

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

Service Appeal No. 2093/2023


Sherin Jan.....Appellant

V E R S U S

The Govt. of Khyber Pakhtunkhwa through Chief Secretary
Civil Secretariat, Peshawar & others.....Respondents

I N D E X

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Appellant
Through


Adnan Aman

Advocate High Court
Cell No.0321-9853530

Dated 17.10.2023

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

Service Appeal No. 2093/2023

Sherin Jan S/o Abdullah Jan,
Ex Assistant Engineer (BPS-17),
Irrigation Department, Govt. of KP

.....Appellant

V E R S U S

1. The Govt. of Khyber Pakhtunkhwa
Through Chief Secretary
Civil Secretariat, Peshawar
2. The Chief Secretary
Govt. of Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar
3. The Secretary Irrigation to
Govt. of Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar
4. The Secretary Establishment to
Govt. of Khyber Pakhtunkhwa,
Peshawar.....Respondents

**SERVICE APPEAL U/S 4 OF THE KHYBER
PAKHTUNKHWA SERVICES TRIBUNAL ACT,
1974, AGAINST THE IMPUGNED REFUSAL
/INACTION OF THE RESPONDENTS TO PLACE**

THE CASE OF THE APPELLANT BEFORE THE (PROVINCIAL SELECTION BOARD) PSB AND TO CONSIDER HIM FOR GRANT OF PROFORMA PROMOTION TO THE POST OF EXECUTIVE ENGINEER BS-18, BE DECLARED AS ILLEGAL, UNLAWFUL AGAINST THE LAW/SERVICE RULES GOVERNING THE SUBJECT AND THUS INEFFECTIVE UPON THE RIGHTS OF THE APPELLANT AND CONSEQUENTLY THE RESPONDENTS MAY BE DIRECTED TO PLACE THE NAME OF THE APPELLANT, BEFORE THE UPCOMING MEETING OF PROVINCIAL SELECTION BOARD (PSB) AND TO CONSIDER HIM FOR GRANT OF PROFORMA PROMOTION TO EXECUTIVE ENGINEER IN BPS-18, WITH ALL OTHER ANCILLARY, BENEFITS.

Prayer

By accepting this appeal, the impugned refusal /inaction of the respondents, to place the case of promotion of the appellant, before the PSB and therefore to consider him for promotion to BPS-18, be declared as illegal, unlawful, against the rules governing the subject and consequently they may be directed to place the case of appellant before the P.S.B and thereafter to consider

him for his promotion to BPS-18, from the date of his eligibility with all back benefits.

Respectfully Sheweth:

1. That the appellant is holding the qualification of DAE & was initially appointed as Sub Engineer way back on 31.01.1985.
2. That on 17th of February 2011, some necessary amendments were made in the Service Rules of 2011 duly notified in the official gazette. **(Copy of the rules are attached as annexure "A")**.
3. That in light of the amendments ibid, the case of promotion of the appellant was duly recommended by the DPC and accordingly was promoted to BPS-17 vide notification dated 11.10.2011. **(Copy of the notification is attached as annexure "B")**.
4. That on 24th August 2021 the respondents department was once again pleased to pave way of promotion to the post of Executive Engineer (BPS-18) for diploma holders and in this respect, once again necessary

amendments were made in the service rules, duly notified on the official gazette. **(Copy of the amendments are attached as annexure "C").**

5. That in light of the amendments ibid, the case of appellant was to be considered, for promotion to BPS-18 (Executive Engineer) as he/was fulfilling the required length of five years of service in BPS-17.
6. That prior to the meeting of the provincial selection board (P.S.B), one of the colleagues of the appellant, assailed the amended service Rules 2021, before this Hon'ble tribunal through Service Appeal No.7917/2021, titled Engineer Imtiaz Khan Vs Govt. etc.

It is worth to mention here that this Hon'ble Tribunal was further pleased to suspend the operation of the impugned amendments vide order dated 31.01.2022. **(Copies of Service Appeal and Order dated 31.01.2022 are attached as annexure "D" & "E").**

7. That during the pendency of the instant service appeal, though the appellant was eligible to be promoted to the post of Executive Engineer (BPS-18) however his case was not placed/considered for promotion, due to the interim injunction granted by this Hon'ble Tribunal.

It is worth to mention have that as per the seniority list of BPS-17 notified on 29th November 2022, the appellant was a serial No.3 of the list.

(Copy of the seniority list is attached as annexure "F").

8. That on 06.01.2023, the appellant got retire from his service after attaining the age of superannuation. **(Copy of the notification dated 27.10.2022 is attached as annexure "G").**
9. That the service appeal ibid was lastly heard on 13.07.2021 and this Hon'ble Tribunal was pleased to dismiss the aforesaid appeal vide judgment dated 13.07.2023, by declaring the amendments of (2021) as intra vires. **(Copy of the judgment dated 13.07.2023 is attached as annexure "H").**

10. That in light of the judgment dated 13.07.2023 the appellant submitted departmental appeal, before the respondent No.3, for placing his case before the upcoming meeting of PSB for grant of proforma promotion however his appeal was not considered by the respondents. **(Copy of the appeal is attached as annexure "I")**.
11. That the appellant after waiting for statutory period of ninety (90) days now prefers this service appeal before the Hon'ble Tribunal for the following amongst other grounds:

G R O U N D S:

- A. That the impugned refusal of the respondent department to place the case of promotion of the appellant before the P.S.B, despite the fact that he being eligible in all terms is prima facie illegal, unlawful and against the law/Rules governing the subject.
- B. That the amended service Rules of 2021, do provides a quota of 8% for diploma holders for their onward promotion to the post of

Executive Engineers (BPS-18), and the appellant being eligible and qualified in all terms, was expecting a legitimate expectancy to be considered for his promotion but the respondents through their impugned inaction of has caused a serious loss to the appellant, by depriving him of his due right.

- C. That even otherwise, the appellant is/was at serial No.3 of the final seniority list duly notified by the respondent of the officers of BPS-17 and by then he was eligible for his promotion right from the date of publication of amended Rules in the official gazette i.e. 24th august 2021.
- D. That more so, the matter of suspension of amended rules was pending before this tribunal for almost two long years and as such due to the pendency of the service appeal No.7917/2021, all the cases of promotion were put at halt and prior to the decision of the appeal, the appellant got retire of his service and as such, the appellant was deprived of his

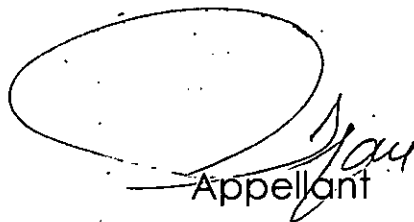
right, therefore, this Hon'ble Court once again needs to interfere to meet the ends of justice.

- E. That the service rules do provide for eligibility of five (05) service experience in BPS-17 and the appellant was having more than years of services in BPS-17, at the time when 8% quota was provided in the amended rules, therefore he is/was otherwise eligible to be considered for his promotion in BPS-18 that due to injunctive order, he could not be considered for the same, having no fault/deficiency on the part of the appellant.
- F. That the appellant has been treated against the law and has also been deprived of equal protection of law.
- G. That any other ground not specifically mentioned here will be raised at the time of arguments with the permission of this Hon'ble Tribunal.


It is, therefore most humbly prayed that by accepting this appeal, the impugned refusal /inaction of the respondents, to place

the case of promotion of the appellant, before the PSB and thereafter to consider him for promotion to the post of Executive Engineer (BPS-18), be declared as illegal, unlawful, against the rules governing the subject and consequently they may be directed to place the case of appellant before the P.S.B and thereafter to consider him for his proforma promotion to BPS-18, from the date of his eligibility with all back benefits.

Any other relief which is deemed fit and appropriate in the circumstances of the case may also be passed in favour of the appellant.


Appellant

Through



Adnan Aman
Advocate High Court

Dated 17.10.2023

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

Service Appeal No. _____/2023


Sherin Jan.....Appellant

V E R S U S

The Govt. of Khyber Pakhtunkhwa through Chief Secretary
Civil Secretariat, Peshawar & others.....Respondents

A F F I D A V I T

I, Sherin Jan S/o Abdullah Jan, Ex Assistant Engineer (BPS-17), Irrigation Department, Govt. of KP, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.


