


FORM OF ORDER SHEET

Court of _____

Appeal No. 1852/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	13/09/2023	<p>The appeal of Syed Mohsin Ahmad Bukhari resubmitted today by Mr. Noor Muhammad Khattak Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on</p> <p>By the order of Chairman</p>  <p>REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

SERVICE APPEAL No. 1852/2023

SYED MOHSIN AHMAD BUKHARI

VS

GOVT OF KPK

INDEX

S. NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of Appeal with Affidavit	1-4
2.	Appointment order	A	5
3.	Order	B	6
4.	Service rules of defunct Directorate of Industries & Minerals Department 1980	C	7
5.	Impugned service rules	D	8-11
6.	Joint seniority list	E	12
7.	Departmental appeal	F	13-17
8.	Proposed amendment in the service rules along with working paper for SSRC	G	18-22
9.	FST judgment	H	23-31
10.	Vakalatnama	32

APPELLANT

THROUGH:

NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

-1- ~~Amended~~

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 1859 /2023

Mr. Syed Mohsin Ahmad Bukhari, Deputy Director Industries, Commerce & Trade (BPS-18) Kohat Region, Kohat.

..... APPELLANT

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary Finance Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
- 3- The Secretary Establishment Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
- 4- The Secretary, Industries, Commerce & Technical Education Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
- 5- The Director General Industries & Commerce, Khyber Pakhtunkhwa, Peshawar.

.....RESPONDENTS

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED SERVICE RULES NOTIFIED ON 08-06-2012 WHEREBY CHIEF INSPECTOR OF BOILER (BPS-18) HAS BEEN GIVEN CROSS-CADRE LINE OF PROMOTION TO THE POST OF ADDITIONAL DIRECTOR (BPS-19) DEPRIVING THE DEPUTY DIRECTORS OF INDUSTRIES CADRE FROM PROMOTION TO THE POST OF ADDITIONAL DIRECTOR (BPS-19) AND AGAINST THE SUSEQUENT AMENDMENT NOTIFIED VIDE DATED 4.10.2022 WHEREBY THE CHANNEL OF PROMTION FOR THE BOILER CADRE HAS BEEN PROVIDED TO THE POST OF DIRECTOR COMMERCE & TRADE/DIRECTOR (BPS-19) AND AGAINST ISSUANCE OF JOINT SENIORITY LIST OF TWO DIFFERENT CADRES I.E. INDUSTRIES CADRE & BOILER CADRE AFFECTING THE APPELLANT'S PROSPECT OF PROMOTION TO THE NEXT HIGHER GRADE AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STAUTORY PERIOD OF NINETY DAYS

PRAYER:

That on acceptance of this appeal the impugned service rules Notified on 08-06-2012 may kindly be amended/ modified to the extent of serial No. 3 column No.5 of the table by deleting the Chief Inspector of Boiler (BPS-18) from line of promotion to the post of Additional Director (BPS-19) and the Notification dated 4.10.2022 may kindly be amended to the extent that the post of Director Commerce &

Trade/Director may kindly be allocated for the cadre of Industry by deleting the Boiler cadre. That the respondents may further please be directed to issue/maintain separate seniority lists of the Deputy Directors belonging to Industries cadre and Chief Inspectors of Boiler belonging to the boiler cadre. Any other remedy which this august Service Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:
ON FACTS:

Brief facts giving rise to the present appeal are as under:

- 1- That the appellant was appointed as Assistant Director (BPS-17) in the Industries, Commerce & Technical Education Department, Peshawar and started serving the Department quite efficiently up to the entire satisfaction of his superiors. Copy of the appointment order is attached as annexure..... **A.**
- 2- That the appellant was promoted to the post of Deputy Director Industries, Commerce & Trade (BPS-18) vide Notification dated 19.04.2022. Copy of the appointment order is attached as annexure..... **B.**
- 3- That according to the service rules of defunct Directorate of Industries & Minerals Department 1980, the promotion line to the Director Industries was by promotion from Deputy Director Industries (Industries Cadre) & Deputy Director Technical while Chief Inspector Boiler (Boiler Cadre) was ex-cadre technical post with its own line of promotion from Inspector of Boiler. Copy of service rules of defunct Directorate of Industries & Minerals Department 1980 are attached as annexure **C.**
- 4- That the Directorate of Industries & Minerals Department was upgraded to the Directorate General of Industries & Commerce and the service rules were re-framed in 2012 vide impugned Notification dated 08.06.2012 where in Chief Inspector of Boiler belonging to boiler cadre was given cross cadre line of promotion to the post of Additional Director (BPS-19) which belonged to the Industries Cadre and thus severely affected the prospect of promotion of the Industries cadre officers. So much so through impugned Notification dated 4.10.2022 further channel of promotion to the post of Director Commerce & trade/Director (BPS-19) has been provided to the Boiler's cadre. Copies of the impugned service rules and Notification are attached as annexure **D.**
- 5- That the respondent department issued impugned joint seniority list of the Deputy Directors (BPS-18) & Chief Inspector of Boilers

(BPS-18) on 16.03.2023 which has not been officially circulated however the appellant obtained the said seniority list through social media WhatsApp group where it was shared on 30.03.2023. Copy of the joint seniority list is attached as annexure..... E.

- 6- That the ibid impugned seniority list would result in depriving the appellant from timely future promotion.
- 7- That the appellant feeling aggrieved, filed departmental appeal against the impugned service rules but no response has been received so far. Copies of departmental appeal is attached as annexure..... F.
- 8- That the appellant feeling aggrieved and having no other efficacious remedy but to file the instant appeal on following grounds inter alia:

GROUND:

- A- That the inaction of the respondents by not deleting the Chief Inspector of Boiler (BPS-18) from line of promotion to the post of Additional Director (BPS-19) in the impugned service rules dated 08.06.2012 and notification dated 4.10.2022 are against the law, facts, norms of natural justice and materials on the record hence not tenable in the eye of law and liable to be modified/ rectified to the extent of serial No. 3 column No.5 of the table and the Chief Inspector of Boiler (BPS-18) being cross cadre may be deleted from line of promotion to the post of Additional Director (BPS-19).
- B- That the action of the respondents by issuing impugned joint seniority list of the Deputy Directors (BPS-18) & Chief Inspector of Boilers (BPS-18) being cross cadre is against the law and rules which would result in depriving the appellant's timely future promotion along with other officers of the same cadre.
- C- That it is also pertinent to mention here that the Directorate General of Industries & Commerce proposed amendment in service rules of Directorate where in cross cadre promotion to the post of Additional Director (BPS-19) from Chief Inspector of Boiler (Boiler Cadre) was to be abolished and it was to be reserved only for promotion of Deputy Director / Deputy Director Commerce & Trade of Industries Cadre. Copies of the proposed amendment in the service rules along with working paper for SSRC are attached as annexureG.
- D- That the August Federal Service Tribunal in service appeal titled **Bashiruddin Ahmad Memon Versus Secretary, Ministry Of Industries & Works and others** , reported in **2000 PLC (CS) 1222** has strucked down the service rules of the department and declared joint seniority list of different cadres as null and void. Copy of FST judgment is attached as annexureH.

- E- That appellant has not been treated in accordance with law and rules by the respondent Department on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- F- That the respondents acted in arbitrary and mala fide manner while issuing the impugned service rules dated 08.06.2012 and impugned joint seniority list.
- G- That the action of the respondents is discriminatory, therefore not tenable in the eye of law.
- H- That under Article 38(e) of the Constitution of Pakistan 1973 state is bound to reduce disparity in the income and earning of the individuals including persons in the various service of Pakistan.
- I- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.

Dated: 31/9/22



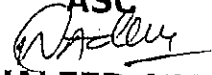
APPELLANT

SYED MOHSIN AHMAD BUKHARI

THOROUGH:

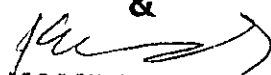
NOOR MOHAMMAD KHATTAK

ASC



WALEED ADNAN

&



KAMRAN KHAN

ADVOCATES HIGH COURT

AFFIDAVIT

I, Syed Mohsin Ahmad Bukhari, Deputy Director Industries, Commerce & Trade (BPS-18) Kohat Region, Kohat, do hereby solemnly affirm that the contents of this **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.



DEPONENT



7/233-44

-5-

**GOVERNMENT OF KHYBER PAKHTUNKHWA,
INDUSTRIES, COMMERCE & TECHNICAL EDUCATION,
DEPARTMENT, PESHAWAR**

NOTIFICATION.

No.SO-I(IND)9-5/2014 Consequent upon their acceptance of offer of appointment issued vide Notification of even no dated 13-05-2015, the Competent Authority has been pleased to post the following Assistant Directors as under.

S No	Name	From	To
1	Mr. Mujhid Khan Assistant Director (Bs-17)	District office Peshawar	Assistant Director Head Quarters Office, Peshawar
✓ 2	Mr. Syed Mohsin Ahmad Bukhari Assistant Director (Bs-17)	Newly Appointee	Assistant Director Head Quarters Office, Peshawar
3	Mr. Asif Raza Assistant Director (Bs-17)	---Do---	Assistant Director Malakand (CPC).

All the Assistant Directors are hereby directed to report to their place of duty/Directorate of Industries as early as possible.

Sd-

SECRETARY

Industries Commerce & TE Deptt: Peshawar

No.SO-I(IND)9-5/2014 Dated 1st June, 2015

Copy is forwarded to:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. District Accounts Office, Peshawar/ Malakand.
3. The Director Examination, Khyber Pakhtunkhwa Public Service Commission, 2 Fort Road Peshawar Cantt 2/r to his letter No. 002600 dated 03/02/2015
4. The SO (Secret)/ SO (Admn)/ S.O.(Budget)/ E.O.Programmer/ Librarian, E&AD.
5. The Director Industries & Commerce Peshawar.
6. The PS to Chief Secretary, Khyber Pakhtunkhwa.
7. The PS to Secretary Establishment Department.
8. The PS to Secretary Finance Department.
9. The Manager, Govt. Printing Press Peshawar.
10. All candidates concerned.
11. The PS to Secretary Industries Commerce and Technical Education Department Peshawar.
12. Office order file.


(MOHAMMAD YUNAS)
SECTION OFFICER (ADMN)



**GOVERNMENT OF KHYBER PAKHTUNKHWA
INDUSTRIES, COMMERCE & TECHNICAL
EDUCATION DEPARTMENT.**

RA B''

-6-

19th April, 2022

NOTIFICATION

No.E&A(IND)2-14/2022/ : On the recommendations of the Provincial Selection Board (PSB) meeting held on 6th April, 2021, the Competent Authority is pleased to promote the following Assistant Director (BPS-17) to the post of Deputy Director Industries, Commerce & Trade (BPS-18) in the Directorate General, Industries & Commerce, Peshawar on regular basis with immediate effect.

