
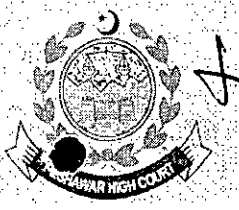


FORM OF ORDER SHEET

Court of _____

Case No. _____ 2325/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	13/11/2023	<p>The present appellant initially went in Writ Petition before the Hon'ble Peshawar High Court Peshawar and the Hon'ble High Court vide its order dated 31.10.2023 while treating the Writ Petition into an appeal and has sent the same to this Tribunal for decision in accordance with law. This case is entrusted to Single Bench at Peshawar for preliminary hearing to be put up there on</p> <p style="text-align: right;">By the Order of Chairman  REGISTRAR</p>



The
PESHAWAR HIGH COURT
Peshawar

Ph: No. 091-9210149-58

No. 84518 (1)/706/2023/WP-MN

Dated. 10-November-2023

From

Deputy Registrar (J),
Peshawar High Court,
Peshawar.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 8976

Dated 13-11-2023

To

The Provincial Service Tribunal, Khyber Pakhtunkhwa, Peshawar.

Subject: Writ Petitions W.P 873/2023 Title: Shaukatullah Shah VS Secretary, Communication and Works Dept and others

Memo,

I am directed to send herewith the titled case in original alongwith all annexures and copy of judgment of this Honble Court dated 31.10.2023 for compliance.

Deputy Registrar (J)

10/11/23

Encl: As above.

10

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

W.P. No.873-P/2023 with IR

Shaukatullah Shah

Vs.

**Secretary, Communication and Works Department,
Government of Khyber Pakhtunkhwa, Peshawar and others**

Date of hearing **31.10.2023**
Petitioner(s) by: **Abdul Rauf Rohaila, Advocate.**
Respondent(s) by: **Syed Asif Jalal, AAG.**

JUDGMENT

IJAZ ANWAR, J. This writ petition is filed under Article

199 of the Constitution of Islamic Republic of Pakistan, 1973,

with the following prayer:-

“It is, therefore, humbly prayed that on acceptance of this writ petition, this Honourable Court may declare, order and hold:-

- I. That B. Tech (Hons) Engineers have been granted and fixed separate quota by Khyber Pakhtunkhwa Energy and Power Department, Local Government; Election and Rural Development Department; Irrigation Department and Physical Health Engineering (PHE) Department and denial by Communication and Works Department, Khyber Pakhtunkhwa/ respondents to B.Tech (Hons) Engineers for promotion to BPS-18 is based on discrimination, void ab initio and liable to be unlawful.
- II. That Notification No.SOE/C&WD/8-12/2022 issued on 25.11.2022 by the respondents is illegal, discriminative, without lawful authority, against the fundamental rights of the petitioner, therefore, required to be declared unlawful.
- III. That the petitioner being B. Tech (Hons) Engineer has the right to promoted in BPS 18 on the basis of separate independent 20% quota to be fixed by the respondents

and refusal thereof is based on malafide, discriminative and void ab-initio.

- IV. That the petitioner has been denied to grant 20% quota illegally and unlawfully through "Notification" dated 25.11.2022 being B.Tech (Hons) Engineer and the petitioner is to be promoted to the post of BPS-18 with effect from 15.08.2017 be paid arrears and pensionary benefits and refusal thereof cannot sustain and liable to be set aside.
- V. Any other appropriate remedy not specifically mentioned may also be granted".

2. In essence, the petitioner has called in question the Notification dated 25.11.2022, whereby, certain amendments were made in the recruitment rules, besides, he is also seeking proforma promotion to BPS-18 w.e.f. 15.08.2017.

3. Comments were called from the respondents who furnished the same, wherein, they opposed the issuance of desired writ asked for by the petitioner.

4. Arguments heard and record perused.

5. It appears that the main claim of the petitioner is with regard to the denial of his prayer for granting 20% quota, besides, seeking his proforma promotion to BPS-18 and also called in question the Notification dated 25.11.2022, whereby certain amendments were made in the recruitment rules, which, according to the recent judgment of the Hon'ble Supreme Court of Pakistan passed in the case titled "Chief Secretary, Government of Punjab, Lahore and others Vs. Ms. Shamim Usman (2021 SCMR 1390)", even such matters were considered as terms and conditions of service to

be specifically dealt with by appropriate Service Tribunal established under the Service Tribunals Act, 1974.

6. We when confronted learned counsel for the petitioner with the above pronouncement of the Hon'ble Supreme Court of Pakistan, he stated that the matter is ripe as comments and even rejoinder have already been submitted and requested that the matter be sent to the Khyber Pakhtunkhwa Service Tribunal for its decision in accordance with law.

7. The request of learned counsel for the petitioner seems genuine. In view thereof, we, instead of dismissing the instant writ petition, treat it as Service Appeal and send it to the Khyber Pakhtunkhwa Service Tribunal for its decision in accordance with law. Office shall retain copies of the memo of this writ petition for the purpose of record. On receipt of the case file, the Khyber Pakhtunkhwa Service Tribunal shall issue notices to the parties for further proceedings in the matter.

Announced
Dt:31.10.2023

JUDGE

JUDGE

(DB) Hon'ble Mr. Justice Ijaz Anwar and Hon'ble Mr. Justice Syed Muhammad Attique Shah

URGENT FORM

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

W.P.No. _____ 2023

Shaukatullah Petitioner

Versus


Secretary Communication and Works Department

Govt. of KP and others Respondents

1. Will you kindly treat the accompanying Writ Petition as under and in accordance with the provisions of rules 9, Chapter 3-A rules order of the Hon'ble High Court Lahore volume V.

2. **The ground of urgency is:**

Since the matter is of urgent nature, petitioner is being discriminated illegally and unlawfully due to the apparent personal malafide of C&W high officials inasmuch as they are B.Sc. engineers and deliberately delaying 20% quota to B.Tech (Degree holders), therefore, there is an urgency for placing the case before this Hon'ble Court.


Abdul Rauf Rohaila
Advocate Supreme Court

Dated: 04.03.2023

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.

CHECK LIST

1.	Case Title <i>Q. J. Khan</i> VERSUS <i>M. J. Khan</i>	
2.	Case is duly signed.	Yes	No
3.	The law under which the case is preferred has been mentioned.	Yes	No
4.	Approved file cover is used.	Yes	No
5.	Affidavit is duly attested and appended.	Yes	No
6.	Case and annexures are properly paged and numbered according to index.	Yes	No
7.	Copies of annexures are legible and attested. If not, then better copies duly attested have annexed.	Yes	No
8.	Certified copies of all requisite documents have been filed.	Yes	No
9.	Certificate specifying that no case on similar grounds was earlier submitted in this court, filed.	Yes	No
10.	Case is within time.	Yes	No
11.	The value for the purpose of court fee and jurisdiction has been mentioned in the relevant column.	Yes	No
12.	Court fee in shape of stamp paper is affixed. [For writ Rs. 500, for other as required]	Yes	No
13.	Power of attorney is in proper form.	Yes	No
14.	Memo of addressed filed.	Yes	No
15.	List of books mentioned in the petition.	Yes	No
16.	The requisite number of spare copies attached [Writ petition-3, civil appeal (SB-2) Civil Revision (SB-1, DB-2)]	Yes	No
17.	Case (Revision/ Appeal/petition etc) is filed on a prescribed form.	Yes	No
18.	Power of attorney is attested by jail authority (for jail prisoner only)	Yes	No

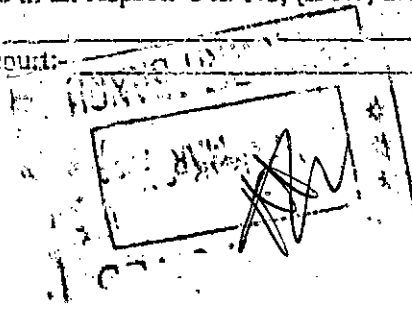
It is certified that formalities/documentations as required in column 2 to 18 above, have been fulfilled.

Name: *M. J. Khan*
 Signature:- *[Signature]*
 Dated:- *6-3-2023*

FOR OFFICE USE ONLY

Case:- _____
 Case received on _____
 Complete in all respect: Yes/No, (If No, the grounds) _____

Date in court:- _____



Signature _____
 (Reader)

Date:- _____

Countersigned: _____
 (Registrar)

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

Writ Petition No. 873-P/23 2023
Service Appeal No. 2328/2023 5

Shaukatullah Shah. **PETITIONER**

VERSUS

Govt. of KPK & others **RESPONDENTS**

INDEX

S.No	Description of Documents	Annex	Pages
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4.	Copies of relevant document	A	13-17
5.	Copy of judgment of August Supreme Court	B	18-29
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Deputy Registrar

06 MAR 2023 Through

Petitioner

ABDUL RAUF ROHAILA
Advocate High Court.

Dated:04.03.2023

38
Scanned USB Received
06 MAR 2023
Signature

A

**IN THE PESHAWAR HIGH COURT, PESHAWAR
OPENING SHEET FOR WRIT PETITION**

Date of Filing: 04.03.2023
District: Peshawar

Case Type: Writ Petition

Category Code

0	5	0	7	0	9
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(Categories & Sub categories are given at the back of the opening sheet)

Review/ Contempt of Court in respect of:

If certiorari:

Writ of:

**Heabus
Corpus**

P5rohibition

Mandamus
√

**Qua
Warranto**

Certiorari

If Certiorari:

Forum	Date	Interlocutory/ Final Order	Case Pertains to
NA	NA	NA	<input checked="" type="checkbox"/> SB
NA	NA	NA	<input type="checkbox"/> DB

Petitioner Name:	Shaukat Ullah
Cell:	0333-9125822
Address	Former Employee of C&W Deptt: Peshawar
CNIC No.	11201-0376771-9
Email Address	

Counsel for Petitioner(s)	Abdur Rauf Rohaila
Mobile No.	0321-9290960
Address	Sikandarpura, G.T.Road, Peshawar
CNIC No.	17301-7707745-1
Email Address	raufrohaila@gmail.com

Respondents	Secretary Communication and Works Department Govt. of KP and others
Address	Civil Secretariat, Peshawar

ORIGINAL ORDER/ ACTION/ INACTION COMPLAINED OF:

Notification dated 25.11.2022

PRAYER

- i) Notification No.SOE/C7WD/8-12/2022 dated issued on 25.11.2022 by the respondents is illegal, without lawful authority and against the fundamental rights of the petitioner, therefore, required to be declared unlawful.
 - ii) Petitioner being B.Tech (Hons) Engineer has the right to be promoted in BPS-18 on the basis of separate independent 20% quota to fix by the respondents and refusal thereof is based on malafide, void ab-initio being based on discrimination.
 - iii) Petitioner has been denied to grant 20% quota through "Notification" dated 25.11.2022 being B.Tech (Hons) Engineer illegally and unlawfully, which cannot sustain and liable to be set aside.
- iv) B.Tech (Engineer) have been granted and fixed separate quota for B.Tech (Hons) Engineers: by K.P. Energy and Power department, Local Govt., Election and Rural Dev. Deptt:, Irrigation Deptt: and Physical Health Engineering (PHE) Deptt and denial by communication and Works Deptt:, KP for promotion to BPS-18 is based on discrimination, void ab-initio.

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B

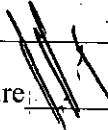
- v) The petitioner is to be promoted to the post of BPS-18 w.e.f. 15.08.2017 be paid arrears, pensionary benefits.
- vi) Any other appropriate remedy not specifically mentioned may also be granted.

INTERIM RELIEF:

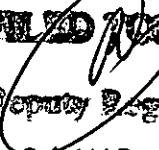
Petitioner may be allowed to get pensionary benefits as BPS-18 official of C&W department till the final disposal of main writ petition.

LAW/ RULES/ GOVERNING THE ORIGINAL PROCEEDINGS/ ACTION/ LOCATION -

1. *Constitution of Pakistan*
2. *Law books*

Signature: 

Note: Any suggestion to improve the preformat will be appreciated.


Deputy Registrar
06 MAR 2023

IN THE PESHAWAR HIGH COURT, PESHAWAR

(Constitutional jurisdiction)

Writ Petition No. ^{873-P/23} -P/2023

service Appeal No. 2325/2023

Shaukatullah Shah son of Yaqoob Shah,
Former employee of Communication and Works Department,
Peshawar, Peshawar.

..... Petitioner

Versus

1. Secretary, Communication and Works Department,
Government of Khyber Pakhtunkhwa, Peshawar.
 2. Secretary, Establishment and Administration Department,
Government of Khyber Pakhtunkhwa, Peshawar.
 3. Secretary, Law Department,
Government of Khyber Pakhtunkhwa, Peshawar.
 4. Secretary Finance Department,
Government of Khyber Pakhtunkhwa, Peshawar.
 5. Additional Chief Secretary, Planning and Development Department,
Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
 6. Government of Khyber Pakhtunkhwa, through
Chief Secretary, Civil Secretariat, Peshawar.
- Respondents

WRIT PETITION UNDER ARTICLE 199 OF
THE CONSTITUTION OF ISLAMIC REPUBLIC
OF PAKISTAN, 1973

Respectfully Sheweth:-

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06 MAR 2023

The petitioner humbly submits as under:-

1. That Bachelor of technology (B. Tech) is the study of technology which is more practical based on creative designing whereas in BSc. it is about knowing and learning science theoretically more. B. Tech is a professional degree in engineering which is a graduate course for 7 (seven) years on the other hand BSc is a six year course both after passing matriculation examination.

(Copies of the relevant documents are annexure "A")

That Pakistan Engineering Council (PEC) is a statutory regulatory body established in 1976 under an Act of Parliament to regulate the engineering profession. The mission of PEC is to set and maintain realistic and internationally relevant standards of professional competence and ethics for engineers and engineering institutions. The Engineering Council licenses a number of professional engineering institutions to carry out the process of accreditation or approval. This assesses whether qualifications and programmes fully or partially meet the education requirements for professional registration.

3. That the petitioner holds B. Tech (Honos) Degrees and was serving in Communication and Works Department, as Sub-Divisional Officers, promoted time and again and was lastly posted as Executive Engineer in Communication and Works Department.
4. That Bachelor of Technology is the study of technology and B. Tech. is more practical based on creative designing whereas in BSc. is about knowing and learning science theoretically more. B. Tech is a professional degree in engineering which is a graduate course comprises of 3 (three) years Diploma and four years thereafter total 7 (seven) years on the other hand BSc is a three year course. Both are considered not a similar cadre and ranked independently.
5. That somewhat similar question came up for consideration before the apex Supreme Court of Pakistan while dealing with Suo Moto Review Petition No. 52 of 1993 reported as "Fida Hussain Versus The Secretary Kashmir Affairs and Northern Affairs Division" (PLD 1995 SC 701), it has been observed sideline "B" at page 713 that:-

".....Pakistan Engineering Council is vested with the functions to regulate the person qualified to practice as professional engineers and consulting engineers and not persons who are employed in the Government or semi-Government organizations. If the Government employs a professional engineer as defined in the Act for performing professional engineering work as envisaged by the Act in above clause (k) of section 2, the provisions of the Act would be attracts and not otherwise."

(Copy of the referred judgment is annexure "B")

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6. That the role and objective of Higher Education Commission is to develop, expand, enhance and manage the university's research programs and to link research activities directly to the educational, social and economic priorities of the university and its broader community. Accordingly Higher Education Commission in line with decision taken in 39th meeting of University Grants Commission (UGC) dated 12-2-1998 which through circular letter dated 21-5-2007 clarified that B. Tech (Hons) degree is at par with B.E./B.Sc. Engineering degree for the purposes of employment.

7. That in the light of the judgment of the apex Supreme Court of Pakistan in "Fida Hussain" case supra, the petitioner and his colleague preferred departmental representation on 15-8-2017 for reservation of 20% quota for promotion of B. Tech (Honors) degree holder to the post of BPS 18 with the request to make amendments in the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, hereinafter referred to as "The Rules".

(Copy of the representation is annexure "C")

8. That in consequence of the representation of the petitioner and others, inter-departments correspondence was exchanged for promotion of B. Tech (Hons) Degree Holders SDOs (BPS-17) to the post of BPS 18. For the purposes, "The Rules" provide for constitution of Standing Service Rules Committee, hereinafter referred to as "SSRC". The meetings of such committee was held number of time but the same remained pending for one and/or other reason.

9. That it is matter of record that various reminders were issued to convene the meeting of "SSRC" including dated 24-10-2017, 28-11-2017, 28-1-2021, 3-2-2021, and 17-2-2021 but either the meeting was not held or it was adjourned on flimsy grounds. The petitioner and another, in the circumstances was constrained to approach this honourable court through Writ Petition No. 2707-P/2022 seeking directions to the respondents for reservation of 20% quota for promotion to the post of BPS-18.

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Deputy Registrar

06 MAR 2023

10. That the Government of Sindh in the similar circumstances fixed quota for B. Tech (Hons) through notification on 19-3-2014 in the following manner

"NOTIFICATION No.SOI (W&S)E.W/I2-I/2005: In pursuance of Sub-Rule (2) of Rule-3 of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules 1974 and in consultation with the Services, General Administration and Coordination Department, Government of Sindh, and in partial modification of this Department's Notification No. EI(C&W)I-34/8I-84(86) dated 14.01.1987, the method, qualification and other conditions for appointment in respect of the post of Executive Engineer (BPS-18) (Civil/Mechanical/Electrical) in Works and Services Department, Government of Sindh mentioned in column-2 of the table below:-

TABLE

Name of the post with BS	METHOD OF APPOINTMENT
I	2
Executive Engineer (Civil/Mechanical and Electrical) (BPS-18)	<p>i) <u>Eighty percent</u> by promotion from amongst the Assistant Engineers B.E. in Civil, Electrical or Mechanical Engineering with at least five years service in BPS-I7 on seniority-cum-fitness basis with their respective.</p> <p>ii) <u>Thirteen percent</u> by promotion from amongst the Diploma holder Assistant Engineers having Diploma in Civil, Electrical or Mechanical Engineering with at least five years' service in BPS-I7 on seniority-cum-fitness basis with their respective technology and</p> <p>iii) <u>Seven percent</u> by promotion from amongst the Assistant Engineers having B. Tech (Hons.) degree in Civil, Electrical or Mechanical Engineering with at least five years' service in BPS-I7 on seniority-cum-fitness basis with their respective technology</p>

QAZI SHAHID PERVEZ
SECRETARY TO GOVT. OF SINDH

11. That such classification and quota was challenged and finally the apex Supreme of Pakistan in the case of Moula Bakhsh "2018 SCMR 2098" held 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. The fixation of quota was approved

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Deputy Registrar by the august Supreme Court.

06 MAR 2023

12. That a glance at the documents filed by the petitioner and parawise comments in WP No. 2707-P/2021 will reveal that matter was lingering on due to malafide intention of respondents who deliberately delayed the completion of amendment in the recruitment rules allocating 20% quota for the B. Tech Degree Holders for their promotion in BPS-18 posts.

13. That Writ Petition filed by the petitioner alongwith WP No. 1539-P/2021 finally came up for hearing on 24-3-2022 and this honourable court accepted the writ petition. Paragraph No. 11 of the judgment is reproduced hereunder for ready reference:-

II. We, therefore, direct the Committee so constituted vide Notification dated 7-9-2021 to abide by the said notification because one of its TORs was "*The Committee shall finalize its recommendations with viable proposals for perusal of the competent authority within 30 days*". Albeit despite laps of above 8 months, the matter has not yet been finalized. Accordingly, the Committee is directed to finalize its recommendations within 60 days positively.

(Copies of the referred documents are annexure "D")

14. That meeting of high powered Committee was held on 20-4-2022 and after lengthy discussions, the committee unanimously recommended that C& W Department may review its existing rules to provide opportunity of promotion to B-Tech (hons) degree holders in line with rules of other departments including Irrigation Department, Energy and Power Department and PHE Department.
15. That it was proposed to hold SSRC meeting on 29-7-2022 but was postponed to 5th August, 2022 and again adjourned with no date for holding SSRC meeting whereas this honourable court through order dated 24-3-2022 categorically directed to decide the matter within 60 days. The petitioner in the meanwhile has retired on 28-8-2022 whereas he is/was at serial No. 2 of the seniority list of B. Tech (Hons).
16. That the judgment of this honourable dated 24-3-2022 was not implemented for many months, therefore COC No. 350-P/2022 was filed against the official respondents. Unfortunately taking revenge, the establishment department illegally and unlawfully involved the petitioner in criminal case FIR No. 1 dated 28-11-2022. The petitioner has already challenged registration of criminal case in this honourable court through Writ Petition No. 4470/2022. However, he has been released on bail by the trial court.

(Copies of the referred documents are annexure "E")

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Deputy Registrar
06 MAR 2023

17. That a draft was sent to Law Department from C& W Department which keep it pending for more than 60 days without assigning any reason without any additional input or reservations. It is strange to note that some vested interest hands were beyond to delay the proposed notification for more than two months.
18. That after hectic efforts Notification No. SOE/C&WD/8-12/2022 has been issued on 25-11-2022, hereinafter referred to as "Notification" stating that in pursuance of sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules 1989, C&W Department notified amendments in Notification No. SOE/C&WD/8-12/2009 dated 25-3-2010 as under:-

AMENDMENTS

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

S #	Nomenclature of the Post	Method of recruitment
1	2	5
"3	Executive Engineer/Design Engineer/ Senior Engineer/ Research Officer/ Deputy Director Technical/ Senior Engineer (Survey/RMU) (BPS "18")	By promotion, on the basis of seniority-cum-fitness, from among the Sub-Divisional Officer, Assistant Engineer, Junior Engineer and Assistant Research officers with at least 05 (Five) years' service as such and have passed the Professional Examination as prescribed in West Pakistan Buildings and Roads Code"

(Copy of the Notification is annexure "G")

19. That the respondents have played naked fraud with the petitioner while issuing "Notification" denying the 20% quota demanded and prayed, thus the petitioner has been constrained to invoke the constitutional jurisdiction of this honourable court inter-alia on the following grounds:-

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(1)
Deputy Registrar

06 MAR 2023

Firstly, the petitioner has been denied to grant 20% quota through the "Notification" dated 25-11-2022 being B. Tech Engineer illegally and unlawfully which cannot sustain and liable to be set aside.

7

- (2) Secondly, the malafide of the respondents is established from the record while issuing "Notification" in that the matter is being delayed on one pretext or other for many years. Even, after the judgment dated 24-3-2022 of this honourable, the respondents took more than 8 months to notify disputed "Notification"
- (3) Thirdly, a bare perusal of "Notification" will reveal that no quota has been fixed for B. Tech (Hons) Engineers in negation of claim made by the petitioner and other B. Tech (Hons) Engineers.
- (4) Fourthly, the petitioner has been dealt illegally and denied his right for promotion on 20% quota which he is agitating and demanding since 15-8-2017 praying for fixation of quota and to make amendments in "The Rules" for promotion of B. Tech (Honos) Degree holder SDOs of BPS-17 to the post of BPS-18.
- (5) Fifthly, the petitioner is being discriminated illegally and unlawfully due to the apparent personal malafide of C&W high officials inasmuch as they are B. Sc. engineers and deliberately delaying 20% quota to B. Tech (Degree holders).
- (6) Sixthly, there can be no cavil and denial that C&W department through notification dated 14-10-2014 and 26-3-2018 fixed the quota for promotion which aspect testify the claim of the petitioner that B. Sc. engineers and B. Tech (Engineers have separate cadre.
- (7) Seventhly, the discriminative attitude of the respondents is transparent from the fact that various departments in Khyber Pakhtunkhwa Province have granted and fixed separate quota for B. Tech (Hnons) Engineers including, KP Energy and Power Department; Local Government, Election and Rural Development Department etc.

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Deputy Registrar

06 MAR 2023

- (8) Eighthly, it has already been ruled by the apex Supreme Court of Pakistan that the provincial Government is empowered and authorized to reserve quota for promotion. The respondent/government has the authority to appoint and promote on such terms and conditions as it may deem appropriate. The respondent department has the option and authority to lay down the procedure for appointment and promotion of its officers.
- (9) Ninthly, the respondents have ignored the major factor of the matter that the "Notification" has been issued by respondent No. 1 with unreasonable justification inasmuch as the petitioner has fundamental right to be promoted as BPS 18 official on the basis of his seniority among the B. Tech (Hnos). Engineers.
- (10) Tenthly, the petitioner has vested right to be promoted as BPS 18 officer in that he has held the post of Executive Engineer BPS 18 from 14-6-2017 but was illegally denied the right of formal promotion. No reason whatsoever has been shown to deny the right of the petitioner to hold post of BPS-18.
- (11) Eleventhly, a look at the "Notification" will reveal that grievance of the petitioner has been put at backburner by the respondents deceitfully in that no change has been made and the joint seniority list already maintained has been retained.
- (12) Twelfthly, Government of Sindh through Notification issued on 19-3-2014 has fixed 20% quota for B. Tech (Hons) and diploma holders for the promotion to BPS-18. Finally the apex Supreme court of Pakistan while dilating upon the matter in CP No 78-K of 2015 title "Maula Bux Shaikh Versus Chief Minister Sindh" approved, assented and concurred 20% quota allocated for B. Tech (Hons) and Diploma Holders for promotion to BPS 18.

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Deputy Registrar

06 MAR 2023

- (13) Thirteenthly, reliance can also be placed on the ruling of the apex Supreme Court Moula Bakhsh case " 2018 SCMR 2098" in which it has been held 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 in the authority 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.
- (14) Fourteenthly, the petitioner has been denied his right to be promoted in the separate category of B. Tech (Hons) engineer in line with quota granted to other similarly placed B. Tech (Hons) Engineers. The petitioner being senior most in his own cadre has the right to be promoted accordingly pre-dated to get pensionary benefits.
- (15) Fifteenthly, the refusal of the respondents is in clear derogation of the specific orders passed by apex Supreme Court of Pakistan in Moula Bkhsh case , therefore, the respondents have also exposed themselves to be proceeded under the provision of Article 204 of the Constitution of Islamic Republic of Pakistan, 1973 read with section 3 and 5 of the Contempt of Court Ordinance, 2003.
- (16) Sixteenthly, great illegality has been committed with the petitioner and other B. Tech (Hons) engineers due to the personal malafide of the respondents. The apex Supreme Court of Pakistan in the similar circumstances has observed that "The objective of PEC is to regulate the working of professional engineers and consulting engineers and not to regulate the qualification or the working of the engineers in the Government or semi-Government departments. Further that the definitions of the terms "professional engineer" and "professional engineering work" given in clauses (j) and (k) of section 2 of the Civil Servant Act, 1973 are to be read together and, therefore, as a corollary to the same, it must follow that the term "professional engineering work" as defined in clause (k) of section 2 ibid is to be performed by a professional engineer as defined in clause (j) thereof, which is evident from section 8 ibid of the Act, which defines the functions of the Pakistan Engineering Council.

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Deputy Registrar

06 MAR 2023

- (17) Seventeenthly, the discriminative attitude and conduct of the respondents in crystal than clear to deprive the petitioner from his lawful fundamental right to be promoted at the post of BPS 18. The refusal of the respondent by issuing "Notification" fixing the quota is in clear violation of Article 4, 14 and 25 of the Constitution. The refusal of the respondent ex-facie cannot be approved by any cannon of law, therefore, the entire exercise made by the respondents is to be declared null and void and not sustainable.
- (18) Eighteenthly, great injustice has been done with the petitioner for his no default and he has been constrained to knock the door of this august court invoking constitutional jurisdiction of this honourable court.
- (19) Nineteenthly, there can be no cavil and dispute that the right of petitioner being B. Tech (Hons) engineer has been protected by the apex Supreme court of Pakistan in that promotion of a senior official is otherwise full fill the criteria being fit has never been denied. The apex Supreme Court has ruled that there is different category and cadre of B. Sc. Engineers and B. Tech (Engineer. The respondent have overlooked such dictum and clear directions of the august Supreme Court.
- (20) Twentiethly, a deep study of the ruling made in ' Moula Bakhsh case reported as 2018 SCMR 2098 will reveal that apex Supreme Court of Pakistan has categorized B. Sc. Engineers and B. Tech (Hons) Engineers as separate cadre and category, but while issuing "Notification" such classification has been ignored without assigning any reason.
- (21) Lastly, the petitioner craves permission to make further submissions and produce additional documents at the time of hearing of the writ petition.