DEPONENT

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

Service Appeal No. _____/2023

Sherin Jan.....Appellant

V E R S U S

The Govt. of Khyber Pakhtunkhwa through Chief Secretary
Civil Secretariat, Peshawar & others.....Respondents

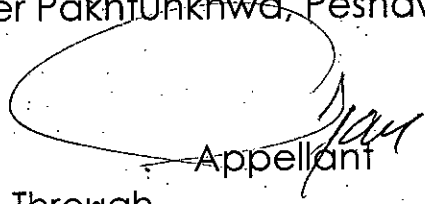
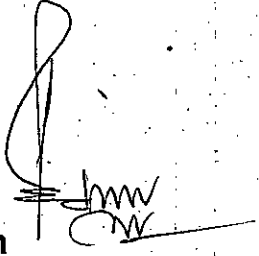
MEMO OF ADDRESSES OF PARTIES

APPELLANT:

Sherin Jan S/o Abdullah Jan, Ex Assistant Engineer (BPS-17), Irrigation Department, Govt. of KP

RESPONDENTS"

1. The Govt. of Khyber Pakhtunkhwa Through Chief Secretary Civil Secretariat, Peshawar
2. The Chief Secretary, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar
3. The Secretary Irrigation to Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar
4. The Secretary Establishment to Govt. of Khyber Pakhtunkhwa, Peshawar

Through  Appellant


Adnan Aman
Advocate High Court

Dated 17.10.2023

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Annexure
"A"

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EXTRAORDINARY
GOVERNMENT



REGISTERED NO. PIII
GAZETTE

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, SATURDAY, 2ND APRIL, 2011.

GOVERNMENT KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT.

NOTIFICATION

Dated Peshawar the 17th February, 2011

NO.SO(E)IRR:23-5/73: In pursuance of the provisions contained in sub rule (2) of Rule-3 of the North-West Frontier Province Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 and in supersession of all previous rules and notifications, issued in this behalf, except Notification No.SO(E)IRR:23-5/73 dated 20-12-2006, the Irrigation Department, in consultation with the Establishment Department and the Finance Department hereby lays down, the method of recruitment, qualification and other conditions specified in columns No. 3 to 5 of the Appendix (pages 1 to 5) to this Notification which shall be applicable to the posts in column No. 2 of the Appendix.

Secretary to Government of the Khyber Pakhtunkhwa Province
Irrigation Department.

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Printed and published by the Manager,
Disty. & Ptg. Dept., Khyber Pakhtunkhwa, Pesh.

ATTESTED

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KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 2ND APRIL, 2011

APPENDIX

S#	Nomenclature of Post	Qualification for appointment	Age Limit	Method of recruitment
1	2	3	4	5
PART-I-ENGINEERING STAFF				
1.	Chief Engineer/ Director General (BPS-20)			By selection, on merit from amongst the Senior Superintending Engineers and Directors with at least seventeen years service in BPS-17 and above, possessing Degree in B.E/BSc Engineering (Civil) from a recognized University.
2.	Superintending Engineer/Director (BPS-19)			By promotion, on the basis of seniority-cum-fitness, from amongst the Executive Engineers/Deputy Directors with at least twelve years service in BPS-17 and above.
3.	Executive Engineer/ Deputy Director (BPS-18)			By promotion, on the basis of seniority cum fitness, from amongst the Sub Divisional Officers, Assistant Engineers and Assistant Directors possessing Degree in B.E/BSc Engineering (Civil or Mechanical) from a recognized University, with at least five years service as such, and have passed the Professional or Revenue Examination under the prescribed rules.
4.	Assistant Engineer/Sub Divisional Officer/ Assistant Director (BPS-17)	BE/BSc Degree in Civil/Mechanical Engineering from a recognized University	21 to 32 years	<p>a. Sixty five percent by initial recruitment.</p> <p>b. ten percent by promotion, on the basis of seniority cum fitness, from amongst the Sub Engineer's who has acquired during service degree in Civil or Mechanical Engineering from a recognize university.</p> <p>c. five percent by promotion, on the basis of seniority cum fitness, from amongst the Sub Engineer's who joined service as degree holders in Civil/Mechanical Engineering and</p> <p>d. twenty percent by promotion, on the basis of seniority-cum-fitness from amongst the Sub Engineer's, who hold a diploma of Civil, Mechanical, Electrical or Auto Technology and have passed Departmental Grade A examination with ten years service as such.</p> <p>Note: - Provided that where candidate under Clause (b) & (c) above is not available for promotion, the vacancy shall be filled in by initial recruitment.</p>
5.	Sub Engineer (BPS-11)	Diploma of Associate Engineering in Civil/Mechanical/Auto/Electrical Technology from a recognized Institute.	18 to 30 years	<p>a. Eighty percent by initial recruitment; and</p> <p>b. twenty percent by promotion, on the basis of seniority-cum-fitness, from amongst the Canal Inspectors, Work Takers, Gauge Readers, Surveyors and other establishments having Diploma of Associate Engineering in Civil, Mechanical, Electrical or Auto Technology from a recognized Institute or Board of Technical Education of Government with at least ten years service, and have passed the departmental Grade B and Grade A examination</p>

A. H. Khan
10/04/2011

ATTESTED

KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 2ND APRIL, 2011.

6.	Geologist (S-17)	MSc. Geology from a recognized University with 03 years experience in the relevant field.	10 to 32 years.	By initial recruitment
PART-II-MINISTERIAL ESTABLISHMENT				
7.	Administrative Officer/ Budget and Accounts Officer (BPS-16)			By promotion, on the basis of seniority-cum-fitness, from amongst the Superintendents of the Department having at least three years service.
8.	Superintendent (BS-16)			By promotion, on the basis of seniority-cum-fitness, from amongst the Assistants, Head Clerks and Senior Scale Stenographers with at least five years service as such. Note 1: For the purpose of promotion, a joint seniority list of Assistants and Senior Scale Stenographers shall be maintained. If the date of appointment of both the officials is the same, then Assistant shall rank senior. Note 2: Promotion to the post of Superintendents in Regional Office cadre shall be considered from amongst the Assistants, Head Clerks and Senior Scale Stenographers of Regional Office cadre and that of Circle Office Cadre from the Assistants, Head Clerks and Senior Scale Stenographers of Circle Office Cadre.
9.	Senior Scale Stenographer (BPS-15)	a. Bachelor's Degree/ B.Com from a recognized University; and b. A speed of 100 words per minute in short hand in English and 40 words per minute in English typing.	18 to 30 years	a. Forty percent by initial recruitment; and b. sixty percent by promotion, on the basis of seniority-cum-fitness, from amongst the Junior Scale Stenographers with at least three years service as such.
10.	Assistants/Head Clerk (BPS-14)	Second Class Bachelor's Degree with Economics/ Statistics as one of the subject or B.Com, from a recognized University.	18 to 30 years	<u>In Regional Office Cadre</u> a. Twenty five percent by initial recruitment; and b. seventy five percent by promotion, on the basis of the seniority cum fitness, from amongst Accounts Clerks and Senior Clerks in Regional Office Cadre with at least 5 years service as such. <u>In Circle Office Cadre</u> By promotion, on the basis of seniority cum fitness, from among the Accounts Clerks and Senior Clerks with at least 5 years' service as such, in the Circle where the vacancies occur.

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Attested

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KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 2ND APRIL, 2011.

11	Junior Scale Stenographer (BPS-12)	(a). Intermediate or D.Com From a recognized Board; and (b) A speed of 50 words per minute in Short hand in English and 35 words per minute in English typing with computer knowledge of Microsoft Words and Excel.	18 to 30 years	By Initial Recruitment.
12	Accounts Clerk/ Senior Clerk (BPS-9)			By promotion, on the basis of seniority cum fitness, from among the Junior Clerks with atleast 5 years service in the respective regional or Circle cadre as such; Note. Promotion to the post of Accounts Clerk or Senior clerk in Regional Office cadre shall be considered from amongst the Junior Clerks of Regional Office Cadre and that of Circle Office Cadre from amongst the Junior Clerks of Circle Office Cadre.
13	Junior Clerk (BPS-?)	(a) Secondary School Certificate from a recognized Board; and (b) A speed of 30 words per minute in English typing.	18 to 30 years	(a) Sixty Seven percent by initial recruitment; and (b) Thirty three percent by promotion, from amongst the Daftaries, Record Lifters, Naib Qasids, Chowkidars and other equivalent posts who have Secondary School Certificate and are under 45 years of age and have at least two years service as such in the respective Regional and Circle Office Cadre Note For the purpose of promotion, there shall be maintained a joint seniority list of Daftaries, Record Lifters, Naib Qasids, Chowkidars with reference to the date of regular appointment to the post or that of acquiring the Secondary school certificate which ever is later, provided that if two dates are the same, the person older in age or having longer service, whichever is more beneficial to him, shall rank senior.
PART-III COMPUTER ESTABLISHMENT				
14	Data Processing Supervisor (BPS-14)	Bachelor's Degree from a recognized University with 03 years Diploma in Computer Science, from recognize institute	18 to 30 years	(a). Twenty five percent by initial recruitment, and (b). Seventy five percent by promotion, on the basis of seniority cum fitness, from amongst the Data Entry Operators and Key Punch Operators with five years service as such.