S.No	Name of Officer	Present posting
1	Syed Sajjad Ali Shah	Deputy Director Industries, Commerce & Trade (BPS-18), Hazara Region
2	Mr. Shahab Nawaz	Deputy Director Industries, Commerce & Trade (BPS-18) Head Quarter Office Peshawar
3	Syed Mohsin Ahmad	Deputy Director Industries, Commerce & Trade (BPS-18) Kohat Region
4	Syed Badshah	Deputy Director Industries, Commerce & Trade (BPS-18) Peshawar Region
5	Mr. Asif Raza	Deputy Director Industries, Commerce & Trade (BPS-18) Malakand Region

2. The officer will remain on probation for a period of one year extendable for further period of one year in terms of Section-6(2) of Khyber Pakhtunkhwa, Civil Servants Act, 1973 read with Rule-15(1) of Khyber Pakhtunkhwa, Civil Servants (Appointment, Promotion and Transfer) Rules, 1989.

SECRETARY

Government of Khyber Pakhtunkhwa,
IC&TE Department

Copy forwarded for information/ necessary action to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director General, Industries & Commerce, Khyber Pakhtunkhwa, Peshawar.
3. PSO to Chief Minister, Khyber Pakhtunkhwa, Peshawar.
4. PSO to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
5. PS to Secretary Establishment Department, Peshawar.
6. PS to Secretary Industries, Commerce & Technical Education Department.
7. Officer concerned.
8. Personal File/ Master File.

wb
19-04-2022

(Muhammad Saqib)
Section Officer (Admn)

376
APPENDIX

Sl. No.	Nomenclature of Post	Minimum qualification prescribed for appointment by initial recruitment. *	Minimum qualification prescribed for appointment by promotion	Age Limit for initial recruitment	Method of recruitment
1	2	3	4	5	6
1.	Director of Industries, Comin. & Mineral Development.				(i) By selection on merit with due regard to seniority from amongst the holders of the posts of Deputy Director (Industries)/Deputy Director (Technical) having the prescribed length of service, Or (ii) By transfer.
2.	Administrative Officer/ Budget & Accounts Officer.				By promotion on the basis of seniority-cum-fitness from amongst the holders of the post of Superintendents in the Directorate.
3.	Superintendent.				By promotion on the basis of seniority-cum-fitness from amongst the holders of the posts of Assistants & Senior Scale Stenographers in the Directorate with at least five years service as such.
4.	Assistant	Bachelor's Degree from a recognised University.		21 to 25 years	a) Sixty per cent by promotion on the basis of seniority-cum-fitness from amongst the holders of the posts of Senior Clerks in the Directorate with at least Three years service as such, & **b) Forty per cent by initial recruitment provided that ten per cent vacancies out of this quota shall be reserved for ex-defence personnel and one per cent for disabled persons.
5.	Senior Scale Stenographer	(i) Matriculation or equivalent qualification from a recognised Board, and		18 to 25 years	a) Eighty per cent by promotion on the basis of seniority-cum-fitness from amongst the holders of the posts of Stenotypists in the Directorate with at least three years service as such, &

* The word "or by transfer" deleted vide Notification No. SORI (S&GAD) 4-5/76, dated 2.11.1985.

** Substituted vide Notification No. SORI (S&GAD) 4-5/76 Dated 2nd November, 1985.

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APPENDIX

Sr. No.	Nomenclature of Post	Minimum qualification prescribed for appointment by initial requirement	Minimum qualification prescribed for appointment by promotion	Age limit for initial recruitment	Method of recruitment
1	2	3	4	5	6
1	Director of Industries Comm. & Mineral Development				(i) By selection on merit with due regard to seniority from amongst the holders of the posts of Deputy Director (Industries)/Deputy Director (Technical) having the prescribed length of service, Or (ii) By transfer.
2	Administrative Officer/ Budget & Accounts Officer				By promotion on the basis of seniority-cum-fitness from amongst the holders of the post of Superintendents in the Directorate.
3	Superintendent				By promotion on the basis of seniority-cum-fitness from amongst the holders of the posts of Assistants & Senior Scale Stenographers in the Directorate with at least five years service as such.
4	Assistant	Bachelor's Degree from a recognized University		21 to 25 Years	a) Sixty per cent by promotion on the basis of seniority-cum-fitness from amongst the holders of the posts of Senior Clerks in the Directorate with at least Three years service as such, & **b) Forty per cent by initial recruitment provided that ten per cent vacancies out of this quota shall be reserved for ex-defence personnel and one per cent for disabled persons.
5	Senior Scale Stenographer	(i) Matriculation or equivalent qualification from a recognized Board, and		18 to 25 years	a) Eighty per cent by promotion on the basis of seniority-cum-fitness from amongst the holders of the posts of Stenotypists in the Directorate with at least three years service as such. &



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D

GOVERNMENT OF KHYBER PAKHTUNKHWA
INDUSTRIES, COMMERCE AND TECHNICAL EDUCATION DEPARTMENT

NOTIFICATION

Reservoir, dated the 21st June 2012

No. SOI/IND/2-1/91/V/G-114. In pursuance of the provisions contained in sub-rule (2) of rule 36 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1959, and in supersession of all previous Rules and Notifications issued in this behalf, the Industries, Commerce and Technical Education Department, in consultation with the Establishment Department and the Finance Department, hereby lays down, the method of recruitment of permanent qualification and other conditions of service in Column 3 to 5 of the Appendix which shall be applicable to the posts borne in the Directorate of Industries and Commerce, Khyber Pakhtunkhwa, specified in Column No. 2 of the Appendix.

APPENDIX

DIRECTORATE OF INDUSTRIES AND COMMERCE, KHYBER PAKHTUNKHWA
Method of recruitment

S.No	Nomenclature of posts	Qualification for appointment of initial recruitment	Age limit	Method of recruitment
1	Director (BS-19)			By promotion from amongst Officers of the District Government (Senior Civil Services Executive Group) / Provincial (Secretariat Group) / Provincial Management Group.
2	Additional Director (BS-19)			By promotion on the basis of seniority from amongst Officers of the District Government (Senior Civil Services Executive Group) / Provincial (Secretariat Group) / Provincial Management Group.
3	Deputy Director (BS-18)			By promotion on the basis of seniority from amongst Officers of the District Government (Senior Civil Services Executive Group) / Provincial (Secretariat Group) / Provincial Management Group.

Section Officer (A)
Govt. of Khyber Pakhtunkhwa
Industries, Commerce &
Tech. Educa.

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GOVERNMENT OF KHYBER PAKHTUNKHWA
INDUSTRIES, COMMERCE AND TECHNICAL EDUCATION

NOTIFICATION

Peshawar, dated the 8th June 2012

No. SOI(IND)2-1/91/Vol-IV: In pursuance of the provisions contained in sub rule (2) of the rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, and in supersession of all previous Rules and Notification, issued in this behalf, the Industries, Commerce and Technical Education Department by consultation with the Establishment Department and the Finance Department hereby lays down, the method of recruitment qualification and other conditions specified in Column 3 to 5 of the Appendix which shall be applicable to the posts borne in the Directorate of Industries and Commerce, Khyber Pakhtunkhwa specified in Column No. 3 of the Appendix.

APPENDIX
DIRECTORATE OF INDUSTRY AND COMMERCE KHYBER PAKHTUNKHWA

S.No.	Nomenclature of posts	Qualification for appointment by initial requirement	Age Limit	Method of recruitment
1	2	3	4	5
1	Director (BPS-19)			By transfer from amongst officers of the District Management Group/provincial Civil Services (Executive Group) /Provincial Civil Service (Secretariat Group/provincial Management Service.
2	Additional Director (BPS-19)			By promotion on the basis of seniority-cum-fitness from amongst Deputy Directors and Chief Inspectors of Bachelor with at least seven years service in BS-18 or above years service in BS-17 and above.
3	Deputy Director (BPS-18)			By promotion on the basis of seniority-cum-fitness from amongst the Assistant Director with five years service as such

4	Chief Inspector of Poles (BPS-18)	<p>(i) M.S. in Mechanical Engineering (with at least 2nd Division) from a recognized University with three years experience in the relevant field.</p> <p>(ii) B.Sc. in Mechanical Engineering (at least 2nd Division) from a recognized University with five years experience in the relevant field.</p> <p>(iii) In case certificate of competency from the Board of Examining Bachelors under the Bole's Act.</p>	25 to 40 years	<p>(i) By promotion from amongst the Inspector of Poles with at least five years service as such.</p> <p>(ii) If no suitable person is available for promotion, then by lateral recruitment.</p>
5	Inspector of Boilers (BPS-17)	At least 2nd Division B.Sc. Mechanical Engineering or B.Tech (Honour) Mechanical Engineering from a recognized University.	21 to 32 years	By lateral recruitment.
6	Assistant Director (BPS-17)	At least 2nd Division Bachelor's Degree in Chemistry, Physics, Business Administration, Public Administration, Economics, Political Science, Statistics, Commerce, Mathematics, Computer Science, Mechanical, Textile, Electrical, Agriculture Engineering or I.I.T. from a recognized University.	27 to 32 years	<p>(a) By promotion from 1st promotion on the basis of seniority from Inspectors, Technicians, and Mechanical Development Officers with five years service as such and</p> <p>(b) Lateral recruitment (BPS-17) by lateral recruitment.</p>
7	Administrative Officer (BPS-17)	Master's Degree with at least 2nd Division in M.Com, M.B.A, CA or R.Com (Honour) from a recognized University.	21 to 32 years	<p>(a) Promotion, on the basis of seniority from Inspectors and Development Officers with five years service as such and lateral recruitment.</p> <p>(b) Lateral recruitment (BPS-17) by promotion on the basis of seniority from Inspectors, Technicians, and Industrial Development Officers with five years service as such and</p> <p>(c) Lateral recruitment (BPS-17) by lateral recruitment.</p>
8	Industrial Development Officer (BPS-16)	Bachelor's Degree with at least 2nd Division in Business Administration, Public Administration, Commerce, Political Science, Mathematics, Economics, Statistics, Geography, Physics or I.I.T. from a recognized University.	21 to 32 years	<p>(a) Promotion from 1st promotion on the basis of seniority from Inspectors, Technicians, and Industrial Development Officers with five years service as such and</p> <p>(b) Lateral recruitment (BPS-16) by lateral recruitment.</p>
10	Superintendent (BPS-16)			<p>(a) Seniority from 1st promotion on the basis of seniority from Inspectors, Technicians, and Industrial Development Officers with five years service as such and</p> <p>(b) Lateral recruitment (BPS-16) by promotion on the basis of seniority from Inspectors, Technicians, and Industrial Development Officers with five years service as such and</p>
11	Senior Scale Stenographer (BPS-15)			<p>By promotion from the Senior Scale Stenographers and Computer Operators amongst Inspectors, Technicians, and Industrial Development Officers with five years service as such and lateral recruitment.</p>

Admission to the posts of Industrial Development Officers, Technicians, and Inspectors will be on the basis of the marks obtained in the examination conducted by the Government of India.

