

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1156/2022

Hamza Ali Khan, Work Superintendents (BPS-10)
Public Health Engineering Division Bannu

.....Appellant


V E R S U S

1. Govt. Of Khyber Pakhtunkhwa, through Secretary Public Health Engineering Department, Peshawar.
2. Secretary Establishment Department Civil Secretariat, Peshawar.
3. Secretary Finance, Finance Department, Civil Secretariat, Peshawar.
4. The Chief Engineer (Center), Public Health Engineering Department Peshawar.

.....Respondent

I N D E X

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3	Affidavit		5
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5	Copy of Promotion of Work Superintendent (BPS-10)	B	8-9
6	Seniority List of appellant	C	10


DEPONENT
03339111069

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No. 1156/2022

Diary No. 8414

Hamza Ali Khan, Work Superintendents (BPS-10)
Public Health Engineering Division Bannu.

Dated 19-10-23

.....Appellant

V E R S U S

1. Govt. Of Khyber Pakhtunkhwa, through Secretary Public Health Engineering Department, Peshawar.
2. Secretary Establishment Department Civil Secretariat, Peshawar.
3. Secretary Finance, Finance Department, Civil Secretariat, Peshawar.
4. The Chief Engineer (Center), Public Health Engineering Department Peshawar.

Hamza Ali Khan, Work Superintendents (BPS-10)
Public Health Engineering Division Bannu.

.....Respondent

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

RESPECTFULLY SHEWETH:

PRELIMINARY OBJECTIONS:

1. The Appellant has no cause of action nor locus standi.
2. The Appellant has not come to the Tribunal with clean hands.
3. The instant appeal is hit by "laches" and as such not maintainable.
4. The present appeal is liable to be dismissed for mis-joinder / non-joinder of necessary parties.
5. The Appellant has filed the instant appeal on malafide motives.
6. The instant appeal is against the prevailing laws and rules.
7. The Appellant is estopped by his own conduct to file the present appeal.
8. The instant appeal is not maintainable in the present form and also in the present circumstances of the issue.
9. That the instant appeal is barred by law and limitations.

ON FACTS:

1. Pertains to record.
2. Incorrect and misconceived. It is clarified that the appellant did not submit any departmental appeal before the Chief Engineer (Center) Public Health Engineering Department being the competent authority and instituted / filed the instant service appeal before the Honorable Tribunal. The present appeal is not maintainable in the eyes of law and liable to be dismissed with cost.
3. Correct to the extent, it is clarified that Public Health Engineering Department in consultation with Finance Department and Establishment Department amended the Service Rules vide notification No. SO(Estt)/PHED/1-9/2019-20,

wherein, 1% quota is reserved for promotion of Works Superintendent to the post of Sub Engineer BPS-12 on the basis of seniority cum fitness with five year service as such , having at least Second class Diploma of Associate Engineering (D.A.E) in Civil , Electrical, Electronics, Mechanical Technology from a recognized Board of Technical Education (Copy of notification with regard to promotion quota is attached as Annexure-A).

4. Incorrect and misconceived. That the quota is already entertained by the respondent department in 2017-18, wherein, two (02) Work Superintendents namely; Mr.Abdur Rahim and Mr.Asmat Ullah Khan were promoted to the post of Sub Engineer BPS-12 and were posted on 10.01.2018 accordingly (Copy of office order is attached as Annexure-B).
5. Incorrect and misconceived. Seniority list has been maintained by the respondent department and the appellant is at serial No.2 and he will be promoted on his turn as per existing promotion policy of Public Health Engineering Department (Copy of seniority list is attached as Annexure-C).