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KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 2ND APRIL, 2011. 692

15	Data Entry Operator/Key Punch Operator (BPS-12)	Intermediate with one year Diploma in computer science from a recognize institute with speed of 10000 key depression per hour.	18 to 30 years	By initial recruitment.
PART-IV REVENUE ESTABLISHMENT				
16	Canal Collector (BPS-18)			By promotion, on the basis of seniority cum fitness, from amongst the Deputy Collectors and Assistant Land Reclamation Officers with five years service as such.
17	Deputy Collector / Assistant Land Reclamation officer (BPS-17)			By promotion, on the basis of seniority-cum-fitness, from amongst Zilladars with atleast five years service as such.
18	Zilladar (BPS-14)	Bachelor's degree or equivalent qualification from a recognized University.	21 to 30 years	(a) Seventy percent by initial recruitment; and (b) thirty percent by promotion, on the basis of seniority-cum-fitness, from amongst the Head Vernacular Clerks with six years experience and Vernacular Clerk/Revenue Inspector with ten years service and having passed Secondary School Certificate Examination from recognized Board. Note: Promotion of Haad Vernacular Clerks (BPS-7) to the post of Zilladar (BPS-14) shall be considered only in the circle where no post of Head Vernacular Clerk (BPS-10) exist
19	Revenue Inspector (BPS-10)	Intermediate or equivalent qualification from a recognized Board.	18 to 30 years	By initial recruitment.
20	Head Vernacular Clerk (BPS-10)			By promotion, on the basis of seniority-cum-fitness, from amongst the Vernacular clerks in the circle where the vacancies occur.
21	Vernacular Clerk (BPS-7)	Secondary School Certificate, from a recognized Board.		By promotion, on the basis of seniority-cum-fitness, from amongst the Patwaris having five years service as such in the Circle where the vacancies occur.
22	Patwari (BPS-5)	Secondary School Certificate from a recognized Board with one year Patwar training in Irrigation Department and have passed Irrigation Patwar Examination.	18 to 35 years	By initial recruitment
PART-V DRAWING ESTABLISHMENT:				
23	Chief Draftsman (BPS-17)			By promotion, on the basis of seniority-cum-fitness, from amongst the Circle Head Draftsman with three years service as such.

*Attested
Munir Khan*

[Signature]
ATTESTED

[Signature]

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KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 2ND APRIL, 2011.

24	Circle Head Draftsman (BPS-16) (BPS-16)			By promotion, on the basis of seniority-cum-fitness, from amongst the Divisional Head Draftsman with three years service as such.
25	Divisional Head Draftsman (BPS-13)			By promotion, on the basis of seniority-cum-fitness, from amongst the Draftsman, who have passed the prescribed departmental examination for appointment as Head Draftsman with three years service as such.
26	Draftsman (BPS-10)	(a). Secondary School Certificate from a recognized Board; and (b). Two years Certificate course in Civil Draftsmanship from a recognized Institute/Board of Technical Education.	18 to 30 years.	a. Fifty percent by initial recruitment; b. twenty five percent by promotion, on the basis of seniority-cum-fitness, from amongst the Tracers having Certificate of Civil Draftsman course of two years duration from a recognized Board of Technical Education with three years service as such; and c. twenty five percent by promotion, on the basis of seniority-cum-fitness, from amongst the Tracers who have qualified the prescribed Departmental Examination of Draftsman and having three years service as such. Note: - If no suitable candidate is available for promotion against the quota at (b) then the vacancy shall be filled-in by the way as prescribed at (c) and Vice Versa.
27	Tracer (BPS-5)	(a) Secondary School Certificate from recognized Board; and (b) Tracer Course of at least six months duration from a recognized Institute or Board of Technical Education.	18 to 30 years.	By Initial Recruitment.

ATTESTED

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EXTRAORDINARY
GOVERNMENT

REGISTERED NO. PIII
G A Z E T T E



KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, MONDAY, 25TH JUNE, 2012.

**GOVERNMENT OF KHYBER PAKHTUNKHWA,
IRRIGATION DEPARTMENT.**

NOTIFICATION
Dated. 25th June, 2012.

SOE/IRRI/23-5/2010-11. -- 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 Irrigation Department in consultation with the Establishment Department and the Finance Department, hereby directs that in this Department's Notification No. SO(E)Irr:/23-5/73 dated 17.02.2011, the following amendments shall be made namely:-

AMENDMENTS

In the Appendix,

- 1. Against Serial No. 4, in column No. 5, for the existing entries, in clause (b), (c) and (d), the following shall be respectively substituted, namely:
 - (b) twelve percent by promotion, on the basis of seniority-cum-fitness, from amongst the Sub Engineers, having degree in Civil Engineering or Mechanical Engineering from a recognized university and have passed departmental grade B&A examination with five year service of such.

Note- For the purpose of Clause (b), a Joint seniority list of the Sub Engineers having Degree in Civil Engineering or Mechanical Engineering shall be maintained and their seniority is to be reckoned from the date of their 1st appointment as Sub Engineer.

- (c) eight percent by promotion, on the basis of seniority-cum-fitness, from amongst the Sub Engineers, having Degree in B. Tech (Hons) and have passed departmental Grade B and A examination with five years service as such; and

Note- For the purpose of clause (c), a seniority list of Sub Engineers having Degree in B. Tech (Hons) shall be maintained and their seniority is to be reckoned from the date of their 1st appointment as Sub Engineer.

- (d) fifteen percent by promotion, on the basis of seniority-cum-fitness, from amongst the Sub Engineers, who hold a Diploma of Associate Engineer in Civil, Mechanical, Electrical or Auto Technology and have passed departmental Grade B and A examination, with five years service as such.

Note- For the purpose of clause (d), a seniority list of Sub Engineers having Diploma of Associate Engineering in Civil Mechanical, Electrical or Auto Technology shall be maintained and their seniority is to be reckoned from the date of their 1st appointment as Sub Engineer.

ATTESTED

[Signature]
Secretary Irrigation Department Peshawar

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KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 25TH JUNE, 2012.

Note- The quota of clause (b), (c) and (d), above respectively shall be filled in by initial recruitment, if no suitable Sub Engineer is available for promotion.

- ii. against serial No. 5, in column No. 5, for the existing entries in clause (b), the following shall be substituted, namely:
- (b) fifteen percent by promotion, on the basis of seniority-cum-fitness, from amongst the Canal Inspectors, Work Takers, Gauge Readers, Surveyors, having Diploma of Associate Engineering in Civil, Mechanical, Electrical or Auto Technology from a recognized Board of Technical Education, having passed the departmental Grade-B and Grade-A examination, with at-least seven years service as such; and
 - (c) five percent by promotion, on the basis of seniority-cum-fitness, from amongst the Canal Inspectors, Work Takers, Work Munshi, Surveyors, and work superintendent, having passed the departmental Grade-B examination with at-least ten years service as such;
- iii. Against serial No. 7, in column No. 5, for the words "three years" the words "one year" shall be substituted;
- iv. against serial No. 9, in column No. 3, for the existing entry the following shall be substituted, namely:
- a. Bachelor Degree or equivalent qualification from a recognized University; and
 - b. A speed of 80 words per minute in short hand in English, and 40 words per minute in English typing; and.
- v. against serial No. 13, in column No. 5, in clause (b), the words and figures "and are under 45 years of age" shall be deleted

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT.

Printed and published by the Manager,
State & P.W. Dept., Khyber Pakhtunkhwa, Pesh.