Section Officer
Govt. of India
Industrial Development
Tech. Education Department

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4	Chief Inspector of Boilers (BPS-18)	(i) M.S in Mechanical Engineering (with at least 2 nd division) from a recognized University with three years experiences in the relevant field. (ii) B.Sc in Mechanical Engineering (at least 2 nd Division) from a recognized University with three years experiences in the relevant field. (iii) 1 st class certificate of competency from the Board of Examining Engineering under the Boiler Act	30 to 40 years	(i) By promotion from amongst the Inspector of Boilers with at least five years service as such. (ii) if as suitable person is available for promotion than by initial recruitment
5	Inspector of Boilers (BSP-17)	At least 2 nd Division B.Sc Mechanical Engineering or B.Tech (Honour). Mechanical Engineering from a recognized University.	21 to 32 years	By initial recruitment
6	Assistant Director (BPS-17)	At least 2 nd Division Master's Degree in Chemistry, Physics, Business Administration, Public Administration, Economics, Political Science, Statistics, Commerce, Mathematic, Computer Science, Mechanical, Textile, Electrical, Agriculture Engineering or L.L.B from a recognized University.	21 to 32 years	(a) Sixty percent (60%) by promotion on the basis of seniority-cum-fitness, from amongst the Industrial Development Officers, with five years service as such and (b).Forty percent (40%) by initial recruitment.
7	Administrative Officer (BPS-17)			By promotion from amongst the Superintendents with at least five years service as such.
8	Accounts Officer (BPS-17)	Master's Degree with at least 2 nd Division in M.Com, MBA, CA or B.Com (Hons) from a recognized University.	21 to 32 years	By initial recruitment
9	Industrial Development Officer (BPS-16)	Master's Degree with at least 2 nd Division in Business Administration, Public Administration, Commerce, Political Science, Mathematics , Economics, Statistics, Chemistry, Physics or L.L.B from a recognized University.	21 to 32 years	(a) Fifty percent (50%) by promotion on the basis of seniority-cum-fitness, from amongst the Assistant with five years service as such and (b) Fifty percent (50%) by initial recruitment.
10	Superintendent (BPS-16)			(a) Seventy Five percent (75%) by promotion on the basis of seniority-cum-fitness, from amongst the Assistant with five years service as such and (b) Twenty Five percent (25%) by promotion on the basis of seniority-cum-fitness, from amongst the Senior Scale Stenographers with five years service as such and
11	Senior Scale Stenographer (BPS-15)			By promotion on the basis of seniority-cum-fitness, from amongst the Junior Scale Stenographers and Computer Operators subject to clearance of Departmental test of Shorthand with a

General (BPS-14)	Bachelor's Degree from a recognized University with at least 24 Division.	21 to 32 years	speed of entry notes per minute in English with three years service as such. (a) Sixty-five (65%) percent by promotion on the basis of seniority-cum-fitness, from amongst the Senior Clerks with three years service as such; and (b) Thirty-five (35%) percent by initial recruitment.
Computer Operator (BPS-12)	Bachelor's Degree with at least 24 Division from a recognized University, with one year Diploma in Information Technology or its equivalent qualification from Board of Technical Education.	21 to 32 years	By initial recruitment.
Junior Scale Sienographer (BPS-12)	(a) F.C.S. (Faculty of Computer Science) with at least 24 Division from a recognized Board; and (b) a speed of fifty words per minute in shorthand in English and thirty five words per minute in typing.	18 to 32 years	By initial recruitment.
Assistant Industrial Development Officer (BPS-11)	Bachelor's Degree from a recognized University, in Physics, Chemistry, Commerce, Economics, Mathematics or Statistics as one of the subject.	21 to 32 years	By promotion on the basis of seniority-cum-fitness, from amongst the Junior Clerks with three years service as such.
Senior Clerk (BPS-09)	(a) Secondary School Certificate with at least 24 Division from a recognized Board; and (b) a speed of thirty words per minute in typing and (c) Computer literate.	18 to 32 years	(a) Thirty percent (30%) by promotion on the basis of seniority-cum-fitness, from amongst the Clerks who have passed Secondary School Certificate Examination with two years service as such; or (b) If no suitable Data is available then by promotion from amongst the Head Clerks, Clerks, Mail, Invoice, Dak, Purger and Sweeper etc. who have passed Secondary School Certificate Examination with two years service as such; and (c) Seventy percent (70%) by initial recruitment.
Junior Clerk (BPS-07)	Having a valid Driving License of Heavy Transport Vehicle/Light Transport Vehicle with at least five years experience of practical driving.	18 to 32 years	By initial recruitment.
Driver (BPS-02)	Having a valid Driving License of Heavy Transport Vehicle/Light Transport Vehicle with at least five years experience of practical driving.	18 to 32 years	By promotion on the basis of seniority-cum-fitness from amongst the Head Clerks, Clerks, Mail, Invoice, Dak, Purger and Sweeper etc. who have passed Secondary School Certificate Examination with two years service as such; and (c) Seventy percent (70%) by initial recruitment.

Director, Industries, Commerce & Tech. Education Department
 Government of Punjab
 Lahore

Director, Industries, Commerce & Tech. Education Department
 Government of Punjab
 Lahore

Section Officer (A)
 Govt. of Khyber Pakhtunkhwa
 Industries, Commerce & Tech. Education Department

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				Speed of fifty words per minutes in English with three years service as such.
12	Assistant (BPS-14)	Bachelor's Degree from a recognized University with at least 2 nd Division		(a) Sixty Five percent (65%) by promotion on the basis of seniority-cum-fitness, from amongst the Senior Clerks with three years service as such and (b) Thirty Five percent (35%) by initial recruitment.
13	Computer Operator (BPS-12)	Bachelor's Degree with at least 2 nd Division from a recognized University with one year Diploma in Information Technology or its equivalent qualification from Board of Technical Education.		By Initial recruitment
14	Junior Scale Stenographer (BPS-12)	(a) F.C.S (Faculty of Computer Science) with at least 2 nd Division from a recognized Board and (b) a speed of fifty words per minute in shorthand in English and thirty five words per minute in typing		By Initial recruitment
15	Assistant Industrial Development Officer (BPS-11)	Bachelor's Degree (at least 2 nd Division) from a recognized University in Physics, Chemistry, Commerce, Economics, Mathematics or Statistics as one of the subject.		By Initial recruitment
16	Senior Clerk (BPS-09)			By promotion on the basis of seniority-cum-fitness, from amongst the Junior Clerks with three years service as such.
17	Junior Clerk (BPS-07)	(a) Secondary School Certificate with at least 2 nd Division from a recognized Board. (b) a speed of thirty words per minute in typing and (c) Computer literature		(a) Thirty percent (30%) by promotion on the basis of seniority-cum-fitness from amongst the Daftaries, who have passed Secondary School Certificate Examination with two years service as such or (b) If no suitable Daftari is available then by promotion from amongst the Naib Qasid, Chowkidars, Mali, Bhishti, Dak Runner and Sweeper etc who have passed Secondary School Certificate Exemption with two years service as such (c) Seventy percent (70%) by initial recruitment
18	Driver (BPS-04)	Having a valid Driveling License of Heavy Transport Vehicle/ Light Transport Vehicle with at least five years experience of practical driving		By initial recruitment
19	Daftari (BPS-02)			By promotion on the basis of seniority-cum-fitness from amongst the Naib Qasids, Chowkidars, Mali, Bhishti, Dak Runner and Sweepers who have passed at least Middle with

Sl. No.	Post Grade/ Dist.	Level	By which recruitment	Age limit	Qualification
20	Prob. Qaid/ Dist. Account (BPS-14)		by direct recruitment	13 to 35 years	D. Matric
21	Group 'A' (BPS-17)		by direct recruitment	13 to 35 years	D. Matric
22	Distt. (BPS-17)		by direct recruitment	13 to 35 years	D. Matric
23	Distt. (BPS-17)		by direct recruitment	13 to 35 years	D. Matric
24	Secretary (BPS-20)				

Encl. No. SOI/INDP/21/2012
Copy forwarded to:-

1. Administrative Secretaries to Govt. of Khyber Pakhtunkhwa
2. Secretary to Government, Khyber Pakhtunkhwa, Peshawar.
3. Secretary to Chief Minister, Khyber Pakhtunkhwa, Peshawar.
4. All Heads of Allocated Departments.
5. All DCOs in Khyber Pakhtunkhwa.
6. All DSOs & Section Judges, Khyber Pakhtunkhwa.
7. Registrar, Peshawar High Court, Peshawar.
8. Secretary, Board of Revenue, Khyber Pakhtunkhwa.
9. Registrar, Khyber Pakhtunkhwa, Peshawar.
10. P.S. to Minister for Industries & Commerce, Khyber Pakhtunkhwa, Peshawar.
11. The Section Officer (Regd. Office) Govt. of Khyber Pakhtunkhwa, Establishment Department, Peshawar.
12. The Director, Industries & Commerce, Khyber Pakhtunkhwa, Peshawar.
13. The Manager, Printing & Stationery Department, Peshawar.

Secretary to Government of Khyber Pakhtunkhwa
Industries, Commerce & Technical Education Department
Peshawar, Khyber Pakhtunkhwa, Pakistan.
Date: Peshawar, 21/01/2012.

Section Officer (IA)
Govt. of Khyber Pakhtunkhwa
Industries, Commerce & Technical Education Department
Peshawar, Khyber Pakhtunkhwa, Pakistan.

Secretary to Government of Khyber Pakhtunkhwa
Industries, Commerce & Commerce
Peshawar, Khyber Pakhtunkhwa, Pakistan.

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BETTER COPY OF THE PAGE NO. //

				Two years service as such
20	Naib Qasid /Dak Runner (BPS-01)	Literate		By initial recruitment
21	Chowkidar (BPS-01)	-----	18 to 35 years	By initial recruitment
22	Bhishti (BPS-01)	-----	18 to 35 years	By initial recruitment
23	Mali (BPS-01)	-----	18 to 35 years	By initial recruitment
24	Sweeper (BPS-01)	-----	18 to 35 years	By initial recruitment

Secretary to Government of Khyber Pakhtunkhwa
Industries, Commerce, Technical Education Department

Endst No. SOI(IND)2-1/91/Vol-IV/7186-7273

Dated Peshawar the 8th June 2012

Copy forwarded to:

1. All Administrative Secretaries, Govt, of Khyber Pakhtunkhwa.
2. Secretary to Governor, Khyber Pakhtunkhwa, Peshawar.
3. Secretary to Chief Minister, Khyber Pakhtunkhwa, Peshawar.
4. All head of Attached Department.
5. All DCOs in Khyber Pakhtunkhwa.
6. All Dist. & Session Judges, Khyber Pakhtunkhwa.
7. Registrar Peshawar High Court, Peshawar.
8. Secretary, Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
9. Registrar, Service Tribunal Khyber Pakhtunkhwa, Peshawar.
10. P.S to Minister for Industries & Commerce Khyber Pakhtunkhwa.
11. The Section Officer (Regulation-I) Govt. of Khyber Pakhtunkhwa, Establishment Department.
12. The Director, Industries & Commerce, Khyber Pakhtunkhwa, Peshawar.
13. The Manager, Printing & Stationary Department, Peshawar with request to provide then printed copies of the Gazette for Law Department.