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06 MAR 2023

It is, therefore, humbly prayed that on acceptance of this writ petition, this honourable court may declare, order and hold:-


11

- I. That the "Notification" No. SOE/C&WD/8-12/2022 dated issued on 25-11-2022 by the respondents is illegal, without lawful authority and against the fundamental rights of the petitioner, therefore required to be declared unlawful.
- II. That the petitioner being B. Tech (Hons) Engineer has the right to be promoted in BPS 18 on the basis of separate independent 20% quota to fix by the respondents and refusal thereof is based on malafide, void ab-initio being based on discrimination.
- III. That the petitioner has been denied to grant 20% quota through "Notification" dated 25-11-2022 being B. Tech (Hnos) Engineer illegally and unlawfully, which cannot sustain and liable to be set aside.
- IV. That B. Tech (Engineers) have been granted and fixed separate quota for B. Tech (Hons) Engineers by Khyber Pakhtunkhwa Energy and Power department, Local Government, Election and Rural Development Department, Irrigation Department and Physical Health Engineering (PHE) Department and denial by Communication and Works Department, Khyber Pakhtunkhwa for promotion to BPS 18 is based on discrimination, void ab initio.
- V. That the petitioner is to be promoted to the post of BPS 18 with effect from 15-8-2017, be paid arrears , pensionery benefits.
- VI. Any other appropriate remedy not specifically mentioned may also be granted.

INTERIM RELIEF

The petitioner may be allowed to get pensionery benefits as BPS 18 official of C& W Department till the final disposal of the main writ petition.

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06 MAR 2023

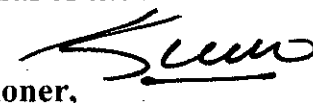
Petitioner, 
through
Abdul Rauf Rohaila,
Senior Advocate Supreme Court.

It is, therefore, humbly prayed that on acceptance of this writ petition, this honourable court may declare, order and hold:-

- I. That B. Tech (Hons) Engineers have been granted and fixed separate quota by Khyber Pakhtunkhwa Energy and Power Department, Local Government; Election and Rural Development Department; Irrigation Department and Physical Health Engineering (PHE) Department and denial by Communication and Works Department, Khyber Pakhtunkhwa/respondents to B. Tech (Hons) Engineers for promotion to BPS 18 is based on discrimination, void ab initio and liable to be unlawful.
- II. That Notification No. SOE/C&WD/8-12/2022 issued on 25-11-2022 by the respondents is illegal, discriminative, without lawful authority, against the fundamental rights of the petitioner, therefore, required to be declared unlawful.
- III. That the petitioner being B. Tech (Hons) Engineer has the right to promoted in BPS 18 on the basis of separate independent 20% quota to be fixed by the respondents and refusal thereof is based on malafide, discriminative and void ab-initio.
- IV. That the petitioner has been denied to grant 20% quota illegally and unlawfully through "Notification" dated 25-11-2022 being B. Tech (Hnos) Engineer and the petitioner is to be promoted to the post of BPS 18 with effect from 15-8-2017, be paid arrears and pensionery benefits and refusal thereof cannot sustain and liable to be set aside.
- V. Any other appropriate remedy not specifically mentioned may also be granted.

INTERIM RELIEF

The petitioner may be allowed to get pensionery benefits as BPS 18 official of C& W Department till the final disposal of the main writ petition.

Petitioner,
through 
Abdul Rauf Rohaila,
Senior Advocate Supreme Court.

w.p. = 873-P/23 12

Certificate

Certify that the petitioner did file Writ Petition No. 2707-P/2021 on the subject.

List of Books

1. Constitution of Islamic Republic of Pakistan, 1973.
2. Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989

Q.

Affidavit

I, Shaukatullah Shah son of Yaqoob Shah, Former employee of Communication and Works Department, Peshawar, Peshawar do hereby declare and affirm on oath that the contents of above noted writ petition are true and correct. Nothing contain therein is false.

Deponent

Shaukatullah Shah.
CNIC 11201-0376771-9
Cell # 0333-9125822

Shaukatullah Shah
4/3/2023

Identified by

Advocate

FILED W.D.V
Deputy Registrar
06 MAR 2023

32603

Certified that the above was verified on solemn affirmation before me in office, this 04 day of March 2023 by Shaukatullah Shah son of Yaqoob Shah Peshawar who was identified by AB Rana who is personally known to me.

Oath Commissioner
Peshawar High Court, Peshawar.

04/03/2023

12/A

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

Writ Petition No. 873-12/23/2023

Shaukatullah Shah. **PETITIONER**

V E R S U S

Govt. of KPK & others **RESPONDENTS**

ADDRESSES OF PARTIES

PETITIONER:

Shaukatullah Shah Son of Yaqoob Shah
Former Employee of Communication and Works Department
Peshawar.

RESPONDENTS:

1. Secretary, Communication and Works Department,
Government of Khyber Pakhtunkhwa, Peshawar.
2. Secretary, Establishment and Administration Department,
Government of Khyber Pakhtunkhwa, Peshawar.
3. Secretary, Law Department,
Government of Khyber Pakhtunkhwa, Peshawar.
4. Secretary Finance Department,
Government of Khyber Pakhtunkhwa, Peshawar.
5. Additional Chief Secretary,
Planning and Development Department,
Government of Khyber Pakhtunkhwa,
At Civil Secretariat, Peshawar.
6. Government of Khyber Pakhtunkhwa
Through Chief Secretary,
At Civil Secretariat, Peshawar.

FILED TODAY
Deputy Registrar

06 MAR 2023

Through

Petitioner

ABDUL RAUF ROHAILA
Senior Advocate Supreme Court.

FRAMEWORK FOR 4-YEAR IN BSc/BS/BE CIVIL ENGINEERING PROGRAMME

ANNEX
49
2
13

Duration	4 years
Number of Semesters	8
Number of weeks per semester	18 (16 for lectures and 2 for examinations)
Total number of credit hours	120
Number of credit hours per semester	14-20
Engineering Courses	70 per cent
Non-Engineering Courses	30 per cent

Knowledge Area	Sub Area	Non-Engineering Domain				Total Course Nos	Total Credit
		Name of Course	Lec CH	Lab CH	Credit Hours		
Humanities	English	Functional English	2	0	2	2	4
		Business Communication	2	1	3		
	Culture	Islamic Studies	2	0	2	2	4
		Pakistan Studies	1	0	1		
	Social Sciences & Ethics	Professional Ethics	2	0	2	2	5
		Social Science Elective	3	0	3		
Management Sciences	Professional Practice	Construction Management	2	1	3	3	6
		Engineering Economics	2	0	2		
		Management Science Elective Course	3	0	3		
Natural Sciences	Math	Applied Calculus/Math-I	3	0	3	7	20
		Applied Differential Equations/Math-II	3	0	3		
		Numerical Analysis/Math-III	3	0	3		
		Probability & Statistics/Math-IV	2	1	3		
	Physics	Engineering Mechanics	3	1	4	2	6
	Earth Sciences	Engineering Geology	2	0	2		
		Geo Informatics	1	1	2		
Total						15	41

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Engineering Domain

Knowledge Area	Sub Area	Name of Course	Lec CH	Lab CH	Credit Hours	Total Courses	Total Credits
Computing	Fundamentals	Computer Programming	1	2	3	3	9
	Estimation	Quantity & Cost Estimation	2	1	3		
	Design	Civil Engg. Drawing & Graphics	1	2	3		
Engineering Foundation		Civil Engg Materials	2	1	3	9	28
		Engineering Drawing	1	2	3		
		Engineering Surveying	2	1	3		
		Mechanics of Solids-I	2	1	3		
		Structural Analysis-I	3	0	3		
		Soil Mechanics	3	1	4		
		Fluid Mechanics	3	1	4		
		Construction Engineering	3	0	3		
		Engineering Hydrology	2	1	3		
		Advanced Engineering Surveying	2	1	3		
Major Based Core (Breadth)		Advanced Fluid Mechanics	3	1	4	6	20
		Reinforced Concrete Design-I	3	1	4		
		Environmental Engineering-I	2	1	3		
		Transportation Engineering-I	3	0	3		
		Structural Analysis-II	3	0	3		
		Reinforced Concrete Design-II	3	1	4		
Major Based Core (Depth)		Mechanics of Solids-II	2	1	3	7	24
		Geo Technical & Foundation Engineering	3	1	4		
		Transportation Engineering-II	3	1	4		
		Environmental Engineering-II	2	0	2		
		Steel Structures	3	0	3		

ATTESTED

**SCHEME OF STUDIES
FOR BACHELOR OF TECHNOLOGY
CIVIL TECHNOLOGY
Duration: 4 Years**

15

First Year B.Tech. (Civil)

S. No.	Course nature	Course name	T	P	Contact Hrs.	Marks	
						T	P
1	CS113	Applied Mathematics-I	3	0	3	150	0
2	CT122	Computer Applications	1	3	4	50	50
3	CH132	Communication Skills-I	2	0	2	100	0
4	CT144	Applied Mechanics	3	3	6	150	50
5	CT154	Civil Engineering Drawing	2	6	8	100	100
6	CT164	Concrete Technology	3	3	6	150	50
7	CT174	Surveying	2	6	8	100	100
8	CT183	Material and Methods of Construction	3	0	3	150	0
9	CH192	Islamiat and Pak Studies-I	2	0	2	100	0
Total Hours			21	21	42	1050	350

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ATTESTED

Second Year B.Tech. (Civil)

16

S. No.	Course nature	Course name	T	P	Contact Hrs.	Marks	
						T	P
1	CS213	Applied Mathematics-II	3	0	3	150	0
2	CT223	Theory of Structures	2	3	5	100	50
3	CT234	Soil Mechanics	3	3	6	150	50
4	CT243	Fluid Mechanics	2	3	5	100	50
5	CT253	Mechanics of Materials	2	3	5	100	50
6	CT263	Highway and Transportation Engineering	2	3	5	100	50
7	CT273	Water Supply and Waste Water Management	2	3	5	100	50
8	CT283	Quantity Surveying and Contract Document	3	0	3	150	0
9	CT292	Material Testing, Repair & Maintenance	2	0	2	100	0
10	CH2102	Communication Skills-II	2	0	2	100	0
Total Hours			23	18	41	1150	300

ATTESTED

Third Year B.Tech. (Civil)

17

S. No.	Course nature	Course name	T	P	Contact Hrs.	Marks	
						T	P
1	CT314	Irrigation and Hydraulic Structures	3	3	6	150	50
		Reinforced Concrete Structures	3	3	6	150	50
2	CT324	Steel Structures	3	0	3	150	0
3	CT333	Hydrology	2	3	5	100	50
4	CT343	Computer Aided Building Modeling and Design	1	3	4	50	50
5	CT352	Foundations and Pavements	3	3	6	150	50
		Environmental Management	3	3	6	150	50
6	CT364	Engineering Geology	2	0	2	100	0
7	CT374	Introduction to Earthquake Engineering	2	0	2	100	0
8	CT382	Islamiat and Pak Studies-II	2	0	2	100	0
9	CT392						
10	CH3102						
Total Hours			24	18	42	1200	300

Fourth Year B.Tech. (Civil)

S. No.	Course nature	Course name	T	P	Contact Hrs.	Marks	
						T	P
1	CT413	Project Management	2	3	5	100	50
2	CT423	Engineering Economics	3	0	3	150	0
		Project	0	6	6	0	100
3	CT432	Internship	0	36	36	0	600
4	CT44X						
Total Hours			5	45	50	250	750

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ANNEX
'B'

18

P L D 1995 Supreme Court 701 .

Present: Sajjad Ali Shah, CJ., Ajmal Mian, Manzoor Hussain Sial, Muharnmad Munir Khan and Mir Hazar Khan Khoso, JJ

FIDA HUSSAIN--- Petitioner

versus ...

**THE SECRETARY, KASHMIR AFFAIRS AND NORTHERN
AFFAIRS DIVISION, ISLAMABAD and another- Respondents**

Suo Motu Review Petition No .52 of 1993, decided on 5th June, 1995.

(On review froze the judgment dated 5-12-1992 of the Supreme Court of Pakistan passed in Civil Appeal No. 216 of 1991;.

(a) Pakistan Engineering Council Act (V of 1975)---

---S. 8- -Constitutions of Pakistan (1973;. Arts. 25 & 212- --Promotion of civil servant from any particular grade to higher grade Authority competent to order such promotion- --Government has the exclusive domain to decide whether any particular qualification would be considered sufficient for; promotion from any particular grade to higher grade and Government is; vested with exclusive domain to change such policy from time to time, for no body could claim any vested right in that policy- --Pakistan Engineering Council, however, has exclusive domain to decide, as to whether any particular qualification could be equated with another academic qualification but would have no power to say that civil servant/employee holding particular academic. qualification could not be promoted from a particular grade to higher grade- - Government cannot abdicate its power to decide such question in favour of a corporate body which is not in its control nor it can act in a manner which might be violative of Art. 25 of the Constitution on account of being discriminatory.

Muhammad Siddique Nasim v. Secretary, Government of the Punjab, Irrigation and Power Department, Lahore 1987 SCMR 302; Muhammad Azim Jamali and 11 others v. Government of Pakistan through Secretary/Chairman, Ministry of Railways and 33 others 1992 PLC (C.S.) 637 and Pakistan Diploma Engineers Federation (Registered) through its Chairman v. Federation of Pakistan through Secretary, Ministry of Water and Power, Government of Pakistan, Islamabad and 9 others 1994 SCMR 1807 ref.

(b) Pakistan Engineering Council Act (V of 1975)---

---Ss. 2 & 8- --Pakistan Engineering Council- --Functions- -Pakistan Engineering Council is vested with functions to regulate persons qualified to practise as professional engineers and consulting engineers and not persons who were employed in the Government or semi-Government organizations- - Where Government had employed any professional engineer, for

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performing professional engineering work as envisaged in cl. (k) of S.2 of the Act, provisions of the Act would be attracted and not otherwise.

(c) Civil service--.

---Pakistan Engineering Council Act (V of 1975), Ss. 2 & 8-- Constitution of Pakistan (1973), Arts. 25, 212 & 188- Supreme Court Rules, 1980, O.XXVI, R.1- --Review of judgment of Supreme Court-- Civil servant- Right to promotion on basis of improvement of qualifications- Government had initiated two degree courses for diploma-holders in Engineering i.e. B. Tech. (Pass) and B. Tech (Honours), petitioner passed both such examinations and claimed promotion on basis of his improved qualifications Petitioner was not promoted on the ground that Pakistan Engineering Council did not recognize B. Tech. (Honours) as equivalent to B.Sc. Engineering degree- --Petitioner's departmental appeal and appeal before Service Tribunal did not succeed- Supreme Court dismissed petitioner's appeal on the ground that decision of Service Tribunal was based on judgment of Supreme Court in Muhammad Siddique Nasim's case (1987 SCMR 302)--- Review- --Petitioner having improved his qualifications on the undertaking of Government that diploma holder engineers would be provided facility of improving their qualifications by introducing B. Tech. (Pass) and B. Tech. (Honours) degree course, and that latter degree would be considered equivalent to B.Sc. Engineering degree was entitled to be considered for promotion to B-17 Grade- -Important aspect of the case which escaped notice of Supreme Court in its judgment under review was that some other civil servants/employees placed in the same position as petitioner had been considered for promotion to B-17 Grade and in fact were promoted whereas petitioner was denied such benefit which amounted to violation of Art. 25 of the Constitution-- -Judgment under review was, thus, liable to be recalled for having proceeded on wrong premises- --Petitioner's appeal was allowed and judgment of Service Tribunal was set aside- --Authority was directed to consider petitioner's case for promotion to B-17 Grade.

Mukhtar Ahmad and 37 others v. Government of West Pakistan through the Secretary, Food and Agriculture, Civil Secretariat, Lahore and another PLD 1971 SC 846 and I. A. Sharwani and others v. Government of Pakistan through Secretary, Finance Division, Islamabad and others 1991 SCMR 1041 ref.

(d) Civil service---

---Promotion- --Administrative decision- --Promotion of civil servant relating to specific qualifications- --Government can exercise its discretion for future to provide that academic qualification of B. Tech. (Honours) would not be considered sufficient for promotion from B-16 to B-17 Grade if the same did not violate the principles of equality before law-- -Constitution of Pakistan (1973), Art.25.

Petitioner in person.

Raja Muhammad Bashir, Deputy Attorney-General of Pakistan with Bashir Ahmed Sheikh, Registrar, Pakistan Engineering Council for Respondents.

Date of hearing: 5th June, 1995.


ATTESTED

JUDGMENT

AJMAL MIAN, J.-- -The above suo motu review petition has been initiated by this Court to consider, whether the judgment rendered by the Court on 5-12-1992 in Civil Appeal No. 216 of 1991 is liable to be recalled.

2. The brief facts are that the petitioner was appointed as an Overseer/Sub-Engineer in Northern Area P.W.D. in 1971. It appears that the Federal Government, in order to encourage the diploma holders to improve their academic qualification, resolved to prescribe courses, namely, B. Tech (Pass) and B. Tech. (Hons.), the latter was treated equivalent to B.Sc (Engineering) and Bachelor of Engineering, respectively, for the purpose of promotion. In this behalf, the then Minister of Education and Provincial Government stated:

My Dear Governor,

As you may be aware the Polytechnic Diploma Holders had been agitating for a long time for provision of facilities for higher education. In order to resolve this issue in consultation with the Provincial Governments various Associations of the Polytechnic Diploma Holders, I convened a meeting on the 20th October, 1973 of the Chairman/Directors for Technical Education in the Provinces, Principals of Polytechnics, Representatives of Engineering Universities/Colleges and Representatives of various Associations of the Polytechnic Diploma Holders. It was decided that steps should be taken to introduce the degree programs for the polytechnic diploma holders without further delay.

2. As envisaged in the new Education Policy, the following programme was adopted. There will be two degree courses for diploma holders (i) B. Tech. (Pass) and (ii) B. Tech. (Honours).
3. Admission to the B. Tech. (Pass) course shall be subject to the
 - (i) Three years diploma from a Polytechnic institute in first Division,
 - (ii) Two years, industrial training/experience. Candidates without industrial experience shall be required to undergo one year's supervised/guided practical training in industry to be arranged by the institution concerned.
 - (iii) Performance in the admission test.
4. B. Tech. (Pass) course will consist of a year's programme of studies at the institution. The degree of B.Tech. (Pass) shall be treated at par with a Bachelor's degree in Science.
5. Candidates having successfully completed B. Tech. (Pass) degree course- shall be eligible for admission to a two years B. Tech. (Honours) course. The first year of this course will comprise supervised/guided industrial training during which the students shall be assigned


ATTESTED

specific projects relevant to their fields of study. The second year will consist of intensive study at the institution. B. Tech..

(Honours) shall be treated at par with B. Sc. (Engineering)/B.E. Degree.

It was also decided that so long as necessary facilities do not exist in Balochistan and N.-W.F.P. and other backward areas, Federal Government will arrange placement of students from these areas in other Provinces.

You are requested to kindly direct the relevant authorities of your Province to implement these decisions urgently, With regards,

Yours sincerely,

(Sd.)

(Abdul Hafeez Pirzada):"

3. Pursuant to the above policy, the aforesaid proposed courses of B.Tech. (Pass) and B. Tech. (Honours) were initiated. It is the case of the petitioner that he passed B. Tech. (Pass) course in 1977 and B. Tech.(Honours) course in March, 1981, from N.E.D. University, Karachi. After improving this academic qualifications the petitioner resumed his duties in March, 1981, in the Northern Areas P.W.D. It is an admitted position that a number of employees who cleared B. Tech. (Pass) and B. Tech. (Honours) were promoted to BPS-17 by the authorities concerned. The petitioner was not promoted, 'the Administrator, Northern Areas, Gilgit, was informed by the Chief Engineer, Northern Areas P.W.D., that the petitioner could not be promoted as the Pakistan Engineering Council did not recognise B. Tech. (Honours) as equivalent to B.Sc. (Engineering) degree. Thereupon, the petitioner filed a department appeal on 2G-1-1989, which was rejected on 11-2-1990. Then he approached the Federal Service Tribunal through Appeal No.83(R) of 19(10) but the same was dismissed for the following reasons:--

"10. We have considered the arguments advanced by both sides as well as the objections submitted by Pakistan Engineering Council. In our view the letter of Minister hat Education and Provincial Coordination dated 26-10-1973 was a letter laying down a policy, effect to which was to be given by issue of notifications by the Federal Government and the Provincial Governments. It appears that only the Government of Punjab issued a notification dated 1-2-1981 but withdrew it on 5-3-1985. Any notification to give effect to this policy decision was not issued by the Federal Government. The Pakistan Engineering Council which is the appropriate body to give opinion clearly stated in their letter dated 24-2-1982 to the Ministry of Education that B. Tech. (Hons.) was not equivalent to B.Sc. (Engineering) Degree. We are, therefore, of the view that the, appellants appeal have no merit and are dismissed."

After that, the petitioner filed a petition for leave to appeal in this Court, which was granted to consider the various contentions raised by the learned counsel for the petitioner. The appeal was heard on 5-12-1992 and it was dismissed on the ground that the impugned judgment of the


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Tribunal was based on the judgment of this Court in the case of Muhammad Siddique Nasim v .secretary government of the Punjab, Irrigation and Power Department, Lahore (1987 SCMR 302). Then the petitioner filed a review petition, which was registered as a Suo Motu Review Petition.

4. We have heard the petitioner in person and Raja Muhammad Bashir, learned Deputy Attorney-General for. the respondents. We have also perused the record. It appears to be an admitted position that pursuant to the above decision contained in the aforesaid letter dated 26-10-1973 of the Minister for Education and Provincial Coordination, two degree courses for diploma holders, namely, B. Tech. (Pass) and B. Tech. (Honours) had commenced. The employees who improved their academic qualification by passing the aforesaid examinations were given promotion by the Federal .Government Departments as well as by the Government of Punjab. Upon failure of the Government of Punjab, the Punjab Service tribunal had allowed a number of appeals filed by the aggrieved employees, copies of some of such decisions have been filed by 'the petitioner in the present proceedings. It seems to be also an admitted position that even in the petitioner department, certain employees who had passed B. Tech. (Honours) examination were given promotions to BPS-17. However, upon the receipt of communication from the Pakistan Engineering Council to the effect that 13. Tech. (Honours) cannot be equated with B. Sc: (Engineering), the Punjab government as well as the federal Government stopped considering for promotion to BPS-17 the incumbents who had Passed B. Tech. (Honours). At this juncture, it may be, pertinent to refer to the letter of the Registrar of the Pakistan Engineering Council dated 30-4-1983. addressed to one Mr. Sajid Ali, General Secretary, Sui Northern Gas Sub- Engg . Association ,in which the following statement of facts was made.

"The Council has approved B. Tech. (Hons)_ as equivalent to B. Sc. Engineering which a Diploma Holder can pass after 4 years of passing the final examination in diploma. The Council has also equated AMIL Examination equivalent to B. Sc. Engineering. These facilities have been provided to those who want to improve their qualification become equivalent to t3. Sc. Engineering. You arc advised to improve your qualifications if you are registered as a Professional Engineer with the Council."

4-A. We invited the attention of the learned Deputy Attorney-General to the above portion of the aforesaid letter. He, after obtaining instructions from Mr. Bashir Ahmed Sheikh, Registrar of the Pakistan Engineering Council, stated that the words "The Council has approved B. Tech. (Hons.) as equivalent to B. Sc. Engineering" should be read as "The Government has approved B. Tech. (Hons.) as equivalent to B. Sc. Engineering". According to him, this was typographical error and the word "Council" has been used in place of the word "Government". We asked the Registrar of the Pakistan Engineering Council to .produce any document to indicate that the above alleged typographical error was corrected. For that purpose, we adjourned the case till after tea break. The learned Deputy Attorney-General produced letter No.PEC/QEC/4-P dated 24-4-1984 of the Registrar, Pakistan Engineering Council addressed to the Director-General (Investigation-IV), Wafaqi Mohtasib (Ombudsman)'s Secretariat, Islamabad, wherein' the following averment has been made:--

"We are extremely sorry to say that a small typographical error in writing the word 'Council' in place of 'Government' in the 5th para. of our letter dated 30-4-1981 has caused


ATTESTED

misunderstanding. It is confirmed that the course of B. Tech. (Hons.) has never been approved by the Pakistan Engineering Council. It was originally approved by the Government in 1973."

5. However, we are not impressed by the above explanation. A perusal of the above-quoted para. of the Pakistan Engineering Council's letter dated 30-4-1981 indicates that the words 'The Council' which are used as the first two words of the aforesaid para. could not have been written on account of typographical error as in the fifth line of the above -para. it has been stated that "The Council has also equated AMIL Examination equivalent to B.Sc. Engineering". The use of the word "also" in the above referred subsequent portion of the above-quoted para. leads to the conclusion that the words 'The Council' in the beginning of above para. could not have been used on account of typographical error. It is, therefore, evident that initially the Pakistan Engineering Council had approved to treat B. Tech. (Honours) equivalent to B.Sc. Engineering. However, subsequently it changed its stand. It appears that the University of Engineering and Technology, Lahore, through its Registrar's letter dated 15-10-1980 addressed to the Secretary Education, Government of Punjab, Lahore, intimated to the latter that the Equivalence Committee on the basis of the opinion contained in the working paper and after discussing the entire issue with the complete background, recommended that B. Tech. (Honours) degree in particular specialization may be equated with that of corresponding B. Sc. Engineering degree with the above University for the job purposes as Field Engineers

6. We are, therefore, inclined to hold that factually the policy decision contained in the above-quoted letter of Minister of Education and Provincial Coordination dated 26-10-1973 was implemented. Even if we were to hold that the Pakistan Engineering Council had not approved the above equivalisation of the above academic degrees, it would not make any difference as the basic question in the present case which escaped notice of the learned Judges of the Bench of this Court which rendered the judgment involved is, as to whether the Pakistan Engineering Council is competent to decide the question, whether a particular academic degree should be accepted as sufficient academic qualification for promotion of civil servants and employees of the semi Government organizations from a particular lower grade to a particular higher grade or is it within the domain of the Government or the semi-Government organization concerned. At this juncture, it may be pertinent to refer to a judgment of the High Court of Sindh in the case of Muhammad Azim Jamali and 11 others v. Government of Pakistan through Secretary/Chairman, Ministry of Railways and 33 others (1992 PLC (C.S.) 637), in which the facts were that the petitioners, who were 12 in number, were holding post of Assistant Executive Engineers (Grade-17) in Pakistan Railways, hereinafter referred to as the Railways. Respondents Nos.4 to 10 were holding posts as Executive/Divisional Engineers (Grade-18), whereas respondents Nos.11 to 34 were holding posts of Assistant Executive Engineers (Grade-17) in the Railways and were claiming promotion to the posts of Executive/Divisional Engineers (Grade-18). The petitioners filed a Constitution petition, in which they averred that respondents Nos.4 to 34, who had diplomas from various institutions, were not professional Engineers in terms of clause (j) of section 2 of the Pakistan Engineering Council Act, 1975, hereinafter referred to as the Act, and, therefore, were not entitled to undertake any professional engineering work as defined in clause (k) of section 2 of the Act. It was further averred that in spite of the efforts on the part of the petitioners, the Government of Pakistan, the Chairman Railways Board and the General Manager, Pakistan Railways, Lahore (who were arrayed as respondents Nos.1, 2 and 3 respectively) and despite of the directive of respondent No.1, respondents Nos.4 to 34 continued


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to hold the office of professional engineers in violation of the provisions of the Act. On the basis of above averments, a number of declarations and directives were sought. The matter was heard by a Division Bench of the Sindh High Court. One of us, Ajmal Mian, J. (who was a member of the above Bench) after referring all the relevant provisions of the Act, came to the following conclusion:--

"30. Having referred to the various provisions of the Act, the question, which requires consideration is, as to whether the provisions of the Act are applicable only to professional Engineers and professional consultants, who are in practice or do they also apply to the persons working in the Government Departments, autonomous bodies, local authorities and private firms and companies or employed by the private persons as paid employees etc. I am inclined to hold that the provisions of the Act are applicable only to the professional Engineers and consulting Engineers, who are in practice. My reasons for holding so inter, alia are as follows:

(i) That though preamble to an Act does not control the provisions of the Act, but reference can be made to it to ascertain the legislative intendment in case of any doubt/ambiguity. In the instant case the object of the Act given in the preamble is 'to make provision for regulation of engineering profession'.

(ii) That the definition of 'professional Engineer': as given in clause (g) of Council.

The word engineer is prefixed by the word professional, which has a definite connotation and is used when a person is in practice of a particular profession.

(iii) The term "professional engineering work" as defined in clause (k) of section 2 of the Act refers to the services/works which are normally rendered by a professional engineer, who is in practice, namely, giving of professional advice and opinions. The other services/works mentioned after the above two services/works are to be read in conjunction with them, otherwise it would lead to absurdity. I may give an illustration. Suppose A for his private residential building employs B a diploma holder in engineering to take weekly measurements of the work executed. The work, measurements and the residential building both have been mentioned in the above clause (k). If we were to read the words professional advice and opinion disjunctively with the word 'measurement', it must follow that A and B have rendered themselves liable to be prosecuted under subsections (1) and (2) of section 27 of the Act referred to hereinabove, which could not have been the intention of the law-maker.