ATTESTED

(20)

GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

Dated Peshawar the 22nd December, 2017

NOTIFICATION

No. SO E/IRRI/23-5/73/Vol-III: 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 Irrigation Department, in consultation with the Establishment Department and the Finance Department, hereby directs that in this Department's Notification No. SO E/IRRI/23-5/73 dated 17.02.2011, the following further amendments shall be made namely:-

AMENDMENTS

In the Appendix:-

- (i) against serial No. 1 to 27, in Column No. 2, the basic pay scales mentioned after nomenclature of post, shall respectively be deleted.
- (ii) against serial No. 1, in column No. 2, after the word "University", the words "and have successfully completed the Senior Management Course" shall be added.
- (iii) against serial No. 16, in column No. 5, the words "and Assistant Land Reclamation Officers" shall be deleted; and
- (iv) against serial No. 17, in column No. 2, the oblique and words "/Assistant Land Reclamation Officer" shall be deleted.

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Ends: No and date even

Copy of the above is forwarded:-

1. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. The Secretary to Governor, Khyber Pakhtunkhwa.
3. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
4. The Accountant General, Khyber Pakhtunkhwa.
5. The Additional Accountant General (PR, Sub Offices), Peshawar.
6. The All Commissioner in Khyber Pakhtunkhwa.
7. All Heads of Irrigation Department, Khyber Pakhtunkhwa.
8. All Deputy Commissioners/P.As in Khyber Pakhtunkhwa.
9. The Registrar, Peshawar High Court, Peshawar.
10. The Secretary, Board of Revenue, Khyber Pakhtunkhwa.
11. The Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
12. The Secretary, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
13. All Superintending Engineers in Irrigation Department.
14. All Executive Engineers of Irrigation Department.
15. File to Chief Secretary, Khyber Pakhtunkhwa.
16. File to Secretary Irrigation Department, Peshawar.
17. The Manager Govt. Printing Press, Khyber Pakhtunkhwa, Peshawar. He is requested to supply 200 copies of the printed gazette, for further distribution.
18. File to Additional Secretary, Irrigation Department, Peshawar.

ATTESTED

(FAZAL ELAHI)
Section Officer (Estt)

Chief Engineer
(Sewer)

455
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29/12

21



GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

NOTIFICATION

Peshawar, dated the 12th September, 2019

NOTIFICATION

No. SO(E)/IRRI/23-5/73/Vol-VI: 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 Irrigation Department in consultation with the Establishment Department and the Finance Department, hereby directs that in this Department's Notification No. SO(E)IRR/23-5/73/ dated 17.02.2011, the following further amendments shall be made, namely:-

AMENDMENTS

In the Appendix:-

- (i) against Serial No. 2, in Column No. 5, after the words "Deputy Directors" the slash and words "/Technical Officers" shall be inserted; and
- (ii) against Serial No. 3, in Column No. 2, after the words "Deputy Director" the slash and words "/Technical Officer" shall be added.

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Endst: No and date even.

Copy of the above is forwarded:-

1. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. The Secretary to Governor, Khyber Pakhtunkhwa.
3. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
4. The Accountant General, Khyber Pakhtunkhwa.
5. The Additional Accountant General (PR, Sub Office), Peshawar.
6. All the Commissioners in Khyber Pakhtunkhwa.
7. The Chief Engineer (North)/South Irrigation Department, Khyber Pakhtunkhwa.
8. All Deputy Commissioners in Khyber Pakhtunkhwa.
9. The Registrar, Peshawar High Court, Peshawar.
10. The Secretary, Board of Revenue, Khyber Pakhtunkhwa.
11. The Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
12. The Secretary, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
13. PS to Chief Secretary, Khyber Pakhtunkhwa.
14. PS to Secretary Irrigation Department, Peshawar.
15. The Manager Govt. Printing Press, Khyber Pakhtunkhwa, Peshawar.
He is requested to supply 200 copies of the printed gazette, for further distribution.
16. PA to Additional Secretary, Irrigation Department, Peshawar.
17. Master File.

ATTESTED

(ABDUL RAUF)
Section Officer (Estt)

29



GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

Dated Peshawar the 10th July, 2020

NOTIFICATION

No. SO(E)/IRRI/23-5/73/Vol-VI: 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 Irrigation Department in consultation with the Establishment Department and Finance Department, hereby notifies that in this Department's Notifications No. SO(E)IRR/23-5/73 dated 17.02.2011 amended vide Notification No. SO(E)Ir/23-5/2010-11 dated 25.06.2012, the following further amendments shall be made namely:-

AMENDMENTS

In the Appendix:-

- (i) Against Sr. No. 04, in Column No. 5, in the Note, in clauses (b), and (c), after the words "as Sub Engineer", the words "or from the date of acquiring degree whichever is later" shall be inserted.


Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Endst: No and date even

Copy of the above is forwarded:-

1. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. The Secretary to Governor, Khyber Pakhtunkhwa.
3. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
4. The Accountant General, Khyber Pakhtunkhwa.
5. The Additional Accountant General (PR, Sub Office), Peshawar.
6. All the Commissioners in Khyber Pakhtunkhwa.
7. The Chief Engineers (North)/South & NMAs) Irrigation Department, Khyber Pakhtunkhwa.
8. The Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
9. The Secretary, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
10. PS to Chief Secretary, Khyber Pakhtunkhwa.
11. PS to Secretary Irrigation Department, Peshawar.
12. The Manager Govt. Printing Press, Khyber Pakhtunkhwa, Peshawar.
He is requested to supply 200 copies of the printed gazette, for further distribution.
13. PA to Additional Secretary, Irrigation Department, Peshawar
14. Master File.

ATTESTED


(ABDUL RAUF)
Section Officer (Estt)

GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

23

Dated Peshawar the 11 Oct., 2011.

NOTIFICATION

NO SO(E)IRR/4-5/74: Consequent upon the recommendations of the Departmental Promotion Committee, the competent authority is pleased to promote the following Diploma Holder Sub Engineers to the posts of Assistant Engineers (BS-17) in the Irrigation Department on regular basis, with immediate effect:

Annexure
"B"

- 1 Mr. Shaukat Ali
- ✓ 2 Mr. Riaz Ahmad †
- 3 Mr. Habib Ullah
- 4 Mr. Hidayat Ullah
- 5 Mr. Faizur Rehman
- 6 Mr. Wahheed ur Rehman
- 7 Mr. Fazl e Khuda †
- 8 Mr. Hassan Zulqarnain Haider ✓
- 9 Mr. Alamzeb
- 10 Mr. Tahir Said
- 11 Mr. Nasrullah
- 12 Mr. Jamshid Ahmad Raees
- 13 Mr. Naseerud Din †
- 14 Mr. Sherin Jan
- 15 Mr. Hazrat Hassan

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

875 15/10/2011

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ATTESTED

24

Annexure
"C"

ANNEX - B

EXTRAORDINARY
GOVERNMENT



REGISTERED NO. PIII.
GAZETTE

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, TUESDAY, 24TH AUGUST, 2021.

**GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT**

NOTIFICATION

Dated Peshawar the 24th August, 2021

No. SO(E)IRRI/23-5/73/VOI-VI.--- 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 Irrigation Department, in consultation with the Establishment and Finance Department, hereby direct that in this Department's Notification No. SO(E)IRRI/23-5/73 dated 17.02.2011, the following further amendments shall be made namely:-

AMENDMENTS

In the APPENDIX.-

(a) Under the heading "PART-I ENGINEERING STAFF", against Serial No. 3, in Column No. 5, for the existing entries, the following shall be substituted, namely:-

(a) Eighty percent (80%) by promotion, on the basis of seniority-cum-fitness, from amongst the holders of the post of Assistant Engineer, Sub Divisional Officer and Assistant Director possessing Degree in B.E/B.Sc.Engineering (Civil or Mechanical) from a recognized University with at least five years service as such and have passed the Professional or Revenue Examination under the prescribed rules.

(b) twelve percent (12%) by promotion, on the basis of seniority-cum-fitness, from amongst the holders of the post of Assistant Engineer, Sub Divisional Officer and Assistant Director possessing Degree in B. Tech (Hons) from a recognized University with at least five years service as such and have passed the Professional and Revenue Examination under the prescribed rules; and

(c) eight percent (08%) by promotion, on the basis of seniority-cum-fitness, from amongst the holders of the post of Assistant Engineer, Sub Divisional Officer and Assistant Director possessing Diploma of Associate Engineering in (Civil, Mechanical, Auto and Electrical) Technical Education with at least five years service as such and have passed the Professional and Revenue Examination under the prescribed rules.