GROUNDS:

- A. Incorrect and misconceived. It is clarified that the respondent department reserved 1% quota for promotion of Work Superintendent (BPS-10) to the post of Sub Engineer (BPS-12). Promotion quota of other department is not applicable on the respondent department, as Standing Service Rule Committee (SSRC) being the competent forum framed service rules of the respondent department.
- B. Incorrect and misconceived. As discussed in the preceding paras.
- C. Incorrect and misconceived. As discussed in the preceding paras.
- D. Incorrect and misconceived. The appellant is misleading this Honorable Tribunal, as 33% quota is reserved for Class-IV to the post of Junior Clerk is a non-Technical Post, however, the post of the appellant is a technical post.
- E. Incorrect and misconceived. As discussed above.
- F. Incorrect and misconceived. As discussed above.
- G. Incorrect and misconceived. As discussed above.
- H. Incorrect and misconceived. As discussed above.
- I. Incorrect and misconceived. It is clarified that the appellant would be promoted on his turn as per existing promotion policy of the respondent department.
- J. Incorrect and misconceived. The appellant misleading this Honorable Tribunal and did not submit his departmental appeal before the Chief Engineer (Center) being the competent authority.
- K. The respondent departments seek permission from this Honorable Tribunal to raise additional grounds at the time of arguments, please.

Prayers:

It is, therefore, most humbly prayed before this Honorable Tribunal, that the present appeal being vexatious and devoid of merit may please be dismissed with cost.

Chief Engineer (Center)
Public Health Engineering Department
Peshawar
(Respondent No. 4)

Secretary
Public Health Engineering Department
Peshawar
(Respondent No. 1)

Secretary
Finance Department
Peshawar
✓ (Respondent No. 3)

Secretary
Establishment Department
Peshawar
(Respondent No. 2)



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OFFICE OF THE CHIEF ENGINEER (CENTER)
PUBLIC HEALTH ENGG:DEPARTMENT KHYBER PAKHTUNKHWA PESHAWAR
Ph: 091-9217528 E-mail:centrephe@gmail.com, Plot No. 40, Sector B-II, Phase-V, Hayatabad, Peshawar

No. 04 / CG-7 / PHE,

Dated Peshawar, The 31 / 08 / 2023.

AUTHORITY LETTER

It is certified that Mr. Kamran Shahid, Assistant Social Organizer of Public Health Engineering Division Peshawar is hereby authorized to attend the court of Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar in Service Appeal No.1156/2022 titled "Hamza Ali Khan VS Government of Khyber Pakhtunkhwa through Chief Engineer(Center) PHED & Others" on behalf of all the respondents of Public Health Engineering Department.

Chief Engineer (Center)

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1156/2022

Hamza Ali Khan, Work Superintendents (BPS-10)
Public Health Engineering Division Bannu

.....Appellant

V E R S U S

1. Govt. Of Khyber Pakhtunkhwa, through Secretary Public Health Engineering Department, Peshawar.
2. Secretary Establishment Department Civil Secretariat, Peshawar.
3. Secretary Finance, Finance Department, Civil Secretariat, Peshawar.
4. The Chief Engineer (Center), Public Health Engineering Department Peshawar.

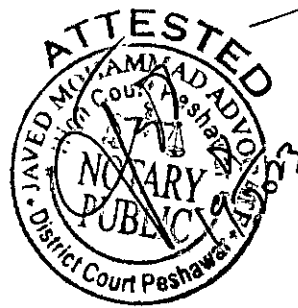
.....Respondent

AFFIDAVIT

I, Kamran Shahid, Assistant Social Organizer, Office of the Chief Engineer (Center), Public Health Engineering Department Peshawar do hereby solemnly affirm and declare on oath that the contents of accompanying Para wise comments on behalf of respondents No. 1 & 4 are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal. It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense has been struck off.