(iv) That section 8 of the Act, which defines the functions of the Council inter alia provides for the maintenance of a Register in terms of section 16 of the Act 'of persons qualified to practise as professional engineers and professional consultants and not persons in service'.

(v) That section 12 of the Act empowers the Executive Committee to grant to any person domiciled outside Pakistan, who does not hold any recognized engineering qualification but, who holds a diploma in engineering, or a degree in applied sciences or an equivalent diploma from the institution recognized by the Council etc. a temporary licence for a


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specific project to work as an associate of a professional engineer, but the latter will have to sign and seal the plans and specifications for the project.

(vi) That section 16 provides for the maintenance of a register and for enrolment of professional engineers and professional consultants, whereas section 17 of the Act provides for removal of the name of a professional engineer or professional consultant and **re-enrolment**. It may be observed that subsection (2) of section 17 of **the Act empowers** the Enrolment Committee in its discretion to refuse to permit the registration of any person or to **direct the removal altogether** or for a specified period from the Register the name of any registered professional engineer or consulting engineer, who or which has been convicted for any such offence as implies in the opinion of the Committee a defect of character or who or which after an enquiry and of hearing has been held by the Committee as guilty of infamous conduct in any professional respect or who or which has shown himself or itself to be unfit to continue in practice on any ground including in the case of a professional engineer mental ill-health.

(vii) That section 20 of the Act provides for lodging of a complaint against any professional engineer or consulting engineer, whereas section 21 contemplates constitution of Tribunals of Inquiry for inquiring into such complaints. Furthermore, subsection (6) of section 22 provides that in any case in which it (i.e. the Tribunal) has recommended the imposition of any penalty on or the prosecution of, the respondent; the Tribunal may also recommend that an amount not exceeding twice the amount of the fee recovered by the respondent from the complainant may be recovered from the respondent and be paid to the complainant as compensation.

(viii) That subsection (5) of section 27 of the Act provides that no person undertaking any professional engineering work shall, unless he is registered under the Act, be entitled to recover before any Court or authority any sum of money for services rendered in such work:

However, a contrary view was taken by Qaiser Ahmad Hamidi, j as under:-

"6. According to Pakistan Engineering Council Act, :1975, only registered professional and consulting engineers are authorised to undertake professional engineering works. The copy of letter sent by Chairman, Pakistan Engineering Council to Government of Punjab dated 2-6-1977, further makes It clear that the Federal Government had announced 30th June, 1977, to be the last date by which all Professional and Consulting engineers shall get themselves registered with the Pakistan Engineering Council. It appears that due to pressure of diploma holders who are not registered professional engineers, there has been flagrant violation of tire provisions of the Act. Even in relating to the posts of Assistant Executive Engineers (B.P.S. 17) regarding which a decision was taken by the Government that diploma holders could be appointed against such posts, the same lacks the warrant of law and is in the nature of concession granted to unqualified persons. The appointment of the diploma holders against senior posts of Pakistan Railways in disregard of the provisions of the Act, is, therefore, illegal on the face of it. It may be noted that the responsibilities of the engineers in Pakistan Railways are more onerous. They relate to proper functioning of the railways and the construction, design, supervision and maintenance of engineering works which affect the safety of public at large."


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The matter was referred to a third learned Judge and was heard by Saiduzzaman Siddiqui, C. J., (as he then was), who concluded as under:--

"7. From the above debates in the National Assembly, it would appear that the object of introducing the Engineering Council Bill of 1975 was to bring the engineering profession on the same line and make it subject to similar check and control as are applicable to the Medical and legal profession, by creating an Engineering Council in line with the Medical Council and the Bar Council. Ajmal Mian, C.J. (as he then was) in his Judgment compared the provisions of the Act with the provisions of Legal Practitioners Act and observed that the provisions of the Legal Practitioners Act are applicable only to the practising advocates and are not extended to persons having legal qualification who are employed in Statutory Corporations, and other Departments though they may be tendering legal advises in course of their such employment. The observations of Ajmal Mian, C.J., appear to be in accord with the objects of the Act. I am, therefore, of the view that merely because a person possesses an engineering qualification and is employed on a job which requires engineering skill does not mean that he must be registered under the Act."

7. The above matter came up before this Court through appeals with the cave of this Court, which were inter alia filed by the Pakistan Engineering Council. The same were dismissed and the above majority view of the High court of Sindh was maintained.

8. However, - Raja -Muhammad Bashir, learned Deputy Attorney general, has submitted that the following portion of the judgment of this Court in the case of Pakistan Diploma Engineers Federation (Registered) through its Chairman v. Federation of Pakistan through Secretary, Ministry of Water and Power, Government of Pakistan, Islamabad and 9 others (1994 SCMR 1807) upports the plea of the respondents:--

"18. We on the other hand after hearing Mr. Abid Hassan Minto learned Advocate for the appellatant at considerable length consider that this is' not a correct interpretation of the judgment of the High Court. The High Court has clearly stated that the provisions of the Act were wide enough to include cases of those persons engaged in professional engineering works whether employed in any private or Governmental Organisation, if they are called upon to **undertake any professional engineering** work, as defined under the Act. In fact in the connected case CA. No.31 of 1992 a Committee of Secretaries constituted by the Punjab Government correctly summed up the true position obtaining in the Act as follows:--

"The Committee was of the view that the Government could appoint a non-graduate engineer to a post in any grade but if the post involved performance of professional engineering work such appointment would attract penalties prescribed in the Act."

The finding of the Referee Judge in this case is to the same effect and in our opinion this finding is quite correct."

9. In this regard, we may point out that it is the domain of the Government concerned to decide whether a particular academic qualification of a civil servant employee is sufficient for


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promotion from one Grade to another higher Grade and whereas it is in the domain of the Pakistan A, Engineering Council to decide, as to 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 qualifications cannot be promoted from a particular Grade to a higher Grade. The main object of the Act as pointed out by one of us (Ajmal Mian, J.) and Saiduzzaman Siddiqui, CJ. (as he then was) in the above High Court judgment is to regulate the working of professional engineers and consulting engineers and not to regulate the qualifications or the working of the engineers in the Government or semi-Government departments. The definitions of the terms "professional engineer" and "professional engineering work" given in clauses (j) and (k) of section 2 of the Act are to be read together and, therefore, as a corollary to the same, it must follow that the term "professional engineering work" as defined in clause (k) of section 2 of the Act is to be performed by a professional engineer as defined in clause (j) thereof, which is evident from section 8 of the Act, which defines the functions of the Pakistan Engineering Council as under:--

"8. Functions of the Council ---The following shall be the functions of the Council, namely:--

- (a) maintenance of a Register of persons qualified to practise as professional engineers and consulting engineers;
- (b) recognition of engineering qualifications for the purpose of registration of professional engineers and consulting engineers;
- (c) removal of names from the Register and restoration to the Register
- (d) laying down of standards of conduct for the members;
- (e) safeguarding the interests of the members;
- (f) promotion of reforms in the engineering profession;
- (g) management of the funds and properties of the Council;
- (h) promotion of engineering education and review of courses of study
- (i) levy and collection of fees from applicants for registration temporary licences and members;
- (j) exercise of such disciplinary powers over the members and servants
- (k) formation of such committees as maybe prescribed; and
- (l) performance of all other functions connected with, or ancillary

A perusal of the above-quoted section shows that the Pakistan Engineering Council is vested with the functions to regulate the person qualified to practise as professional engineers

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and consulting engineers and n persons who are employed in the Government or semi-Government organisations. If the Government employs a professional engineer as defined the Act for performing professional engineering work as envisaged by the A in above clause (k) of section 2, the provisions of the Act would be attracts and not otherwise. '

10. Reverting to the merits of the present case, as pointed o hereinabove, that the petitioner pursuant to the above decision of the Government of Pakistan dated 26-1t1-1973 passed[his B. Tech. (Pass) in 19' and h. Tech (Honours; in March, 1981, from the N.E.D. University, Karacl And, thci before, acted upon the above representation of the Government. In the view of the matter, it is not just and fair not to consider the petitioner f promotion to BPS-17 keeping in view the admitted fact that a number of other civil servants/employees in the same department in the same position ha been promoted by the departments/organisations concerned. In this behalf, may be pertinent to refer to the 'case of Mukhtar Ahmad and 37 others Government of West Pakistan through the Secretary, Food and Agriculture Civil Secretariat, Lahore and another (PLD 1971 SC 846). The facts of the above case were that the persons possessing the qualifications mentioned Rule 7 of the West Pakistan Agricultural Engineering Service (Class II) Rule 1963, were not available. The Government launched a scheme for training of Assistant Agricultural Engineers, where under 46 Graduates in B.Sc. Agriculture were to be selected for appointment as Assistant Agricultural Engineers after their successful completion of two years' diploma courses at an Agricultural University. The above scheme was discussed by the Government with the Public Service Commission. The candidates selected by the Public Service Commission, who were about to complete their training of two years, were informed by the Government that they would have to appear again before the Public Service Commission to be selected for appointment to the posts of Assistant Agricultural Engineers (Class II). The candidates asserted that after the completion of their training they were entitled to be appointed as Assistant Agricultural Engineers (Class II) in terms of the offer made to them and they could not be required to appear again before the Public Service Commission for such appointment. on the other hand, the Government contended that the 'candidates did not possess the qualification prescribed by Rule 7 of the West Pakistan Agricultural Engineering Service (Class II) Rules, 1963, for appointment to such posts. The matter came up for hearing before this Court in the form of an appeal with the leave of this Court filed by the candidates against the judgment of a Division Bench of the erstwhile High Court of West Pakistan. The same was allowed and inter alia the following was concluded:--

"The offer of the Government and its acceptance by the appellants constituted a valid agreement and the Governor's order dated the 1st July, 1965 provided the authority for such an agreement: This agreement is capable of being enforced in law. The Government was both competent and obliged to implement that agreement. When the Governor's order, dated the 1st July, 1965, provided a special authority for recruitment to the 46 posts of Assistant Agricultural Engineers, rule 7 of the Recruitment Rules was not applicable in this case:"

11. The above case supports the petitioner's stand. Another aspect which escaped notice of this Court in tire judgment under review is that some of the other civil servants/employees placed in the same position as the petitioner was had been considered for promotion to BPS-17 and in fact were promoted, whereas the petitioner was denied the above benefit which amounted to violation of inter alia Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973. In


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this regard, reference may be made to the case of I. Sharwani and others v. Government of Pakistan through Secretary, Finance Division, Islamabad and others (1991 SCMR 1041).

12. The judgment of this Court in the case of Muhammad Siddique Nasim (supra) relied upon by the Tribunal is distinguishable for more than one reason, firstly, in the above case the **notification of the Government of Punjab dated 8-2-1961** equivalising B. Tech. (Honours) with B. Sc. Engineering degree was withdrawn on 15-3-1985, whereas the petitioner received degree of B. Tech. (Honours) in June, 1985, i.e. after the withdrawal of the notification; whereas in the present case, admittedly the petitioner passed his B. Tech. (Honours) in March, 1981, before the Pakistan Engineering Council through its Registrars above letter dated L4-4-1984 stated that there was typographical error in the above-quoted portion of its Registrar's letter dated 30-4-1981.. Secondly, in the judgment in the case of Pakistan Diploma Engineers federation (Registered) through its Chairman (supra), this Court affirmed the majority view of the High Court of Sindh in the case of Muhammad Aim jamatt (supra), in which it has been held that the provisions of the Act are applicable only to professional engineers and consulting engineers who are in practice and not to the persons working in the Government departments, autonomous bodies, local authorities and private firms or companies.

13. We may again observe that it is exclusively within the domain of the Government to decide whether a particular qualification will be considered sufficient for promotion from a particular Grade to a higher Grade and it is also within the domain of the Government to change the above policy from time to time as nobody can claim any vested right in the policy. However, it cannot abdicate its power to decide the above question in favour of a corporate body which is not in its control nor it can act in a manner which may be violative of Article 15 of the Constitution on account of being discriminatory. It is still open to the Government for future to provide that academic qualification of B. Tech. (Honours) will not be considered sufficient for promotion from BPS-16 to BPS-17 if the same does not violate the above principle.

14. The upshot of the above discussion is that the judgment under review is liable to be recalled as it proceeded on wrong premises. We would, therefore, allow the above Suo Motu Review Petition and recall the above judgment. In consequence thereof, petitioner's civil Appeal No.216 of 1991 is allowed and the judgment of the Tribunal is set aside and the respondents are directed to consider the petitioner's case for promotion to BPS-17,

AA./F-368/5

Review allowed.


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To

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

Subject: - AMENDMENT IN THE RECRUITMENT RULES - RESERVATION OF
20% QUOTA FOR PROMOTION OF B.TECH (Hons) DEGREE HOLDER
SDOs (BS-17) TO THE POST OF XEN ETC. (BPS-18).

Dear Sir,

Respectfully we B.Tech (Hons) Degree Holder SDOs (BS-17) submit the following few lines for perusal and sympathetic consideration please:-

1. That the Supreme Court of Pakistan vide judgment in *Sou Matu pallon* No.52 of 1993 considered the B.Tech (Hons) Degree at par with B.E/B.Sc Engineering Degree.
2. That the Higher Education Commission in its letter dated 31.07.2009 clarified equivalency of the B.Tech (Hons) Degree at par with B.E/B.Sc Engineering Degree for the purpose of employment in light of the decision taken by the University Grants Commission in 39th meeting held on 12.02.1998.
3. That in pursuance of the judgment of Apex Court and clarification of Higher Education Commission, the Khyber Pakhtunkhwa Establishment & Administration Department advised the PHE Department to place the case of B.Tech (Hons) degree holder Sub-Engineers before the SSRC. The Committee observed that the degree of B.Tech (Hons) is not similar to B.E/B.Sc Engineering professionally but for the purpose of pay, grade and promotion, B.Tech (Hons) Degree be treated at par with B.E/B.Sc Engineering.
4. That in view of the E&A Department advice and decision of the SSRC, provincial Works Departments i.e. Irrigation, PHE & C&W carried out amendments in the respective recruitment rules by reserving different quotas for promotion of B.Tech (Hons) Degree holder Sub-Engineers to the post of SDO (BS-17).
5. That keeping in view our age factor and in the presence of huge number of young SDOs inducted in the C&W Department through PSC, the aged B.Tech (Hons) Degree holder SDOs (BS-17) having hardly 5-7 years left towards retirement, will never be promoted as XEN (BS-18).
6. That in order to benefited the B.Tech (Hons) Degree holder SDOs from promotion to the post of XEN (BS-18), the Govt. of Sindh, Works & Services Department made amendments in the recruitment rules in 2014 whereby 80%, 13% & 7% quotas have been reserved for promotion to the post of XEN for SDOs, having B.E/B.Sc Engineering, B.Tech (Hons) Degree and Diploma holder respectively (copy enclosed).
7. That since in the Khyber Pakhtunkhwa entire Works Departments, Khyber Pakhtunkhwa, the SDOs, having DAE are not considered for promotion as XEN (BS-18), therefore, 80% and 20% quotas may be reserved for promotion to the post of XEN (BS-18) for SDOs (BS-17) having B.E/B.Scs Engineering and B.Tech (Hons) Degrees respectively.

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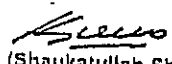
ADVOCATE

- 8. The Quota reserved by the Sindh Government for promotion of B.Tech (Hons) degree holders SDOs to the post of XEN (BPS-18) has been confirmed/upheld by the Supreme Court of Pakistan vide its judgment announced on 15.08.2014 (copy attached).
- 9. That the Islamabad Electric Supply Company has also reserved 10% promotion quota against the post of Senior Engineers for Junior Engineers having qualification of B.Tech (Hons) (copy attached).

In view of the narration/facts above, the Secretary C&W Department, being Chairman of the SSRC may consider the genuine request of aged B.Tech (Hons) Degree holder SDOs (BS-17) and reserve 20% quota for promotion against the post of XEN on the analogy of Sindh Government and Islamabad Electric Supply Company, so as to avoid unnecessary litigations please.

Dated: 15-08-2017


Your's obediently

- 1. 
(Sher Wali Jang)
Deputy Director (Tech) (OPS),
Anti-Corruption Establishment,
Khyber Pakhtunkhwa, Peshawar.
- 2. 
(Shaukatullah Shah)
Executive Engineer (OPS)
C&W FATA Division,
Orakzai Agency.

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ADVOCATE

THE ¹KHYBER PAKHTUNKHWA CIVIL SERVANTS
(APPOINTMENT, PROMOTION & TRANSFER) RULES, 1989

Annex.
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PART-I
GENERAL

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1. **Short title and commencement:** - (1) These rules may be called the ²[Khyber Pakhtunkhwa] Civil Servants (Appointment, Promotion and Transfer) Rules, 1989.

(2) They shall come into force at once.

2. **Definitions:-**(1) In these rules, unless the context otherwise requires:-

(a) "Appointing Authority" in relation to a post, means the persons authorized under rule 4 to make appointment to that post;

(b) "Basic Pay Scale" means the Basic Pay Scale for the time being sanctioned by Government, in which a post or a group of posts is placed;

(c) "Commission" means the ³[Khyber Pakhtunkhwa] Public Service Commission;

⁴(d) "Departmental Promotion Committee" means a committee constituted for making selection for promotion or transfer to such posts under a Department, or offices of Government, which do not fall within the purview of the Provincial Selection Board;

⁵(dd) "Departmental Selection Board" means a Board constituted for the purpose of making selection for initial recruitment /appointment to posts under a Department or office of Government in Basic Pay Scale 17 not falling within the purview of the Commission:

Provided that more than one such committees may be constituted for civil servants holding different scales of pay".

(e) "Departmental Selection Committee" means a committee constituted for the purpose of making selection for initial appointment to posts under a department, or office of Government [in Basic Pay Scale 17 and below not falling within the purview of the Commission];

(f) "Post" means a post sanctioned in connection with the affairs of the Province, but not allocated to all Pakistan Unified Grades ; and

¹ For the words "NWFP" or "North-West Frontier Province", wherever occurred, the words "Khyber Pakhtunkhwa" substituted by the Khyber Pakhtunkhwa Laws (Amendment) Act, 2011 (Khyber Pakhtunkhwa Act No. IV of 2011) published in the Khyber Pakhtunkhwa Government Gazette Extraordinary dated 2nd April, 2011

² Sub.by the Khyber Pakhtunkhwa Act No. IV of 2011.

³ Sub.by the Khyber Pakhtunkhwa Act No. IV of 2011.

⁴ Substituted by Clause (d) of sub-rule (1) of Rule 2 vide Notification No. SOR-I (S&GAD) 4-1/80 (Vol-II) dated 14-01-92.

⁵ Clause (dd) added by Notification No. SOR-III (S&GAD) 2-7/86, dated 8-12-1994


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⁶(g) "Provincial Selection Board" means the Board constituted by Government for the purpose of selection of civil servants for promotion or transfer to posts in respect whereof the appointing authority under rule 4 is the Chief Minister and shall consist of such persons as may be appointed to it by Government from time to time.

(2) Words and expressions used but not defined in these rules shall have the same meanings as are assigned to them in the ⁷[Khyber Pakhtunkhwa] Civil Servants Act, 1973 (⁸[Khyber Pakhtunkhwa] Act XVIII of 1973) or any other statutory order or rules of Government for the time being in force.

3. **Method of Appointment:-** (1) Appointment to posts shall be made by any of the following methods, namely:-

- (a) by promotion or transfer in accordance with the provisions contained in Part-II of these rules; and
(b) by initial recruitment in accordance with the provisions contained in Part-III of these rules.

(2) The method of appointment, qualifications and other conditions applicable to a post shall be such as laid down by the Department concerned in consultation with the ⁹Establishment and Administration Department and the Finance Department.

4. **Appointing Authority:-** The authorities competent to make appointment to posts in various basic pay scales shall be as follows:-

S.No. !	Posts !	Appointing Authority
¹⁰ 1. (a)	Posts in Basic Pay Scale 18 and above including posts in Basic Pay Scale 17 borne on any of the following services; (i) Former Provincial Civil Service (Executive Branch); (ii) Former Provincial Civil Service (Judicial Branch); and (iii) Provincial Civil Secretariat Service.	Chief Minister
	¹¹ (b) Posts in Basic Pay Scale 17	Chief Secretary

⁶ Clause (g) substituted by Notification No. SOR-I(S&GAD) 4-1/80/II, dated 14-01-1992.

⁷ Sub. by the Khyber Pakhtunkhwa Act No. IV of 2011.

⁸ Sub. by the Khyber Pakhtunkhwa Act No. IV of 2011.

⁹ For the words "Services and General Administration" wherever occurred, substituted with the words "Establishment and Administration" by Notification No. SO(O&M) E&AD/8-6/2001 dated 30-05-2001.

¹⁰ Substituted by Notification No. SOR-I(S&GAD)4-1/75/Vol-I, dated 22-08-1991.

¹¹ Substituted by Notification No. SOR-III(E&AD)2(144)03 dated 16-09-2003.


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other than those covered by
(a) above and the post of
Deputy Superintendent of
Police; and.

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¹²(c) Posts of Deputy Superintendents of Police. Provincial Police Officer/
Inspector General of Police.

2. Posts in Basic Pay Scale 16. (a) In the case of Secretariat of the
Government of ¹³[Khyber Pakhtunkhwa],
the Chief Secretary.

¹² Inserted by Notification No. SOR-III(E&AD)2(144)03 dated 16-09-2003.

¹³ Sub.by the Khyber Pakhtunkhwa Act No. IV of 2011.


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- (b) In case of High Court, the Chief Justice; and
- (c) In the case of Attached Department:

- (i) the Head of Attached Department concerned; and
- (ii) In any other case the Secretary of the Department concerned.

3. Posts in Basic Pay Scales 3 to 15.

- (a) In the case of civil Servants borne on ministerial establishment of Civil Courts subordinate to High Court, the officer authorized as such by the Chief Justice; and
- (b) In other cases
 - (i) an officer declared under the relevant Delegation of Powers Rules, which shall to this extent be deemed as operative; or
 - (ii) Where no such appointing authority has been declared, the Secretary to Government or the Head of an Attached Department/ Office, as the case may be.

4. posts in Basic pay Scale 1 and 2.	Deputy Secretary incharge of Administration or office, , as the care may be
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5. ¹⁴Departmental Promotion & Selection Committee/Board- (1) In each Department or office of Government there shall be one or more Departmental Promotion Committee and Departmental Selection Committee ¹⁵(or, as the case may be, Departmental Selection Board), the composition of which shall be determined by the Establishment and Administration Department or the Department in consultation with the Establishment and Administration Department.

(2) Each such Committee (or the Board, as the case may be), shall consist of at least three members, one of whom shall be appointed as Chairman.

¹⁴ The heading of rule 5 substituted by Notification No. SOR-I(S&GAD)2-7/86, dated 8-12-1994.

¹⁵ The words inserted by Notification No. SOR-III(S&GAD)2-7/86, dated 8-12-1994

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¹⁶6. **Procedure when recommendation is not accepted:-** When an appointing authority for Basic Pay Scale 17 or below does not accept the recommendation of a Departmental Promotion or Selection Committee, or the Departmental Selection Board, as the case may be, it shall record its reasons and obtain order of the next higher authority.

PART-II

APPOINTMENT BY PROMOTION OR TRANSFER

7. **Appointment by Promotion or Transfer.** ¹⁷(1) Except as otherwise provided in any service rules for the time being in force, appointment by promotion or transfer to posts in respect whereof the appointing authority under rule 4 is the Chief Minister shall ordinarily be made on the recommendation of the Provincial Selection Board and promotion and transfer to posts other than those falling within the purview of the Provincial Selection Board shall ordinarily be made on the recommendation of appropriate Departmental Promotion Committee".

(2) Appointment by transfer shall be made from amongst the persons holding appointment on regular basis in the same basic pay scale, in which the posts to be filled, exist.

(3) Persons possessing such qualifications and fulfilling such conditions as laid down for the purpose of promotion or transfer to a post shall be considered by the Departmental Promotion Committee or the Provincial Selection Board for promotion or transfer, as the case may be.

(4) No promotion on regular basis shall be made to posts in Basic Pay Scale 18 to 21 unless the officer concerned has completed such minimum length of service as may be specified from time to time.

¹⁸(5) If on an order of promotion or before promotion any civil servant declines in writing, to accept promotion, such civil servant shall not be considered for such promotion for the next four years following order.

Provided that if he declines to avail the benefit of promotion for the second time, then he shall stand superseded permanently for such promotion.

8. **Inter-Provincial Transfer:-**(1) Persons holding appointment in BPS 1 to 15 under Federal Government and other Provincial Government may, in deserving cases, be transferred to equivalent posts under these rules:-

Provided that:-

- (i) the Federal Government or the Government of the Province concerned, as the case may be, has no objection to such a transfer;
- (ii) the person seeking transfer possesses the requisite qualification and experience and the post to which his transfer is intended can, under the rules, be filled by transfer;
- (iii) the person concerned holds appointment to the post in his parent Department on regular basis;

¹⁶ Rule-6 substituted by Notification No. SOR-III(S&GAD)2-7/86, dated 8-12-1994

¹⁷ Sub rule (1) substituted by Notification No. SOR-I(S&GAD)4-1/80/II, dated 14-01-1992.

¹⁸ Sub rule (5) inserted by Notification No. SOR-VI(E&AD)1-3/2009/Vol-VIII, dated 22-10-2011.

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- (iv) the person concerned is a bona fide resident of the ¹⁹[Khyber Pakhtunkhwa].
- (v) a vacancy exists to accommodate the request for such a transfer; and:
- (vi) Provided further that in most deserving cases, the merit of which shall be determined on case to case basis and the decision of the Competent Authority in that behalf shall be final, Government may allow transfer of a civil servant in BPS-16 and above, subject to the aforesaid conditions.

(2) A person so transferred shall be placed at the bottom of the cadre strength which he joins for the purpose of determining his seniority vis-à-vis other members borne on the cadre.

(3) It will be the sole discretion of the appointing authority to accept or refuse a request for transfer under this rule and any decision made in this behalf shall be final and shall not be quoted as precedence in any other case.

9. **Appointment on Acting Charge or current Charge Basis.** (1) Where the appointing authority considered it to be in the public interest to fill a post reserved under the rules for departmental promotion and the most senior civil servant belonging to the cadre or service concerned, who is otherwise eligible for promotion, does not possess the specified length of service the authority may appoint him to that post on acting charge basis;

²⁰Provided that no such appointment shall be made, if the prescribed length of service is short by more than ²¹[three years].

²²[(2)].

(3) In the case of a post in Basic Pay Scale 17 and above, reserved under the rules to be filled in by initial recruitment, where the appointing authority is satisfied that no suitable officer drawing pay in the basic scale in which the post exists is available in that category to fill the post and it is expedient to fill the post, it may appoint to that post on acting charge basis the most senior officer otherwise eligible for promotion in the organization, cadre or service, as the case may be, in excess of the promotion quota.

(4) Acting charge appointment shall be made against posts which are likely to fall vacant for period of six months or more. Against vacancies occurring for less than six months, current charge appointment may be made according to the orders issued from time to time.

(5) Appointment on acting charge basis shall be made on the recommendations of the Departmental Promotion Committee or the Provincial Selection Board, as the case may be.

(6) Acting charge appointment shall not confer any vested right for regular promotion to the post held on acting charge basis.

PART-III

INITIAL APPOINTMENT

¹⁹ Sub.by the Khyber Pakhtunkhwa Act No. IV of 2011.

²⁰ Full stop at the end of Rule 9 (1) replaced with colon and proviso added by Notification No. SOR-I (S&GAD)4-1/80/Vol-II, dated 20-10-1993.

²¹ The words one year substituted by Notification No. SOR-I(S&GAD)4-1/80/III, dated 14.3.96.

²²Sub rule (2) of rule-9 deleted vide by Notification No. SOR-VI(E&AD)1-3/2009/Vol-VIII, dated 22-10-2011.


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10. **Appointment by Initial Recruitment :-**(1) Initial appointment to posts ²³[in various basic pay scales] shall be made-

- (a) if the post falls within the purview of the Commission, on the basis of Examination or test to be conducted by the Commission; or
- (b) if the post does not fall within the purview of the Commission, in the manner as may be determined by Government;

²⁴(2) Initial recruitment to posts which do not fall within the purview of the Commission shall be made on the recommendation of the Departmental Selection Committee, after vacancies have been advertised in newspapers.