151 A

ATTESTED

25

151 B

KHYBER PAKHTUNKHWA GOVT. GAZETTE, EXTRAORDINARY, 24TH AUGUST, 2021

Note:- A separate seniority list of all the three categories of the Assistant Engineers, Sub Divisional Officers and Assistant Directors shall be maintained for the purpose of promotion; and

(b) under the heading "PART-V DRAWING ESTABLISHMENT", against Serial No. 26, in Column No. 5, for the existing entries, the following shall be substituted, namely:

- (a) Seventy percent (70%) by promotion, on the basis of seniority-cum-fitness, from amongst the holders of the post of Tracer who have qualified the prescribed Examination of Draftsmen with three years' service as such; and
- (b) thirty percent (30%) by initial recruitment.

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department.

Printed and published by the Manager,
State & P.W. Dept., Khyber Pakhtunkhwa, Peshawar

ATTESTED



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

APPEAL NO. _____/2021

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

..... APPELLANT

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary Irrigation Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The Secretary Law & Parliamentary Affairs Department, Khyber Pakhtunkhwa, Peshawar.
- 5- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 6- The Chief Engineer (South) Irrigation Department, Khyber Pakhtunkhwa, Peshawar.

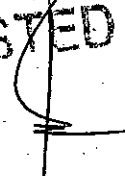
..... RESPONDENTS

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED AGENDA ITEM NO.4 OF THE SSRC MINUTES DATED 29.4.2021 AND NOTIFICATION DATED 24.8.2021 WHEREBY UNJUSTIFIED 20% PROMOTION QUOTA IN BPS-18 (EXECUTIVE ENGINEER) TO B-TECH/DIPLOMA HOLDERS FOR WORKING AGAINST THE PROFESSIONAL ENGINEERING WORKS POSTS HAS BEEN CREATED BY THE RESPONDENTS AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

RESPECTFULLY SHEWETH:**FACTS:**

Brief facts giving rise to the present writ petition is as under:

1. That the appellant is the employee of respondent Department and is performing duty quite efficiently and up to the entire satisfaction of his superiors. Copy of the service record/appointment order is attached as annexure A.
2. That the appellant is highly qualified Civil/Mechanical Engineer and registered with Pakistan Engineering Council and having command and experience over the services in respect of Professional Engineering Work. That under the existing rules of the respondent

ATTESTED


Department the appellant has better prospects of promotion/ciser progression. That according to the rules ibid the post of Executive Engineer/Deputy Director/Technical Officer (BPS-18) has to be filled up "by promotion, on the basis of seniority cum fitness from amongst the sub Divisional Officer, Assistant Engineers and Assistant Directors possessing Degree in B.E/B.Sc Engineering (Civil or Mechanical) from a recognized University, With at least five years service as such, and have passed the professional or Revenue Examination under the prescribed rules". Copy of the rules is attached as annexure B.

3. That recently through agenda item No.4 of the impugned minutes dated 29.4.2021 passed/issued by the standing service rules committee not comprised in accordance with Notification of the Establishment Department dated 29.1.2005 and judgment of the august Peshawar High Court, Peshawar passed in W.P No. 4378/17 Titled Manzoor Ahmad VS Govt: of KPK and other dated 11-3-2021 unfortunately due to some mala fide intentions or knowingly misinterpreted the settled law of the land, non-qualified/ non-engineers of B-Tech technology / diploma holder persons have been granted illegal benefits in shape of assigning Professional Engineering Works (PEW) and also benefiting them by awarding promotion to the Grade-17 once and now once again a 20% quota has been proposed for promotion to Grade-18 (Executive Engineer) post and will be performing professional engineering works which is against the Pakistan Engineering Council Act 1976. Copies of the impugned minutes, Pakistan Engineering Council Act, 1976, Notification and judgment is attached as annexure C, D, E and F.

4. That in light of the ibid SSRC minutes dated 29.4.2021 the respondents issued the impugned Notification dated 24.8.2021 whereby amendments have been made in the service rules of the respondent Department dated 17.2.2011 whereby non-qualified/ non-engineers of B-Tech technology / diploma holder persons have been granted illegal benefits in shape of assigning Professional Engineering Works (PEW) and also benefiting them by awarding promotion to the Grade-17 once and now once again a 20% quota has been proposed for promotion to Grade-18 (Executive Engineer) post and will be performing professional engineering works which is against the Pakistan Engineering Council Act 1976. Copy of the impugned Notification is attached as annexure G.

5. That appellant feeling aggrieved from the impugned minutes of the standing service rules committee passed/issued on 29.4.2021 and impugned Notification dated 24.8.2021 filed Departmental appeal before the respondent No.1 but no response has been received so far. Copy of the Departmental appeal is attached as annexure H.

ATTESTED

6. Hence the present appeal on the following grounds amongst the others.

GROUNDS:

- 1. That agenda item No.4 passed by the standing service rules committee dated 29.4.2021 is against the law, facts, Norms of natural justice and materials on the record hence not tenable and liable to be set aside.
- 2. That the appellant have not been treated in accordance with law and rules and as such the respondents violated Article 4 & 25 of the Constitution of Pakistan, 1973.
- 3. That Executive Engineer (BPS-18) in Irrigation Department is a Professional Engineering post and the person who holds the said post has to look into the matters which is related to the professional engineering works with human resource having professional BE/BSc Civil and Mechanical Engineering degrees duly registered with the Pakistan Engineering Council. At present in Irrigation Dept, all the Executive Engineer/Deputy Director (BPS-18) posts is professional engineering posts whose job requirement involves professional engineering works, allowed only to BE/BSc Civil / Mechanical Engineering degree holders registered with Pakistan Engineering Council.
- 4. That according to Esta Code of Khyber Pakhtunkhwa, Constitution of Standing Service Rules committee, page 257 (**Annexure-I**), Framing of Service Rules/Recruitment Rules point No. 2 which is reproduced, "**while sending proposals for framing of new Service Rules and making amendments in the existing rules, the qualifications proposed for appointment to posts should suit the requirement of the job**". Which in the present case has been completely ignored by SSRC in its meeting dated 29.04.2021, as neither change has occurred in set Job description of Executive Engineers (BPS-18) nor they have changed the requirement of the job since last SSRC and still allotted 20% quota to B-Tech/Diploma holders whose qualification does not meet the present requirement for the job. By doing so, it violates the Pakistan Engineer Council Act requirement to perform against the BPS-18 Executive Engineer Post performing professional engineering works.
- 5. That a committee was constituted vide Secretary Irrigation Department Notification No. SO(E)/Irr/23-5/73/Vol-IV (S. Rules) dated 06.04.2018 (**Annexure-1**) having members from Irrigation Department, C&W, LGE&RDD, Peshawar Development Authority, Public health Engineering Department and Pakhtunkhwa Energy and Development Organization. The committee was tasked to examine the position of B-Tech (Hons) degree visa viz B.Sc. / BE Engineering in light of decision of Pakistan Engineering Council (PEC), Supreme court of Pakistan, High Court Peshawar and Khyber Pakhtunkhwa

TESTED



Service Tribunal and to come up with well considerate proposal along with recommendation for allocation of uniform percentage quota for their promotion. The committee in its report submitted the following recommendations;