Secretary to Government of Khyber Pakhtunkhwa
Industries, Commerce, Technical Education Department

TENTATIVE SENIORITY LIST OF DEPUTY DIRECTOR AND CHIEF INSPECTOR OF BOILER (DCS-18) AS STOOD ON 31.12.2022

TOTAL SANCTIONED PERMANENT POSTS OF DEPUTY DIRECTORS = 08 POSTS

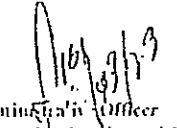
S. No.	Name of the officer	Date of birth with domicile	Date of Retirement	Date of 1 st entry into Govt. Service	Date of regular appointment/promotion to the present post	Present posting/District	Remarks
1.	Muhammad Hanif Khan, M.Sc. (Economics)	07.01.1966 Lakki Marwat	06.01.2026	11.06.1991	15.09.2014	Head Office, Peshawar	By Promotion
2.	Mr. Feroz Shah, B.A & Boilers Engineer.	02.01.1969 N. Waziristan	01.01.2029	02.12.1993	26.01.2021	Head Office, Peshawar	-do-
3.	Mr. Mujahid Khan, M.Sc.	02.01.1968 Mehmand	01.01.2028	06.02.1995	31.01.2022	Head Office, Peshawar	-do-
4.	Syed Sajjad Ali Shah M.Phil. (Economics)	25.04.1963 Nowshera	24.04.2023	24.07.1996	19.04.2022	Office of DD IC&T Hazara Region	-do-
5.	Mr. Shahab Nawaz, M.Sc. (Economics)	15.05.1985 Pitakand	14.05.2045	20.05.2017	19.04.2022	Head Office, Peshawar	-do-
6.	Syed Mohsin Ahmad Bukhari, MSBA, + LLB + ACCA + M.Sc. (Economic)	30.11.1985 Peshawar	29.11.2045	24.03.2008	19.04.2022	Office of DD IC&T Kohat Region	-do-
7.	Syed Usman, MA (Politic Science, Eng & IR)	11.11.1982 Kurram	10.11.2044	07.10.2011	19.04.2022	Office of DD IC&T Peshawar Region	-do-
8.	Mr. Asif Raza, M.Sc. (Economics) + LLB	05.03.1985 Dir Lower	04.03.2045	02.06.2015	19.04.2022	Office of DD IC&T Malakand Region	-do-

Encls: No. 20/29-46/142-DI-Admin

Director General, I&C,
Khyber Pakhtunkhwa.

Date: 16/12/2022

Copy of the above is forwarded to all concerned officers for information. They are requested to confirm their placement in the list and if there is any objection on their placement in the seniority list, they can submit representation within 15-days of the receipt of this communication otherwise it will be presumed that their placement is correct and seniority will be finally notified.


 Administration Officer
 Directorate General Industries and Commerce,
 Khyber Pakhtunkhwa, Peshawar

BETTER COPY OF THE PAGE NO. 12
TENTATIVE SENIORITY LIST OF DEPUTY DIRECTOR AND CHIEF INSPECTOR OF BOILER (BPS-18) AS STOOD ON 31.12.2022
TOTAL SANCTIONED PERMANENT POSTS OF DEPUTY DIRECTORS=08 POSTS

S.No.	Name of the Officer	Date of birth with domicile	Date of Retirement	Date of 1 st entry into Govt. Service	Date of regular appointment/ promotion to the present post	Present posting / District	Remarks
1.	2	3	4	5	6	7	8
1	Muhammad Hanif Khan (M.Sc (Economics)) Lakki Marwat	07.01.1966	06.01.2026	11.06.1991	15.09.2014	Head Office, Peshawar.	By promotion
2	Mr. Feroz Shah B.A & Boiler Engineer N. Waziristan	02.01.1969	01.01.2029	02.12.1993	26.01.2021	Head Office, Peshawar	-do-
3	Mr. Mujahid Khan M.Sc Mohmand	02.01.1968	01.01.2028	06.02.1995	31.01.2022	Head Office, Peshawar	-do-
4	Syed Sajjad Ali Shah M.Phil (Economics) Nowshera	25.04.1963	24.04.2023	24.07.1996	19.04.2022	Office of DD IC&T Hazara Region	-do-
5	Mr. Shahab Nawaz M.Sc (Economics) Malakand	15.05.1985	14.05.2045	20.05.2013	19.04.2022	Head Office, Peshawar	-do-
6	Syed Mohsin Ahmad Bukhari, MSBA + LLB + ACCA + M.Sc (Economics) Peshawar	20.11.1988	29.11.2048	24.03.2008	19.04.2022	Office of DD IC&T Khyber Region	-do-
7	Syed Badshah M.A (Polit Science, Eng & IR) Kurram	11.11.1984	10.11.2044	07.10.2011	19.04.2022	Office of DD IC&T Peshawar Region	-do-
8	Mr. Asif Raza M.Sc (Economics) + LLB Dir Lower	05.03.1985	04.03.2045	03.06.2015	19.04.2022	Office of DD IC&T Malakand Region	-do-

Director General I&C
Khyber Pakhtunkhwa

Dated: 10/03/2023

Endst No. 3039-46/1/42-DI-Admn

Copy of the above is forwarded to all concerned officers for information. They are requested to confirm their placement in the list and if there is any objection on their placement in the seniority list, they can submit representation within 15-days of the receipt of this communication otherwise it will be presented that their placement is correct and seniority will be finally notified.

Administration Officer
Directorate General Industries and Commerce,
Khyber Pakhtunkhwa, Peshawar

"F"

- 13 -

To

The Director General Industries and Commerce
Khyber Pakhtunkhwa, Peshawar.

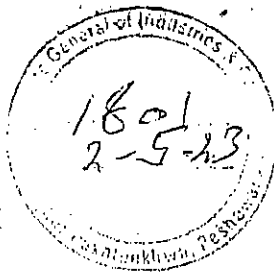
Sub: REPRESENTATION ON AMENDED SERVICE RULES 2012 OF
DIRECTORATE GENERAL OF INDUSTRIES AND COMMERCE, KHYBER
PAKHTUNKHWA, PESHAWAR.

Respected Sir

With due respect it is stated that representation on amended Service Rules 2012 of Directorate General of Industries and Commerce Khyber Pakhtunkhwa may kindly be forwarded through proper channel to the Secretary Industries, Commerce and Technical Education Government of Khyber Pakhtunkhwa for kind consideration please.

Syed Mohsin Ahmad Bukhari

Syed Mohsin Ahmad Bukhari
Deputy Director, Kohat Region
Directorate General, I & C, KP



-14-

To

The Secretary Industries, Commerce & Technical Education Department
Government of Khyber Pakhtunkhwa, Peshawar

(Through Proper Channel)

Director General, Industries & Commerce, Khyber Pakhtunkhwa, Peshawar

SUB: REPRESENTATION ON AMENDED SERVICE RULES 2012 OF DIRECTORATE
GENERAL OF INDUSTRIES AND COMMERCE, KHYBER PAKHTUNKHWA
PESHAWAR

Respected Sir,

With due respect it is stated the Service Rules framed under Civil Servant Act 1973 provide a mechanism for recruitment, promotion and retention of suitable office in a particular Government department.

Brief Background of Service Rules and Amendments:

2. The Service Rules of Directorate (defunct Directorate of Industries & Mineral were framed in 1980) where-in the promotion line to Director Industries was by promotion from Deputy Director Industries (Industries Cadre) & Deputy Director Technical while Chief Inspector of Boiler (Boiler Cadre) was ex-cadre technical post with its own line of promotion from Inspector of Boiler. In these service rules officers of Industries Cadre were provided career progression up-to the highest post of Director Industries which was the-then head of Directorate of Industries & Commerce, Khyber Pakhtunkhwa. *(Copy of Service Rules 1980 of defunct Directorate of Industries & Mineral Development attached as Annex-A.*
3. The Service Rules of Directorate were re-framed in 2012 where-in Chief Inspector of Boilers was given cross-cadre line of promotion to the post of Additional Director CPC which belonged to Industries cadre leading to anomalies causing decade of litigation and stalemate which severely affected the career progression of officers of Industries cadre. *(Copy of Service Rules 2012 of Directorate of Industries & Commerce are attached as Annex-B)*
4. The Government of Khyber Pakhtunkhwa under Commerce & Trade Strategy through which Directorate was upgraded to the Directorate General of Industries & Commerce and various new posts were created for its implementation including posts of Director General, Director Administration, Director Commerce while post of Additional Director was to be re-designated as Director CPC. *(Copy of Organogram of Directorate General under Khyber Pakhtunkhwa Commerce & Trade Strategy as attached as Annex-C.*

5. The Service Rules 2012 were then amended where-in Director General and Director Administration were reserved for PAS/PCS while Director Commerce and Director Industries were given line of promotion from amongst the Deputy Director/Deputy Director Commerce & Trade. *(Copy of Amended Service Rules of Directorate General of Industries & Commerce are attached as Annex-D).*

5. The Directorate General of Industries & Commerce proposed amendment in Service Rules of Directorate where-in cross-cadre promotion to the post of Additional Director (Industries Cadre) from Chief Inspector of Boiler (Boiler Cadre) was to be abolished and it was to be reserved only for promotion of Deputy Director/Deputy Director Commerce & Trade of Industries Cadre. *(Copy of Proposed Amendments in Service Rules of Directorate General is attached as Annex-E).*

4. The proposed Service Rules were sent to Establishment Department for its placement before Standing Service Rules Committee (SSRC) however the SSRC during its meeting disregarded the proposed amendment in Service Rules and provided cross cadre line of promotion to Chief Inspector of Boiler (Boiler technical ex-cadre) to all the three sanction posts of Industries Cadre i.e. Director Commerce, Director Industries, Additional Director CPC which is in contravention of Civil Servant Act 1973 and rules framed thereunder. *(Copy of Notified amendment in Service Rules 2012 is attached as Annex-F).*

5. The exciting notified Service Rules of Directorate General Industries & Commerce had many anomalies due to which officers of Directorate General are facing great hardship in promotions and career progressions. These anomalies are as under:

i. Merger of two separate Cadres:

It is pertinent to mention that the posts of Director/Director Commerce & Trade/Additional Director (BS-19) and Deputy Director/Deputy Director Commerce & Trade. (BS-18) belong to Industries Cadre having specific job function, nature and qualification while the post of Chief Inspector Boiler (BPS-18) and Inspector Boiler (BPS-17) belongs to the technical Boiler ex-cadre of Directorate General with its specific job function, nature and qualification. These two separate technical cadres are merged at the level of Director/Director Commerce/ Additional Director in contravention of Civil Servant Act, Rules and Regulations.

ii. Promotion on Non-transferable posts:

The officer belonging to Industries cadre cannot be posted on the Boiler Cadre posts and vice-versa due to their distinct job function, nature, qualification and experience requirement of each cadre However the existing service rules provides for promotion and posting of Chief Inspector of Boiler a BPS-18 officer of Boiler cadre can be posted as head of Industries/Commerce or Consumer wing as Director Industries/Director Commerce & Trade/Additional Director Consumer without any relevant qualification, experience and expertise which will severely effect the performance of Director General and morale of officers of Industries cadre.

iii. Cross-cadre Promotion.