²⁵Provided that nothing contained in this sub-rule shall apply to the household staff of the Chief Minister House Peshawar, ²⁶[Khyber Pakhtunkhwa] House Islamabad, ²⁷[Khyber Pakhtunkhwa] Rest Houses Bannu, Swat and Abbottabad, ²⁸[Khyber Pakhtunkhwa] House Nathia Galli and Shahi Mehman Khana, Peshawar and any other House to be established by the Government:

²⁹Provided further that the appointment in Basic Pay Scale-1 to 4 shall be made on the recommendations of the Departmental Selection Committee through the District Employment Exchange concerned, ³⁰[or, where in a District, the office of the Employment Exchange does not exist, after advertising the posts in the leading newspapers] ³¹[]

(3) A candidate for initial appointment to a post must possess the educational qualification or technical qualifications and experience and except as provided in the rules framed for the purpose of relaxation of age limit, must be within the age limit as laid down for the post, provided that-

- (i) ³²where recruitment is to be made on the basis of written examination, then, notwithstanding anything to the contrary contained in any other rules for the time being in force, age shall be reckoned on 1st January of the year in which the examination is proposed to be held;
- (ii) in other cases as on the last date fixed for submission of applications for appointment.

²³ The words in basic pay scale-16 to 21 substituted by Notification No. SOR-I(S&GAD)1-117/91 (C), dated 12-10-1993.

²⁴ Sub rule (2) of Rule-10 substituted by Notification No. SOR-I(S&GAD) 1-117/91 (C), dated 12-10-1993.

²⁵ Proviso added vide Notification No. SOR-VI(E&AD)1-3/2003 (VI) dated 03-07-2003.

²⁶ Sub.by the Khyber Pakhtunkhwa Act No. IV of 2011.

²⁷ Sub.by the Khyber Pakhtunkhwa Act No. IV of 2011.

²⁸ Sub.by the Khyber Pakhtunkhwa Act No. IV of 2011.

²⁹ Proviso added vide Notification No. SOR-VI(E&AD)1-3/2003 (VI) dated 16-03-2004

³⁰ Sentence added in the Proviso vide Notification No. SOR-VI(E&AD)1-3/2003 (VI) dated 23-01-2006.

³¹ 2nd Proviso in sub- rule (2) of Rule 10 was deleted vide Notification No. SOR-VI(E&AD)1-3/2008 dated 09-05-2008 and added again vide Notification No. SOR-VI(E&AD)1-3/2008 dated 03-11-2008.

³² Clause (i) substituted vide Notification No. SOR-I(S&GAD)4-1/80, dated 17-5-1989.


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³³(4) Where a civil servant dies or is rendered incapacitated/invalidated permanently during service then notwithstanding the procedure provided for in sub-rule (2), the appointing authority may appoint one of the children of such civil servant, or if the child has not attained the age prescribed for appointment in Government Service, the widow/wife of such civil servant, to a post in any of the Basic Pay Scales 1-10:

Provided that the child or the widow/wife as the case may be, possesses the minimum qualification prescribed for appointment to the post:

Provided further that if there are two widows/wives of the deceased civil servant, preference shall be given to the elder widow/wife.

Provided also that the appointment under this sub rule is subject to availability of a vacancy and if more than one vacancies in different pay scales are available at a time, and the child or the widow/wife, as the case may be, possesses the qualifications making him or her eligible for appointment in more than one post, he /she shall ordinarily be appointed to the post carrying higher pay scale.

Provided further that this shall not apply to any post in BPS-1-10 falling in the purview of the ³⁴[Khyber Pakhtunkhwa] Public Service Commission.

³⁵(5) Notwithstanding anything contained in any rule for the time being in force, two percent of all posts in each basic pay scale to be filled in by initial recruitment shall be reserved for disabled candidates and ten percent of all posts meant for initial recruitment shall be reserved for female candidates:

Explanation-I---For the purpose of reservation under this sub-rule "disability" does not include such disability which hampers in the smooth performance of the duties required of a disabled candidate.

Explanation-II---Ten per cent quota reserved above shall be in addition to the posts exclusively reserved for female candidates.

³⁶(6) Notwithstanding anything contained in any rule for the time being in force, five per cent of all posts in each basic pay scale to be filled in by initial recruitment shall be reserved for candidates hailing from earthquake affected areas of District Mansehra, Battagram, Shangla, Kohistan and Abbottabad (Calamity hit area) for a period of three years commencing from 1st February, 2006.

³⁷(7) Notwithstanding anything contained in any rule for the time being in force, ³⁸[three] percent of all the posts in each basic pay scale to be filled in by initial recruitment shall be reserved for candidates belonging to minorities in addition to their participation in the open merit:

Provided that, the reservation shall not apply to—

³³ Sub rule (4) substituted vide Notification No. SOR-VI (E&AD)1-3/2011/Vol-VIII, dated 31-08-2012.

³⁴ Sub. by the Khyber Pakhtunkhwa Act No. IV of 2011.

³⁵ Sub rule (5) substituted vide Notification No. SOR-VI (E&AD)1-10/03 (VI), dated 04-12-2007.

³⁶ Sub rule (6) inserted vide Notification No. SOR-VI(E&AD)1-3/03 (VI), dated 01-02-2006

³⁷ Sub rule (7) added vide Notification No. SOR-VI(E&AD)1-3/08, dated 06-01-2009

³⁸ Subs. vide Notification No. SORIV/E&AD/1-10(Minority)/2008, dated 08.01.2014.


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- (i) the percentage of vacancies reserved for recruitment on merit;
- (ii) short term vacancies likely to last for less than one year; and
- (iii) isolated posts in which vacancies occur only occasionally.

11. **Eligibility.** (1) A candidate for appointment shall be a citizen of Pakistan and bona fide resident of the ³⁹[Khyber Pakhtunkhwa].

Provided that for reasons to be recorded in writing, Government may, in a particular case, relax this restriction.

⁴⁰[(2)]

(3) No person, not already in Government service, shall be appointed to a post unless he produces a certificate of character from the principal, academic officer of the academic institution last attended and also certificates of character from two responsible persons, not being his relatives, who are well acquainted with his character and antecedents.

(4) Notwithstanding anything contained in sub-rule (3), an appointment by initial recruitment shall be subject to the verification of character and antecedents of the candidate or the person appointed, to the satisfaction of appointing authority.

(5) No candidate shall be appointed to a post unless he is found, after such medical examination as Government may prescribe, to be in good mental and bodily health and free from physical defect likely to interfere in the efficient discharge of his duties.

12. **Zonal and Divisional representation:** - (1) Except as otherwise specifically provided in any rule for the time being in force, initial recruitment to posts in Basic Pay Scales 16 and 17 and other posts in Basic Pay Scales 3 to 15 borne on Provincial cadre shall be made in accordance with the Zonal quota specified by Government from time to time:

⁴¹Provided that initial recruitment to the post of Civil Judge/Judicial Magistrate/Allaqa Qazi (BPS-18) shall also be made in accordance with the zonal quota specified by the Government from time to time.

(2) Initial recruitment to posts in Basic Pay Scales 3 to 15 borne on divisional or district cadre shall be made from amongst bona fide residents of the division or district concerned, as the case may be.

(3) Initial recruitment to posts in Basic Pay Scales 1 and 2 or equivalent shall ordinarily be made on local basis.

PART-IV

AD HOC APPOINTMENT

13. **Requisition to Commission:-**When under any rule for the time being in force, a post is

³⁹ Sub.by the Khyber Pakhtunkhwa Act No. IV of 2011.

⁴⁰ Sub rule (2) of rule-11 deleted vide Notification No. SOR-VI(E&AD)1-3/08, dated 17-06-2008

⁴¹ Proviso to rule-12 added vide Notification No. SOR-VI(E&AD)1-27/08, dated 03-07-2008

required to be filled in through the Commission, the appointing authority shall forward a requisition on the prescribed form to the Commission immediately after it is decided to fill in the post, or if that is not practicable and the post is filled on ad hoc basis as provided in rule 14, within two months of the filling of the post.

14. **Ad hoc Appointment:-**(1) When the appointing authority considers it to be in the public interest to fill in a post falling within the purview of the Commission urgently, it may, pending nomination of a candidate by the Commission, proceed to fill in such post on ad hoc basis for a period not exceeding ⁴²[one year] by advertising the same in accordance with the procedure laid down for initial appointment in Part-III of these rules.

(2) Short term vacancies in the posts falling within the purview of the Commission and vacancies occurring as a result of creation of temporary posts for a period not exceeding ⁴³[one year], may be filled in by appointing authority otherwise than through the Commission on a purely temporary basis after advertising the vacancy.

PART-V

PROBATION AND CONFIRMATION

⁴⁴15. **Probation.** ----- (1) Persons appointed to posts by initial recruitment, promotion or transfer shall be on probation for a period of one year.

(2) The appointing authority, if considers necessary, may extend the probation period for one year as may be specified at the time of appointment.

⁴⁵(3) On the successful completion of probation period, the appointing authority shall, by specific order terminate the probation of the officer or official concerned within two months after the expiry of probation period prescribed in sub-rule(1):

Provided that if no specific order regarding termination of the probation period of the official or officer concerned is issued within two months, the period of probation shall be deemed to have been extended under sub-rule (2):

Provided further that if no specific order is issued on the expiry of the extended period of probation, the period of probation shall be deemed to have been successfully completed."

16. **Confirmation:-**After satisfactory completion of the probationary period, a civil servant shall be confirmed; provided that he holds a substantive post, provided further that a civil servant shall not be deemed to have satisfactorily completed his period of probation, if he has failed to pass an examination, test or course or has failed to complete successfully a training prescribed within the meaning of sub-section (3) of Section 6 of the ⁴⁶[Khyber Pakhtunkhwa] Civil Servants Act, 1973.

⁴² The words six months replaced with the words one year vide Notification No. SOR-VI(E&AD)1-3/08, dated 17-01-2009.

⁴³ The words six months replaced with the words one year vide Notification No. SOR-VI(E&AD)1-3/08, dated 17-01-2009.

⁴⁴ Rule-15 substituted vide Notification No. SOR-VI/E&AD/1-3/2009/Vol-VIII dated 16-2-2010.

⁴⁵ Sub rule (3) substituted vide Notification No. SOR-VI (E&AD)1-3/2012 dated 28-12-2012.

⁴⁶ Sub.by the Khyber Pakhtunkhwa Act No. IV of 2011.


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SENIORITY

17. **Seniority :-** (1) the seniority inter se of civil servants ⁴⁷(appointed to a service, cadre or post) shall be determined:-

- (a) in the case of persons appointed by initial recruitment, in accordance with the order of merit assigned by the Commission ⁴⁸[or as the case may be, the Departmental Selection Committee;] provided that persons selected for appointment to post in an earlier selection shall rank senior to the persons selected in a later selection; and
- (b) in the case of civil servants appointed otherwise, with reference to the date of their continuous regular appointment in the post; provided that civil servants selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter se seniority as in the lower post.

Explanation-I:- If a junior person in a lower post is promoted to a higher post temporarily in the public interest, even though continuing later permanently in the higher post, it would not adversely effect the interest of his seniors in fixation of his seniority in the higher post.

Explanation-II:- If a junior person in a lower post is promoted to a higher post by superseding a senior person and subsequently that senior person is also promoted the person promoted first shall rank senior to the person promoted subsequently; provided that junior person shall not be deemed to have superseded a senior person if the case of the senior person is deferred for the time being for want of certain information or for incomplete record or for any other reason not attributing to his fault or demerit.

Explanation-III:- A junior person shall be deemed to have superseded a senior person only if both the junior and the senior persons were considered for the higher post and the junior person was appointed in preference to the senior person.

(2) Seniority in various cadres of civil servants appointed by initial recruitment vis-à-vis those appointed otherwise shall be determined with reference to the dates of their regular appointment to a post in that cadre; provided that if two dates are the same, the person appointed otherwise shall rank senior to the person appointed by initial recruitment.

⁴⁹(3) In the event of merger/restructuring of the Departments, Attached Departments or Subordinate Offices, the inter se seniority of civil servants affected by the merger/restructuring as aforesaid shall be determined in accordance with the date of their regular appointment to a cadre or post.

⁵⁰(4) The inter-se-seniority of civil servants in a certain cadre to which promotion is made from different lower posts, carrying the same pay scale shall be determined from the date of regular appointment/promotion of the civil servants in the lower post.

Provided that if the date of regular appointment of two or more civil servants in the

⁴⁷ Substituted for the words appointment to a post in the same basic pay scale in a cadre by Notification No. SOR-I(S&GAD)4-1/80, dated 17-05-1989.

⁴⁸ The words inserted by Notification No. SOR-I(S&GAD)4-1/80/II, dated 04-02-1996.

⁴⁹ Sub-rule (3) of Rule 17 added vide Notification No. SOR-I(E&AD)4-1/80/IV, dated 28-5-2002.

⁵⁰ Sub-rule (4) of Rule 17 added vide Notification No. SOR-VI (E&AD) 1-3/2008 dated 19-11- 2009.

lower post is the same, the civil servant older in age, shall be treated senior.

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18. General Rules: - In all matters not expressly provided for in these rules, civil servants shall be governed by such rules as have been or may hereafter be prescribed by Government and made applicable to them.

19. Repeal:- The ⁵¹[Khyber Pakhtunkhwa] Civil Servants (Appointment, Promotion and Transfer) Rules, 1975, are hereby repealed.

(Authority; No. SORI(S&GAD)4-1/80, dated 13th May, 1989)

⁵¹ Sub.by the Khyber Pakhtunkhwa Act No. IV of 2011.

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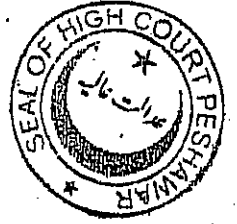
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Judgment Sheet
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT.

W.P.No.2707-P/2021

Shaukat Ullah Shah and another
Versus
Govt: of KPK through Chief Secretary and others.



Date of hearing 24.03.2022

Mr. Abdur Rauf Rohaila, advocate for petitioners.
M/S Muhammad Sohail, AAG and Qazi Jawad Ehsanullah,
advocate for respondents.

JUDGEMENT

IJAZ ANWAR. J:- By this single Judgement, we propose to decide this as well as the connected Writ Petition No.1539-P/2021 "Niamat Gul and others Vs. Govt: of KPK through Chief Secretary and others" as both these petitions have been filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 involving similar controversy. The following prayer has been made in the instant writ petition.

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EXAMINER
Peshawar High Court

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"On acceptance of this writ petition:

A. Direct Respondent No.4

(Secretary
Communication & Works
Department, Government
of Khyber Pakhtunkhwa
being the Chairman of
SSRC to convene SSRC
meeting at the earliest in
accordance with law

B. Grant any other relief that
this honourable Court
deems fit and appropriate
in the facts and
circumstances of the
case."

2. In essence, petitioners holding
B.Tech (Hons) Degree and serving the
respondent department as Sub Divisional
Officers (BPS-17) seek issuance of direction to
the respondents for reservation of 20 % quota for
promotion of B.Tech (Hons) Degree holder
SDOs (BPS-17) to the post of XEN BPS-18.

3. Comments were called from the
respondents which were accordingly submitted

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Peshawar High Court

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wherein they have opposed the issuance of the desired writ.

4. Arguments of counsel for the parties heard and record perused.

5. The main emphasis of the learned counsel for petitioners is that earlier the respondents have initiated process for amendment in the recruitment rules for providing specific quota to the B.Tech Degree Holders, however, no progress is made so far and his only prayer is that the Standing Service Rules Committee shall convene its meeting to decide this issue once for all.

6. It is pertinent to mention here that on an earlier date, the learned AAG had produced a Notification dated 07.9.2021 whereby a Committee was constituted by the Provincial Government in order to address the issue pertaining to the B.Ss/B.Tech Engineering

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Peshawar High Court

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Degree Holders and their respective promotion quota. This Court vide order dated 18.11.2021 directed the learned AAG to provide the outcome of the meeting of the said Committee.

7. Today, learned AAG produced the relevant minutes of the meeting wherein this issue has been discussed with detail, however, it was decided that certain record be obtained from the associations of both the categories so that the same could be further discussed in the forthcoming meeting of the Committee.

8. Learned AAG as well as learned counsel for the added respondents have objected on the maintainability of this writ petition on the ground the issue in hand relates to the terms and conditions of service and as such, this issue can only be adjudicated by the Provincial Service Tribunal. We are in complete agreement with the learned AAG and learned counsel representing

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EXAMINER
Peshawar High Court

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the respondents to the effect that where the matter relates to the terms and conditions of service of a civil servant, the Service Tribunal has the exclusive jurisdiction and the jurisdiction of this Court is barred under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973, however, in the instant matter, petitioners have merely sought direction of this Court for expediting the matter pending with the Standing Service Rules Committee, because presently the matter in hand is premature particularly for the purpose of filing appeal before the Service Tribunal.

9. We have noted that vide Notification dated 07.9.2021, the Chief Secretary constituted a Committee with certain TORs. It being relevant is reproduced below:

"TORs of the Committee

- To consider various aspects of the issue in the prevailing

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EXAMINER
Peshawar High Court

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circumstances of B.Sc/B.Tech Engineers.

- To look into the various Courts judgements passed with regard to B.Sc/B.Tech Engineers as per merits of the case.
- To consider the issue in the light of available Service Rules.
- To consider any other issue pertaining to the subject matter.
- The committee shall finalize its recommendations with viable proposals for perusal of the competent authority within 30 days."

10. Pursuant to the notification above referred, the meeting was convened on 21.12.2021 and this issue was discussed at considerable length, however, for certain clarification, this matter was further to be deliberated in the forthcoming meeting of the Committee.

11. We, therefore, direct the Committee so constituted vide Notification dated 07.9.2021 to abide by the said notification because one of its TORs was "The Committee shall finalize its recommendations with viable proposals for

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EXAMINERS
Peshawar High Court

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perusal of the competent authority within 30 days.", albeit despite lapse of about 8 months, the matter has not yet been finalized. Accordingly, the Committee is directed to finalize its recommendations within 60 days positively.

12. This and the connected Writ Petition No.2707-P/2021 are disposed of in the above manner.


Judge


Judge

Announced on;
Dated. 24.03.2022.

D.B. Hon'ble Mr. Justice Ijaz Anwar and Hon'ble Mr. Justice Syed Muhammad Atique Shah

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Date of Presentation of Application: 23/8/2022

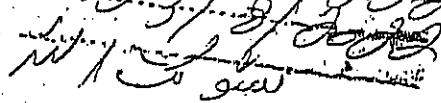
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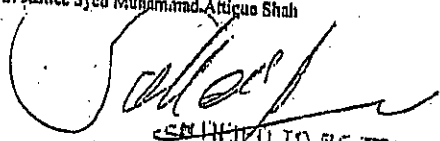
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ANNEX. E-I

IN THE COURT OF MR. MUHAMMAD ZAFAR
SPECIAL JUDGE, ANTI-CORRUPTION,
SOUTHERN DISTRICTS CAMP COURT KOHAT

BBA Petition No. 108 of 2022
Shoukat Ullah Vs. State

BBA Petition No. 110 of 2022
Raj Muhammad Vs. State

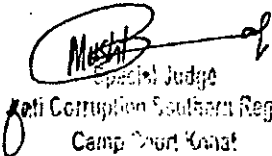
BBA Petition No. 111 of 2022
Ibad Ullah Vs. State

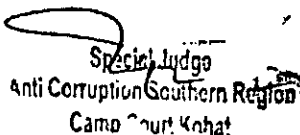
BBA Petition No. 112 of 2022
Malik Feroz Khan Vs. State

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Order # 05
17.02.2023

1. Sr.PP for the State present. Accused/petitioners Shaukat Ullah s/o Syed Yaqoob the then XEN who has filed BBA No. 108 of 2022, Raj Muhammad s/o Chamba Gul the then SE who has filed BBA No. 110 of 2022, Ibad Ullah s/o Muhammad Kareem the then SDO who has filed BBA No. 111 of 2022, and Malik Ferooz Khan s/o Hassan Khan the Government Contractor who has filed BBA No. 112 of 2022 are seeking the confirmation of their bail before arrest on the basis of the applications moved by them referred above in case FIR No. 01 Dated: 28.11.2022 u/s 409-420-468 PPC / 5(2) PC Act pertaining to Police Station Anti-Corruption Hangu. As all the BBA petitions are the of shoots of one and the same FIR therefore they have been taken together for


Special Judge
Anti Corruption Southern Region
Camp Court Kohat


Special Judge
Anti Corruption Southern Region
Camp Court Kohat


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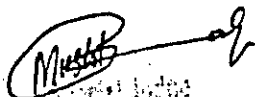
disposal through the single consolidated order given in BBA petition No. 108 of 2022.


2. All the accused on ad-interim bail present. The record would show that the arguments on the applications moved by the accused/petitioners except to the extent of co-accused Raj Muhammad were already heard on the previous date, whereas the arguments on behalf of the co-accused/petitioner Raj Muhammad have been heard today, similarly the arguments on behalf of the Sr.PP for the state also heard, file gone through and my this order is going to decide all the above mentioned petitions.

3. The facts giving rise to the instant petitions are that an open inquiry bearing No.78 of 2019 was initiated in the light of the reference letter No.17013 ACE dated 29.08.2019 and the final report dated 08.11.2022 was also prepared, followed by the technical report bearing No.649-51/DDT/ACE dated 01.11.2022 prepared by Engineer Jawad Amir Technical Officer.

4. It is version of the Prosecution that in the light of the inquiry report and the technical report in the different heads of the project of ADP No.461 of 2015-16 loss has been given to the government exchequer to the tune of rupees 163,77,491/- and that this loss has been given to the government exchequer

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Special Judge
Anti Corruption Southern Region
Camp Court Kohat


Special Judge
Anti Corruption Southern Region
Camp Court Kohat


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by the accused/petitioners as they were in gloves with one another. And booked the accused/petitioners mentioned above vide FIR bearing No.01 dated 28.11.2022 u/s 409-420-468 PPC r/w 5(2) of the PC Act PPC.

5. During the course of the arguments the counsel of the accused/petitioners are of the view that the prima facie tentative assessment of the record suggest that the case on hand needs further probe and inquiry, whereas on the other hand the nomination of the present accused/petitioners on the basis of malafide, ulterior motive and undue harassment could also not be ruled out, and is therefore a fit case for the confirmation of bail.

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Mushtaq
Special Judge
Anti Corruption Southern Region
Camp Court, Kohat

6. In support of arguments the counsels of the accused/petitioners are of the view that there is a long standing delay between the date and time of occurrence, the date of report and the date of the chalking out the FIR. Because as per the contents of the FIR the date and time of occurrence has not been given only the year 2015-16 has been shown, whereas the date of report has shown to be 22.07.2019 and the date of FIR


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Anti Corruption Southern Region
Camp Court, Kohat

28.11.2022 regarding these long standing delay there is no plausible explanation available on the record, making the case to be a case of further inquiry.

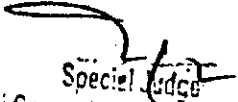
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It has also been argued that the perusal of the record also shows that the proceedings in the instant case has been initiated on the basis of an anonymous application shown to be given by the inhabitants/residents of village Ghozgarh district Orakzai. There is no signature/thumb impressions of anyone to show that who own this application coupled with the fact that there is no statement of any inhabitant recorded. As such the same is an anonymous application and anonymous applications have got no legal standings.

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Anti Corruption Southern Region
Camp Court Kohat

7. It has further been pointed out during the course of arguments that the record shows that a writ petition bearing No.2707-P of 2021 was filed in the Honorable Peshawar High Court, Peshawar and was disposed of vide order of the Honorable Court dated 24.03.2022, thereafter, as COC bearing No.350 of 2022 in writ petition No.2707-P of 2021 was also filed in the Honorable Peshawar High Court, Peshawar and that the present FIR infact in nothing but the counter blast of the said writ petition and COC which again creates doubts on the Prosecution side to the extent that the possibility could not be ruled out that the present accused/petitioners have malafidely been involved in the instant case.


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8. The counsel of the accused/petitioners are of the view also that it is the alleged version of the Prosecution that the



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accused/petitioners were in gloves with one another and by doing so they given loss by the government exchequer, this aspect of the case will also be seen during the trial stage that whether present accused/petitioners were really in gloves with one another and have really given loss to the government exchequer or otherwise. Similarly the applicability of 409 PPC will also been seen during the trial stage after recording the evidence. Whereas the rest section of law leveled against the accused/petitioners does not carry punishments falling within the prohibitory clause and the grant of bail in such like cases is a rule and refusal is an exception as laid down through the judgments of the Superior Courts. The counsels are of the view also that these aspects of the case again make the case in hand to be a case of further probe and inquiry.

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The counsels further argued that the Prosecution is relying on the technical report prepared by the Technical Officer dated 01.11.2022. But the validity of the same technical report will also be seen during the trial stage to the extent that whether the technical report of the Technical Officer is based on scientific analysis or otherwise, which again creates a reasonable doubts at this stage. They are further of the view that the investigation of the instant case has already been completed, the accused/petitioners are no more required to the Prosecution, the


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Camp Court Kohat

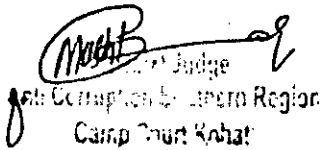

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Anti Corruption Southern Region
Camp Court Kohat

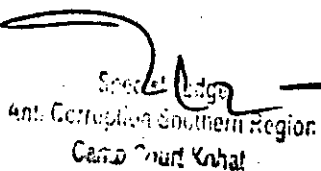

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accused/petitioners have got no previous criminal history. As such the surroundings and the attending circumstances of the case suggest that it is a fit case for the confirmation of bail and requested for the acceptance of their applications.

9. Whereas on the other hand learned Sr.PP for the state is of the view the prima facie tentative assessment of the record suggest that there exist a case of embezzlement against the accused/petitioners. Because the accused/petitioners being government officers/officials of C&W department joined hands with the government contractor have made payments to the contractor through MBs, whereas the work of the contract was not done properly according to the specification of the tender/contract. As such the government officers/officials have mis used their powers and have given loss to the government exchequer to the tune of 163,77,491/- rupees. In addition to it has also been argued that the accused/petitioners have directly been charged by name in the FIR the inquiry report and the technical report available on the record also prima facially supports the version of the Prosecution. The section of law section 409 PPC carries punishment falling within the prohibitory clause. As such there exist a case against the accused/petitioners, so far the malafide, ulterior motive and undue harassment which are important and essential ingredients

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required for BBA are concerned, regarding these noted elements nothing have been brought on the record by the counsel of the accused/petitioners. While winding up his arguments the Sr.PP for the state is of the view that the accused/petitioners in the given circumstances are not entitled for the extra ordinary concession of bail at this stage and requested that their applications may please not be considered.

10. After hearing the arguments and after making the prima facie tentative assessment of the record for the reasons given below this Court has come to the conclusion that the counsels of the accused/petitioners are succeeded in making the case of accused/petitioners to be a case of further inquiry of one hand, whereas on the other hand their nomination on the basis of malafidy and ulterior motive could also not be ruled out. Thus the applications of the accused/petitioners are accepted on the already existing bail bonds furnished by them.

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Anti Corruption Southern Region
Camp Court Kohat

REASONS:

The reasons upon which this Court gives opinion are as under:

- i. There is a long standing delay between the date and time of occurrence, the date of report, and the date of the chalking out the FIR. Because as per the contents of the FIR the date and time of occurrence has not been given only the year 2015-16 has been shown,

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whereas the date of report has shown to be 22.07.2019 and the date of FIR 28.11.2022 regarding these long standing delay there is no plausible explanation available on the record, making the case to be a case of further inquiry.

ii. The record also shows that the proceedings in the instant case have been initiated on the basis of an anonymous application shown to be given by the inhabitants/residents of village Ghozgarh district Orakzai, because there is no signature/thumb impressions of anyone to show that who own this application coupled with the fact that there is no statement of any inhabitant recorded. As such the same is an anonymous application making again the case to be case of further inquiry.

iii. The record shows that a writ petition bearing No.2707-P of 2021 was filed in the Honorable Peshawar High Court Peshawar and was disposed on 24.03.2022, A COC bearing No.350 of 2022 in writ petition No. 2707-P of 2021 was also moved in the Honorable Peshawar High Court Peshawar. The possibility could also not be ruled out that the FIR in hand is the counter blast of the writ petition and COC.

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Judge
Sudh Cantt. District Peshawar
Cantt. District Kohat

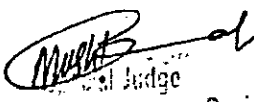

Judge
Sudh Cantt. District Peshawar
Cantt. District Kohat


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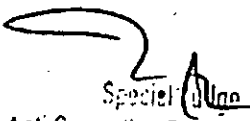
This aspect again makes the case a doubtful one and of further inquiry.

iv. It is the version of the Prosecution that the accused/petitioners in connivance with one another and by joining hands have given loss to the government exchequer. It will be seen during the trial stage that whether really the accused were in gloves with one another and intends to give loss to the government exchequer, coupled with the fact that the applicability of 409 PPC to the extent of the accused/petitioners will also be seen during the trial stage and could properly be answered after recording the evidence. Excluding the 409 PPC the rest section of law leveled against the accused does not carry punishment falling within the prohibitory clause and the grant of bail in such like cases is a rule and refusal is an exceptional.