- "That B-Tech (hons) qualification is not equivalent to BE/BSc Engineering. As basic qualification required for posting / appointment against the position of Assistant Engineer / Assistant Director / SDO etc. in BS-17 and above is BE/BSc Engineering in Civil / Mechanical / Electrical as per requirement of a department, there B-Tech (Hon) qualification holder may not be promoted and / or posted against such position(s) that involve performance of professional engineering works/services. However, such qualification (i.e., B-Tech) holders cannot be denied promotion to higher scale; provide no law/Rule is violated and for which non engineering positions (Technologists) may be created, if not already existing"***
6. That the recommendation of the committee in para-3, makes the previously SSRC approved Irrigation Department Notification No. SO(E)/IRR/23-5/2010-11 dated 25 June 2012 (***Annexure-K***) not maintainable for creating quota at first place for promotion of non-engineers to BPS-17 and performing engineering works. ***As a Corollary to this, in the Medical profession or health department, nurses acquire qualification of three years diploma after which they is allowed to enhance their qualification in their field even to the Master level but they is never considered as MBBS doctors nor is they posted to the professional positions or Medical Officers nor is they registered by Pakistan Medical and Dental Council (PMDC) as registered medical practitioners (Doctors).***
7. That the recommendation produced in Para-3 has been completely ignored by the department and non-professional engineers have been placed in various engineering positions and even elevated higher positions, not meeting the job criteria and equivalent qualification required for the post. One such unjustified order was issued by the Secretary Irrigation Department vide notification No. SO(E)/IRR/4-10/77/Vol-VI: dated 18-12-2020 (***Annexure-L***) by placing a B-Tech Diploma holder Sub Divisional Officer on higher position of Deputy Director Jabba Dam. The present action of creating 20% quota clearly indicates that the Secretary Irrigation Department office wants to regularize the unjustified action / notification / orders issued.
8. That the Irrigation Engineers represented by the Advocate A. Latif Afridi has already served two weeks Legal Notice dated 06 April, 2021 to Chief Secretary Office, Secretary Irrigation Office and Secretary Establishment office (***Annexure-M***) against for your inaction in removing non-engineer from engineering practicing posts.

ATTESTED

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9. That the competent authority envisage provision under Pakistan Engineering Council (PEC) Act 1976 for qualification, mannerism, mode and mechanics for granting promotion to registered Civil/Mechanical engineers registered with PEC while B-Tech degree holders, is not competent / qualified for any Professional Engineering Works (PEW) and promotion to such high grades involving engineering works, hence, the promotion and assigning the duties to non-professional like B-Tech / Diploma holders by the department is illegal, unjustified and in effective upon the rights of appellant and liable to be struck down/ reversed accordingly.
10. That PEC is a statutory body having been constituted under the PEC Act V 1976 enacted by the parliament and the competent authority allegedly on several occasion has promoted non-professional, non-registered and non-graduates having diploma and B. Tech certificate against the post, which were specified/ allocated only for professional engineers, furthermore, the grievance of the appellant is that BSC/BE Civil engineering is not at par with B. Tech (Hon) and that non-professional engineers (B-Tech) were promoted posted against the post of professional engineers which is against the law and settled realities hence this practice should require to be stopped forthwith and implement the PEC Rules Regulation. ***The explanation of all kind of PEWs is enacted in section 2 (xxv) of the PEC Act 1976. (Annexure-N).***
11. The recent historical & decisive judgment of the August Court of the Supreme Court of Pakistan in its decision on the C.P No.78-K of 2015 announced on 03/10/2018 (*copy enclosed as Annexure-*), upheld the provisions of the PEC Act 1976 in its detail judgment where in ***Para 21 & 23*** is worth reading. In operative part of the judgment Para 23, the Honorable Supreme Court contains that: - ***"Government shall not allow or permit any person to perform professional engineering work as defined in the PEC Act who does not possess accredited engineering qualification from the accredited engineering institution and his name in not registered as a registered engineer or professional engineer under the PEC Act"***.
12. That the appellant is highly aggrieved of certain orders of competent authority which was passed in favor of the non-qualified / non registered B-Tech / diploma holders, because the people having lesser qualification were being alleviated and posted to higher posts without meeting the job criteria and which were specified for performing professional engineers work only, whereas the appellant having rightful superior education/ qualification and most importantly meeting the job criteria were put on idle positions desk jobs hence the competent authority have been committing violation of laws including the legislation of the PEC Act 1976 and the judgments of the Superior Court of the country.

ATTESTED

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13. That according to the PEC Act 1976 the management and supervision of the engineering works in respect of all engineering disciplines is "**Professional Engineering Works**" and that under **section 27** can only be under taken/ executed by engineers who is registered with PEC hence the statutory provisions of PEC Act 1976 is frequently violated by the authorities which is bad in law and also punishable act under the law, **as Section 27 (1) of PEC Act criminalizes the undertaking of engineering work by non-engineers making it an offence punishable with 6 months imprisonment or Rs.10,000 fine or both. Conversely, engaging a non-engineer for doing professional engineering work is also criminalized, being an offence punishable with 6 months imprisonment or Rs.5,000 fine or both.**
14. That Pakistan Engineering Council through various reference kept on reminding Provincial Government of Khyber Pakhtunkhwa & other competent authorities about the limitation of the PEC Act 1976, its implementation / repercussion in case of violations & even reminded to implement the decision of the afore mentioned judgment of Honorable Supreme Court C.P No.78-K of 2015, announced on 03/10/2018 but all in vain. **(Annexure-----O).**
15. That it is admitted fact regarding clarification of B-Tech degree from HEC which is not qualified engineers and for this reason PEC unable to registered them as engineer so promotion awarded and duties assigned to non-graduates, non-professional and non-registered by PEC by the competent authority on engineering works, this has caused a grave in justice and utter disregard of the mandatory statutory provision of the PEC Act 1976 hence the competent authority violated not only the provision of PEC Act 1976 but also its own rules and regulation beside involved in contempt of court proceeding, if initiated.
16. That appointment of in-eligible people to handle extremely technical works would be disaster for the public at large and rule of the regulatory body is to ensure professionalism and trust for the public. Furthermore, the question of the qualification B-Tech being equivalent to BSc Engineering has already been decided by the superior court of the country. PLD 2003 SC 143, as well as in the aforementioned judgment of 03/10/2018. Once forever.
17. That most recently, review petitions have also been dismissed by the Honorable Supreme Court vide order dated, 05/03/2019. **(Annexure-----P).**
18. **That the appellant through the forums of Khyber Pakhtunkhwa Association of Government Engineering (KPAGE)** previously prayed the competent forums for redressal of their genuine demands regarding subject issues but no action has so far been taken and blue-eyed favors its B-Tech degrees holder / diploma holder / non engineers is still enjoying the perks & privileges of their illegal appointments / posting status against the Professional



ATTESTED

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Engineering Works (PEW) posts starting right from Assistant Engineer to high ones.


19. That the promotions awarded to B. Tech (Hon) employees and duties assigned to them against Professional Engineering Works (PEW) is the result of political victimization, illegal, injustice and also in effective upon the valid rights of the appellant.
20. That the appellant seek permission to advance other grounds and proofs at the time of hearing.

That on acceptance of this appeal the impugned agenda item No. 4 of the SSRC minutes dated 29.4.2021 and Notification dated 24.8.2021 whereby creation of unjustified 20% promotion quota in BPS-18 (Executive Engineer) to B-Tech/Diploma Holders for working against the professional engineering works posts may kindly be declared as illegal, unconstitutional and in effective upon the rights of appellant and may kindly be set aside. That the respondents may further please directed that not to issue/make promotions of B-Tech/Diploma holders against the post specified for professional engineers, in line with the provisions of the PEC Act, 1976 and in light of the judgments/decisions dated 3.10.2018 of the august Supreme Court of Pakistan in C.P No. 78-K/2015. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.


Dated: 15.12.2021


APPELLANT

THROUGH:


NOOR MOHAMMAD KHATTAK,
ADVOCATE

Flat No. 4, 2nd Floor, JUMA KHAN PLAZA,
WARSAK ROAD, Peshawar
0345-9383141


ATTESTED



33

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

C.M NO. _____/2021

IN

APPEAL No. _____/2021



IMTIAZ KHAN

VS

GOVT: OF KP

Annexure
"E"

**APPLICATION FOR SUSPENSION OF OPERATION OF
THE IMPUGNED NOTIFICATION DATED 24.08.2021
TILL THE DISPOSAL OF THE MAIN APPEAL**


R/SHEWETH:

- 1- That the above mentioned appeal along with this application has been filed the appellant before this august Tribunal in which no date has been fixed so far.
- 2- That appellant filed the above mentioned appeal against the impugned notification dated 24.08.2021.
- 3- That all the three ingredients necessary for the stay is in favor of the appellant.
- 4- That the impugned notification dated 24.08.2021 had been issued by the respondents in utter disregard of law and prevailing Rules.

It is therefore, most humbly prayed that on acceptance of this application the operation of the impugned notification dated 24.08.2021 may very kindly be suspended till the disposal of the above mentioned service appeal.