The existing service-rules provide cross cadre line of promotion to Industries cadre posts of Director/Director Commerce/Additional Director from technical ex-Cadre Boiler cadre post of Chief Inspector of Boiler (BS-18) in contravention of Civil Servant Act. Rules and Regulations. There is separate line of promotion of Industrial cadre till the post of Deputy Director/Deputy Director Commerce & Trade (BPS-18) which are filled by promotion from Assistant Director/Assistant Director Statistics while the post of Chief Inspector of Boiler (BPS-18) is filled through promotion from Inspector of Boiler (BS-17).

iv. Joint Seniority of Industries & Boiler Cadre:

The existing service rules provides for joint seniority of two different technical cadres i.e., Industries Cadre & Boiler Cadre which is in contravention of Civil Servant Act 1973, Rules and Regulations framed thereunder.

v. Non-existence of Nomenclature of Posts:

The nomenclature is not mentioned with the post of Director, Additional Director, Deputy Director and Assistant Director which creates ambiguity in the Service Rules.

vi. Re-designation of post of Additional Director:

The post of Additional Director has not been re-designated as Director Consumer Protection as per the organogram duly approved by the Government as per Khyber Pakhtunkhwa Commerce & Trade Strategy.

vii. Non-specification of Training program.

The existing service rules provides for completion of training program to be considered for promotion to the posts of Director Industries/Director Commerce/Additional Director. However, there is no mention of the Institute, components, nature and modules of the subject training in the service rules.

viii. Promotion to Director General:

The existing service rules does not provide for promotion to the Director General Industries & Commerce from amongst the Director Industries/Commerce/Additional Director which restrict career progression of Industries Cadre technical officers with relevant qualification and experience.

6. It is therefore requested that earlier proposal for amendment in service rules sent by Directorate General the service rules may kindly be amended/revised by forwarding the same to Establishment department, Government of Khyber Pakhtunkhwa for its onward placement/re-consideration by SSRC in the light of following proposals:

-17-

- a. The line of promotion of officers of Industries cadre may be separated from other cadres of Directorate General i.e. Boiler (technical) ex-cadre and General (Ministerial) cadre.
- b. The cross-cadre line of promotion to the posts of Director Industries/Director Commerce/Additional Director Consumer (BS-19) from the post of Chief Inspector of Boiler may be abolished.
- a. The joint seniority of Deputy Director/Deputy Director Commerce & Trade (BS-18) Industries cadre with the Chief Inspector of Boilers (BS=18) Boiler ex-cadre shall be abolished.
- d. The nomenclature may be inserted along the post of Director/Additional Director, Deputy Director and Assistant Director.
- e. The post of Additional Director shall be re-designated to Director Consumer Protection in line with approved organogram.
- f. The training program for promotion to the post of Director Industries/Commerce and Additional Director shall be further described by mentioning the institute, nature and modules of program.
- g. The officers of Industries cadre may be provided career progression and an equal opportunity for promotion to the post of Director General of Industries & Commerce, Khyber Pakhtunkhwa.

Syed Mohsin Ahmad Bukhari

Syed Mohsin Ahmad Bukhari
Deputy Director, Kohat Region
Directorate General, I & C, KP

Copy in-advance to PS to Secretary Industries, Commerce & Technical Education, Government of Khyber Pakhtunkhwa, Peshawar for information, please.

Syed Mohsin Ahmad Bukhari

Syed Mohsin Ahmad Bukhari
Deputy Director, Kohat Region
Directorate General, I & C, KP

F. J. J. - C 294
37
-18-

**GOVERNMENT OF THE KHYBER PAKHTUNKHWA,
INDUSTRIES, COMMERCE AND TECHNICAL
EDUCATION DEPARTMENT**

NOTIFICATION

Peshawar dated the 3rd November, 2021

No. SO-E & A(IND)3-3/2021/4529-70:- In pursuance of the provisions contained in the sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules 1989, the Industries, Commerce and Technical Education Department in consultation with the Establishment Department and the Finance Department, hereby directs that in this Department's Notification No. SO(IND)2-1/91/Vol-IV, dated: 8th June 2012, the following further amendments shall be made namely:

AMENDMENTS

In the Appendix,-

- (n) the existing Serial No. 1, shall be re-numbered as Serial No. 1C and before serial No. 1C as so re-numbered, the following new entries shall be inserted in the respective Columns, namely:

1	2	3	4	5
"1.	Director General (BPS-20).	---	---	By transfer from amongst the officers of PAS/PMS.
1A.	Director Administration (BPS-19).	---	---	By transfer from amongst the officers of PAS/PMS.
1B.	Director Commerce and Trade (BPS-19).	---	---	(d) By promotion, on the basis of seniority-cum-fitness, from amongst the holders of the posts of Deputy Director Industries, Commerce and Trade and Deputy Director with at least seven (07) years service in BPS-18 or twelve years service in BPS-17 and above. Note: For the purpose of promotion, the Deputy Directors Industries, Commerce and Trade and Deputy Directors shall complete three months mandatory training in management and other relevant modules to be determined by the Director General Industries and Commerce.

Administrative Officer
Department of Industries, Commerce and
Technical Education, Peshawar

Secretary
Govt. of Khyber Pakhtunkhwa
Industries, Commerce
& Technical Education

(b) against Serial No. 1C, as so re-numbered above, in Column No. 5, for the existing entries, the following shall be substituted namely:

5.

"By promotion, on the basis of seniority-cum-fitness, from amongst the holders of the posts of Deputy Director Industries, Commerce and Trade and Deputy Director with at least seven (07) years service in BPS-18 as such or 12 year service in BPS-17 and above.

Note: For the purpose of promotion, the Deputy Directors Industries, Commerce and Trade and Deputy Directors shall complete three months mandatory training in management and other relevant modules to be determined by the Director General, Industries and Commerce."

(c) against Serial No. 3, in Column No. 5, for the existing entries, the following shall be substituted, namely:

"By promotion, on the basis of seniority-cum-fitness, from amongst the holders of the posts of Assistant Director and Assistant Director, Statistics with at least five (05) years service in BPS-17 as such";

(d) after Serial No. 3, as so amended, the following new entries shall be inserted in the respective Columns, namely:

1	2	3	4	5
"3A.	Deputy Director - Industries, Commerce and Trade (BS-18).	---	---	By promotion, on the basis of seniority-cum-fitness, from amongst the holders of the posts of Assistant Director and Assistant Director Statistics with at least five (05) year service in BPS-17 as such." and

Section Officer (A)
 Govt. of Khyber Pakhtunkhwa
 Industries, Commerce &
 Education Department

Serial No. 6, the following new entries shall be inserted in the respective Columns, namely:

1	2	3	4	5
	Assistant Director Statistics (BS-17).	Master's Degree with at least 2 nd Division in Business Administration, Economics, Statistics, Commerce or Mathematics, from a recognized University.	21-32 Years.	By initial recruitment."

Administrative Officer
 Industries, Commerce & Education
 Khyber Pakhtunkhwa

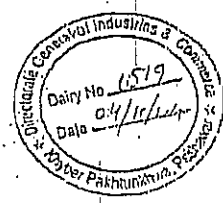
SECRETARY TO
GOVERNMENT OF THE KHYBER PAKHTUNKHWA,
INDUSTRIES, COMMERCE AND TECHNICAL
EDUCATION DEPARTMENT

Copy forwarded for information to the:-

1. All administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. Accountant General, Khyber Pakhtunkhwa, Peshawar.
3. Director, Industries & Commerce, Khyber Pakhtunkhwa, Peshawar.
4. Secretary to Govt. of Khyber Pakhtunkhwa. Public Service Commission, Peshawar.
5. Manager, Govt. Printing Press Khyber Pakhtunkhwa for publication in Govt. Gazette. He is requested to send 10 copies of the same to this Department.
6. PS to Special Assistant to Chief Minister for Industries & Commerce Khyber Pakhtunkhwa.
7. PS to Secretary Establishment, Khyber Pakhtunkhwa, Peshawar.
8. PS to Secretary Law, Parliamentary Affairs & Human Rights Department.
9. PS to Secretary IC & TE Department.
10. PS to Special Secretary IC & TE Department.
11. PA to Additional Secretary (Admin), IC & TE Department.
12. Master File.

[Signature]
SECTION OFFICER (ADMIN)

[Signature]
Section Officer (A)
Govt. of Khyber Pakhtunkhwa
Industries, Commerce &
Tech. Education Department
D (Admin)



[Signature]
5/4

Admin Officer

[Signature]
D. A (Admin) 05/11/22

Additional Officer
Directorate of Industries & Commerce,
Khyber Pakhtunkhwa, Peshawar

~~Extra Copy~~

DIRECTORATE GENERAL,
INDUSTRIES AND COMMERCE
KHYBER PAKHTUNKHWA, PESHAWAR

-19-

Government Printing Press Building Shami Road, Peshawar.

No. 5784/1/106-DI-Admn
To

Dated: 13/06/2022

The Section Officer (Admn)
Government of Khyber Pakhtunkhwa
Industries, Commerce and Technical Education
Department, Peshawar

Subject: WORKING PAPER FOR SSRC/AMENDMENTS IN THE SERVICE RULES OF
DIRECTORATE GENERAL, INDUSTRIES AND COMMERCE KHYBER
PAKHTUNKHWA.

I am directed to refer to your letter B& A (IND)9-5/2022/3410 dated 25/05/2022 on the subject cited above.

Enclosed please find herewith a draft Working Paper along with enclosures and proposed draft amendment in the existing Service Rules 2012 on requisite proforma.

It is requested that aforesaid Working Paper along with draft proposed amendment in the existing Service Rules 2012, may kindly be placed before the Standing Service Rules Committee (SSRC) at the earliest to remove the anomaly so that final Seniority list of Deputy Director and Deputy Director Industries, Commerce and Trade could be approved by the Competent Authority as the senior most Deputy Director Industries (BPS-18) is due for retirement on superannuation with effect from 4th October 2022.

Encl: AA

[Signature]
Administrative Officer
Directorate General Industries and Commerce
Khyber Pakhtunkhwa, Peshawar

Encl: No. _____/1/106-DI-Admn

Dated: _____/06/2022

Copy of the above is forwarded:-

1. PA to Director Industries and Commerce Khyber Pakhtunkhwa for information please
File No. 6745 -DI-Admn.

[Signature]
Administrative Officer
Directorate General Industries and Commerce
Khyber Pakhtunkhwa, Peshawar

BETTER COPY OF THE PAGE NO. 19
DIRECTORATE GENERAL, INDUSTRIES AND COMMERCE KHYBER
PAKHTUNKHWA, PESHAWAR

Government Printing Press Building Shami Road, Peshawar.