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Special Judge
Anti Corruption Southern Region
Camp Court Kohat

v. The Prosecution is relying upon the technical report prepared by the Technical Officer and on the basis of which the present accused/petitioners have been held responsible. The validity of the technical report will also be seen during the trial stage to the extent that


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Anti Corruption Southern Region
Camp Court Kohat


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whether the technical report is based on scientific analysis or otherwise.

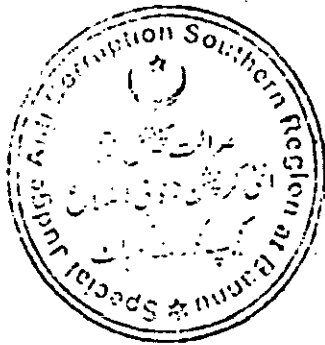
vi. The investigation of the instant case has already been completed accused/petitioners are no more required to the Prosecution coupled with the fact that there is also no previous criminal history against the accused/petitioners.

11. As such with these observations and findings the BBA of the accused/petitioners are hereby confirmed and disposed of according petitions be consigned to the record room after compilation and completion and record of the case be sent to the quarters concerned immediately.

Muhammad Zafar
Special Judge
Anti-Corruption Southern Region
Camp Court Kohat

Announced:
17th February, 2023
At Kohat.

Muhammad Zafar
(MUHAMMAD ZAFAR)
Special Judge, Anti-Corruption
Southern Region KPK, Camp Court at
Kohat.



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ANNEX.
"F"

IN THE PESHAWAR HIGH COURT, PESHAWAR
(Constitutional Jurisdiction)

Writ Petition No. 4450 P/2022

1. Shaukatullah son of Yaqoob Shah,
2. Raj Muhammad son of Chamba Gul,
3. Abidullah son of Muhammad Karim,
Formerly employed in C&W Department, Peshawar.
..... Petitioner.

Versus

1. Secretary, Communication and Works Department,
Government of Khyber Pakhtunkhwa, Peshawar.
2. Government of Khyber Pakhtunkhwa,
through secretary Establishment, Peshawar
3. Director, Anti-Corruption Establishment, Peshawar.
4. The Assistant Director, Anti-Corruption, Kohat.
5. Circle Officer, Anti Corruption Establishment, Hangu.
..... Respondents

WRIT PETITION UNDER ARTICLE 199
OF CONSTITUTION OF ISLAMIC REPUBLIC
OF PAKISTAN, 1973

Respectfully Sheweth:-

The petitioners humbly submit as under:-

1. That the petitioners were serving in Communication and Works Department, remained posted and worked at various places during the service as Sub Divisional Officer, Executive Engineer and have retired on 27-8-2022, 1-11-2022 and 16-1-2022 respectively.
2. That during the employment, Tender for the work title "Rehabilitation and blacktopping of Existing Ghuzgarh Road in Orakzai Agency (8KMS) Phase-1". Was granted on the rebated rates tendered at 4.70% above on CSR 2012 offered by contractor was granted through Work Order No. 2504/C&W dated 21-1-2016.

(Copy of the work order is annexure "A")


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3. That after issuance of work order agreement is executed in which entire modalities relating to the work assigned are mentioned and incorporated. According to the modalities contain in Agreement executed, measurement is made for finished item of work done, description of each item includes materials, transport, labour, fabrication tools and plant and all types of overheads for finished work required in shape, size and specification.

4. That measurement book in Civil engineering is a book used by any department or agency of construction site, to record the work done by the contractor with all the direction, dimension and quantity with date of execution of work. Measurement book is generally used by Junior Engineer or Assistant Engineer, who is responsible on the field or site of project. No record is entered in the measurement book by not below the rank of junior engineer as he is the starting designation or lowest level in the technical field.

5. That the work at site remained in progress for about one year which was completed on 23-6-2017, the site was handed over to the department and the road in successfully used and utilized by people.

6. That on the basis of alleged complaint received by Anti-Corruption Department and an inquiry team was constituted in early 2019 comprising of three members, (1) Naveed Khan, (2) Anwar Khan, and (3) Abid Hussain, SDO. The committee visited the site and confirmed that the allegations have no substance.

7. That after some time again second inquiry team was appointed in late 2019 by Anti-Corruption Department comprising of (1) Naveed Khan, and (2) Anwar Khan who associated with officials of the department for technical assistance. Nothing adverse was found, therefore, the matter was closed.


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8. That petitioner No. 1 is a B. Tech. Engineer litigating with his parent department to be considered at par with B.Sc. Engineer for his promotion and grant of 20% quota for B. Tech. Engineers. Writ Petition No. 2707-P/2020 remained pending for many months and finally this honourable court directed the parent department to convene the meeting for finalizing the rules through order dated 24-3-2022.

9. That unfortunately, the directions issued by this honourable court dated 24-3-2022 were not implemented, therefore, petitioner No. 1 has filed COC No. 350-P/2022 which is still pending. Respondent No. 1 and 2 are parties by name in such contempt of court petition.

(Copies of the referred documents are annexure "C")

10. That due to malafide intention, the respondents have initiated fresh inquiry and respondent No. 5 has issued notices on 3-11-2022 with the contention that open inquiry No. 78/2019 has been initiated relating to the work "Rehabilitation and blacktopping of Existing Ghuzgarh Road in Orakzai Agency (8KMS) Phase-1".

11. That petitioner did appear and were provided questioner prepared by respondent No. 5 which was completed and submitted accordingly. However, respondent no. 3 to 5 are pressing hard for the payment of alleged loss being demanded as per technical report No. 49-51/DDT/A&I dated 1-11-2022. The petitioners have not been provided copy of the said disputed technical report inspite of requests made.

(Copies of the referred documents are annexure "D")

12. That respondent No. 4 and 5 called the petitioners on 10-11-2022 whereas petitioners No. 2 and 3 were forced to sign an undertaking with the plea that no action will be taken against them and they may compel petitioner No. 1 to personally appear, otherwise criminal case will be registered against them.


ATTESTED

13. That the entire proceedings are based on malafide, in excess of jurisdiction and petitioners liberty is at stake, therefore, they have been constrained to approach this honourable court for the redress of their grievance inter-alia on the following grounds:-

- a) Firstly, the petitioners have not committed any irregularity nor any incriminating material has been brought on record, therefore, the open inquiry No. 28/2019 is void ab-initio and liable to be quashed.
- b) Secondly, the work "Rehabilitation and blacktopping of Existing Ghuzgarh Road in Oraltzai Agency (8KMS) Phase-1" has been completed on 23-6-2017 therefore the notices dated 3-11-2022 is time barred and hit by doctrine of laches, thus the entire exercise has been illegally and unlawfully.
- c) Thirdly, the petitioners have been condemned unheard and they have not been provided with copy of Technical Report No. 49-51/DDT/A&I dated 1-11-2022, therefore, the principles enshrined in constitution of Islamic Republic of Pakistan have been flouted knowingly and willfully.
- d) Fourthly, previously two inquiries have been conducted in 2019 and nothing adverse was found against the petitioners. Even they were never called by the two previous inquiries meaning thereby that nothing adversarial opposing petitioners have been found against the petitioners.
- e) Fifthly, the notices dated 3-11-2022 have been issued maliciously for no default of the petitioners. It is matter of record that though the site where the disputed road has been made in hilly snow fall area but the same is perfectly in best condition and being used for vehicular transport.
- f) Sixthly, the petitioners have unblemished record at their credit whereas they since been retired from the service. The entire exercise is patently illegal to counter blast the legal proceedings initiated by petitioner No. 1 against the respondents No. 1 and 2 higher authorities.

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- g) Seventhly, it is unimaginable that the disputed road work was completed in June, 2017, two earlier inquiry committees after thorough site inspection, have exonerated the petitioners and even did not call any clarification, therefore after expiry of three years of last two inquiries, the petitioners have been served with notices dated 3-11-2022 which itself is null and void.
- h) Eighthly, the respondents are twisting the hands of the petitioner No.1 for having initiated Contempt of Court proceedings by name to three high officials. Great injustice has been committed with the petitioners without their fault.
- i) Ninthly, the petitioners have never contravened the rules and instructions issued from time to time. Nothing adverse has been recorded in the entire career of the petitioners. Unfortunately, the petitioners have been made victim of personal malafide.
- j) Tenthly, the petitioners in their written reply to the questioners have requested respondents for the provision of technical report and details of alleged losses but the same has not been provided in negation of fundamental rights including Article 10A of the Constitution of Pakistan.
- k) Eleventhly, law envisage that fair opportunity of defense need to be provided to the petitioners before taking any detrimental action against the petitioners. The petitioners have followed the codal formalities while performing their duties and always secure the interest of department, revenue and exchequer. Nothing can be done on the basis of concocted and baseless proceedings.
- l) Thirteenthly, there is no justification for opening a close and finalized matter inasmuch as the disputed work has been completed long ago in June, 2017 and after passage of more than five years, the petitioners are being harassed illegally and unlawfully.
- m) Fourteenthly, the respondents due to malafide intention are bent upon to make stigma on the clean and unblemished record of service when all the petitioners have already retired.

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- n) Fifteenthly, the petitioners have not committed any omission, error or irregularity which can empower the respondents to take the adverse action at the age when they have joined their families after retirement.
- o) Lastly, the petitioners crave permission to make further submissions and produce additional documents at the time of hearing of the petition.

It is therefore most humbly prayed that on acceptance of this writ petition, this honourable may direct, hold and order:-

1. That the work "Rehabilitation and blacktopping of Existing Ghuzgarh Road in Orakzai Agency (8KMS) Phase-1" has since been completed on 23-6-2017, therefore, the initiation of Inquiry No. 78/2019 is illegal, based on malafide, to counterblast of COC No.350-P/2022 initiated against respondents No. 1 and 2 by petitioner No.1.
2. That the matter has been enquired and investigated twice in 2019 and third inquiry initiated through notice dated 3-11-2022 is illegal, unlawful, hit by doctrine of laches, barred by time and required to be quashed.
3. That the petitioners have been condemned unheard and they have not been dealt in accordance with constitutional mandate and refusal to provide Technical report No. 49-51/DDT/A&I dated 1-11-2022 is void ab-initio and cannot sustain.
4. Any other appropriate remedy not specifically mentioned may also be provided.

INTERIM RELIEF:

The respondents be restrain to take any adverse action against the petitioners till the final disposal of the main writ petition.

Petitioner,
through
Abdul Rauf Rohaila,
Senior Advocate Supreme Court.


ATTESTED



Dated Peshawar, Nov 25, 2022

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ANNEX.
u/c

NOTIFICATION:

No.SOE/C&WD/8-12/2022: In pursuance of the provision contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Communication & Works Department, in consultation with the Establishment Department and Finance Department, hereby notify that in this Department's Notification No.SOE/C&WD/8-12/2009, dated March 25, 2010, the following further amendments shall be made, namely:

AMENDMENTS

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

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

SECRETARY TO
Government of Khyber Pakhtunkhwa
Communication & Works Department

Endst of even number and date

Copy is forwarded to the:-

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

(JAZ KHAN)
SECTION OFFICER (Estb) 25/11/22

(Signature)
ATTESTED

**TENTATIVE SENIORITY LIST OF ASSISTANT ENGINEERS/SDOs BS-17
COMMUNICATION AND WORKS DEPARTMENT As Stood On 20.01.2022**

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Sl. No.	Name of Officer	Academic Qualification	Date of Birth	Domicile	Date of 1st Entry in Govt. Service	Date of Appointment/Promotion in Present Grade	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
01	Nadia Bashir	B.Sc (Civil)/ MS (Transportation)	29/01/1986	Abbottabad	24/12/2010	24/12/2010	
02	Muhammad Imran	B.Sc/M.Sc (Civil)	20/08/1985	Swat	24/12/2010	24/12/2010	
03	Muhammad Asad	B.Sc (Civil)	24/12/1963	Kohat	07/12/1990	24/01/2012	
04	M. Ikramullah Khan	B.Sc (Mech)	14/02/1989	S.W. Agency	06/03/2013	06/03/2013	
05	Salih Dar	B.Sc (Civil)	15/02/1980	Dir	22/04/2013	22/04/2013	
06	Fawad Bilal	B.Sc (Civil)	18/04/1988	Dir Upper	22/04/2013	22/04/2013	
07	Muhammad Ayaz	B.Sc (Civil)/MS (Constr/Management)	10/04/1989	Malakand	22/04/2013	22/04/2013	
08	Ahmad Ali	B.Sc (Civil)	09/05/1989	Mansehra	22/04/2013	22/04/2013	
09	Umer Hayat	B.Sc (Civil)	02/03/1975	Karak	22/04/2013	22/04/2013	
10	Khafid Usman	B.Sc (Civil)	02/02/1978	F.R. Kohat	30/04/2013	30/04/2013	
11	Hayatullah Noor	B.Sc (Civil)	19/04/1979	N.W. Agency	30/04/2013	30/04/2013	
12	Hayatullah Jan	B.Sc (Civil)	03/03/1965	Lakki Marwat	12/12/1990	03/07/2013	
13	Zahoor Ellahi Baig	B.Sc (Civil)	07/01/1964	Haripur	16/03/1988	03/07/2013	
14	Shahid Nawaz	B.Sc (Civil)	01/08/1964	Peshawar	19/02/1990	19/05/2014	
15	Muhammad Asghar Khan	B.Sc (Civil)	30/12/1964	Swabi	17/03/1988	19/05/2014	
16	Sher Bahadar	B.Sc (Civil)	03/05/1965	Dir Lower	19/12/1990	13/10/2015	
17	Muhammad Ghazanfarullah	B-Tech (Hons)	04/05/1964	Bannu	21/10/1986	04/11/2016	

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Sl. No.	Name of Officer	Academic Qualification	Date of Birth	Domicile	Date of Ist Entry In Govt. Service	Date of Appointment/Promotion in Present Grade	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
18	Shaukat Ullah Shah	B-Tech (Hons)	28/08/1962	Lakki Marwat	14/03/1988	04/11/2016	
19	Faizan Akbar	B.Sc/M.Sc (Civil)	20/04/1990	Swabi	10/05/2017	10/05/2017	
20	Muhammad Junaid	B.Sc (Civil)/M.S (Trans)	17/02/1991	DIKhan	10/05/2017	10/05/2017	
21	Ifikhar Qayum	B.Sc (Civil)	01/05/1992	Karak	10/05/2017	10/05/2017	
22	Nasir Iqbal	B.Sc (Civil)/M.S (Trans)	18/07/1989	Malakand	10/05/2017	10/05/2017	
23	Wasim Akbar	B.Sc (Civil)	06/05/1988	Abbottabad	10/05/2017	10/05/2017	
24	Muhammed Ishaq	B.Sc (Civil)	10/01/1991	FR Peshawar	14/07/2017	14/07/2017	
25	Khushdil Khan	B.Sc (Civil)	01/06/1992	Lakki Marwat	10/05/2017	10/05/2017	
26	Abdullah	B.Sc (Civil)	15/03/1985	Swabi	10/05/2017	10/05/2017	
27	Umair Ahmed Jan	B.Sc (Civil)	26/10/1994	Mansehra	10/05/2017	10/05/2017	
28	Akbar Mehboob Khattak	B.Sc (Civil)	01/01/1990	Nowshera	10/05/2017	10/05/2017	
29	Imran Khan	B.Sc/M.Sc (Civil)	01/04/1989	Orakzai Agy	14/07/2017	14/07/2017	
30	Ali Rehman	B-Tech (Hons)	12/11/1964	Malakand	13/03/1988	04/01/2018	
31	Muhammad Idrees Afizai	DAE (Civil)	01/06/1962	DIKhan	16/12/1981	04/01/2018	
32	Waseem Shah	B.Sc (Civil)	01/01/1994	Malakand	26/08/2019	26/08/2019	
33	Tariq Murtaza	B.Sc (Civil)	08/10/1991	Peshawar	26/08/2019	26/08/2019	
34	Bilawal Hussain	B.Sc (Civil)/MS (Geo)	03/08/1993	Swabi	26/08/2019	26/08/2019	
35	Sahibzada Fahad Noor	B.Sc/MS (Civil)	07/12/1990	Peshawar	26/08/2019	26/08/2019	
36	Jawad Ali	B.Sc (Civil)	04/03/1991	Mohmand agy	26/08/2019	26/08/2019	
37	Zia Ullah	B.Sc (Civil)	15/01/1994	Shangla	26/08/2019	26/08/2019	
38	Abdur Rehman	B.Sc (Civil)	08/05/1994	Mardan	26/08/2019	26/08/2019	

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Sl. No.	Name of Officer	Academic Qualification	Date of Birth	Domicile	Date of Ist Entry in Govt. Service	Date of Appointment/Promotion in Present Grade	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
39	Saléem Khan	B.Sc (Civil)	18/01/1990	Swat	26/08/2019	26/08/2019	
40	Jehan Zeb	B.Sc (Civil)	11/09/1990	Khyber Agy	26/08/2019	26/08/2019	
41	Zia-ur-Rehman	B.Sc (Civil)	15/04/1986	Karak	26/08/2019	26/08/2019	
42	Danish Ali	B.Sc (Civil)	01/09/1995	Haripur	26/08/2019	26/08/2019	
43	Mahrukh Naseem	B.Sc (Civil)	18/08/1993	Peshawar	26/08/2019	26/08/2019	
44	Manzoor Ellahi	DAE (Civil)	20/09/1962	Peshawar	18/02/1982	07/10/2019	
45	Saeedullah	B-Tech (Hons)	13/07/1964	Kohat	14/03/1988	07/10/2019	
46	Muhammad Jamshid	B-Tech (Hons)	15/04/1967	Swabi	14/03/1988	07/10/2019	
47	Sher Ali Khan	B-Tech (Hons)	31/12/1962	Malakand	19/03/1988	07/10/2019	
48	Niamat Gul	B-Tech (Hons)	12/01/1963	Malakand	19/03/1988	07/10/2019	
49	Ajmal Anwar	B-Tech (Hons)	06/09/1966	Mardan	19/03/1988	07/10/2019	
50	Faisal Saeed	B-Tech (Hons)	02/11/1962	Mardan	28/03/1988	07/10/2019	
51	Aurangzebi-I	B-Tech (Hons)	21/05/1964	Peshawar	13/05/1987	07/10/2019	
52	Jehanzeb	B-Tech (Hons)	15/04/1962	Bannu	16/12/1990	07/10/2019	
53	Farhat Ali	B-Tech (Hons)	02/04/1965	Peshawar	12/12/1990	07/10/2019	
54	Muhammad Humayun	B-Tech (Hons)	31/08/1965	Lakki Marwat	06/12/1990	07/10/2019	
55	Muhammad Najeeb	DAE (Civil)	15/04/1962	Abbottabad	18/05/1982	21/04/2020	
56	Iftikhar Khan Babar	DAE (Civil)	22/02/1962	Peshawar	14/03/1985	21/04/2020	
57	Nasim Ahmad Shah	DAE (Civil)	10/12/1963	Peshawar	19/05/1985	21/04/2020	
58	Nasrullah Khan	B-Tech (Hons)	05/01/1966	Dir Lower	22/12/1990	21/04/2020	
59	Azhar Ali	B-Tech (Hons)	28/10/1966	Peshawar	15/12/1990	21/04/2020	
60	Abdul Baqi	B.Sc (Civil)	19/11/1995	Buner	03/06/2021	03/06/2021	

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Remarks

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Sl. No.	Name of Officer	Academic Qualification	Date of Birth	Domicile	Date of Ist Entry in Govt. Service	Date of Appointment/Promotion in Present Grade	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
61	Muhammad Zuhair	B.Sc (Civil)	30/03/1996	Charsadda	03/06/2021	03/06/2021	
62	Allah Yar Khan	B.Sc (Civil)	01/06/1996	Mansehra	03/06/2021	03/06/2021	
63	Naveed Mehmood	B.Sc (Civil)	19/11/1995	Malakand	03/06/2021	03/06/2021	
64	Hassan Sardar	B.Sc (Civil)	01/05/1996	Charsadda	03/06/2021	03/06/2021	
65	Babar Saleem	B.Sc (Civil)	18/08/1993	Peshawar	03/06/2021	03/06/2021	
66	Abbas Khan	B.Sc/M.Sc (Civil)	02/02/1995	Swabi	03/06/2021	03/06/2021	
67	Hidayat Ullah	B.Sc (Civil)	12/09/1994	Karak	03/06/2021	03/06/2021	
68	Hassan Zahid	B.Sc/M.S (Civil)	15/06/1993	Mansehra	03/06/2021	03/06/2021	
69	Shams-ur-Rehman	B.Sc (Civil)	15/01/1990	Lakki Marwat	03/06/2021	03/06/2021	
70	Muhammad Ismail Afridi	B.Sc (Civil)	17/12/1996	Khyber Agy	03/06/2021	03/06/2021	
71	Zahid Mehmood	B.Sc (Civil)	16/04/1991	F.R. Tank	03/06/2021	03/06/2021	
72	Uzma Bibi	B.Sc (Civil)	20/03/1996	Dir Lower	03/06/2021	03/06/2021	
73	Maham Tariq	B.Sc (Civil)	16/09/1997	Peshawar	03/06/2021	03/06/2021	
74	Aziz Ullah	B.Sc (Civil)	15/03/1993	S.W. Agency	03/06/2021	03/06/2021	
75	Labiha Imtiaz	B.Sc (Civil)	16/05/1998	Abbottabad	03/06/2021	03/06/2021	
76	Ram Chand	B.Sc (Civil)	05/07/1996	Buner	03/06/2021	03/06/2021	
77	SHIVA	B.Sc/M.S (Civil)	05/03/1988	DIKhan	03/06/2021	03/06/2021	
78	Ashbeel	B.Sc (Civil)	15/11/1996	Charsadda	31/08/2021	31/08/2021	
79	Nouman Nasir	B.Sc (Civil)	07/09/1997	Charsadda	31/08/2021	31/08/2021	
80	Mushtaq Aji	DAE (Civil)	30/09/1964	N.W.Agency	08/11/1986	20/01/2022	
81	Saif-ur-Rehman	DAE (Civil)	18/11/1962	Kohat	03/08/1987	20/01/2022	
82	Yaqoob Khan	DAE (Civil)	19/03/1962	N.W.Agency	13/03/1988	20/01/2022	
83	Shahzad Hassan	DAE (Civil)	05/04/1962	Peshawar	13/03/1988	20/01/2022	

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Remarks

Sl. No.	Name of Officer	Academic Qualification	Date of Birth	Domicile	Date of 1st Entry in Govt. Service	Date of Appointment/Promotion in Present Grade	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
84	Muhammad Javed	DAE (Mech)	02/09/1962	D.I.Khan	13/03/1988	20/01/2022	
85	Sameeullah	DAE (Civil)	01/06/1963	Kohat	13/03/1988	20/01/2022	
86	Abdul Waheed	DAE (Civil)	30/08/1963	D.I.Khan	13/03/1988	20/01/2022	
87	Muhammad Sajjad	DAE (Civil)	21/04/1966	Peshawar	13/03/1988	20/01/2022	
88	Syed Nawazish Ali Shah	DAE (Elect)	06/03/1962	Mansehra	14/03/1988	20/01/2022	
89	Sadiq Ullah	DAE (Civil)	15/03/1963	N.W.Agency	14/03/1988	20/01/2022	
90	Fazal Rehman	DAE (Civil)	27/03/1965	D.I.Khan	14/03/1988	20/01/2022	
91	Ahmad Ali	DAE (Civil)	11/04/1965	N.W.Agency	14/03/1988	20/01/2022	
92	Shad Muhammad Khan	DAE (Civil)	16/04/1965	Mansehra	14/03/1988	20/01/2022	
93	Salah-ud-Din	DAE (Civil)	28/06/1965	Mansehra	14/03/1988	20/01/2022	
94	Nihar Gul	DAE (Civil)	07/01/1963	Mardan	15/03/1988	20/01/2022	
95	Muneeb Khan	DAE (Civil)	16/04/1964	Mohmand Agy	15/03/1988	20/01/2022	
96	Syed Azmat Ali Shah	DAE (Civil)	15/12/1963	Mansehra	16/03/1988	20/01/2022	
97	Mashal Khan	DAE (Civil)	02/02/1964	Lakki Marwat	16/03/1988	20/01/2022	
98	Shabir Ahmad	B.Sc (Civil)	31/03/1964	Swat	20/12/1990	20/01/2022	
99	Tariq Afzal	B.Sc (Civil)	01/04/1968	N.W.Agency	20/04/1995	20/01/2022	
100	Aurangzeb-II	B.Sc (Civil)	30/03/1966	Malakand	14/03/1988	20/01/2022	
101	Muhammad Rafiq Shinwari	B-Tech (Hons)	15/04/1964	Malakand	12/12/1990	20/01/2022	
102	Shujaat Ali	B-Tech (Hons)	20/02/1963	Charsadda	12/12/1990	20/01/2022	
103	Mumtaz Alam	B-Tech (Hons)	01/06/1964	Malakand	23/12/1990	20/01/2022	
104	Naqeebullah Khattak	B-Tech (Hons)	02/01/1971	Karak	27/06/1994	20/01/2022	
105	Muhammad Farooq	B-Tech (Hons)	01/01/1973	Mardan	23/04/1995	20/01/2022	
106	Niamatullah Khan	B-Tech (Hons)	06/05/1967	S.W.Agency	27/04/1995	20/01/2022	

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TENTATIVE SENIORITY LIST OF EXECUTIVE ENGINEERS BS-18
COMMUNICATION AND WORKS DEPARTMENT As Stood On 20.01.2022

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Sl. No.	Name of Officer	Academic Qualification	Date of Birth	Domicile	Date of 1st Entry in Govt. Service	Date of Appointment/Promotion in Present Grade	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
01	Muhammad Tariq	B.Sc. (Civil)	03/06/1964	DIKhan	12/11/1989	15/03/2011	
02	Azmatullah	B.Sc (Civil)	05/01/1979	N.W.Agy	28/05/2007	09/12/2014	
03	Muhammad Asif Imran	B.Sc (Civil)	15/12/1979	Bannu	28/05/2007	18/09/2015	
04	Mushtaq Ahmed	B.Sc (Civil)	15/10/1968	SW Agency	24/04/1995	28/03/2017	
05	Khurshid Iqbal	B.Sc (Civil)	21/08/1977	Mansehra	28/05/2007	28/03/2017	
06	Mohammad.Shahid	B.Sc (Civil)	05/08/1980	DI Khan	14/06/2007	28/03/2017	
07	Amir Jamal	B.Sc (Civil)	28/02/1978	Mansehra	14/06/2007	28/03/2017	
08	Amir Jan	B.Sc (Civil)	01/04/1965	Lakki	13/12/1990	21/11/2019	
09	Adnan	B.Sc (Civil)	28/02/1978	Mohmand Agy	02/04/2008	28/03/2017	
10	Inayatullah	B.Sc (Civil)	15/05/1975	FR Tank	02/04/2008	28/03/2017	
11	Tufail Ahmad	B.Sc/MS (Civil)	15/08/1981	Mardan	02/04/2008	28/03/2017	
12	Sajjad Haider Jan	B.Sc (Civil)	11/05/1970	Swat	23/04/1995	28/03/2017	
13	Muhammad Ali Khan	B.Sc (Civil)	15/02/1978	Lakki Marwat	30/12/2008	14/11/2017	
14	Muhammad Zubair	B.Sc (Civil)	05/04/1985	N.W.A.	30/12/2008	14/11/2017	
15	Abdus Salam	B.Sc (Civil)	04/10/1972	N.W.A.	03/07/1994	18/05/2018	
16	Shafeeq-ur-Rehman	B.Sc/M.Sc(Civil)	14/04/1983	Abbottabad	17/03/2009	14/11/2017	
17	Muhammad Arif	B.Sc (Civil)	20/04/1965	Peshawar	11/12/1990	18/05/2018	
18	Shahab Ahmad	B.Sc/M.Sc (Civil)	10/04/1984	Peshawar	21/10/2010	08/10/2018	