Dated: 15.12.2021

Certified to be true copy


KAMRAN KHAN
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

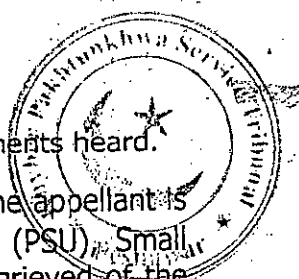

APPLICANT

IMTIAZ KHAN

THROUGH:

NOOR MOHAMMAD KHATTAK


& 
KAMRAN KHAN
ADVOCATES



31.01.2022

Counsel for the appellant present. Preliminary arguments heard.

Learned counsel for the appellant contended that the appellant is degree holder Engineer and serving as Deputy Director (PSU), Small Dam Directorate of the respondent-department. He is aggrieved of the minutes of SSRC meeting dated 29.04.2021 whereby earlier Service Rules/notification dated 17.02.2011 was amended vide notification dated 24.08.2021. Through Agenda item No.4 of SSRC, the 100% quota earlier reserved for promotion, was now bifurcated and distributed in three categories (a) 80% for promotion to the BE/B.Sc degree holders, (b) 12% for degree holders B.Tec (Honors) and (c) 8% for Diploma Holders. Learned counsel for appellant further argued and assailed the constitution of SSRC because it did not include Additional Secretary (Regulation) E&A Department and Additional Secretary Law department as its members as per requirement under E&A Department circular dated 29.01.2005. To strengthen his arguments he relied on the judgement of Peshawar High Court, dated 03.11.2020 when the notification based on an in appropriately constituted/composed SSRC, was declared as illegal, void ab-initio and set aside. The appellant submitted departmental appeal on 07.09.2021 but no written order was passed within the statutory period and resultantly the instant service appeal was instituted under Section-4 of the Khyber Pakhtunkhwa Service Tribunal 1974 on 21.12.2021. Learned counsel for the appellant was asked to indicate the original notification dated 17.02.2011 (now amended) to have not been submitted with the memorandum of service appeal. He admitted that the same is not included with the attached documents and will be provided as rejoinder.

The appeal is admitted to regular hearing subject to all just legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to respondents for submission of reply/comments. To come up for reply/comments on 10.02.2022 before S.B.

Appellant Deposited Security & Process Fee
04/02/22

An application for suspension of impugned order dated 24.08.2021 is also submitted with the memorandum of appeal which shall be served on the respondents to submit reply thereon. Status-quo be maintained till the date fixed.

(Mian Muhammad)
Member(E)

10.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to

Certified to be true copy

25.02.2022 for the same as before.

MEMBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Reader

35

Annexure
"F"



GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT
(ESTABLISHMENT SECTION)

Dated Peshawar the 29th November, 2022

NOTIFICATION:

NO. SO(E) IRR/2-1/2006/VOL-IX. In pursuance of Section 8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule- 17 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Final/Un-disputed Seniority list of Assistant Engineers/Sub Divisional Officers/Assistant Directors (Diploma Holders) (BS-17) as stood on 27.10.2022, Irrigation Department, Khyber Pakhtunkhwa is hereby circulated/ notified for general information.

S.#	Name of Officer and Education Qualification	Date of Birth with Domicile	Date of Retirement	Date of 1st Entry into Govt Service on Regular Basis.	First Regular Appointment to the Service/Cadre			Remarks
					Date	RPS	Method of recruitment	
	1	2	3	4	5	6	7	8
1.	Mr. Alam Zeb Khan, D.A.E (Civil)	14.04.1963 Mardan	13.04.2023	01.09.1982	11.10.2011	17	By promotion	Working as XEN (OPS)
2.	Mr. Jamshid Ahmad Raees, D.A.E (Civil)	12.04.1963 D.I. Khan	11.04.2023	12.12.1982	11.10.2011	17	By Promotion	Working as SDO
3.	Mr. Sherin Jan, DAE (Civil)	07.01.1963 Bannu	06.01.2023	31.01.1985	11.10.2011	17	By promotion	Working as XEN (OPS)
4.	Mr. Farid Gul, D.A.E (Civil)	12.04.1964 Malakand	11.04.2024	29.05.1985	05.05.2020	17	By promotion	Working as SDO
5.	Mr. Fatch Ullah, D.A.E (Civil)	10.04.1964 Bannu	09.04.2024	07.09.1986	01.10.2020	17	By promotion	Working as SDO
6.	Mr. Riaz Muhammad, D.A.E (Civil)	08.03.1965 Mardan	07.03.2025	10.09.1986	31.08.2021	17	By promotion	Working as SDO
7.	Mr. Waqar Shah, D.A.E (Civil)	24.03.1966 Nowshera	23.03.2026	08.19.1986	31.08.2021	17	By promotion	Working as SDO
8.	Mr. Noora Jan, D.A.E (Civil)	18.12.1964 South Waziristan	17.12.2024	23.10.1985	31.08.2021	17	By promotion	Working as SDO
9.	Mr. Jehanzeb, D.A.E (Civil)	20.10.1964 Peshawar	19.10.2024	21.10.1986	31.08.2021	17	By promotion	Working as SDO

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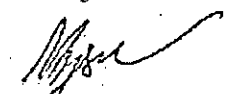
S.#	Name of Officer and Education Qualification	Date of Birth with Domicile	Date of Retirement	Date of 1st Entry into Govt Service on Regular Basis.	First Regular Appointment to the Service/Cadre			Remarks
					Date	BPS	Method of recruitment	
	1	2	3	4	5	6	7	8
10.	Mr. Farman Ullah, D.A.E (Civil)	15.04.1966 D.I. Khan	14.04.2026	11.12.1988	31.08.2021	17	By promotion	Working as SDO
11.	Mr. Shafqat Faheem, D.A.E (Civil)	01.01.1964 Karak	31.12.2023	11.12.1988	31.08.2021	17	By promotion	Working as SDO
12.	Mr. Khawar Nadeem, D.A.E (Civil)	10.10.1969 D.I. Khan	09.10.2029	11.12.1988	26.08.2022	17	By promotion	Working as SDO
13.	Mr. Habib ur Rehman, D.A.E (Civil)	01.04.1965 Dir	30.03.2025	11.12.1988	26.08.2022	17	By promotion	Working as SDO
14.	Mr. Daud Khan-I, D.A.E (Civil)	01.01.1963 FR, Peshawar	31.12.2022	11.12.1988	26.08.2022	17	By promotion	Working as SDO

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Endst: No. SO(E) IRR/2-1/2006/Vol-VII

Copy of the above is forwarded to: -

1. The Chief Engineers (South/North/Merged Areas) Irrigation Department.
2. The Director General, Small Dams, Peshawar.
3. The Director General, Jabba Dam Project, Khyber.
4. The Project Director, Ground Water, Peshawar.
5. The Project Director, Raising of Baran Dam, Bannu.
6. All Superintendent Engineers of Irrigation Department, Peshawar.
7. All Executive Engineer of Irrigation Department, Peshawar.
8. The Web Developer, Irrigation Department.
9. PS to Secretary Irrigation Department, Peshawar.
10. PA to Additional Secretary, Irrigation Department.
11. PA to Deputy Secretary (Admn.) Irrigation Department.


(Maqsood Khan)
Section Officer (Estt.)

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ANNEX-G

GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT
(Establishment Section)

Dated Peshawar, the 27th October, 2022

NOTIFICATION:

No.SO(E)/IRR/1-76/06/PF: The Competent Authority (Secretary Irrigation) in terms of provision of Rule-20 of the Khyber Pakhtunkhwa Civil Servant Revised Leave Rules 1981 and instructions there-under Issued from time to time, sanction is hereby accorded for encashment of 365 days in lieu of Leave Preparatory to Retirement (LPR) in respect of Mr. Sherin Jan, Assistant Engineer (BS-17), Irrigation Department.

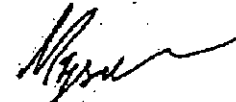
2. In pursuance of sub-section (2) of section 13(A)(1) of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), read with sub-section (3) thereof, Mr. Sherin Jan, Assistant Engineer (BS-17) Irrigation Department, shall stand retired from Government Service with effect from 06.01.2023 (A.N) on attaining sixtieth (60th) year of age, as his date of birth is 07.01.1963.

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Endst. No. & date even.