No. 5184/1/106-DI-Admn

Dated: 13/06/2022

To,

The Section Officer (Admin)
Government of Khyber Pakhtunkhwa
Industries, Commerce and Technical Education
Department, Peshawar

Subject: **WORKING PAPER FOR SSRC/AMENDMENTS IN THE SERVICE**
RULES OF DIRECTORATE GENERAL INDUSTRIES AND
COMMERCE KHYBER PAKHTUNKHWA

I am directed to refer to your letter H& A (IND)9-5/2022/3410 dated 25.05.2022 on the subject cited above.

Enclosed please find herewith a draft Working Paper along with enclosures and processed draft amendment in the existing Service Rules 2012 on requisite proforma.

It is requested that aforesaid Working Paper along with draft proposed amendment in the existing Service Rules 2012, may kindly be placed before the Standing Service Rules Committee (38) at the earliest to remove the anomaly so that final Seniority list of Deputy Director and Deputy Director Industries, Commerce and Trade could be approved by the Competent Authority as the senior most Deputy Director Industries (BPS-18) is due for retirement on superannuation with effect from 4th October 2022.

Endst: A-A

Administrative Officer
Directorate General Industries and Commerce
Khyber Pakhtunkhwa, Peshawar.

Endst: No. _____/1/106-DI-Admn

Dated ___/06/202

Copy of the above is forwarded:

1. PA to Director Director Industries and Commerce Khyber Pakhtunkhwa for information please.
2. File No. 6/45-DI-Adman.

Administrative Officer
Directorate General Industries and Commerce
Khyber Pakhtunkhwa, Peshawar.

WORKING PAPER

Subject: WORKING PAPER FOR SSRC/ AMENDMENT IN THE SERVICE RULES OF DIRECTORATE GENERAL INDUSTRIES AND COMMERCE KHYBER PAKHTUNKHWA.

The Industries, Commerce and Technical Education Department submitted a combined Seniority List of Deputy Director (BPS-18), Deputy Director Industries, Commerce and Trade (BPS-18) and Chief Inspector of Boiler (BPS-18) for approval of Competent Authority.

The Establishment Department in Note Para-5 dated 28-03-2022, placed at Flag-A, pointed out anomalies in the combined seniority list of Deputy Director Industries, Commerce and Trade (BPS-18) and Chief Inspector of Boiler (BPS-18) as per Service Rules notified on 09-06-2012 placed at Flag-B and the amended Service Rules notified on 03-11-2021 placed at Flag-C.

The Establishment Department in its Note Para-13 dated 19-04-2022 placed at Flag-D, advised Industries Department to prepare a Working Paper for consideration of Standing Service Rules Committee (SSRC) so that the anomaly could be removed before seniority list could be approved.

The Establishment Department in its subsequent Note Para-21(III) dated 17-05-2022 placed at Flag-E, directed to exclude the name of Chief Inspector of Boiler (BPS-18) from the line of promotion to the post of Additional Director (BPS-19) of General Cadre in order to remove the anomaly of combined seniority list of Deputy Director and Deputy Director Industries, Commerce and Trade (BPS-18) of General Cadre with Chief Inspector of Boiler (BPS-18) of Ex-Cadre Technical.

The draft amendments in the existing service rules of 2012 of Directorate General Industries and Commerce Peshawar on the standard format given in the Khyber Pakhtunkhwa Establishment Code may be perused at Flag-F.

In view of above, the forum is requested to examine and approve the proposed amendments in the service rules of Directorate General of Industries & Commerce Peshawar.

11/24/17

PROPOSAL FOR AMENDMENT IN EXISTING SERVICE RULES.

Additional Director BS-19One (01)
 Deputy Director BS-18Three (03)
 Deputy Director Industries, Commerce and Trade BS-18Five (05)

Sl. No	Nomenclature of the Post			Qualification			Age			Method of Recruitment		
	Existing	Proposed	Reasons	Existing	Proposed	Reasons	Existing	Proposed	Reasons	Existing	Proposed	Reasons
	Additional Director (BPS-19)	-	-	-	-	-	-	-	-	By promotion on the basis of seniority - cum-fitness, from amongst Deputy Directors and Chief Inspector of Boilers with at least seven years service in BS-18 or twelve years service in BS-17 and above.	By promotion on the basis of seniority - cum-fitness, from amongst Deputy Directors and Deputy Director Industries, Commerce and Trade BS-18 with at least seven years service in BS-18 or twelve years service in BS-17 and above	(a). The Chief Inspector of Boiler BS-18 deleted from the line of promotion to the General Cadre post of Additional Director BPS-19. (b). The Inspector of Boiler BS-17 and Chief Inspector of Boiler BS-18 have separate Technical Cadre for regulation / implementation of Boiler Act 1923 (adopted as KP Boiler and Pressure Vessel Act 2016). (c). The Inspector of Boiler BS-17 has no combined seniority with Assistant Director BS-17 of the General Cadre. (d). There is no co-relation of job functions and academic qualification of Ex-Cadre Technical post of Inspector of Boiler BS-17 and Chief Inspector of Boiler BS-17 with the General Cadre Assistant Directors BS-17 and Deputy

Section Officer (A)
 Govt. of Khyber Pakhtunkhwa
 Industries, Commerce & Trade

2000 P L C (C.S.) 1222

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- 23 -

[Federal Service Tribunal]

Before Roshan Ali Mangi, Muhammad Raza Khan and Noor Muhammad Magsi, Members

BASHIRUDDIN AHMED MEMON

versus

THE SECRETARY, MINISTRY OF WORKS and 5 others

Appeals Nos. 139(K) and 546/8 of 1996, decided on 1st August, 1997

Per Roshan Ali Mangi, Noor Muhammad Magsi agreeing--[Majority view]---

Civil Servants (Seniority) Rules, 1993---

----R. 3---Civil Servants Act (LXXI of 1973), S. 8---Service Tribunals Act (LXX of -1973), S. 4---Merger of two cadres at the level of Superintending Engineers comprising Civil Engineers and Electrical/Mechanical Engineers for promotion to post of Chief Engineer---Seniority list of both cadres prepared and circulated---Validity---Appellants (Civil Engineers) agitated that merger of two cadres was illegal on account of officers included therein belonged to two different cadres---Seniority' of officers of two cadres was also against Civil Servants (Seniority) Rules, 1993 according to which seniority had to be reckoned from regular officiation in particular cadre or post---Seniority of officers of two cadres should have been counted from the date when they were promoted in their own cadre---One cadet, thus, could not be merged into another cadre, and thereby to count seniority from the date of promotion---Seniority of officers of two cadres in combined seniority list was, thus, in violation of Civil Servants (Seniority) Rules, 1993---Just to accommodate Electrical Engineers against posts meant for Civil Engineers combined seniority list was prepared and Departmental Rules were framed, which action seemed to be mala fide---Departmental Rules whereby combined seniority list of two different cadres was prepared was declared to be, ultra vires ab initio, mala fide and to harm major group of officers i.e. Civil Engineers---Authority was directed to re-draw seniority list on the basis of separate cadres.

Per Muhammad Raza Khan, Member, Contra.---

Manzoor Ali Khan for Appellant (in Appeal No. 139(K) of 1996).

Sajjad Haider Bhatti, Section Officer, M/o Works, M.B. Khattak, Joint Amin. Officer, Pak PWD and Zakauallah Jan, Section Officer, Establishment Division, Departmental Representative for Appellants (in Appeal No. 139(K) of 1996).

Respondent No.5 in person (in Appeal No. 139(K) of 1996).

Nemo for Respondent No.6 (in Appeal No. 139(K) of 1996)

F. E. Siddiqi for Appellant (in. Appeal No. 546/R of 1996).

Khalid Abbas Khan, Standing Counsel alongwith Sajjad Haider Bhatti, Section Officer, Ministry of Works, Amir Ahmed, Deputy Director, FPSC. Zakauallah Jan, Section Officer, Establishment Division and M.B. Khattak, Joint Administrative Officer, Pak. PWD, Departmental Representatives for Respondent (in Appeal No.546/R of 1996).

Date of hearing: 29th April, 1997.

JUDGMENT

-24-

MUHAMMAD RAZA KHAN (MEMBER).---Both the abovementioned appeals are being disposed of by this single consolidated judgment as the facts in controversy are almost identical and similar points of law are involved.

2. Both the appellants belonged to the Engineering Cadre, Pak. PWD, as Civil Engineers. They were appointed on the basis of their degree of Civil Engineering against the post of Assistant Engineer (Civil). Subsequently they were promoted as Executive Engineers and then as Superintending Engineers on the Civil side. In Pak, PWD there is a parallel cadre of E/M Engineers and they also join as Assistant Engineers and get promotion to the post of Superintending Engineer (Electrical/Mechanical). The private respondents belonged to the said cadre whereas the appellants belonged to the cadre of Civil Engineers. The post of Superintending Engineer, on the Civil as well as on the E/M side, is in BPS-19 and further promotion is to the post of Chief Engineer (BPS-20). It is stated in the pleadings of the appellants that the work on the Civil side in the Department covers almost 85 % of the work load whereas the remaining 15% is handled by the E/M Engineers. Initially the service in the respondent-Department was controlled by the Service Rules of 1951 which were later on amended in 1984 and 1990. The controversy between the parties arose with the publication of a Provisional Seniority List on 14-1-1996, which was notified as Final Seniority List on 30-6-1996, whereby the appellants were shown at Serial Nos. 10 and 11 thereof and the private respondents were placed senior to them. After seeking departmental remedy ineffectively the present appeals have been filed mainly on the grounds that the private respondents could not be placed senior to the appellants for the reasons:

- (a) That both the Civil and E&M sides belonged to different cadres and they have to maintain their seniority in their own cadre and they cannot be merged in one cadre.
- (b) That the merger of two cadres was violative of the provisions relating to the seniority contained in section 8 of the Civil Servants Act, 1973, as well as the Seniority Rules of 1993.
- (c) That the rules provided for the method of promotion and the persons eligible for such promotion but such rules cannot be interpreted to disturb the vested right of seniority of the appellants and thereby they cannot be placed junior in , a Seniority list prepared for the purpose of promotion.
- (d) That the post of Chief Engineer was originally proposed to be reserved for the officers of the Civil side which has been incorrectly ' notified as a promotion post for both the cadres.
- (e) That since most of the functions performed by the Chief Engineer pertained to the civil work, therefore, the post may either be reserved for the Civil Engineers or a quota may be fixed in accordance with the strength of the Civil Engineers in the Department, or, in the alternative, a roster is to be maintained for the said promotion caring for the interest of both the cadres on a just and fair consideration.