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Sl. No.	Name of Officer	Academic Qualification	Date of Birth	Domicile	Date of Ist Entry in Govt. Service	Date of Appointment/Promotion in Present Grade	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
19	Abdul Samad	B.Sc (Civil)	01/01/1986	Swat	21/10/2010	08/01/2019	
20	Ghulam Moin-ud-Din	B.Sc (Civil)	22/02/1986	Peshawar	24/12/2010	08/01/2019	
21	Naveed Khan	B.Sc (Civil)	05/04/1986	Peshawar	24/12/2010	08/01/2019	
22	Sami Ullah	B.Sc/M.Sc (Civil)	15/04/1986	Tank	24/12/2010	08/01/2019	
23	Fawad Ahmad Abbasi	B.Sc (Civil)	12/07/1986	Abbottabad	24/12/2010	08/01/2019	
24	Zeeshan Ahmad	B.Sc/M.Sc (Civil)	10/05/1985	Mohmand Agy	24/12/2010	08/01/2019	
25	Arsalan Zeb	B.Sc (Civil)	17/04/1986	Swabi	24/12/2010	08/01/2019	
26	Shaukat Ullah	B.Sc (Civil)	12/10/1969	S.W.Agency	24/12/2010	08/01/2019	
27	Muhammad Irfan	B.Sc/M.Sc (Civil)	01/07/1978	Karak	24/12/2010	08/01/2019	
28	Shahab Khan	B.Sc (Civil)	01/01/1981	DIKhan	24/12/2010	08/01/2019	
29	Muhammad Shoaib	B.Sc /M.Sc(Civil)	23/05/1985	Kohat	24/12/2010	08/01/2019	
30	Waqas Ali Shah	B.Sc (Civil)	01/04/1987	Peshawar	24/12/2010	10/05/2019	
31	Zarak Farooq	B.Sc (Civil)	16/12/1987	Nowshera	24/12/2010	10/05/2019	
32	Abdul Wadood	B.Sc (Civil)	14/08/1984	Karak	24/12/2010	10/05/2019	
32	Azam Amir	B.Sc (Civil)	05/09/1985	Peshawar	24/12/2010	10/05/2019	
32	Riaz Wali Shah	B.Sc (Civil)	11/03/1981	Chitral	24/12/2010	10/05/2019	
34	Muhammad Kamal	B.Sc (Civil)	20/04/1983	Lakki Marwat	24/12/2010	09/10/2019	
35	Muhammad Riaz Khan	B.Sc/M.Sc (Civil)	10/12/1978	N.W.Agency	24/12/2010	09/10/2019	
36	Waqas Arshad Tanoli	B.Sc (Civil)/PhD	23/01/1988	Abbottabad	24/12/2010	05/08/2021	
37	Babar Majeed	B.Sc (Civil)	18/02/1984	Peshawar	24/12/2010	05/08/2021	
38	Safeer Gul	B.Sc (Civil)	10/04/1984	Mansehra	24/12/2010	24/12/2010	
39	Rafi Ullah	B.Sc (Civil)	05/04/1985	Lakki Marwat	24/12/2010	05/08/2021	
40	Fareeha Malahat	B.Sc/M.Sc (Civil)	24/11/1985	Peshawar	24/12/2010	05/08/2021	
41	Muhammad Naeem	B.Sc (Civil)	05/02/1986	Haripur	24/12/2010	05/08/2021	

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Sl. No.	Name of Officer	Academic Qualification	Date of Birth	Domicile	Date of 1st Entry in Govt. Service	Date of Appointment/Promotion in Present Grade
(1)	(2)	(3)	(4)	(5)	(6)	(7)
42	Inayat-ur-Rahman	B.Sc/M/Sc (Civil)	20/04/1986	Mardan	24/12/2010	05/08/2021
43	Fazli Wahab	B.Sc (Civil)	09/05/1987	Malakand	24/12/2010	05/08/2021
44	Muhammad Bilal Afzal	B.Sc (Civil)/MS (Envl)	20/01/1988	Abbottabad	24/12/2010	05/08/2021
45	Syed Hakim Shah	B.Sc (Civil)	13/06/1977	UDA Hazara	24/12/2010	05/08/2021
46	Muhammad Riaz	B.Sc (Civil)	07/04/1980	Hangu	24/12/2010	05/08/2021
47	Aamir Javaid	B.Sc (Civil)	03/06/1987	Peshawar	24/12/2010	05/08/2021
48	Mehdi Raza	B.Sc (Civil)	10/02/1985	Kurram Agy	24/12/2010	05/08/2021
49	Waqas Khan	B.Sc (Civil)	15/12/1985	Nowshera	24/12/2010	10/01/2022
50	Muhammad Afaq Khalid	B.Sc (Civil)	18/03/1987	Hangu	24/12/2010	05/08/2021
51	Muhammad Zahid	B.Sc (Civil)	10/03/1987	UDA Mansehra	24/12/2010	05/08/2021
52	Abid Ali	B.Sc/MS (Civil)	30/06/1978	Mohmand Agy	24/12/2010	05/08/2021
53	Khalid Mehmood	B.Sc (Civil)	01/03/1983	S.W.Agency	24/12/2010	05/08/2021
54	Muhammad Umair Anwar	B.Sc (Civil)	30/06/1987	Battagram	24/12/2010	05/08/2021
55	Mohsin Zafar	B.Sc (Civil)	16/09/1982	Peshawar	24/12/2010	05/08/2021
56	Sifat Ullah Khan	B.Sc (Civil)	02/02/1983	FR Bannu	24/12/2010	05/08/2021
57	Sayad Nasir Jehan	B.Sc/MS (Civil)	24/06/1984	Buner	24/12/2010	05/08/2021
58	Farman Ullah	B.Sc (Civil)/ M.Sc (Geo Tech Engg)	06/03/1985	Karak	24/12/2010	05/08/2021
59	Azmat Ullah	B.Sc/MS (Civil)	04/04/1986	S.W.Agency	24/12/2010	05/08/2021
60	Zia-Ul-Islam	B.Sc (Civil)	02/02/1987	N.W.Agency	24/12/2010	05/08/2021
61	M.Usman Yousaf Shirwari	B.Sc(Civil)/ MS (Engr. Mang)	25/06/1987	Kohat	24/12/2010	05/08/2021
62	Shahab-ud-Din	B.Sc (Civil)	02/05/1977	Nowshera	24/12/2010	05/08/2021

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Sl. No.	Name of Officer	Academic Qualification	Date of Birth	Domicile	Date of 1st Entry in Govt. Service	Date of Appointment/ Promotion in Present Grade	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
63	Ahmad Zeb Khan Afridi	B.Sc (Civil)	12/08/1984	Peshawar	24/12/2010	05/08/2021	
64	Abdul Tahir Jamil	B.Sc/MS (Civil)	27/01/1985	Swabi	24/12/2010	05/08/2021	
65	Muhammad Nissar Khan	B.Sc (Civil)	05/04/1985	S.W.Agency	24/12/2010	05/08/2021	
66	Imad Ahmad	B.Sc (Civil)	01/04/1988	Peshawar	24/12/2010	05/08/2021	
67	Maqbool-e-Azam	B.Sc (Civil)	08/02/1976	Chitral	24/12/2010	05/08/2021	
68	Javed Iqbal Khan	B.Sc (Civil)	13/06/1977	N.W.Agency	24/12/2010	05/08/2021	
69	Shah Nawaz Khan	B.Sc/MS (Civil)	07/04/1980	Malakand	24/12/2010	05/08/2021	
70	Farman Ullah	B.Sc (Civil)	25/03/1987	Hangu	24/12/2010	05/08/2021	
71	Abid Khan	B.Sc (Civil)	04/04/1980	Malakand	24/12/2010	05/08/2021	
72	Nouman Bashir	B.Sc (Civil)	14/08/1978	DIKhan	24/12/2010	05/08/2021	
73	Haseeb-ur-Rehman	B.Sc (Civil)	04/11/1985	Abbottabad	24/12/2010	05/08/2021	
74	Inham-ul-Haq	B.Sc (Civil)	30/03/1987	Abbottabad	29/10/2011	05/08/2021	
75	Yasir Mehmood	B.Sc (Civil)	01/09/1984	Haripur	29/10/2011	05/08/2021	
76	Javaria Naseem Golra	B.Sc (Civil)	23/12/1987	Mansehra	29/10/2011	05/08/2021	
77	Javeria Taimur	B.Sc (Civil)	06/09/1986	Peshawar	29/10/2011	05/08/2021	
78	Rabia Hanan	B.Sc (Civil)	23/03/1988	Peshawar	29/10/2011	05/08/2021	
79	Shahana Mujeeb	B.Sc/M.Sc (Civil)	30/09/1987	Peshawar	29/10/2011	10/01/2022	
80	Afzal Khan	B.Sc (Civil)	27/09/1963	Charsadda	12/12/1990	10/01/2022	
81	Mian Iqbal Shah	B.Sc (Civil)	10/04/1963	Nowshera	16/12/1990	10/01/2022	

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Sl. No.	Name of Officer	Academic Qualification	Date of Birth	Domicile	Date of 1st Entry in Govt. Service	Date of Appointment/Promotion in Present Grade	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
82	Allah Nawaz	B.Sc (Civil)	05/06/1965	DIKhan	11/12/1990	10/01/2022	
83	Obaidullah	B.Sc (Civil)	01/04/1963	Karak	12/12/1990	10/01/2022	
84	Wajid Ali	B.Sc (Mech)	13/01/1966	Charsadda	24/12/1990	10/01/2022	
85	Shah Faisal	B.Sc (Civil)	21/02/1964	Kohat	14/03/1988	10/01/2022	
86	Hamraz Khan	B.Sc (Civil)	10/04/1964	Karak	15/03/1988	10/01/2022	
87	S.Mujtaba Hussain	B.Sc (Civil)	02/01/1989	Kurram Agcy	30/04/2013	10/01/2022	
88	Wahidullah	B.Sc/MS (Civil)	10/12/1981	F.R.Tank	07/05/2013	10/01/2022	
89	Saud Khan	B.Sc (Civil)	14/08/1985	Swabi	22/04/2013	10/01/2022	
90	Najm-ud-Din	B.Sc (Elect)	12/01/1987	Dir Lower	06/03/2013	10/01/2022	
91	Shahroon Khalil	B.Sc (Mech)	01/03/1989	Peshawar	06/03/2013	10/01/2022	
92	Zahid Hussain	B.Sc (Elect)	25/03/1986	Kurram Agy	06/03/2013	10/01/2022	
93	Tahira Gul	B.Sc (Civil)	03/05/1989	Haripur	22/04/2013	10/01/2022	
94	Shahzad Naseer	B.Sc (Civil)	09/07/1986	Mardan	22/04/2013	10/01/2022	
95	Muhammed Irshad	B.Sc (Civil)	03/07/1978	Nowshera	22/04/2013	10/01/2022	
96	Shariq Pervez	B.Sc (Civil)	06/07/1989	Peshawar	22/04/2013	10/01/2022	

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TENTATIVE SENIORITY LIST OF SUPERINTENDING ENGINEERS BS-19
COMMUNICATION AND WORKS DEPARTMENT As Stood On 20.01.2022

Sl No	Name of Officer	Academic Qualification	Date of Birth	Domicile	Date of Entry Into Govt Service	Date of appointment/ Promotion into Present Grade	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1.	Shakir Habib	B. Sc. (Civil)	30/03/1964	Kohat	26/05/1988	05/06/2015	24.3.24
2.	Ahmad Nabi Sultan	B. Sc. (Civil)	30/01/1964	Swat	26/09/1987	01/09/2016	29.1.24
3	Muhammad Nawaz	B. Sc. (Civil)	15/02/1962	Mohmand	26/05/1988	21/11/2019	14.02.22
4	Muhammad Tariq-I	B. Sc. (Civil)	12/01/1964	Malakand	26/05/1988	09/10/2018	11.01.24
5	Jamil Ahmad	B. Sc. (Civil)	20/11/1962	Malakand	16/09/1987	22/01/2019	19.11.22
6	Muhammad Adil	B. Sc. (Civil)	05/08/1964	Peshawar	16/09/1987	25/01/2019	04.08.24
7	Syed Yousaf Shah	B.Sc. (Civil)	03/03/1963	Mansehra	22/09/1987	11/08/2021	2.03.23
8	Luqman Shafi Khattak	B.Sc. (Civil)	10/11/1962	Karak	09/01/1988	11/08/2021	9.11.22
9	Amin-ul-Khaliq	B.Sc/M.S(Civil)	08/12/1962	Dir	11/10/1989	11/08/2021	7.12.22
10	Zulfiqar Ali	B.Sc. (Civil)	27/06/1963	Peshawar	05/03/1990	11/08/2021	26.06.23
11	Shahzad Afzal Khan	B.Sc (Civil) MS (Envt)	01/08/1964	Peshawar	05/03/1990	11/08/2021	31.7.24
12	Ejaz Ahmad	B.Sc/M.Sc (Civil)	14/04/1967	Charsadda	12/11/1989	11/08/2021	13.04.27
13	S.Raffaqt Shah	B.Sc (Civil)	08/04/1966	Abbottabad	01/07/1991	11/08/2021	07.04.26
14	Jalal-ud-din Mahsud	B.Sc (Civil)	17/03/1967	S.W.Agency	01/07/1991	11/08/2021	16.03.27
15	Muhammad Ali	B. Sc (Civil)	27/09/1965	Peshawar	01/07/1991	11/08/2021	26.09.25
16	Mansoor Qadir	B. Sc. (Civil)	31/08/1970	Karak	03/12/1995	11/08/2021	30.08.30
17	Jamshid Ali Khan	B. Sc. (Civil)	04/09/1971	Karak	03/12/1995	11/08/2021	03.09.31
18	Naveed Iqbal	B. Sc. (Civil)	13/02/1971	Kohat	03/12/1995	11/08/2021	12.02.31

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Sl No	Name of Officer	Academic Qualification	Date of Birth	Domicile	Date of Entry into Govt Service	Date of appointment/ Promotion into Present Grade	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
19	Muhammad Israr	B. Sc/M.Sc (Civil)	12/04/1963	Peshawar	03/12/1995	11/08/2021	11.04.23
20	Noor Sahib Khan	B. Sc. (Civil)	01/01/1967	N.W.A.	03/12/1995	11/08/2021	31.01.27
21	Khalid Muhammad Wazir	B.Sc. (Civil)	24/12/1969	F.R. Bannu	15/01/1994	11/08/2021	23.12.29
22	Muhammad Arif Khan	B.Sc. (Civil)	20/10/1965	Malakand	03/12/1995	11/08/2021	19.10.25
23	Muhammad Sajid	B.Sc. (Civil)	25/09/1968	Malakand Agy	03/12/1995	10/01/2022	24.09.28
24	Imran Hussain	B.Sc (Civil)	03/10/1980	Mardan	28/05/2007	11/08/2021	2.10.40
25	Asad Ali	B.Sc (Civil)/M.Sc (transp)	01/04/1980	Kurram Agy	28/05/2007	11/08/2021	31.03.40
26	Sohail Idrees	B.Sc (Civil)	13/10/1976	Swabi	28/05/2007	10/01/2022	12.10.36
27	Qudratullah Khan	B.Sc (Civil)	25/01/1974	Bannu	28/05/2007	10/01/2022	24.01.34
28	Abid Ali	B.Sc (Civil)	02/04/1981	Peshawar	28/05/2007	11/08/2021	1.04.41
29	Muneer Khan	B.Sc (Civil)	11/10/1964	Malakand	02/05/1995	10/01/2022	10.10.24.

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**TENTATIVE SENIORITY LIST OF CHIEF ENGINEERS BS-20
COMMUNICATION AND WORKS DEPARTMENT As Stood On 20.01.2022**



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Sl No	Name of Officer	Academic Qualification	Date of Birth	Domicile	Date of Entry into Govt Service	Date of appointment/ Promotion into Present Grade	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1.	Muhammad Uzair	B.Sc/MS (Civil)	16/04/1963	Malakand	16/09/1987	28/05/2018	15.04.23
2.	Muhammad Tariq	B. Sc/MS (Civil)	10/04/1963	Malakand	16/09/1987	28/05/2018	9.04.23
3.	Ejaz Hussain Ansari	B. Sc. (Civil)	22/07/1962	D.I.Khan	26/05/1988	28/05/2018	21.07.22
4.	Shahid Hussain	B. Sc/MS(Civil)	03/04/1962	Peshawar	26/05/1988	12/10/2018	2.04.22
5.	Noor-us-Saeed Shah	B.Sc. (Civil)	02/03/1962	Mardan	26/05/1988	17/08/2021	01.03.22
6.	Amer Nadeem Durrani	B.Sc. (Civil)	28/04/1962	Peshawar	26/05/1988	17/08/2021	27.04.22
7.	Rafi-ud-Din	B. Sc. (Civil)	01/05/1962	Abbottabad	26/09/1987	17/08/2021	30.04.22
8.	Hamid Ajmal Khan	B. Sc. (Civil)	01/08/1962	Abbottabad	26/05/1988	17/08/2021	31.07.22
09	Bakht Rawan	B. Sc. (Civil)	05/03/1962	Malakand	26/05/1988	12/01/2022	04.03.22
10	Munir Hussain	B.Sc/M.S. (Civil)	10/04/1962	Mansehra	26/05/1988	12/01/2022	09.04.22

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BEFORE PESHAWAR HIGH COURT, PESHAWAR

W. P No. 2707 2021

Shaukat Ullah Shah & others

Vs

Government of Khyber Pakhtunkhwa & others

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Through

Petitioner

Date: 29-06-21

~~Mubashir Manzoor~~
Advocate, High Court

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(1)

BEFORE THE HONORABLE PESHAWAR HIGH COURT, PESHAWAR

Writ Petition No: 2707/2021

1. **Shaukat Ullah Shah**
Assistant Engineer
Communication & Works Department
Government of Khyber Pakhtunkhwa
2. **Muhammad Ghazanfar Ullah**
Sub Divisional Officer
Communication & Works Department
Government of Khyber Pakhtunkhwa
VERSUS
1. **Govt. of Khyber Pakhtunkhwa**
Through Chief Secretary
Civil Secretariat, Peshawar
2. **Govt. of Khyber Pakhtunkhwa**
Through Secretary Establishment & Administrative Department
Civil Secretariat, Peshawar
3. **Govt. of Khyber Pakhtunkhwa**
Through Secretary Law & Parliamentary Affairs Department
Civil Secretariat, Peshawar
4. **Govt. of Khyber Pakhtunkhwa**
Through Secretary Communication & Works Department
Civil Secretariat, Peshawar

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF
ISLAMIC REPUBLIC OF PAKISTAN 1973

Respectfully Sheweth

Briefly fact giving rise to present petition are as under;

FACTS

1. That the petitioners are law abiding and respectable citizen of Pakistan and having fundamental rights as guaranteed by the Constitution of Islamic Republic of Pakistan, 1973(hereinafter referred to as "Constitution").
2. That the petitioners having Bachelors of Technology (hereinafter referred to as "B.Tech(Hons) were initially appointed as Sub Engineers (RPS-11) in


ATTESTED

Communication & Works Department (Respondent No.4) and periodically promoted to the next higher scales up to the post of Sub-Divisional Officer BPS-17).

3. That the petitioners after rendering almost 32 Years of service in the Department of Respondent No.4 are the senior most SDOs with B.Tech(Hons) degree in the seniority list maintained by the department.

4. That the Pakistan Engineering Council is an autonomous body and its functions are enumerated by the Act 1976. Grant of accreditation to the Engineering program of Universities and registration of engineer is the sole duty of the Pakistan Engineering Council whereas the National Technology Council (hereinafter referred to as "NTC") is a body delegated by Higher Education Commission to regulate the technology related programs.

5. That the Hon'ble Supreme Court of Pakistan in Suo Motu Review Petition No 52 of 1993 reported as Fida Husain Vs. The Secretary, Kashmir Affairs and Northern affairs Division, Islamabad and another (PLD 1995 SC 701) has held *that the Government had the exclusive domain to decide, whether any particular qualification would be considered sufficient for promotion from any particular grade to a higher grade and that government is vested with the power to change such policy from time to time, whereas Pakistan engineering council has exclusive domain to decide, as to whether a particular qualification could be equated with another academic qualification but it has no power to say that a civil servant/employee holding a particular academic qualification could not be promoted from a particular grade to a higher grade.*

(Copy of Review Petition No 53 of 1993 is Attached as "Annexure A")


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6. That the High Education Commission vide letter dated 21-05-2007 clarified equivalency of the B.Tech (Hons) Degree at par with B.E/B.Sc Engineering Degree for the purpose of employment in light of the decision taken by the University Grants Commission in 39th meeting held on 12-02-1998.

(Copy of Higher Education Commission letter dated 21-05-2007 is attached as Annexure "B").

7. That in pursuance of the Judgment of Apex Court in Sou-Moto Petition No 52 of 1993 and clarification of High Education Commission, Respondent No 4 carried out amendment in NWFP Civil Servants (Appointment, Promotion and Transfer) Rules by reserving quota for promotion of B.Tech(Hons) to the post of SDO-17 including the petitioners in year 2016.

8. That the petitioner filed representation before Respondent No 4 on 15-08-2017 for amendment in the Recruitment Rules-Reservation of 20percent Quota for promotion of B.Tech(Hons) Degree Holder SDOs(BPS-17) to the Post of XEN (BPS-18) and subsequently Respondent No 3 vide letter dated 24-10-2017 advised Respondent No 4 to make amendment in the recruitment rules and to reserve 20% quota for promotion of B.Tech(Hons) SDO(BPS-17) to the post of Executive Engineer(BPS-18) . It is to be noted that Respondent No 4 being Chairman of Standing Service Rules Committee convened meeting on 28-11-2017 but amendments were not approved in KP(Appointment, Promotion and Transfer Rules 2010 and the same are pending approval by Respondent No.4 for no reason.

(Copy of , Representation dated 15-08-2017, Letter by Law, Parliamentary Affairs & Human Rights Departments dated 24-10-2017 & Working Paper is attached as Annexure "C, CI, ") .


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9. That Respondent No 2 & 3 Vide letter dated 28 -01-2021 & 3-02-2021 advised Respondent No.4 to place before SSRC amendments in the appointment and recruitment Rules, 2010 of Communication & Works Department but to deprive petitioners from promotion to BPS-18, Respondent No 4 being Chairman of SSRC is reluctant to convene SSRC meeting and this long delay is against the principle of natural justice hence effective upon rights of the petitioners.

(Copy of Letter Establishment and Admin Department dated 28-01-2021 & Letter of Law, Parliamentary Affairs & Human Rights Department dated 03-02-2021 As Annexure "D & D1")

10. That the Finance department vide letter dated 17-02-2021 created 596 posts in the Communication & Works Department (Respondent No 4) including post of XEN and alike categories of BPS-18 and the petitioners being senior most in the seniority list serving SDOs in BPS-17 are eligible for Promotion to (BPS-18)

(Copy of creation of 596 posts in Communication & Work Department dated 17-02-2021 as Annexure "E")

11. That the petitioners have time and again approached Respondents for their promotion and granting 20 percent Quota being qualified B.Tech(Hons) engineers to the Post of XEN and other alike categories of BPS-18 but with no fruitful result therefore the petitioners have no other alternate remedy but to invoke the Constitutional Jurisdiction of this Honorable Court inter alia on the following grounds

GROUND

- A Firstly the petitioners are entitled to be considered for promotion being B.Tech(Hons) degree holder engineers to the Post of Executive Engineers


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(3)

and alike post of BPS-18 and refusal thereof is illegal, discriminated and not binding upon the rights of the petitioner.

- B. Secondly, the Government of Sindh vide notification dated 19.03-2014 amended Sindh Civil Servants (Appointment, Promotion and Transfer) Rules 1974 wherein 20percent quota was fixed for B.Tech(Hons) and Diploma Holders for the promotion to (BPS-18) , the said notification was challenged before the Sindh Service Tribunal and finally Apex Supreme Court of Pakistan in C.P No 78-K of 2015 title Maula Bux Shaikh & others versus Chief Minister Sindh & others authenticated the 20 percent Quota of B-Tech (Hons) and Diploma Holders for the promotion in BPS(18).

(Copy of Honorable Supreme Court Judgment is annexed as Annexure "F")

- C Thirdly Article 25 of the Constitution of Pakistan 1973, guarantees to every person the right to equality before the law and the equal protection of the laws. The guiding principal of Article 25 is that all persons and things similarly circumstanced shall be treated alike both in respect of privileges conferred and liabilities imposed. The intentional delay in convening Standing Service Rule Committee by Respondent No 4 infringes upon the fundamental Rights Guaranteed by the Constitution.
- D Fourthly, in pursuance of the Judgment of Apex Court in Sou-Moto Petition No 52 of 1993 and clarification of High Education Commission , Provincial Works Department i.e Khyber Pakhtunkhawa Local Government & Rural Development made amendments in their existing recruitment rules vide notification dated 13-05-2016, while providing 20% quota for B.Tech (Hons) Degree holder SDOs/AEs(BPS-17)for onward promotion. It is pertinent to mention here that the Public Health engineering department Khyber Pakhtunkhwa also allowed onward promotion to


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(6)

B.Tech(Hons) Degree Holder Engineers (BPS-18)in Standing Service Rules Committee on 13-03-2017.

(Copy of letter dated 13-05-2016 is attached as annexure "G& G1")

E Fifthly, Irrigation Department in SSRC meeting held on 29-04-2021 has reserved 20 percent quota for promotion of engineers possessing B.Tech(Hons) degree and DAE to the post of XEN and other BPS-18 Posts. It is pertinent to mention here that the matter of reservation of 20 percent quota for the B.Tech Engineers & DAE for promotion to (BPS-18) has been reserved in all other Provinces of the country but the officials of Civil & Works Department, Government of Khyber Pakhtunkhwa is reluctant and hesitant to grant such quota.

(Copy of SSRC meetings dated 29-04-2021 are attached as Annexure "H")

F Sixthly, the Standing Service rules committee meeting was lastly held in the year 2017 but despite of advice by Khyber Pakhtunkhawa law and Parliamentary affairs department vide letter dated 03-02-2021 meeting of SSRC was not convened due to reasons well known to them. However, to frame policy is the domain of the government but the government cannot keep such matter hanging for indefinite period particularly when such policy exists in other Engineering department.

G Seventhly, the Peshawar High Court Peshawar Vide its Judgment dated 25-04-2013 passed in Writ Petition No.328/2013 title Zahid Hussain versus Chief Secretary has categorically held as under

5. the degree of B.Tech (Hons) and the degree of B.E/B.SC engineering were although held having distinct discipline of knowledge in field of Engineer and Technology but for the

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(7)

equally and Writ Petition No. 1124 of 2006 decided on 21-02-2003 having been filed in similar circumstances was allowed and no appeal has been preferred so far against the said judgment. In the circumstances present writ petition merits acceptance.

Consequently, the writ petition is allowed as prayed for in the light of judgment referred to above

Announced :-24-04-2013

- H. Seventhly, despite letters issued by Respondent No 2 & 3, the inaction of Respondent No 4 for delaying amendments in service rules for promotion to the post of BPS-18 in Communication & Works is in complete violation of the established principles of equity, law, justice and propriety, calling for interference under Article 199 of the Constitution of Pakistan 1973 by the Honorable Peshawar High Court.
- J. Eighthly, the Sindh High Court in C.P No. 4235/2012 title Mehr Ali Dayo versus Government of Sindh having identical facts directed the Government of Sindh to frame the policy when such policy exist in other Engineering department. Order is produced for ready reference

Since it is clear that after regrouping there exists no policy regarding promotion on account of 20% quota, reserved for promotion fixed for diploma holders as exists in other Engineering Department of the Government but same is pending process. In absence of such a policy the claim of the petitioner cannot be accepted because the right to claim on basis of policy shall only be available when such a policy (law) exists and not in absence thereof for simple reason that it would be the law (policy) only which will give a right to claim the promotion. To frame policy is the domain of the government but the government cannot keep such matter hanging for indefinite period particularly when such policy exists in other Engineering department. Thus we dispose of this petition

[Signature]
ATTESTED

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(3)

- (i) The Government shall also undertake exercise to frame the policy in Works and Services Department keeping in view the fact of existence of certain percentage of quota, reserved for promotion in other Engineering department;
- (ii) The respondent / quarter concern shall ensure that no unqualified person holds a post / job which requires special skills of professional engineering, as provided by Pakistan Engineering Council;
- (iii) any person posted on such post will be deemed illegal and such persons shall be removed from such posts without further delay;
18. The quarter concerned shall ensure compliance of these directions within a period of three (03) months and shall submit compliance report thereof.
19. Hence, instant petition is dismissed in the above terms.

(Copy of Sindh High court Order in C.P No. 4235/2012 title Mehr Ali Dayo versus Government of Sindh is attached as Annexure "K")

1. Any other grounds can be taken at the time of arguments if necessary.

It is therefore humbly prayed that on acceptance of this Writ petition.

PRAYER

A Direct Respondent No 4 (Secretary Communication & Works Department), Government of Khyber Pakhtunkhwa being the Chairman of SSRC to convene SSRC meeting at the earliest in accordance with law.


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(9)

B. Grant any other relief that this honorable Court deems fit and appropriate in the facts and circumstances of the case.