[Handwritten Signature]
DEPONENT

CNIC # 16101-6850506-9



GOVERNMENT OF KHYBER PAKHTUNKHWA
PUBLIC HEALTH ENGG: DEPARTMENT

Dated Peshawar, the 14 / 12 / 2020

NOTIFICATION

No.SO(Estt)/PHED/1-9/2019-20: In pursuance of the provisions contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Public Health Engineering Department, in consultation with the Establishment Department and Finance Department, hereby directs that in this Department's Notification No.SO(Estt)/PHED/1-9/2010, dated 06-03-2010, the following further amendments shall be made, namely:

AMENDMENTS

In the APPENDIX:-

- (1) Under the heading "Engineering Cadre":
 - (i) against Serial No.4, in Column No.5 in clause (b), after the brackets and word "(Civil)", the oblique and word "/Electronics" shall be inserted; and
 - (ii) against Serial No.5, in Column No.3 and 5 for the existing entries the following shall respectively be substituted namely;

3	5
(a) At least Second Division Diploma of Associate Engineering in Civil Technology, from a recognized Board of Technical Education; or (b) At least Second Division Diploma of Associate Engineering in Mechanical Technology, from a recognized Board of Technical Education; or (c) At least Second Division Diploma of Associate Engineering in Electrical or Electronics Technology, from a recognized Board of Technical Education.	(a) Five Percent, by promotion, on the basis of seniority-cum-fitness, from amongst the Draftsmen having qualification mentioned in clause (a) of Column No.3 with five years service as such; (b) one percent, by promotion, on the basis of seniority-cum-fitness from amongst the Works Superintendents, having any of the qualification prescribed for initial recruitment in Column No.3, with five years' service as such; (c) eighty-eight percent by initial recruitment having qualification reflected at clause (a) of Column No.3; (d) three percent by initial recruitment having qualification reflected at clause (b) of Column No.3; (e) three percent by initial recruitment having qualification reflected at clause (c) of Column No.3; Note: For the purpose of promotion the seniority of Works Superintendents shall be reckoned from the date of their regular appointment as Works Superintendent.

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Serial No.	159
Date	28/12/2020
Signature	
Official Seal	

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- (2) Under the heading "Ministerial Establishment".

- (i) against Serial No.6, in column No.5, for the words "five years", the words "three years" shall be substituted; and

P.T.O

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Attested

[Signature]

Administrative Officer
O/O the Chief Engineer (Center)
Public Health Engineering Deptt.
Khyber Pakhtunkhwa, Peshawar

(ii) against serial No.13, for the existing entries, the following shall be substituted, namely:-

1	2	3	4	5
"13	Junior Clerk	(a) At least second division Intermediate Certificate or its equivalent qualification from a recognized Board; and (b) a speed of thirty (30) words per minute in English typing."	18 to 30 years	(a) Thirty-three percent by promotion, on the basis of seniority-cum-fitness from amongst the Daftaris, Record Lifters, Barkandazs, Daffadars, Naib Qasids and Chowkidars including holder of equivalent posts who possess at least second division Intermediate Certificate or its equivalent qualification from a recognized Board with at least two years' service as such; and (b) sixty-seven percent by Initial recruitment Note: For the purpose of promotion, there shall be maintained a common seniority list of Daftaris, Daffadars, Record Lifters, Barkandazs, Naib Qasids and Chowkidars including holder of equivalent posts with reference to the date of their acquiring the Intermediate Certificate or its equivalent qualification from a recognized Board. Provided that: (a) if two or more officials have acquired the Intermediate Certificate or its equivalent qualification in the same session, the inter-seniority in the lower post shall be maintained for the purpose of determining seniority in the higher post; and (b) where a senior official does not possess the requisite qualification at the time of filling up a vacancy the official next junior to him possessing the requisite qualification shall be promoted in preference to the senior official. Provided further that the condition of Intermediate Certificate or its equivalent qualification from a recognized Board as laid down at clause (a) above shall not apply till the expiration of a period specified in the Establishment Department Notification No.SOE-IV/(E&AD)/1-35/2014 dated 18 th July, 2019 to the existing matriculate Incumbents of the posts of Daftaris, Record Lifters, Daffadars, Barkandazs, Naib Qasids and Chowkidars for promotion to the post of Junior Clerk."