3. Thus one of the appellants simply prayed for the modification of the final seniority list dated 3-6-1996 by directing the respondents to prepare a separate Seniority List for each cadre. However, in Appeal No.546(R) of 1996 it has been prayed that the Rules of 1984 may be modified, their effect may be nullified, the private respondents, who were promoted over and above the sanctioned strength for E&M may be reverted and the appellant may be placed senior to most of them with consequential benefits.

4. As it will appear from the foregoing discussion that the controversy, as given in the said two appeals, is spread over a period of thirteen years where not only the rules have been notified and implemented but promotions have also been made to the higher posts and the appellants, serving within the Department at responsible positions, had complete knowledge of the position of rules as notified in the Gazette and the promotions of various officers at various stages. It also transpires from the record that the matter has

- 25 -

already been agitated more than once with regard to the filling up of the post of Chief Engineer and such controversy has attained finality by- the verdict of the Honourable Supreme Court.

5. One of the appeals was filed at Islamabad while the other was filed at Karachi, but since identical questions were involved, although with distinct prayers, both the appeals were heard at the Headquarters and the learned counsel for the appellants argued at length. Some of the respondents contested the appeals. Comments have been filed by the Works Division, the Federal Public Service Commission, the Establishment Division and the private respondent, Mr.-Alam Zeb Khan.

6. We have listened to the arguments. The only point that goes in favour of the appellants is that the seniority rules were entirely different than the lists prepared for promotion to the higher posts on merger of more, than one cadres. It is a fact that seniority lists are to be prepared cadre-wise and the seniority so assigned to a civil servant becomes a vested right under section 8 of the Civil Servants Act, 1973, and the principles of Seniority have been finally decided in the Seniority Rules of 1993, whereby the seniority has to be reckoned from the date of regular officiation in a particular cadre or post. Both the categories of Civil Engineers and E&M Engineers belonged to different cadres with their independent line of promotion against the sanctioned strength and the availability of vacancies. The seniority lists of the cadre of Civil Engineers up to the post w Superintending Engineer was certainly to be maintained independently than the seniority list of the E&M Engineers. Admittedly the appellants belonged to different cadre than the private respondents. If a combined seniority list of Superintending Engineers is prepared and published, any one of them who may occupy a senior position in his own cadre may be shown as considerably relegated position of the combined seniority lists prepared on the basis of date of promotion to the post of Superintending Engineer. This will be not only violative of the law and the rules but it will 'also be a cause of mental agony. Thus, the seniority list originally prepared in January, 1996, and finalized in June, 1996 has no legal sanctity behind it to be called as seniority list. This list can, at the most, be termed as a combined list of Superintending Engineers for the purpose of promotion to the higher posts on the basis of merger of the two cadres. Thus, subject to our discussions in the succeeding paragraphs, the claim of the appellant in Appeal No.139(K)/1996 will be satisfied if the nomenclature of the impugned list is changed to any other name than the Seniority List".

7. However, as stated hereinbefore, the matter is not that simple. The issue is spread over a period of thirteen years and the matter has already been agitated earlier more than once at various levels. Such type of lists have been prepared previously and the inter se seniority of both the cadres in the combined list has been determined on the basis of promotion to the post of Superintending Engineer. The posts of Chief Engineers and that of the, Deputy Chief Engineers had been filled previously on the basis of such joint lists.

8. The learned counsel for the appellant in Appeal No.546(R) of 19969 argued vehemently that the Institution of Pak. PWD performs the functions relating to the field of Civil Engineers to the extent of 85 % of the work load and, therefore, the officers were proportionately larger on the Civil side than the E&M side. By this

-26-

argument he wanted to conclude that the Engineers of the E&M side have attained promotion to the higher posts earlier than the appellants and if their seniority is allowed to continue, the Engineers on the civil side will never get a chance to be promoted as Chief Engineer. This argument was repelled by a reply from the respondents that previously when the Civil Engineers were used to be promoted as Chief Engineer on the basis of their earlier promotion as Superintending Engineer, the same was the grievance of the Engineers on the E&M side. However, with the efflux of time the Senior Civil Engineers had retired and the Engineers on the E&M side got the opportunity of promotion to the next grades and responsibilities and subsequently by the same process the Engineers of either cadre will definitely get the opportunity of promotion. Therefore, we have to hold, at this stage, that the merger of cadres at the stage of Superintending Engineers had been the practice in the past and the rules also do not debar rather the rules, as notified, support the provision of opportunity to all the cadres on the basis of seniority-cum-fitness rather than restricting the senior posts to a particular cadre. The inter se seniority has to be determined by reckoning the date of promotion in the lower cadre for the purpose of merger of cadres for consideration to promotion to the higher posts. This practice has prevailed and has to be followed till the rules are amended. The lists prepared on the basis of such practice have been upheld by this Tribunal as well as by the Supreme Court previously.

9. Mr. F.E. Siddiqui, the learned counsel for the appellant in Appeal No.546(R) of 1996 took us to the draft rules of 1984 to prove that initially it was proposed that the post of Chief Engineer should be reserved for the Civil Engineers only and the Superintending Engineers (Civil) were to be considered for promotion as Chief Engineer. It was also argued that apart from promotion, the post of Chief Engineer was to be filled by initial recruitment, if required, from the Civil Engineers only. However, it was stated that, after the approval of the draft rules from the Federal Republic Service Commission and the Establishment Division, the Works Division made a major amendment without the approval of the competent Authority and notified the rules that were not so approved. The learned counsel further stated that the Federal Public Service Commission protested over the publication of rules (in a manner they were not so approved) and hence he concluded that the defect in the rules was still present and they may be deemed to be void in so far as they are not in conformity with the approved rules. Obviously it was a very far-fetched argument in a service appeal. The appeal filed in 1997 cannot legally challenge the Rules of 1984 which were not only published in the official Gazette but were also acted upon for almost over twelve years and each and every word of the said rules was within the active knowledge and compliance of the appellants. The argument was also futile in this respect that the vires of any rules may be challenged by Constitutional petitions but demands of better prospects cannot be considered to be the vested terms and conditions of service and hence a service appeal cannot be filed to demand the exclusive prospects of promotion to a particular cadre to the prejudice of similarly placed other employees of a different cadre. The background of the rules and the internal correspondence between the various departments cannot vest a civil servant with a specific right to read certain words supposed to be available to him "between the line" or "behind the lines". However, despite these legal defects we enquired into the truth of the matter from the representatives of the various departments. The representative of the Federal Public Service

-27-

Commission stated that there were certain technical defects in the rules as published in the Gazette and certain suggestions of the said Commission were modified and therefore, the correspondence was made with the concerned agencies and finally the controversy was settled by the consent of both the agencies i.e. the Federal Public Service Commission and the Works Division and a corrigendum was issued in 1988 whereafter the entire doubts or objection of the said commission were removed. Thus, the Federal Public Service Commission was satisfied with every word of the Rules of 1984 read with the corrigendum of 1988. Hence the arguments, developed on behalf of the appellant, stand repelled. The rules presently in vogue in 1996 have the concurrence of all the concerned agencies and even if there was any deviation the same has been settled. Even otherwise the violation of a Constitutional function of an agency can be taken care of by the agency itself and the appellant cannot agitate the violation of the authority of any agency only to vindicate his personal desires. The matter was further clarified by the representative of the Works Division by saying that originally it was proposed by the Federal Public Service Commission that if the post of Chief Engineers is exclusively reserved for the Civil Engineers, it would amount to gross discrimination with the E&M Engineers and, therefore, the Commission had suggested that an additional post of Chief Engineer for the E&M side may be created. This was not agreed to by the Establishment Division and with the consent of the Establishment Division the said cause of discrimination was rectified and the Post of Chief Engineer was made available to the Engineers of both the cadres: The Federal Public Service Commission had reportedly agreed to the reasoning in this behalf. The representative of the Establishment Division and the learned standing counsel further clarified the issue by stating that the functions of the Federal Public Service Commission were restricted to the framing of the rules for direct recruitment only and the matter of promotion fell exclusively within the scope of the Establishment Division. Any suggestion regarding promotion to a particular post or any approval of the rules regarding promotion by the Federal Public Service Commission shall be immaterial if the Establishment Division provides or approves otherwise. It was, therefore, stated that the rules notified in 1984 had the consent and approval of the Establishment Division. Keeping in view the above discussion we have to conclude that the Rules of 1984 were notified properly and the technical defect therein, if any, stood rectified by the corrigendum of 1988. The rules have been acted upon all along this period and we hold that the rules, as amended from time to time, are valid piece of subordinate legislation and the appellant had no right whatsoever to challenge the validity of such rules by the present service appeal.

10. The learned counsel for the appellant further argued that admittedly the major work performed by the Pak. PWD was of Civil nature and the domination of E&M Engineers on the said post amounts to deprivation of the rights of the Civil Engineers. He, therefore, demanded that some via media should be adopted. Either a roster should be maintained for the filling up of the senior posts on rotation basis proportionately to the strength of the officers of both the cadres or, as the alternative, it was argued, that the quota may be fixed for promotion to the post of Chief Engineer keeping in view the strength and functions of both the cadres. These may be very valid and reasonable points to be stated in a charter of demand required for the purpose of amendment in rules nevertheless such demands amount to desire and wishful thinking when it goes to the enforcement of a vested right of

-28-

civil servants in a service appeal. It is an established fact that vested rights are created by statutes, rules or agreements and not by the desires, aspirations and arguments. Presently the rules are in the field whereby both the cadres are entitled to be considered for promotion to the post of Chief Engineer and the rules are not ambiguous on any point. They have to be implemented in their letter and spirit in the same manner as these rules have been acted upon in the past.

11. The learned counsel in Appeal No.546(R) of 1996 further pointed out that there were only two posts of the Superintending Engineers on the E&M side as against twelve posts of the Superintending Engineer (Civil) and it was added that the Department has unlawfully appointed four Superintending Engineers (E&M) in the past and, therefore, they had been holding the post of Superintending Engineers in excess of their quota. It was demanded that the strength be restricted to the quota specified and those promoted as Superintending Engineers earlier in excess of their quota may be reverted and may be considered for promotion on the availability of any vacancy in the said quota. Thus, by such an argument the appellant has again wished to put the clock back so that certain Superintending Engineers, who were promoted as such a couple of years ago, should be deemed to be reverted so that the seniority attained by them should be nullified and the appellants may qualify for a better position in the determination of inter se seniority between the two cadres. This could have been a very solid and strong point had the matter been agitated at the appropriate time. The law prescribes the period of limitation in terms of days and not even in months. In this case, the violation of quota, if any, had occurred several years ago with no agitation from any quarter and with the passage of considerable period the matter has attained finality and cannot be agitated. Even on merits the representative of the respondent-department explained that the figures stated on behalf of the appellants were not correct. In fact there were three posts of Superintending Engineers (E&M) instead of two and there were nineteen posts of Superintending Engineers (Civil) instead of twelve as stated by the appellants. The representative further added that, three persons have been holding the posts of Superintending Engineers (E&M) throughout and there had been no appointment or promotion in excess of their quota at any stage. Thus, the argument is repelled on technical as well as factual basis.