Petitioner

Through

Mubashir Manzoor
Advocate High Court

INTERIM RELIEF.

By way of this interim relief respondent No 4 be restrained to initiate any process of promotion of XEN or other categories of BPS 18 till the final disposal of main Writ Petition.

ADVOCATE

LIST OF BOOKS:

1. Constitution of Islamic Republic of Pakistan, 1973
2. Any other law books according to need

ADVOCATE


ATTESTED

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BEFORE THE HONORABLE PESHAWAR HIGH COURT, PESHAWAR.

In
W.P No. ___/2021

Shoukat Ullah Shah & Others

Versus

Government of Khyber Pakhtunkhawa

AFFIDAVIT

I Shoukat Ullah Shah S/o Syed Yaqoob, Assistant Engineer, Civil & Works Department, Government of Khyber Pakhtunkhawa do hereby solemnly affirm and declare on oath that the contents of the writ petition are true and correct and nothing has been concealed from this Honorable Court.

Deponent

Case 11201-0376771-9
0333-9125822

Identified By

Mubashir Manzoor
Advocate High Court
Peshawar

21496

21 of June	21	Shoukat Ullah
22 Syed Yaqoob Shah	22	Lakki Manjori
		Mubashir Manzoor

radio verified 29/06/2021

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ATTESTED

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10A

Reset Password

Logout



Online Verification of FTDKRA Identity Cards

Card Verification

Identity Card Number : 11201-0376771-9

Verification Date : June 28, 2021

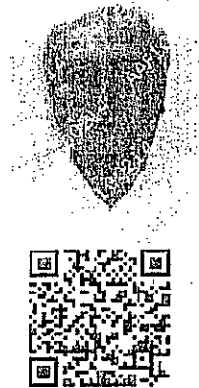
[Start New Verification](#)

This person has been given exemption of expiry being Senior Citizen and does not require renewal for rest of his or her life.

CNIC Verification

Card Status: Verified

Name	شوکت اہل شاہ
Father Name	سید یحیٰی شاہ
Gender	مرد
Identification Mark	بازو پر نشان زخم
Citizen Number	11201-0376771-9
DOB	28-08-1962
Issue Date	07-05-2010
Date of Expiry	30-04-2023
Card Type	ID Card
Old NIC	15662049420



Present Address

فیز 6 حیات آباد، مکان نمبر 198، سٹریٹ نمبر 13، پکٹر
بشار، F-9

Permanent Address

سٹور، تحصیل وضلع لکی مروت

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ATTESTED

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(11)

BEFORE PESHAWAR HIGH COURT, PESHAWAR

W. P No. _____ 2021

Shaukat Ullah Shah & others

Vs

Government of Khyber Pakhtunkhwa & others

ADDRESSES OF PARTIES

PETITIONERS:

1. **Shaukat Ullah Shah**
Assistant Engineer
Communication & Works Department
Government of Khyber Pakhtunkhwa
2. **Muhammad Ghazanfar Ullah**
Sub Divisional Officer
Communication & Works Department
Government of Khyber Pakhtunkhwa

RESPONDENTS:

1. **Govt. of Khyber Pakhtunkhwa**
Through Chief Secretary
Civil Secretariat, Peshawar
2. **Govt. of Khyber Pakhtunkhwa**
Through Secretary Establishment & Administrative Department
Civil Secretariat, Peshawar
3. **Govt. of Khyber Pakhtunkhwa**
Through Secretary Law & Parliamentary Affairs Department
Civil Secretariat, Peshawar
4. **Govt. of Khyber Pakhtunkhwa**
Through Secretary Communication & Works Department
Civil Secretariat, Peshawar

Through

Petitioner

Mubashir Manzoor
Advocate, High Court

Date: 28-06-21

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ANNEXURE "A" (12)

P.L.D 1995 Supreme Court 701

Present: Sajjad Ali Shah, C.J., Ajmal Khan, Manzoor Hussain Sial, Muhammad Munir Khan and Mir Hazar Khan Khoso, JJ

FIDA HUSSAIN--- Petitioner

versus ...

THE SECRETARY, KASHMIR AFFAIRS AND NORTHERN AFFAIRS DIVISION, ISLAMABAD and another- Respondents

Suo Motu Review Petition No .52 of 1993, decided on 5th June, 1995.

(On review froze the judgment dated 5-12-1992 of the Supreme Court of Pakistan passed in Civil Appeal No. 216 of 1991;

(a) Pakistan Engineering Council Act (V of 1975)---

---S. 8- -Constitutions of Pakistan (1973): Arts. 25 & 212- --Promotion of civil servant from any particular grade to higher grade Authority competent to order such promotion- --Government has the exclusive domain to decide whether any particular qualification would be considered sufficient for; promotion from any particular grade to higher grade and Government is; vested with exclusive domain to change such policy from time to time, for no body could claim any vested right in that policy- --Pakistan Engineering Council, however, has exclusive domain to decide, as to whether any particular qualification could be equated with another academic qualification but would have no power to say that civil servant/employee holding particular academic qualification could not be promoted from a particular grade to higher grade- - Government cannot abdicate its power to decide such question in favour of a corporate body which is not in its control nor it can act in a manner which might be violative of Art. 25 of the Constitution on account of being discriminatory.

Muhammad Siddique Nasim v. Secretary, Government of the Punjab, Irrigation and Power Department, Lahore 1987 SCMR 302; Muhammad Azim Jamali and 11 others v. Government of Pakistan through Secretary/Chairman, Ministry of Railways and 33 others 1992 PLC (C.S.) 637 and Pakistan Diploma Engineers Federation (Registered) through its Chairman v. Federation of Pakistan through Secretary, Ministry of Water and Power, Government of Pakistan, Islamabad and 9 others 1994 SCMR 1807 ref.

(b) Pakistan Engineering Council Act (V of 1975)---

---Ss. 2 & 8- --Pakistan Engineering Council- --Functions- -Pakistan Engineering Council is vested with functions to regulate persons qualified to practise as professional engineers and consulting engineers and not persons who were employed in the Government or semi-Government organizations- - Where Government had employed any professional engineer, for performing professional engineering work as envisaged in cl. (k) of S.2 of the Act, provisions of the Act would be attracted and not otherwise.

(c) Civil service--.

---Pakistan Engineering Council Act (V of 1975), Ss. 2 & 8-- Constitution of Pakistan (1973), Arts. 25, 212 & 188- Supreme Court Rules, 1980, O.XXVI, R.1- --Review of judgment of Supreme Court-- Civil servant- Right to promotion on basis of improvement of qualifications- Government had initiated two degree courses for diploma-holders in Engineering i.e. B. Tech. (Pass) and B. Tech. (Honours), petitioner passed both such examinations and claimed promotion on basis of his improved qualifications Petitioner was not promoted on the ground that Pakistan Engineering Council did not recognize B. Tech. (Honours) as equivalent to B.Sc. Engineering degree- -Petitioner's departmental appeal and appeal before Service Tribunal did not succeed- Supreme Court dismissed petitioner's appeal on the ground that decision of Service Tribunal was based on judgment of Supreme Court in Muhammad Siddique Nasim's case (1987 SCMR 302)---Review- --Petitioner having improved his qualifications on the undertaking of Government that diploma holder engineers would be provided facility of improving their qualifications by introducing B. Tech. (Pass) and B. Tech. (Honours) degree course, and that latter degree would be considered equivalent to B.Sc. Engineering degree was entitled to be considered for promotion to B-17 Grade- -Important aspect of the case which escaped notice of Supreme Court in its judgment under review was that some other civil servants/employees placed in the same position as petitioner had been considered for promotion to B-17 Grade and in fact were promoted whereas petitioner was denied such benefit which amounted to violation of Art. 25 of the Constitution-- -Judgment under review was,

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thus, liable to be recalled for having proceeded on wrong premises- --Petitioner's appeal was allowed and judgment of Service Tribunal was set aside- --Authority was directed to consider petitioner's case for promotion to B-17 Grade.

Mukhtar Ahmad and 37 others v. Government of West Pakistan through the Secretary, Food and Agriculture, Civil Secretariat, Lahore and another PLD 1971 SC 846 and I. A. Sharwani and others v. Government of Pakistan through Secretary, Finance Division, Islamabad and others 1991 SCMR 1041 ref.

(d) Civil service---

---Promotion- --Administrative decision- --Promotion of civil servant relating to specific qualifications- -- Government can exercise its discretion for future to provide that academic qualification of B. Tech. (Honours) would not be considered sufficient for promotion from B-16 to B-17 Grade if the same did not violate the principles of equality before law-- -Constitution of Pakistan (1973), Art.25.

Petitioner in person.

Raja Muhammad Bashir; Deputy Attorney-General of Pakistan with Bashir Ahmed Sheikh, Registrar, Pakistan Engineering Council for Respondents.

Date of hearing: 5th June, 1995.

JUDGMENT

AJMAL MIAN, J.-- The above suo motu review petition has been initiated by this Court to consider, whether the judgment rendered by the Court on 5-12-1992 in Civil Appeal No. 216 of 1991 is liable to be recalled.

2. The brief facts are that the petitioner was appointed as an Overseer/Sub-Engineer in Northern Area P.W.D. in 1971. It appears that the Federal Government, in order to encourage the diploma holders to improve their academic qualification, resolved to prescribe courses, namely, B. Tech. (Pass) and B. Tech. (Honours), the latter was treated equivalent to B.Sc. (Engineering) and Bachelor of Engineering, respectively, for the purpose of promotion. In this behalf, the then Minister of Education and Provincial "From: Mr. Abdul Hafeez Pirzada, Minister for Education and Provincial Coordination.

My Dear Governor,

As you may be aware the Polytechnic Diploma Holders had been agitating for a long time for provision of facilities for higher education. In order to resolve this issue in consultation with the Provincial Governments various Associations of the Polytechnic Diploma Holders, I convened a meeting on the 20th October, 1973 of the Chairman/Directors for Technical Education in the Provinces, Principals of Polytechnics, Representatives of Engineering Universities/Colleges and Representatives of various Associations of the Polytechnic Diploma Holders. It was decided that steps should be taken to introduce the degree programs for the polytechnic diploma holders without further delay.

2. As envisaged in the new Education Policy, the following programme was adopted. There will be two degree courses for diploma holders (i) B. Tech. (Pass) and (ii) B. Tech. (Honours).

3. Admission to the B. Tech. (Pass) course shall be subject to the candidates fulfilling the following minimum requirements:

(i) Three years diploma from a Polytechnic institute in first Division.

(ii) Two years, industrial training/experience. Candidates without industrial experience shall be required to undergo one year's supervised/guided practical training in industry to be arranged by the institution concerned.

(iii) Performance in the admission test.

4. B. Tech. (Pass) course will consist of a year's programme of studies at the institution. The degree of B.Tech. (Pass) shall be treated at par with a Bachelor's degree in Science.


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5. Candidates having successfully completed B. Tech. (Pass) degree course- shall be eligible for admission to a two years B. Tech. (Honours) course. The first year of this course will comprise supervised/guided industrial training during which the students shall be assigned specific projects relevant to their fields of study. The second year will consist of intensive study at the institution. B. Tech.

(Honours) shall be treated in par with B. Sc. (Engineering)/B.E. Degree.

It was also decided that so long as necessary facilities do not exist in Balochistan and N.-W.F.P. and other backward areas, Federal Government will arrange placement of students from these areas in other Provinces. You are requested to kindly direct the relevant authorities of your Province to implement these decisions urgently. With regards,

Yours sincerely,

(Sd.)

(Abdul Hafeez Pirzada):"

3. Pursuant to the above policy, the aforesaid proposed courses of B.Tech. (Pass) and B. Tech. (Honours) were initiated. It is the case of the petitioner that he passed B. Tech. (Pass) course in 1977 and B. Tech. (Honours) course in March, 1981, from N.E.D. University, Karachi. After improving his academic qualifications the petitioner resumed his duties in March, 1981, in the Northern Areas P.W.D. It is an admitted position that a number of employees who cleared B. Tech. (Pass) and B. Tech. (Honours) were promoted to BPS-17 by the authorities concerned. The petitioner was not promoted, the Administrator, Northern Areas, Gilgit, was informed by the Chief Engineer, Northern Areas P.W.D., that the petitioner could not be promoted as the Pakistan Engineering Council did not recognise B. Tech. (Honours) as equivalent to B.Sc. (Engineering) degree. Thereupon, the petitioner filed a department appeal on 2G-1-1989, which was rejected on 11-2-1990. Then he approached the Federal Service Tribunal through Appeal No.83(R) of 19(19) but the same was dismissed for the following reasons:-

"10. We have considered the arguments advanced by both sides as well as the objections submitted by Pakistan Engineering Council. In our view the letter of Minister for Education and Provincial Coordination dated 26-10-1973 was a letter laying down a policy, effect to which was to be given by issue of notifications by the Federal Government and the Provincial Governments. It appears that only the Government of Punjab issued a notification dated 1-2-1981 but withdrew it on 5-3-1985. Any notification to give effect to this policy decision was not issued by the Federal Government. The Pakistan Engineering Council which is the appropriate body to give opinion clearly stated in their letter dated 24-2-1982 to the Ministry of Education that B. Tech. (Hons.) was not equivalent to B.Sc. (Engineering) Degree. We are, therefore, of the view that the appellants appeal have no merit and are dismissed."

After that, the petitioner filed a petition for leave to appeal in this Court, which was granted to consider the various contentions raised by the learned counsel for the petitioner. The appeal was heard on 5-12-1992 and it was dismissed on the ground that the impugned judgment of the Tribunal was based on the judgment of this Court in the case of Muhammad Siddique Nasim v. Secretary Government of the Punjab, Irrigation and Power Department, Lahore (1987 SCMR 302). Then the petitioner filed a review petition, which was registered as a Suo Motu Review Petition.

4. We have heard the petitioner in person and Raja Muhammad Bashir, learned Deputy Attorney-General for the respondents. We have also perused the record. It appears to be an admitted position that pursuant to the above decision contained in the aforesaid letter dated 26-10-1973 of the Minister for Education and Provincial Coordination, two degree courses for diploma holders, namely, B. Tech. (Pass) and B. Tech. (Honours) had commenced. The employees who improved their academic qualification by passing the aforesaid examinations were given promotion by the Federal Government Departments as well as by the Government of Punjab. Upon failure of the Government of Punjab, the Punjab Service Tribunal had allowed a number of appeals filed by the aggrieved employees, copies of some of such decisions have been filed by the petitioner in the present proceedings. It seems to be also an admitted position that even in the petitioner department, certain employees who had passed B. Tech. (Honours) examination were given promotions to BPS-17. However, upon the receipt of communication from the Pakistan Engineering Council to the effect that B. Tech. (Honours) cannot be equated with B. Sc. (Engineering), the Punjab government as well as the federal Government stopped considering for promotion to BPS-17 the incumbents who had Passed B. Tech. (Honours). At this juncture, it may be, pertinent to refer to the letter of the Registrar of the Pakistan Engineering Council dated 30-4-1983.


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addressed to one Mr. Sajid Ali, General Secretary, Sui Northern Gas Sub-Engg. Association, in which the following statement of facts was made:

"The Council has approved B. Tech. (Hons.) as equivalent to B. Sc. Engineering which a Diploma Holder can pass after 4 years of passing the final examination in diploma. The Council has also equated AMIL Examination equivalent to B. Sc. Engineering. These facilities have been provided to those who want to improve their qualification become equivalent to B. Sc. Engineering. You are advised to improve your qualifications if you are registered as a Professional Engineer with the Council."

4-A. We invited the attention of the learned Deputy Attorney-General to the above portion of the aforesaid letter. He, after obtaining instructions from Mr. Bashir Ahmed Sheikh, Registrar of the Pakistan Engineering Council, stated that the words "The Council has approved B. Tech. (Hons.) as equivalent to B. Sc. Engineering" should be read as "The Government has approved B. Tech. (Hons.) as equivalent to B. Sc. Engineering". According to him, this was typographical error and the word "Council" has been used in place of the word "Government". We asked the Registrar of the Pakistan Engineering Council to produce any document to indicate that the above alleged typographical error was corrected. For that purpose, we adjourned the case till after tea break. The learned Deputy Attorney-General produced letter No. PEC/QEC/4-P dated 24-4-1984 of the Registrar, Pakistan Engineering Council addressed to the Director-General (Investigation-IV), Wafaqi Mohtasib (Ombudsman)'s Secretariat, Islamabad, wherein the following averment has been made:--

"We are extremely sorry to say that a small typographical error in writing the word 'Council' in place of 'Government' in the 5th para. of our letter dated 30-4-1981 has caused misunderstanding. It is confirmed that the course of B. Tech. (Hons.) has never been approved by the Pakistan Engineering Council. It was originally approved by the Government in 1973."

5. However, we are not impressed by the above explanation. A perusal of the above-quoted para. of the Pakistan Engineering Council's letter dated 30-4-1981 indicates that the words 'The Council' which are used as the first two words of the aforesaid para. could not have been written on account of typographical error as in the fifth line of the above para. it has been stated that "The Council has also equated AMIL Examination equivalent to B.Sc. Engineering". The use of the word "also" in the above referred subsequent portion of the above-quoted para. leads to the conclusion that the words "The Council" in the beginning of above para. could not have been used on account of typographical error. It is, therefore, evident that initially the Pakistan Engineering Council had approved to treat B. Tech. (Honours) equivalent to B.Sc. Engineering. However, subsequently it changed its stand. It appears that the University of Engineering and Technology, Lahore, through its Registrar's letter dated 15-10-1980 addressed to the Secretary Education, Government of Punjab, Lahore, intimated to the latter that the Equivalence Committee on the basis of the opinion contained in the working paper and after discussing the entire issue with the complete background, recommended that B. Tech. (Honours) degree in particular specialization may be equated with that of corresponding B. Sc. Engineering degree with the above University for the job purposes as Field Engineers

6. We are, therefore, inclined to hold that factually the policy decision contained in the above-quoted letter of Minister of Education and Provincial Coordination dated 26-10-1973 was implemented. Even if we were to hold that the Pakistan Engineering Council had not approved the above equivalisation of the above academic degrees, it would not make any difference as the basic question in the present case which escaped notice of the learned Judges of the Bench of this Court which rendered the judgment involved is, as to whether the Pakistan Engineering Council is competent to decide the question, whether a particular academic degree should be accepted as sufficient academic qualification for promotion of civil servants and employees of the semi Government organizations from a particular lower grade to a particular higher grade or is it within the domain of the Government or the semi-Government organization concerned. At this juncture, it may be pertinent to refer to a judgment of the High Court of Sindh in the case of Muhammad Azim Jamali and 11 others v. Government of Pakistan through Secretary/Chairman, Ministry of Railways and 33 others (1992 PLC (C.S.) 637), in which the facts were that the petitioners, who were 12 in number, were holding post of Assistant Executive Engineers (Grade-17) in Pakistan Railways, hereinafter referred to as the Railways. Respondents Nos.4 to 10 were holding posts as Executive/Divisional Engineers (Grade-18), whereas respondents Nos.11 to 34 were holding posts of Assistant Executive Engineers (Grade-17) in the Railways and were claiming promotion to the posts of Executive/Divisional Engineers (Grade-18). The petitioners filed a Constitution petition, in which they averred that respondents Nos.4 to 34, who had diplomas from various institutions, were not professional Engineers in terms of clause (j) of section 2 of the Pakistan Engineering Council Act, 1975, hereinafter referred to as the Act, and, therefore, were not entitled to undertake any professional engineering work as defined in clause (k) of section 2 of the Act. It was further averred that in spite of the efforts on the part of the petitioners, the Government of Pakistan, the Chairman Railways Board and the General Manager, Pakistan Railways, Lahore (who were arrayed as respondents Nos.1, 2 and 3 respectively) and despite of the directive of respondent No.1,


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respondents Nos. 4 to 34 continued to hold the office of professional engineers in violation of the provisions of the Act. On the basis of above averments, a number of declarations and directives were sought. The matter was heard by a Division Bench of the Sindh High Court. One of us, Ajmal Mian, J. (who was a member of the above Bench) after referring all the relevant provisions of the Act, came to the following conclusion:--

"30. Having referred to the various provisions of the Act, the question, which requires consideration is, as to whether the provisions of the Act are applicable only to professional Engineers and professional consultants, who are in practice or do they also apply to the persons working in the Government Departments, autonomous bodies, local authorities and private firms and companies or employed by the private persons as paid employees etc. I am inclined to hold that the provisions of the Act are applicable only to the professional Engineers and consulting Engineers, who are in practice. My reasons for holding so inter alia are as follows:

- (i) That though preamble to an Act does not control the provisions of the Act, but reference can be made to it to ascertain the legislative intent in case of any doubt/ambiguity. In the instant case the object of the Act given in the preamble is 'to make provision for regulation of engineering profession'.
- (ii) That the definition of 'professional Engineer' as given in clause (g) of section 2 of the Act provides two preconditions, namely, (a) the person should hold a recognized engineering qualification, and (b) he should be registered as a professional engineer with the Council. The word engineer is prefixed by the word professional, which has a definite connotation and is used when a person is in practice of a particular profession.
- (iii) The term "professional engineering work" as defined in clause (k) of section 2 of the Act refers to the services/works which are normally rendered by a professional engineer, who is in practice, namely, giving of professional advice and opinions. The other services/works mentioned after the above two services/works are to be read in conjunction with them, otherwise it would lead to absurdity. I may give an illustration. Suppose A for his private residential building employs B a diploma holder in engineering to take weekly measurements of the work executed. The work, measurements and the residential building both have been mentioned in the above clause (k). If we were to read the words professional advice and opinion disjunctively with the word 'measurement', it must follow that A and B have rendered themselves liable to be prosecuted under subsections (1) and (2) of section 27 of the Act referred to hereinabove, which could not have been the intention of the law-maker.
- (iv) That section 8 of the Act, which defines the functions of the Council inter alia provides for the maintenance of a Register in terms of section 16 of the Act 'of persons qualified to practise as professional engineers and professional consultants and not persons in service'.
- (v) That section 12 of the Act empowers the Executive Committee to grant to any person domiciled outside Pakistan, who does not hold any recognized engineering qualification but, who holds a diploma in engineering, or a degree in applied sciences or an equivalent diploma from the institution recognized by the Council etc. a temporary licence for a specific project to work as an associate of a professional engineer, but the latter will have to sign and seal the plans and specifications for the project.
- (vi) That section 16 provides for the maintenance of a register and for enrolment of professional engineers and professional consultants, whereas section 17 of the Act provides for removal of the name of a professional engineer or professional consultant and re-enrolment. It may be observed that subsection (2) of section 17 of the Act empowers the Enrolment Committee in its discretion to refuse to permit the registration of any person or to direct the removal altogether or for a specified period from the Register the name of any registered professional engineer or consulting engineer, who or which has been convicted for any such offence as implies in the opinion of the Committee a defect of character or who or which after an enquiry and of hearing has been held by the Committee as guilty of infamous conduct in any professional respect or who or which has shown himself or itself to be unfit to continue in practice on any ground including in the case of a professional engineer mental ill-health.
- (vii) That section 20 of the Act provides for lodging of a complaint against any professional engineer or consulting engineer, whereas section 21 contemplates constitution of Tribunals of Inquiry for inquiring into such complaints. Furthermore, subsection (6) of section 22 provides that in any case in which it (i.e. the Tribunal) has recommended the imposition of any penalty on or the prosecution of, the respondent; the Tribunal may also recommend that an amount not exceeding twice the amount of the fee recovered by the respondent from the complainant may be recovered from the respondent and be paid to the complainant as compensation.


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(viii) That subsection (5) of section 27 of the Act provides that no person undertaking any professional engineering work shall, unless he is registered under the Act, be entitled to recover before any Court or authority any sum of money for services rendered in such work.'

However, a contrary view was taken by Qaiser Ahmad Hamidi, J as under:-

"6. According to Pakistan Engineering Council Act, 1975, only registered professional and consulting engineers are authorised to undertake professional engineering works. The copy of letter sent by Chairman, Pakistan Engineering Council to Government of Punjab dated 2-6-1977, further makes it clear that the Federal Government had announced 30th June, 1977, to be the last date by which all Professional and Consulting engineers shall get themselves registered with the Pakistan Engineering Council. It appears that due to pressure of diploma holders who are not registered professional engineers, there has been flagrant violation of the provisions of the Act. Even in relating to the posts of Assistant Executive Engineers (B.P.S. 17) regarding which a decision was taken by the Government that diploma holders could be appointed against such posts, the same lacks the warrant of law and is in the nature of concession granted to unqualified persons. The appointment of the diploma holders against senior posts of Pakistan Railways in disregard of the provisions of the Act, is, therefore, illegal on the face of it. It may be noted that the responsibilities of the engineers in Pakistan Railways are more onerous. They relate to proper functioning of the railways and the construction, design, supervision and maintenance of engineering works which affect the safety of public at large."

The matter was referred to a third learned Judge and was heard by Saiduzzaman Siddiqui, C. J., (as he then was), who concluded as under:--

"7. From the above debates in the National Assembly, it would appear that the object of introducing the Engineering Council Bill of 1975 was to bring the engineering profession on the same line and make it subject to similar check and control as are applicable to the Medical and legal profession, by creating an Engineering Council in line with the Medical Council and the Bar Council. Ajmal Mian, C.J. (as he then was) in his Judgment compared the provisions of the Act with the provisions of Legal Practitioners Act and observed that the provisions of the Legal Practitioners Act are applicable only to the practising advocates and are not extended to persons having legal qualification who are employed in Statutory Corporations, and other Departments though they may be tendering legal advises in course of their such employment. The observations of Ajmal Mian, C.J., appear to be in accord with the objects of the Act. I am, therefore, of the view that merely because a person possesses an engineering qualification and is employed on a job which requires engineering skill does not mean that he must be registered under the Act."

7. The above matter came up before this Court through appeals with the leave of this Court, which were inter alia filed by the Pakistan Engineering Council. The same were dismissed and the above majority view of the High court of Sindh was maintained.

8. However, - Raja -Muhammad Bashir, learned Deputy Attorney general, has submitted that the following portion of the judgment of this Court in the case of Pakistan Diploma Engineers Federation (Registered) through its Chairman v. Federation of Pakistan through Secretary, Ministry of Water and Power, Government of Pakistan, Islamabad and 9 others (1994 SCMR 1807) upports the plea of the respondents:--

"18. We on the other hand after hearing Mr. Abid Hassan Minto learned Advocate for the appellant at considerable length consider that this is not a correct interpretation of the judgment of the High Court. The High Court has clearly stated that the provisions of the Act were wide enough to include cases of those persons engaged in professional engineering works whether employed in any private or Governmental Organisation, if they are called upon to undertake any professional engineering work, as defined under the Act. In fact in the connected case CA. No.31 of 1992 a Committee of Secretaries constituted by the Punjab Government correctly summed up the true position obtaining in the Act as follows:--

"The Committee was of the view that the Government could appoint a non-graduate engineer to a post in any grade but if the post involved performance of professional engineering work such appointment would attract penalties prescribed in the Act."

The finding of the Referee Judge in this case is to the same effect and in our opinion this finding is quite correct."

9. In this regard, we may point out that it is the domain of the Government concerned 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 A, Engineering Council to decide, as to


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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 qualifications cannot be promoted from a particular Grade to a higher Grade. The main object of the Act as pointed out by one of us (Ajmal Mian, J.) and Saidduzzaman Siddiqui, C.J. (as he then was) in the above High Court judgment is to regulate the working of professional engineers and consulting engineers and not to regulate the qualifications or the working of the engineers in the Government or semi-Government departments. The definitions of the terms "professional engineer" and "professional engineering work" given in clauses (j) and (k) of section 2 of the Act are to be read together and, therefore, as a corollary to the same, it must follow that the term "professional engineering work" as defined in clause (k) of section 2 of the Act is to be performed by a professional engineer as defined in clause (j) thereof, which is evident from section 8 of the Act, which defines the functions of the Pakistan Engineering Council as under:--

"8. Functions of the Council---The following shall be the functions of the Council, namely:--

- (a) maintenance of a Register of persons qualified to practise as professional engineers and consulting engineers;
- (b) recognition of engineering qualifications for the purpose of registration of professional engineers and consulting engineers;
- (c) removal of names from the Register and restoration to the Register names which have been removed;
- (d) laying down of standards of conduct for the members;
- (e) safeguarding the interests of the members;
- (f) promotion of reforms in the engineering profession;
- (g) management of the funds and properties of the Council;
- (h) promotion of engineering education and review of courses of study in consultation with the Universities;
- (i) levy and collection of fees from applicants for registration temporary licences and members;
- (j) exercise of such disciplinary powers over the members and servants the Council as may be prescribed;
- (k) formation of such committees as maybe prescribed; and
- (l) performance of all other functions connected with, or ancillary incidental to, the aforesaid functions."

