
3	Authority Letter	-	5
4	Govt of Khyber Pakhtunkhwa C&W Department Notification No. SOE/C&WD/8-12/2022 dated 25/11/2022	I	6

Deponent



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

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 867/2023

Mr. SHER WALI JHANG
Retired SDO (BS-17) C&WD
Appellant

VERSUS

1. **Govt. of Khyber Pakhtunkhwa,**
through Chief Secretary, Peshawar & Others --- **Respondents**
2. Secretary to Govt of Khyber Pakhtunkhwa
C&W Department, Peshawar
3. Secretary to Govt of Khyber Pakhtunkhwa
Establishment Department, Peshawar.
4. Secretary to Govt of Khyber Pakhtunkhwa
Finance Department, Peshawar

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 6817

Date: _____

PARA-WISE COMMENTS ON BEHALF OF RESPONDENTS NO.1 TO 4

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 and that too in its constitutional jurisdiction.
- 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 cause of violating even remotely. Thus, no writ as prayed for could at all be issued in the matter in hand.
- v. That subject service appeal is squarely hit by **laches**.
- vi. 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.
- vii. The appellant herein is not entitled to any of the reliefs listed in the prayer.
- viii. The appellant has got no *lucus standi* to file the service appeal.

FACTS:-

1. Pertains to record need no reply.
2. Incorrect, as the Department has enhanced 3.5% quota to 10% for promotion of B. Tech (Hons) Sub Engineers to the rank of Assistant Engineer/SDO BS-17 C&W Department through Notification No.SOE/ C&WD/8-12/2014 dated 26.03.2018. Moreover, the Department also considered the promotion of B. Tech (Hons) Assistant Engineers / SDOs (BS-17) to the rank of BS-18 in light of court orders as well as high level committee which was constituted under the chairmanship of Additional Chief Secretary P&D Department. Finally a Notification dated **25.11.2022** in this behalf has been issued after fulfillment of all codal formalities (**Annex-I**). In light of the referred Notification, the promotion of Assistant Engineer/SDO (BS-17) C&W Department to the rank of BS-18 will be considered as per seniority list with at-least Five (05) years services as such and have passed the Professional Examination, as prescribed in West Pakistan Buildings & Roads Code, irrespective of any discipline.
3. As explained in Para-2 above.

4. Incorrect, the Existing Service Rules were framed and notified by the Provincial Government on **25.03.2010** and recent amendment has been made on **25.11.2022** for promotion of B. Tech (Hons) Assistant Engineers / SDOs (BS-17) C&W Department to the rank of BS-18, which was its prerogative and competency. And while framing these Rules none has been ignored. In doing so, the government had to keep in consideration the relevant provisions of Pakistan Engineering Council Act, 1976 (**PEC Act**), which provides that non-engineers could not be appointed against posts meant for professional engineers. Because B-Tech (Hon.) degree/diploma holders do not come within the definition of Engineers/ Professional Engineers as prescribed in the PEC Act, 1976. The Government is empowered to frame or amend the service rules of any Department through Standing Service Rules Committee (SSRC). Moreover, a working paper forwarded to Establishment Department through letter dated 29.06.2021 for consideration the promotion of appellant. However, the referred letter has cancelled/withdrawn by the department on 09.07.2021 (**Annex-II**) with the request that the promotion case of the appellant may be returned in original alongwith its relevant documents. Accordingly, the Establishment Department returned the referred working paper without any consideration as the appellant was inducted as Sub-Engineer on 14.02.1981 and subsequently promoted to the post of SDO (BS-17) C&WD on 04.11.2016 and stood retired from Govt. Service on 20.06.2021 on attaining the age of superannuation i-e 60 years (**Annex-III**). Moreover, the said officer while retiring from Govt. Service he was most junior in his cadre appearing at Sr. No. 80 of the seniority list of Assistant Engineers/SDOs (BS-17) C&WD.
5. Incorrect, as explained in para-2. Moreover, as per record the officer was inducted as Sub-Engineer on 14.02.1981 and subsequently promoted to the post of SDO (BS-17) C&WD on 04.11.2016 and stand retired from Govt. Service on 20.06.2021 on attaining the age of superannuation i-e 60 years. Moreover, the said officer while retiring from Govt. Service he was most junior in his cadre appearing at Sr. No. 80 of the seniority list of Assistant Engineers/SDOs (BS-17) C&WD.