SECRETARY TO
GOVT: OF KHYBER PAKHTUNKHWA
PUBLIC HEALTH ENGG: DEPARTMENT

Dated Peshawar, the 14 / 12 / 2020

No.SO(Estt)/PHED/1-9/2019-20:

Copy forwarded to the:-

- 1) All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
- 2) Secretary to Governor Khyber Pakhtunkhwa.
- 3) Principal Secretary to Chief Minister Khyber Pakhtunkhwa.
- 4) Accountant General Khyber Pakhtunkhwa.
- 5) Chief Engineer (North/South/Merged Areas/SRU) PHE Khyber Pakhtunkhwa Peshawar.
- 6) Secretary Public Service Commission Khyber Pakhtunkhwa Peshawar
- 7) Registrar Peshawar High Court / Service Tribunal Peshawar.
- 8) All Superintending Engineers PHE / XENs PHE Department Khyber Pakhtunkhwa.
- 9) Manager Government Stationary & Printing Department.
- 10) PS to Chief Secretary Khyber Pakhtunkhwa Province.
- 11) PS to Secretary PHE Department Khyber Pakhtunkhwa Peshawar
- 12) Office Order File.

SECTION OFFICER (ESTT)

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Administrative Officer
O/O the Chief Engineer (Center)
Public Health Engineering Deptt.
Khyber Pakhtunkhwa, Peshawar



ANNEXURE - B
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OFFICE OF THE CHIEF ENGINEER (SOUTH)
PUBLIC HEALTH ENGG: DEPTT: KHYBER PAKHTUNKHWA, PESHAWAR
Ph#091-9212984 Fax#091-9210228 E-mail: Ce.s.phed.pr5419@gmail.com

No. 01/E-9 /PHE,

Dated Peshawar, the 10 /01/2018.

OFFICE ORDER

On the recommendation of the Departmental Promotion Committee (DPC) in its meeting held on 06.12.2017, under the Chairmanship of Chief Engineer (South) PHE Department, the competent authority is pleased to promote the following Tracers (BPS-7) and Work Superintendant (BPS-10) to the post of Sub Engineer (BPS-12), in the best interest of public.

Promoted from Tracer to Sub Engineer

- 1) Mr. Fawad Ali Shah
- 2) Mr. Allah Noor
- 3) Mr. Muhammad Arif
- 4) Mr. Hazrat Bilal
- 5) Mr. Umar Farooq
- 6) Mr. Asghar Javed
- 7) Mr. Muhammad Waqas
- 8) Mr. Ifikhar Ahmad
- 9) Mr. Fahad Elahi

Promoted from Work Superintendant to Sub Engineer

- 1) Mr. Abdur Rahim
- 2) Mr. Asmat Ullah Khan

Consequent upon their promotion to the post of Sub Engineer, they will remain on probation for a period of one year, as per Civil Servants act 1973, read with appointment/promotion and transfer rules 1989, as such, the following posting/transfer are hereby ordered, with immediate effect.

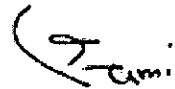
#	Name	From	To	Remarks
1.	Mr. Fawad Ali Shah	Tracer PHE Division Charsadda	Sub Engineer, at the disposal of Chief Engineer North	For further Posting/Adjustment
2.	Mr. Allah Noor	Tracer PHE Circle Bannu	Sub Engineer PHE Division Bannu	Against the existing vacancy
3.	Mr. Muhammad Arif	Tracer PHE Division Lakki Marwat	Sub Engineer PHE Division Lakki Marwat	Against the existing vacancy
4.	Mr. Hazrat Bilal	Tracer PHE Division Kohat	Sub Engineer PHE Division Hangu	Against the existing vacancy
5.	Mr. Umar Farooq	Tracer PHE Circle Kohat	Sub Engineer PHE Division Karak	Against the existing vacancy
6.	Mr. Asghar Javed	Tracer PHE Division Karak	Sub Engineer PHE Division Karak	Against the existing vacancy
7.	Mr. Muhammad Waqas	Tracer o/o Chief Engineer South PHED	Sub Engineer PHE Division Peshawar	Vice item No. 10
8.	Mr. Ifikhar Ahmad	Tracer PHE Circle Bannu	Sub Engineer PHE Division Hangu	Against the existing vacancy