12. There is another vital defect in these appeals. The Provisional Seniority List determining inter se seniority of the Superintending Engineers for consideration of further promotions was initially circulated on 14-1-1996 and objections were invited. None filed the objections within the period so specified and, therefore, the Provisional Seniority List had attained finality. One of the appellants has, however, instead of filing objections addressed a letter arguing for the explanation of legal provisions whereunder the said seniority list was prepared. This letter dated 22-1-1996 was reiterated by another letter dated 5-4-1996 but still the required legal objections were not filed and consequently the Final Seniority List was circulated on 30-6-1996. It is stated on behalf of the appellant that a departmental representation was filed on 16-7-1996 and after waiting for the statutory period of 90 days the Service Appeal No.546(R) of 1996 was filed on 24-10-1996. However, the detailed perusal of the record shows that the departmental representation, dated 16-7-1996 was merely a protest of publication of Final Seniority List prior to the disposal of the representation against the provisional one. No other ground of

-29-

challenging the Final Seniority List appears in the letter, dated 16-7-1996 addressed to the Director-General, Pak. PWD with copies to the Secretaries, Establishment and Works Divisions, and the Chairman, Federal Public Service Commission. It may be mentioned that under section 4 of the Service Tribunals Act, 1973, it is obligatory on the part of a civil servant aggrieved by an order relating to his terms and conditions of service to file a departmental appeal and then only to file a service appeal before this Tribunal after the expiry of ninety days or disposal of the departmental appeal, whichever is earlier. Thus, the purpose of exhausting the departmental remedy is to allow an opportunity to a department to consider all the facts and grounds which may be agitated in a service appeal. If a matter is not agitated in the departmental appeal, the same cannot be taken in the service appeal before this Tribunal as well. On the analogy of general practice of redressal of grievance, it has been held in hundreds of cases that if a ground was not alleged at the time of first appeal, such ground, cannot be agitated at the subsequent one. The departmental appeal, dated 16-7-1996 does not contain any of the grounds which have been alleged in the present service appeal and, therefore, it has to be held that either the departmental appeal was not filed or the service appeal is to be restricted to the grounds mentioned in the said departmental appeal. In the first alternative the present appeal will become incompetent and in the second alternative the appeal will be restricted to the only issue as to whether a Final Seniority List can be issued prior to the disposal of objections or representation. In this view of the matter, it is admitted that the objections, were not filed by the appellant against the Provisional Seniority List within the prescribed period and anything filed thereafter, was not necessary to be disposed of. Another departmental representation alleged to have been filed by the appellant on 30-6-1996 suffers from two defects. Firstly it was directed against the Provisional Seniority List of 14-1-1996 whereas the could be filed only against the Final Seniority List and not against the Provisional Seniority List. Secondly the departmental representation was drafted and submitted on 30-6-1996 and on the same day the impugned Final Seniority List had already been issued. The representation is not directed against the Final Seniority List and since this was a belated representation, as the Department had already circulated the Final Seniority List on the same day, therefore, the letter of protest, dated 16-7-1996 becomes meaningless and redundant. Hence Appeal No.546(R) of 1996 is also incompetent on this account as well.

13. In view of the above discussion, we recapitulate that the Joint Seniority List, although not specifically provided in the rules, was necessary for the purposes of promotion to the higher posts and as such the lists have been prepared and circulated continuously in the past and had been acted upon throughout without any objection by who present appellants and without any success by some others. We also hold that the Rules of 1984, read with Corrigendum of 1988 and amendment in 1990, hold the field and there was no ambiguity, hence they were to be followed in letter and spirit as has been the practice in the past. No question of determination of any quota or formation of any roster is available in the rules presently in vogue. Thus, we do not find any force in both these appeals which are hereby dismissed with r no order as to costs.

14. Parties to be informed accordingly.

(Sd.)

- 36 -

Muhammad Raza Khan,
Member.

15. **ROSHAN ALI MANGI (MEMBER)**.---I have gone through the judgment of my learned brother, but I respectfully differ with the conclusion for the reasons recorded below.

16. The controversy arose between the parties on the publication of Provisional List on 14-1-1996, when Provisional List of S.Es. was made public, and later on notified as final list on 30-6-1996, whereby the appellants who were working as S.Es. on Civil side were shown at Serial Nos. 10 and 11 and the respondents who were S. Es. on Electrical side were shown senior to them. The appellants belong to the Civil Engineering cadre, whereas the private respondents to the Electrical Engineering cadre. However, both these cadres were merged at the level of Superintending Engineers and seniority list prepared on the basis of date of promotion to the post of Superintending Engineer. The further promotion to the post of Chief Engineer is to be made from this combined list of S.Es. on the basis of seniority-cum-fitness.

17. The grievance of the appellants is that hitherto there used to be a separate cadre, and separate line of promotion and the incumbents used to get promotion on the basis of seniority-cum-fitness to the post of Chief Engineer. As a result of this merger the Electrical Engineers have come to occupy the three top most positions in the seniority list. This has * dumped their -chances of promotion to the post of Chief Engineers (B-20), the post hitherto was -reserved for S.Es. on Civil side now to be started with S.Es. (E/M), after merger of two cadres.

18. We were taken to the fact that the Civil Work constitutes 85 % and the Electrical Work only 15%. The natural justice demanded that they should have been given post of the Chief Engineer, Electrical, if it was thought necessary, on the basis of the size of work rather than open the full gates of promotion to them and on the cost of the promotion of other Civil Engineers.

19. They, therefore, alleged that the respondent has mala fide amended the Rules of 1984, to make room for the Electrical Engineers. In this connection, they brought to the notice of the Bench, that to accommodate the Electrical Engineers, it was proposed either the post of Chief Engineer be reserved or created for Electrical Engineers. This proposal was also supported by the F.P.S.C. Later on the amendment made in 1984 Rules to accommodate the said proposal. However, later on, it was found that the said proposal was excluded and a new proposal was included in 1984 in consultation with the Establishment Division whereby the Superintending Engineer Electrical was made eligible for promotion to the post of Chief Engineer. The F.P.S.C. protested against exclusion of the previous proposal, and inclusion of the later proposal which was made in disregard to earlier suggestion and again advised the Ministry of Works to restore it, but that Ministry did not agree. -

20. Somehow the Ministry of Work prevailed over the F.P.S.C. with the help and assistance of the Establishment Division, to agree with their later proposal somewhere in 1988.

-31-

21. According to the appellants the merger was illegal, since both the officers belong to different cadres. The said seniority was drawn also against the Seniority Rules, 1993, according to which seniority has to be reckoned from a regular officiation in a particular cadre or post. In view of this rule position the private respondents should have counted their seniority from the date they were promoted in their own cadre. Thus, the one cadre cannot be merged into another cadre, and thereby to count seniority from the date of promotion. As such it was argued by the learned counsel of the appellant, that it was violative of the Seniority Rules of 1993. I feel no hesitation to subscribe to his views.

22. The undersigned have given a serious thought to the arguments of both the -sides. After consideration he has come to conclusion, if at all the amendment so made in the 1984 Rules was just fair and equitable met the requirements of the natural justice. To examine this material point we quote the Fundamental Rules, F.R. 5-A:--

"A local Government may where power to make rule or general orders is conferred upon it by way of these rules, relax the provisions of rules or orders so made by it in such a manner as, may appear to it to be just and equitable subject to the limit of its powers to make such rules or orders.

Provided that where any such rules or orders are applicable to the case of any person, the case shall not be dealt with in any manner less favourable to him than that provided by the rules or orders. "

23. From the above it follows that any rule when is to be made by the authority, should be just and equitable, so that it should not be less favourable to the other party.

24. Looked in the above perspective, the rule made by the respondents to enable the Electrical Engineers to be eligible to the post of Chief Engineer, which was previously reserved for Civil Engineers has been opened to them. This has adversely affected the promotion chances of the Civil Engineers, as such it is directly in conflict with above fundamental rules and hence does not seem just, fair and equitable and hence sustainable in the eyes of law.

25. It may be pointed as clearly brought out. by the learned counsel for the appellants that the post of the Chief Engineers was reserved for the Civil Engineers. The post of Electrical Engineers were not the feeding posts of the Chief Engineer, but Electrical Engineers have been made eligible to the post' of Chief Engineer, by merging their cadres in the cadre of Civil Engineers. This was against the rules, and natural justice as this has resulted in the encroachment upon the legal rights of the Civil Engineers, it will not only deprive them of the seniority but the promotion as well. Moreover, this will not be in the interest of the service. In this context the opinion of the F.P.S.C. is quoted:--

It would not be in the interest of service to promote an Engineer holding qualification and experience of Electrical/Mechanical to the post requiring

- ~~30~~ - 31/A -

qualification and experience of Civil and vice versa.

When the 85% of the work is on the Civil, it is open to question whether it is justified to promote an Electrical a Chief Engineer to look after civil work for which he neither possesses qualification nor, has the required experience. Looked in this context the suggestion either to reserve one post of Chief Engineer for Electrical/Mechanical works or to create one was a reasonable advice of the F.P.S.C. which was not agreed to by the Works Division. Just to accommodate the Electrical Engineers against posts meant for Civil Engineer, the said rule was made, which action seems to be mala fide. The said rule is basically in conflict with the fundamental rules, as mentioned above.

26. I, therefore, declare the said rule ultra vires ab initio, as it seems mala fide, and harm a major group of officers i.e. one by which the Superintending Engineer (E/M) has also been made eligible for the post of Chief Engineer, and thereby also set aside the impugned seniority list with the direction to the respondents to re-draw the seniority lists on the basis of separate cadres.

27. Ordered accordingly.

28. NOOR MUHAMMAD MAGSI (MEMBER).--I agree with the judgment of my learned brother Mr. Roshan Ali Mangi, Member..

(Sd.)

Roshan Ali Mangi, Member.

(Sd.)

Muhammad Raza Khan, Member

(Sd.)

Noor Muhammad Magsi, Member,

ORDER OF THE TRIBUNAL

By virtue of proviso (a) to subsection (2) of section 3-A, of the Service Tribunals Act, 1973, the order of the Tribunal by majority view is that both the appeals are accepted.

A.A./212/St/F -
accepted.

Appeals

- 32 -

VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Appeal No 12023

Syed Mohsin Ahmed Bukhari

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Govt of Kpk

(RESPONDENT)
(DEFENDANT)

I/We Appellant

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

Dated. ____/____/202

Mohsin

CLIENT

ACCEPTED

NK
NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

Waleed
WALEED ADNAN

Kamran
KAMRAN KHAN

Umar
UMAR FAROOQ MOHMAND

Ayub
MUHAMMAD AYUB

Mahmood
MAHMOOD JAN
ADVOCATES

&

OFFICE:

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(0311-9314232)