GROUND:-


- A. Incorrect, the Existing Service Rules were framed and notified by the Provincial Government on **25.03.2010** and recent amendment has been made on **25.11.2022** for promotion of B.Tech (Hons) Assistant Engineers / SDOs (BS-17) C&W Department to the rank of BS-18, which was its sole prerogative and competency. And while framing these Rules none has been ignored. In doing so, the government had to keep in consideration the relevant provisions of Pakistan Engineering Council Act, 1976 (**PEC Act**), which provides that non-engineers could not be appointed against posts meant for professional engineers. Because B-Tech (Hon.) degree/diploma holders do not come within the definition of Engineers/ Professional Engineers as prescribed in the PEC Act, 1976.
- B. Incorrect. As explained in para-2 of the facts. No right of the appellant has been infringed/ jeopardized.
- C. Incorrect, as the Department has enhanced 3.5% quota to 10% for promotion of B. Tech (Hons) Sub Engineers to the rank of Assistant Engineer/SDO BS-17 C&W Department through Notification No.SOE/ C&WD/8-12/2014 dated 26.03.2018. Moreover, the Department also considered the promotion of


(3)


B. Tech (Hons) Assistant Engineers / SDOs (BS-17) to the rank of BS-18 in light of court orders as well as high level committee which was constituted under the chairmanship of Additional Chief Secretary P&D Department. Finally a Notification dated **25.11.2022** in this behalf has been issued after fulfillment of all codal formalities. In light of the referred Notification, the promotion of Assistant Engineer/SDO (BS-17) C&W Department to the rank of BS-18 will be considered as per seniority list with at-least Five (05) years services as such and have passed the Professional Examination, as prescribed in West Pakistan Buildings & Roads Code, irrespective of any discipline.

- D. Incorrect, as explained in para-2 of the facts. Moreover, as per record the officer was inducted as Sub-Engineer on 14.02.1981 and subsequently promoted to the post of SDO (BS-17) C&WD on 04.11.2016 and stand retired from Govt. Service on 20.06.2021 on attaining the age of superannuation i-e 60 years. Moreover, the said officer while retiring from Govt. Service he was most junior in his cadre appearing at Sr. No. 80 of the seniority list of Assistant Engineers/SDOs (BS-17) C&WD.
- E. Incorrect, as explained in para-2 of the facts. Moreover, the policy decisions of other provinces (if any) are not binding on the answering respondents as they too make their own policies, rules and laws in good faith and that too for the public benefit as also held by the Apex Court in good number of judgments. Beside this, neither discrimination to any individual, including the appellant was done nor any rule or principle of law infringed, the apprehensions of the appellant is misleading.
- F. Incorrect. 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.
- G. 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.


SECRETARY TO
Govt. of Khyber Pakhtunkhwa
C&W Department, Peshawar
(Respondent No.1 & 2)


SECRETARY TO
Govt. of Khyber Pakhtunkhwa
Finance Department, Peshawar
✓ (Respondent No.4)


SECRETARY TO
Govt. of Khyber Pakhtunkhwa
Establishment Department, Peshawar
(Respondent No.3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.867/2023

Sher Wali Jhang --- Appellant

Versus

Govt of Khyber Pakhtunkhwa
through Chief Secretary Khyber Pakhtunkhwa
& others --- 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.

ATTESTED



Deponent

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/3-481/2023
Dated Peshawar, the July 14, 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. 867 of 2023 Sher Wali Jhang Vs Govt of Khyber Pakhtunkhwa through Chief Secretary Peshawar**” on behalf of Secretary C&W Department.

SECRETARY
to Govt of Khyber Pakhtunkhwa
C&W Peshawar.



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Approved S

GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar, Nov 25, 2022

NOTIFICATION:

No.SOE/C&WD/8-12/2022: 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 Finance Department, hereby notify that in this Department's Notification No.SOE/C&WD/8-12/2009, dated March 25, 2010, the following further amendments shall be made, namely;

AMENDMENTS

In the APPENDIX, under the heading "Engineering Service", for Serial No. 3, the following shall be substituted namely;

Sl. No.	Nomenclature of the Post	Method of Recruitment
1	2	5
*3	Executive Engineer/ Design Engineer/ Senior Engineer/ Research Officer/ Deputy Director Technical/ Senior Engineer (Survey/ RMU) (BPS-18).	By promotion, on the basis of seniority-cum-fitness, from amongst the Sub Divisional Officer, Assistant Engineer, Junior Engineer and Assistant Research Officers with at least 05 (five) years service as such and have passed the Professional Examination as prescribed in West Pakistan Buildings and Roads Code.

SECRETARY TO
Government of Khyber Pakhtunkhwa
Communication & Works Department

End 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 Department
5. Managing Director PKHA Peshawar
6. Secretary Khyber Pakhtunkhwa Public Service Commission Peshawar
7. All Superintending Engineers C&W Circles
8. Superintending Engineer Maintenance Peshawar
9. Superintending Engineer C&W Circle North Waristan at Bannu
10. Superintending Engineer Major Projects
11. All Executive Engineers C&W/Building/Highway Divisions
12. Section Officer (R-V) Establishment Department, Peshawar
13. Section Officer (Policy) Establishment Department, Peshawar
14. Deputy Legislation Officer-IV, Law Department, Peshawar
15. Managing Printing Press for publication in the issue of next Govt gazette
16. PS to Chief Secretary Khyber Pakhtunkhwa, Peshawar
17. PS to Advisor to Chief Minister Khyber Pakhtunkhwa for C&W Department
18. PS to Secretary, C&W Department, Peshawar
19. PA to Addl. Secretary, C&W Department, Peshawar
20. PA to Deputy Secretary (Admn), C&W Deptt, Peshawar
21. Office File

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

[Signature]
SECTION OFFICER (Estb) 15/11/22