Copy forwarded to: -

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Chief Engineers (North) Irrigation Department, Peshawar.
3. The Chief Engineer (South), Irrigation Department Peshawar w/r to the letter No. 4895/IB/A-6/276-PF dated 13.10.2022.
4. District Accounts Officer (Concerned).
5. Mr. Sherin Jan, Assistant Engineer (BS-17)/Deputy Director (Design) (OPS), O/o the Chief Engineer (South), Irrigation Department.
6. The Assistant Director (Web Developer) Irrigation Department.
7. PS to Secretary Irrigation Department, Peshawar.
8. PA to Deputy Secretary (Admn), Irrigation Department.
9. Master file/Personal file of the officer.


(Masood Khan)
Section Officer (Estt.)


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Date 31/10

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SWD	S.A.
SG	SA

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Annex-5 "H"

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 7917/2021



BEFORE: MR. KALIM ARSHAD KHAN ...
MISS FARHANA PAUL ...

CHAIRMAN
MEMBER

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

Versus

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

Mr. Noor Muhammad Khattak,
Advocate For appellant

Mr. Muhammad Jan,
District Attorney For official respondents

Mr. Zartaj Anwar & Mian Afrasiab Gul ... For private respondents
Kakakhel, Advocates

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

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JUDGEMENT

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

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

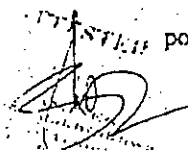
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FAREHIA PAUL
MEMBER (E)

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

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



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

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

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

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

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

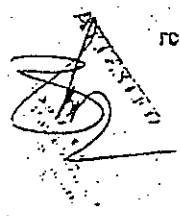
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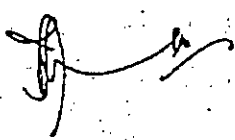
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through proper procedure of Standing Service Rules Committee. Regarding the composition of SSRC, the learned AAG informed that the Law Department was not its member as clarified vide letter dated 08.09.2016 of the Law Department. He argued that the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

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

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

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

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

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professional engineering post and a person holding that post has to look into such matters which are related to the professional engineering work and those having professional qualification of B1/B.Sc Civil/Mechanical Engineering qualify and that no B.Tech or Diploma holder is suitable for that position. While presenting this argument, the learned counsel for the appellant has tried to gain strength from the Pakistan Engineering Council Act 1976 which has clearly defined the terms "professional engineering work", "registered engineer", "accredited engineering qualification", "engineering institution" and so on. By referring to PEC, one must not forget that it is meant to regulate the engineering profession and maintain realistic and internationally relevant standards of professional competence and ethics of engineers, license them and professionally promote and uphold the standards. As far as determining the academic and professional qualification of an engineer, who is a civil servant also, and his promotion from one grade to the next is concerned, it is the sole prerogative of the provincial government.

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

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

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


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

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

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 District Registrar
 District Registrar

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

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

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

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

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

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

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

Secretary of Irrigation Department was in attendance during the meeting as

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

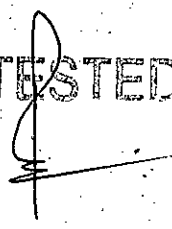
13. In view of the above discussion, both the service appeals are dismissed with cost. Copy of this judgment be placed in the file of connected appeal. Consign.

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


(FAREEHA PAUL)
Member(I)


(KALIM ARSHAD KHAN)
Chairman

Fazle Subhan, P.S.
 Certified
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar
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To,

Recd YWS 18/7/23

The Secretary to the Government of Khyber Pakhtunkhwa,
Irrigation Department Peshawar.

(51)

Subject:-

DEPARTMENTAL APPEAL FOR PROFORMA PROMOTION TO THE RANK OF XEN/DY: DIRECTOR (BS-18) UNDER 8% QUOTA RESERVED FOR SDOs /ASSISTANT ENGINEERS (BS-17) HAVING DAE.

Annexure

R/Sir,

"I"

It is brought to your kind notice that in light of the different courts orders and precedents in the works Departments of the sister provinces, the Irrigation department of Khyber Pakhtunkhwa gave space for promotion to the posts of XEN/Deputy Director (BS-18), to the deprived category of SDOs/Assistant Engineers (BS-17) having Diploma of Associate Engineer (DAE Civil) by making amendments in the recruitment rules vide notification dated 24.08.2021 (**Annex-I**). Aggrieved by the said amendments, Engr: Imtiaz Khan, BSC Engineering (Civil), Assistant Engineer, Challenged the impugned notification, pertaining to the amendments in the Khyber Pakhtunkhwa service Tribunal. The Tribunal upheld the amendments and dismissed the Service Appeal of the appellant on 13.07.2023 (**Annex-II**), as the 8% quota of DAE for promotion to the rank of BS-18 is no more disputed. The undersigned was eligible for promotion among the seniority quota and as well as on seniority cum fitness on date of regular appointment.

It is pertinent to mention that the undersigned had earlier preferred a departmental appeal for considering my promotion to the post of XEN/ Deputy Director (BS-18) under 8% quota, reserved for SDOs/Assistant Engineers (BS-17) having Diploma of Associate Engineer (DAE) but due to Sub judicing Seniority of the Diploma holder SDOs by Engr: Imtiaz Khan through his service appeal in the Service Tribunal, the Irrigation Department did not consider my genuine promotion case in violation of the provincial Government promotion Policy which says that:-

"All Promotions based on sub-judice seniorities will be considered i.e subject to find outcome of court cases".

Since the appeal of Engr: Imtiaz Khan Degree holder Assistant Engineer has been dismissed by the service Tribunal, as explained in opening Para of the Departmental appeal in hand, therefore, by accepting this

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appeal my case for proforma promotion to the post of XEN/Dy: Director (BS-18) under 8% quota reserved for diploma holder SDOs (BS-17), with all financial benefits may be considered at the earliest in light of the provision of Provincial Government Promotion Policy which is reproduced below please.

"In case, the Officer expires or retires from service and subsequently, his seniority is restored his case will be considered from Proforma Promotion alongwith all financial benefits".

Dated.

Yours faithfully.

[Signature]
(SHERIN JAN)
(Retired Deputy Director Design (OPS)).
O/o Chief Engineer (South),
Irrigation Department, Peshawar

Copy forwarded to the:

1. PSO to Chief Secretary Government of Khyber Pakhtunkhwa, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa Establishment Department Peshawar.
3. Secretary to Government of Khyber Pakhtunkhwa Finance Department Peshawar.
4. Secretary to Government of Khyber Pakhtunkhwa Law Department Peshawar.

For similar necessary action, please.

[Signature]
(SHERIN JAN)
(Retired Deputy Director Design (OPS)).
O/o Chief Engineer (South),
Irrigation Department, Peshawar

Dairy No. 3442
Dated 18-7-23
Secy Irrigation Department
Civil Secretariate Peshawar

[Signature]
ATTESTED

WAKALATNAMA (Power Of Attorney)

53

BEFORE THE CHAIRMAN KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

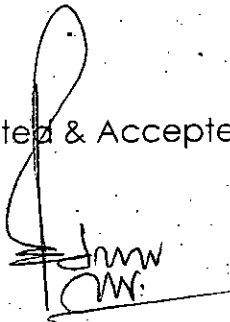
Shevin Jan (Petitioner)
(Plaintiff)
(Applicant)
(Appellant)
(Complainant)
(Decree Holder)

VERSUS

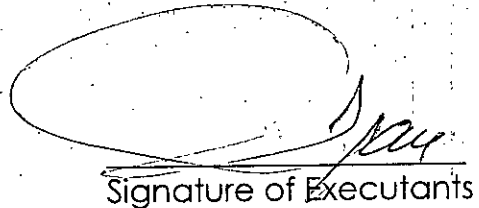
The Govt; of KP etc (Respondent)
(Defendant)
(Accused)
(Judgment Debtor)

We, The undersigned appellant in the above noted Service appeal do hereby appoint **Mr. Adnan Aman**, Advocate to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my /our counsel in the above noted matter, without any liability for their default and with the authority to engage/ appoint any other Advocate/Counsel at my/our matter.

Attested & Accepted By.


Adnan Aman

Adnan Aman
bc-13-4253
Cell No.0321-9853530
CNIC No.16102-7662033-9
Advocates High Court(s), Peshawar
15-B Haroon Mansion, Khyber Bazar,
Peshawar


Signature of Executants

Shevin Jan
(appellant)