Cont'd Page-2

Attested

Administrative Officer
O/O the Chief Engineer (Center)
Public Health Engineering Deptt.
Khyber Pakhtunkhwa, Peshawar

8	Mr. Fahad Elahi	Tracer PHE Division D.I.Khan	Sub Engineer PHE Division Tank	Against the existing vacancy
10.	Mr. Anayat-ur-Rchman	Sub Engineer PHE Division Peshawar	Sub Engineer, at the disposal of Chief Engineer North	For further Posting/Adjustment
11.	Mr. Asmat Ullah Khan	Work Superintendent PHE Division D.I.Khan	Sub Engineer PHE Division D.I.Khan	Against the existing vacancy



Chief Engineer (South)

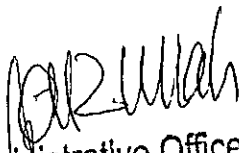
Endstt. No. 01/E-23 / PHE,

/Dated Peshawar the, 10/01/2018

Copy forwarded to:

1. The Secretary to Govt of Khyber Pakhtunkhwa PHED Peshawar
2. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
3. The Chief Engineer (North) Public Health Engg: Department Peshawar.
4. All Superintending Engineers (North/South/FATA) in PHED, Khyber Pakhtunkhwa.
5. All Executive Engineers concerned (North/South/FATA) PHED Khyber Pakhtunkhwa.
6. The Section Officer (Estt) Public Health Engg: Department Peshawar.
7. All District Accounts Officer concerned.
8. The official concerned.

Chief Engineer (South)


 Administrative Officer
 O/O the Chief Engineer (Center)
 Public Health Engineering Deptt:
 Khyber Pakhtunkhwa, Peshawar

NOTIFICATION

Annexure - C (10)
**OFFICE OF CHIEF ENGINEER (CENTER)
PUBLIC HEALTH ENGINEERING DEPARTMENT
KHYBER PAKHTUNKHWA PESHAWAR**

In pursuance of Section-8 (5) of the NWFP Civil Servants act 1973, the **Final Seniority List of Work Superintendant (BPS-10), (3 years DAE)** of Public Health Engg: Department. as stood on 31.12.2022, is notified as under:-

S.No	Name	Father Name	Home District	Qualification	Date of Birth	Date of Commencement of Service	Date of Appointment to Previous Post	Date of Appointment to Present Post	Remarks
1	Qaisar Zaman	Zoor Talab Khan	Mardan	DAE (C)	14.03.1968	07.04.2009		07.04.2009	
2	Hamza Ali Khan	Muhammad Ibrahim	Bannu	DAE (C)	09.01.1993	24.07.2012		23.07.2012	
3	Inayat ullah Khan	Aziz Ur Rehman	Karak	DAE (C)	02.03.1990	18.10.2017		17.10.2017	

Chief Engineer (Center)

Endstt: No. /E-16/PHE

Dated Peshawar the ____/____/2022

Copy of the Seniority List is forwarded for information and intimation of discrepancy if any to the:-

- 1 - Chief Engineer (North) Public Health Engg: Department Khyber Pakhtunkhwa Peshawar.
- 2 - Chief Engineer (FATA) Works & Service Department Peshawar
- 3 - All Superintending Engineers in Public Health Engg: Department Settled/FATA Khyber Pakhtunkhwa.
- 4 - All Executive Engineers in Public Health Engg: Department Settled/FATA Khyber Pakhtunkhwa.
- 5 - Section Officer (Estt) Public Health Engg: Department Khyber Pakhtunkhwa Peshawar

Administrative Officer (Center)

Accepted
Jadullah

Administrative Officer
O/O the Chief Engineer (Center)
Public Health Engineering Deptt:
Khyber Pakhtunkhwa, Peshawar.