A perusal of the above-quoted section shows that the Pakistan Engineering Council is vested with the functions to regulate the person qualified to practise as professional engineers and consulting engineers and n persons who are employed in the Government or semi-Government organisations. If the Government employs a professional engineer as defined the Act for performing professional engineering work as envisaged by the A in above clause (k) of section 2, the provisions of the Act would be attracts and not otherwise.'

10. Reverting to the merits of the present case, as pointed o hereinabove, that the petitioner pursuant to the above decision of the Government of Pakistan dated 26-11-1973 passed[his B. Tech. (Pass) in 19' and h. Tech (Honours; in March, 1981, from the N.E.D. University, Karacl And, thei before, acted upon the above representation of the Government. In the view of the matter, it is not just and fair not to consider the petitioner f promotion to BPS-17 keeping in view the admitted fact that a number of other civil servants/employees in the same department in the same position ha been promoted by the departments/organisations concerned. In this behalf, may be pertinent to refer to the 'case of Mukhtar Ahmad and 37 others Government of West Pakistan through the Secretary, Food and Agriculture Civil Secretariat, Lahore and another (PLD 1971 SC 846). The facts of the above case were that the persons possessing the qualifications mentioned Rule 7 of the West Pakistan Agricultural Engineering Service (Class II) Rule 1963, were not available. The Government launched a scheme for training of Assistant Agricultural Engineers, where under 46 Graduates in B.Sc. Agriculture were to be selected for appointment as Assistant Agricultural Engineers after their successful completion of two years' diploma courses at an Agricultural University. The above scheme was discussed by the Government with the Public Service Commission. The candidates selected by the Public Service Commission, who were about to complete their training of two years, were informed by the Government that they would have to appear again before the Public Service Commission to be selected for appointment to the posts of Assistant Agricultural Engineers (Class II). The candidates asserted that after the completion of their training they were entitled to be


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appointed as Assistant Agricultural Engineers (Class II) in terms of the offer made to them and they could not be required to appear again before the Public Service Commission for such appointment. On the other hand, the Government contended that the candidates did not possess the qualification prescribed by Rule 7 of the West Pakistan Agricultural Engineering Service (Class II) Rules, 1963, for appointment to such posts. The matter came up for hearing before this Court in the form of an appeal with the leave of this Court filed by the candidates against the judgment of a Division Bench of the erstwhile High Court of West Pakistan. The same was allowed and inter alia the following was concluded:--

"The offer of the Government and its acceptance by the appellants constituted a valid agreement and the Governor's order dated the 1st July, 1965 provided the authority for such an agreement. This agreement is capable of being enforced in law. The Government was both competent and obliged to implement that agreement. When the Governor's order, dated the 1st July, 1965, provided a special authority for recruitment to the 46 posts of Assistant Agricultural Engineers, rule 7 of the Recruitment Rules was not applicable in this case."

11. The above case supports the petitioner's stand. Another aspect which escaped notice of this Court in the judgment under review is that some of the other civil servants/employees placed in the same position as the petitioner was had been considered for promotion to BPS-17 and in fact were promoted, whereas the petitioner was denied the above benefit which amounted to violation of inter alia Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973. In this regard, reference may be made to the case of I. Sharwani and others v. Government of Pakistan through Secretary, Finance Division, Islamabad and others (1991 SCMR 1041). -

12. The judgment of this Court in the case of Muhammad Siddique Nasim (supra) relied upon by the Tribunal is distinguishable for more than one reason, firstly, in the above case the notification of the Government of Punjab dated 8-2-1961 equivalising B. Tech. (Honours) with B. Sc. Engineering degree was withdrawn on 15-3-1985, whereas the petitioner received degree of B. Tech. (Honours) in June, 1985, i.e. after the withdrawal of the notification; whereas in the present case, admittedly the petitioner passed his B. Tech. (Honours) in March, 1981, before the Pakistan Engineering Council through its Registrars above letter dated L4-4-1984 stated that there was typographical error in the above-quoted portion of its Registrar's letter dated 30-4-1981. Secondly, in the judgment in the case of Pakistan Diploma Engineers federation (Registered) through its Chairman (supra), this Court affirmed the majority view of the High Court of Sindh in the case of Muhammad Aïm Jamatt (supra), in which it has been held that the provisions of the Act are applicable only to professional engineers and consulting engineers who are in practice and not to the persons working in the Government departments, autonomous bodies, local authorities and private firms or companies.

13. We may again observe that it is exclusively within the domain of the Government to decide whether a particular qualification will be considered sufficient for promotion from a particular Grade to a higher Grade and it is also within the domain of the Government to change the above policy from time to time as nobody can claim any vested right in the policy. However, it cannot abdicate its power to decide the above question in favour of a corporate body which is not in its control nor it can act in a manner which may be violative of Article 19 of the Constitution on account of being discriminatory. It is still open to the Government for future to provide that academic qualification of B. Tech. (Honours) will not be considered sufficient for promotion from BPS-16 to BPS-17 if the same does not violate the above principle.

14. The upshot of the above discussion is that the judgment under review is liable to be recalled as it proceeded on wrong premises. We would, therefore, allow the above Suo Motu Review Petition and recall the above judgment. In consequence thereof, petitioner's civil Appeal No.216 of 1991 is allowed and the judgment of the Tribunal is set aside and the respondents are directed to consider the petitioner's case for promotion to BPS-17.

AA/F-368/5 Review allowed.


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ANNEXURE B



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HIGHER EDUCATION COMMISSION

Sector 11-B, Islamabad, (Pakistan), Phone: +92-31-2227507, 9040100
Fax: +92-31-9040713, URL: http://www.hec.gov.pk

MUHAMMAD JAVED KHAN
Member General (Education & Administration)
F-10/1, Islamabad

No. H-10/HECIA/S/2007/1078
May 21, 2007

Mr. Majid Rafi,
Block # 12-D, Flat # 02,
Cot-IV, I-7/4 Islamabad

Subject: Equivalence of Bachelor of Technology (Hons) in Electrical
Technology degree awarded by the Preston University, U.K.

Dear Sir,

With reference to your application dated May 21, 2007 on the subject, the decision regarding equivalence of B.Tech (Hons) degree was taken in its 39th meeting of Equivalence Committee of erstwhile UGC held on 12.1.1998 had declared B.Tech (Hons) degree as compatible and at par to B.E/B.Sc Engineering for purpose of employment. The decision of the Committee is reproduced below for your information:

"The degree of B.Tech (Hons) is not similar to B.E/B.Sc Engineering degree. Both the degrees of B.E/B.Sc Engineering and B.Tech (Hons) be considered as two distinct disciplines of knowledge in the field of Engineering and Technology and should run parallel to each other. However, B.Tech (Hons) degree may be treated at par and compatible with B.E/B.Sc Engineering degree holders as far as grades, pay and promotions and other benefits are concerned."

Yours faithfully,

Muhammad Javed Khan

Attested
to be true copy

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HIGHER EDUCATION COMMISSION OF PAKISTAN
Sector H-9, Islamabad(Pakistan), Phone 92-51-927505,9040705

No.6-36/HEC/A&A/2007

May 21.2007

MUHAMMAD JAVED KHAN
Director General (Attestation & Accreditation)
Mjkh@hec.gov.pk

MR Majid Rafi
Block # 12-D, Flat # 02
Cat-IV, I-9/4, Islamabad

SUBJECT:- Equivalence of Bachelor of Technology (Hon) in Electrical
Technology degree awarded by the Preston University Kohat.

Dear Sir

With reference to your application dated May 21,2007 on the subject the decision regarding equivalence of B.Tech(Hons) Degree was taken in the 39th meeting of Equivalence Committee of erstwhile UGC held on 12-2-1998 had declared B.Tech(Hons) Degree as compatible and at par to BE/B.Sc Engineering for purpose of employment. The decision of the committee is reproduced below for your information.

The degree if B.Tech(Hons) is not similar to B.E/B.Sc Engineering degree Both the degrees of B.E/B.SC Engineering and B.Tech(Hons) be considered as two distinct disciplines of knowledge in the field of Engineering and Technology and should run parallel to each other. However, B.Tech(Hons) may be treated at par and compaitable with B.E/B.Sc Engineering degree holders as far as grades , pay and promotion and other benefits are concerned.

Yours Faithfully

Muhammad Javed Khan


ATTESTED

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ANNEXURE

To

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

Subject: - AMENDMENT IN THE RECRUITMENT RULES - RESERVATION OF
20% QUOTA FOR PROMOTION OF B.TECH (Hons) DEGREE HOLDER
SDOs (BS-17) TO THE POST OF XEN ETC. (BPS-18).

Dear Sir,

Respectfully we B.Tech (Hons) Degree Holder SDOs (BS-17) submit the following few lines for perusal and sympathetic consideration please:-

1. That the Supreme Court of Pakistan vide judgment in *Sou Molu* petition No.52 of 1993 considered the B.Tech (Hons) Degree at par with B.E/B.Sc Engineering Degree.
2. That the Higher Education Commission in its letter dated 31.07.2009 clarified equivalency of the B.Tech (Hons) Degree at par with B.E/B.Sc Engineering Degree for the purpose of employment in light of the decision taken by the University Grants Commission in 39th meeting held on 12.02.1998.
3. That in pursuance of the judgment of Apex Court and clarification of Higher Education Commission, the Khyber Pakhtunkhwa Establishment & Administration Department advised the PHE Department to place the case of B.Tech (Hons) degree holder Sub-Engineers before the SSRC. The Committee observed that the degree of B.Tech (Hons) is not similar to B.E/B.Sc Engineering professionally but for the purpose of pay, grade and promotion, B.Tech (Hons) Degree be treated at par with B.E/B.Sc Engineering.
4. That in view of the E&A Department advice and decision of the SSRC, provincial Works Departments i.e. Irrigation, PHE & C&W carried out amendments in the respective recruitment rules by reserving different quotas for promotion of B.Tech (Hons) Degree holder Sub-Engineers to the post of SDO (BS-17).
5. That keeping in view our age factor and in the presence of huge number of young SDOs inducted in the C&W Department through PSC, the aged B.Tech (Hons) Degree holder SDOs (BS-17) having hardly 3-7 years left towards retirement, will never be promoted as XEN (BS-18).
6. That in order to benefited the B.Tech (Hons) Degree holder SDOs from promotion to the post of XEN (BS-18), the Govt. of Sindh, Works & Services Department made amendments in the recruitment rules in 2014 whereby 80%, 13% & 7% quotas have been reserved for promotion to the post of XEN for SDOs, having B.E/B.Sc Engineering, B.Tech (Hons) Degree and Diploma holder respectively (copy enclosed).
7. That since in the Khyber Pakhtunkhwa entire Works Departments, Khyber Pakhtunkhwa, the SDOs, having DAE are not considered for promotion as XEN (BS-18), therefore, 80% and 20% quotas may be reserved for promotion to the post of XEN (BS-18) for SDOs (BS-17) having B.E/B.Scs Engineering and B.Tech (Hons) Degrees respectively.

Attested

Continued on Page-2

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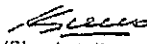
- 8. The Quota reserved by the Sindh Government for promotion of B.Tech (Hons) degree holders SDOs to the post of XEN (BPS-18) has been confirmed/upheld by the Supreme Court of Pakistan vide its judgment announced on 15.08.2014 (copy attached).
- 9. That the Islamabad Electric Supply Company has also reserved 10% promotion quota against the post of Senior Engineers for Junior Engineers having qualification of B.Tech (Hons) (copy attached).

In view of the narration/facts above, the Secretary C&W Department, being Chairman of the SSRC may consider the genuine request of aged B.Tech (Hons) Degree holder SDOs (BS-17) and reserve 20% quota for promotion against the post of XEN on the analogy of Sindh Government and Islamabad Electric Supply Company, so as to avoid unnecessary litigations please.

Dated: 15-03-2017

Your's obediently


 1. (Sher Wali Jang)
 Deputy Director (Tech) (OPS),
 Anti-Corruption Establishment,
 Khyber Pakhtunkhwa, Peshawar.


 2. (Shaukatullah Shah)
 Executive Engineer (OPS)
 C&W FATA Division,
 Orakzai Agency.

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GOVERNMENT OF THE KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS AND
HUMAN RIGHTS DEPARTMENT

No. Reg: 1(1)79/C&W/Vol-II/2930406

Peshawar,
Dated the 24-10-2017

To

The Secretary,
Government of the Khyber Pakhtunkhwa,
Communication and works Department

SUBJECT: AMENDMENT IN THE RECRUITMENT RULES-
RESERVATION OF 20% QUOTA FOR PROMOTION OF B-
TECH (HONS) SDOS (BS-17) TO THE POST OF EXECUTIVE
ENGINEER (BS-16)

Dear Sir,

I am directed to refer to your letter No. SOE(C&WD)17-4/2017,
dated 13-10-2017 on the subject noted above and to state that the matter involves
policy decision by the Administrative Department. Therefore, the Administrative
Department is advised to take policy decision in matter and place the same before the
SSRC for approval being competent forum. After approval of the SSRC and
concurrence of Khyber Pakhtunkhwa Public Service Commission, the Administrative
Department is advised to send the same to this Department for vetting purpose.

Yours faithfully,

(Signature)
(IMRAN ICHAN)
ASSISTANT LEGAL DRAFTER-V
(LEGISLATION WING)

Encls: No. & date given:-

Copy is forwarded for information to:

- 1. PS to Secretary, Government of the Khyber Pakhtunkhwa Law Department.
- 2. PA to Legal Drafter, Law Department.

(Signature)
ASSISTANT LEGAL DRAFTER-V

(Signature) Attested
to be true copy.

Attested
(Signature)
to be true copy

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WORKING PAPER

AMENDMENT IN THE RECRUITMENT RULES - RESERVATION OF 20% QUOTA FOR PROMOTION OF B-TECH (HONS) SDOs (BS-17) TO THE POST OF EXECUTIVE ENGINEER (BS-18)

Pursuant to the Supreme Court of Pakistan Islamabad judgment dated 15.08.2014 and on the analogy of Works & Services Department Government of Sindh, a B-Tech (Hons) degree holder SDOs (BS-17) of C&W Department has submitted a joint representation with the request that 20% quota may be reserved for them for promotion to the post of XEN etc (BS-18) in the Department (Annex-I):-

Short facts of the application are as under:-

- i. In pursuance of the judgment of Apex Court on sou-motu petition No.52 of 1993 and clarification of Higher Education Commission, the Khyber Pakhtunkhwa Establishment & Admn: Department advised the PHE Department to place the case of B-Tech (Hons) Sub Engineers before the SSRC. The committee observed that B-Tech (Hons) is not similar to B.E/B.Sc Engineering professionally but for the purpose of pay, grade and promotion, B-Tech (Hons) be treated at par with B.E/B.Sc Engineering.
- ii. In view of E&A Department advice and decision of the SSRC, Provincial Works Departments i.e. Irrigation, PHE and C&W carried out amendments in the respective recruitment rules by reserving different quotas for promotion of B-Tech (Hons) Sub Engineers to the post of SDO (BS-17).
- iii. Keeping in view their age factor and in the presence of huge number of young SDOs inducted in the C&W Department through Public Service Commission, the aged B-Tech (Hons) holder SDOs (BS-17) having hardly 5-7 years left towards retirement will never be promoted as Executive Engineer (BS-18).
- iv. In order to benefited the B-tech (Hons) holder SDOs from promotion to the post of XEN (BS-18), the Govt of Sindh Works & Services Department made amendments in the recruitment rules in 2014 whereby 80%, 13% & 07% quotas have been reserved for promotion to the post of XEN for SDOs, having B.E/B.Sc Engineering, B-Tech (Hons) and Diploma Holder respectively.
- v. Since in the Khyber Pakhtunkhwa entire Works Departments, the SDOs, having DAE are not considered for promotion as XEN (BS-18), therefore, 80% and 20% quotas may be served for promotion to the post of XEN (BS-18) for SDOs (BS-17) having B.E/B.Sc Engineering and B-Tech (Hons) respectively.
- vi. The quota reserved by the Sindh for promotion of B-Tech (Hons) SDOs to the post of XEN (BS-18) has been confirmed/upheld by the Supreme Court of Pakistan vide its judgment dated 15.08.2014 Annex-II.
- vii. The Islamabad Electric Supply Company has also reserved 10% promotion quota against the post of Senior Engineers for Junior Engineers having qualification of B-Tech (Hons) Annex-III.

Keeping in view the strength of B.E/B.Sc Engineering and B-Tech (Hons) degrees holder SDOs (BS-17), this Department proposes to reserve 90% & 10% quotas for promotion to post of XEN etc (BS-18) for SDOs (BS-17) having B.E/B.Sc Engineering and B-Tech (Hons) degrees respectively as per details given in the proforma (Annex-IV).

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The SSRC is therefore requested to consider the proposal at para-3 above and approve the amendments in the existing service rules for the post of XEN etc (BS-18) mentioned at Sr.No.3 of the appendix/service rules notified in 2010.

Misal Khan
(MISAL/KHAN)
DEPUTY SECRETARY (ADMIN)
C&W DEPARTMENT

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GOVT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

No. SOE/C&WD/B-12/2017
Dated Peshawar, the November 24, 2017

- To:
1. The Special Secretary (Reg) Establishment & Admin Department, Peshawar
 2. The Additional Secretary (Reg) Finance Department, Peshawar
 3. The Chief Engineer (Centre) C&W Department, Peshawar

Subject: AMENDMENT IN THE APPOINTMENT AND RECRUITMENT RULES, 2010 OF THE COMMUNICATION & WORKS DEPARTMENT

I am directed to refer to the subject noted above and to enclose herewith working paper duly signed pertaining to the reservation of promotion quota B-Tech (Hons) Assistant Engineers/SDOs (BS-17) to the rank of Executive Engineer (BS-18). The meeting of the SSRC of C&W Department is scheduled to be held on 28.11.2017 at 1100 Hours in the Committee Room of C&W Secretariat Peshawar.

2. Furthermore, it is pertinent to mention that the case with regard to the Enhancement of quota of B-Tech (Hons) Sub-Engineers from 3.5% to 10% to the post of Assistant Engineers/SDO (BS-17) was discussed in the SSRC meeting held on 19.10.2017 but the committee unanimously decided to obtain information from Irrigation Department about the procedure adopted while reserving 08% quota for B-Tech (Hons) Degree Holder-Sub-Engineers for promotion to the post of Assistant Engineer/ SDO (BS-17). Accordingly, the information obtained (copy enclosed). This case will also be discussed in the scheduled meeting.

3. It is, therefore, requested to make it convenient to attend the aforesaid meeting on the scheduled date, time and venue.

Yours faithfully

(Signature)
(USMAN JAN)
SECTION OFFICER (Estb)

End of even No. & date
Copy forwarded for information to the:

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

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(Signature)
to be true copy

(Signature)
SECTION OFFICER (Estb)

(Signature)
ATTESTED

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GOVT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT
No. SOE/C&WD/B-12/2017
Dated Peshawar, the November 27, 2017

To
21/11/17
28/11/17
12/11/17
27/11/2017

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

Subject: AMENDMENT IN THE APPOINTMENT AND RECRUITMENT RULES, 2010 OF THE COMMUNICATION & WORKS DEPARTMENT

I am directed to refer to this Department letter of even number dated 24.11.2017 on the subject noted above and to stated that the meeting of the Standing Service Rule Committee (SSRC) has been re-scheduled, which will now to be held on 28.11.2017 at 1400 hours in the Committee Room of C&W Secretariat Peshawar.

2. It is, therefore, requested to make it convenient to attend the aforesaid meeting on the scheduled date, time and venue.

Yours faithfully

(USMAN JAN) SECTION OFFICER (Estb)

Encl: even No. & date
Copy forwarded for information to the:


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

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SECTION OFFICER (Estb)

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

No.SOR-V(E&AD)/1-1/C&W/2019/Vol-V
Dated 28th January, 2021.

To

The Secretary to Govt. of Khyber Pakhtunkhwa,
Communication & Works Department.

Subject: AMENDMENT IN THE APPOINTMENT AND RECRUITMENT
RULES, 2010 OF COMMUNICATION AND WORKS
DEPARTMENT.

Dear Sir,

I am directed to refer to your letters No.SOE/C&WD/8-12/2020 dated 28-12-2020 on the subject noted above and to state that as per rule-3 of the Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, the subject case may be placed before the Standing Service Rules Committee (SSRC)

Yours faithfully,

(Sultan Wazir Khan)
SECTION OFFICER (REG-V)

Encl: of even No. & Date.

Copy forwarded to:

1. PS to Secretary, Establishment Department.
2. PA to Deputy Secretary (R-III) Establishment Department.

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SECTION OFFICER (REG-V)

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GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS &
HUMAN RIGHTS DEPARTMENT

No. SOE(OP-II) LD-13-7/2012-VOL-II
DATED: PESHAWAR THE 7 FEBRUARY, 2021

Handwritten number: 1420/21

To

The Secretary to Govt. of Khyber Pakhtunkhwa
Communication & Works Department.

Attention: Section Officer (Estb)

Subject: AMENDMENT IN THE APPOINTMENT AND RECRUITMENT RULE
2010 OF THE COMMUNICATION AND WORKS DEPARTMENT.

Dear Sir,

I am directed to refer to your Department's letter No.SOE(C&WD)8-12/2020 dated 28.12.2020, on the subject noted above and to state that the Law Department has examined the case and is of the view that by virtue of Rule 3(2) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Administrative Department, in consultation with Establishment Department and Finance Department is empowered to lay down method of recruitment for the relevant posts in the department, to serve the purposes of the department, in public interest.

Yours Faithfully,

Section Officer (Opinion-II)

Encls: of even No. & date.

Copy forwarded to the:-

1. P.S to Secretary Law, Department.
2. PA to Law Officer, Law Department.

Section Officer (Opinion-II)

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GOVERNMENT OF KHYBER PAKHTUNKHWA FINANCE DEPARTMENT

Finance Department Civil Secretariat Peshawar | <http://www.finance.gkp.pk> | [facebook.com/GoKPFD](https://www.facebook.com/GoKPFD) | twitter.com/GoKPFD

NO. BO. /FD/1-61/2020-21

Dated Peshawar, the 17/02/2021

To

The Secretary to Govt of Khyber Pakhtunkhwa,
Communication & Works Department,
Peshawar

Subject:- **RESTRUCTURING OF COMMUNICATION & WORKS DEPARTMENT.**

Dear Sir,

I am directed to refer to your letter No. Accu/C&WD/1-4/SNE/2021 dated 18/1/2021 on the subject noted above and to state that in pursuance of the recommendations of the SNE Committee headed by the Finance Minister, Khyber Pakhtunkhwa and approval of the competent authority, Finance Department agrees to create 596 posts in the Communication & Works Department with immediate effect, as per detail given below, subject to observance of all usual formalities:

1. PR4104-Communication & Works Department				
S. No	Designation	BPS	No of posts	Position Codes
1	Additional Secretary (Technical)	19	1	81093355
2	Deputy Director Technical	18	2	81093364 81093363
3	Assistant	16	3	81093356 81093357 81093358
4	Computer Operator	16	5	81093359 81093360 81093361 81093362 81093363
5	Senior Clerk	14	2	81093372 81093373
6	Driver	6	1	81093366 81093367
7	Naib Qaid	3	5	81093368 81093369 81093370 81093371
Total			19	
2. PR8040-Chief Engineer (Maintenance) Peshawar				
S. No	Designation	BPS	No of posts	Position Codes
1	Chief Engineer	20	1	81093393
2	Superintending Engineer	19	1	81093420
3	Design Engineer	18	1	81093405
4	Assistant Design Engineer	17	1	81093390
5	Administrative Officer	17	1	81093385
6	Chief Draftsman	17	1	81093392 81093417
7	Superintendent	17	3	81093418 81093419
8	Assistant	16	4	81093386 81093387 81093388 81093389

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				81093448
15	Dafari		2	81093441
				81093442
				81093450
				81093451
16	Nabi Qasid	3	6	81093452
				81093453
				81093454
				81093455
17	Chowkidar	3	2	81093452
				81093453
18	Sweeper	3	1	81093460
Total -			39	
4. PH8642-Chief Engineer (Foreign Aid) Peshawar				
S. No	Designation	BPS	No of posts	Position Codes
1	Chief Engineer	20	1	81093470
2	Superintending Engineer	19	1	81093408
3	Design Engineer	18	2	81093482
				81093482
4	Assistant Design Engineer	17	2	81093466
				81093467
5	Administrative Officer	17	1	81093462
6	Chief Draftsman	17	1	81093469
				81093495
7	Superintendent	17	3	81093496
				81093497
				81093463
8	Assistant	16	3	81093464
				81093465
				81093473
				81093474
				81093475
9	Computer Operator	16	7	81093476
				81093477
				81093478
				81093479
10	Accounts Clerk	14	1	81093461
11	Head Draftsman	14	1	81093468
12	Draftsman	12	2	81093484
				81093485
13	Autocade Operator	7	1	81093468
14	Driver	6	2	81093486
				81093487
15	Dafari	4	2	81093480
				81093481
				81093489
				81093490
				81093491
				81093492
				81093493
				81093494
				81093471
				81093472
17	Chowkidar	3	2	
18	Sweeper	3	1	81093499
Total			39	

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9	Driver	6	1	81093339
10	Nabi Qasid	3	2	81093350
				81093351
11	Chowkidar	3	2	81093343
				81093344
12	Sweeper	1	1	81093354
9. PR8643-Executive Engineer (Provincial Maintenance-II), Peshawar				
S. No	Designation	BPS	No of posts	Position Codes
1	Executive Engineer	18	1	81093500
Total			1	
10. PR8644-Executive Engineer (Provincial Maintenance-II), Peshawar				
S. No	Designation	BPS	No of posts	Position Codes
1	Sub Divisional Officer	17	1	81093501
Total			1	
11. PR8645-Executive Engineer (Highway) Division-II Peshawar				
S. No	Designation	BPS	No of posts	Position Codes
1	Executive Engineer	18	1	81093514
2	Sub Divisional Officer	17	1	81093519
3	Divisional Accounts Officer	17	1	81093510
4	Assistant	16	1	81093503
5	Computer Operator	16	3	81093506
				81093507
				81093508
6	Senior Clerk	14	1	81093518
7	Accounts Clerk	14	1	81093502
8	Head Draftsman	14	1	81093515
9	Draftsman	12	1	81093511
10	Sub Engineer	12	4	81093520
				81093521
				81093522
				81093523
11	Quantity Surveyor	12	1	81093524
12	Autocad Operator	7	1	81093504
13	Driver	6	2	81093512
				81093513
14	Ballot	4	1	81093509
15	Nabi Qasid	3	2	81093516
				81093517
16	Chowkidar	3	1	81093505
17	Sweeper	1	1	81093525
Total			24	
12. CA4340-Executive Engineer (Highway) Division Charardda				
S. No	Designation	BPS	No of posts	Position Codes
1	Executive Engineer	18	1	81093225
2	Divisional Accounts Officer	17	1	81093222
3	Assistant	16	1	81093215
4	Computer Operator	16	3	81093218
				81093219
				81093220
5	Accounts Clerk	14	1	81093214
6	Head Draftsman	14	1	81093226
7	Draftsman	12	1	81093223
8	Sub Engineer	12	1	81093229
9	Quantity Surveyor	12	1	81093230

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13	Dawar	6	1	41091300
				41091301
14	Daftra	4	1	41091307
				41091308
15	Nash Qasid	3	2	41091304
				41091305
16	Chowkidar	3	1	41091303
17	Sweeper	3	1	41091312
Total			24	
15. AD4490-Executive Engineer Highway Division Hyderabad				
S. No	Designation	BPS	No of posts	Position Codes
1	Executive Engineer	18	1	41091271
2	Divisional Accounts Officer	17	1	41091270
3	Assistant	16	1	41091263
				41091266
4	Computer Operator	16	3	41091267
				41091268
				41091269
5	Accounts Clerk	14	1	41091262
6	Head Draftsman	14	1	41091273
7	Draftsman	12	1	41091274
				41091275
8	Sub Engineer	12	2	41091276
				41091277
9	Quantity Surveyor	12	1	41091278
10	Autocad Operator	7	1	41091264
11	Driver	6	1	41091272
12	Dallari	4	1	41091269
				41091275
13	Nash Qasid	3	2	41091276
				41091276
14	Chowkidar	3	1	41091265
15	Sweeper	3	1	41091280
Total			19	
16. AD4490-Executive Engineer Highway Division Abhinavahad				
S. No	Designation	BPS	No of posts	Position Codes
1	Executive Engineer	18	1	41091171
2	Sub Divisional Officer	17	1	41091182
3	Divisional Accounts Officer	17	1	41091124
4	Assistant	16	1	41091116
				41091139
5	Computer Operator	16	3	41091120
				41091121
6	Senior Clerk	14	1	41091181
7	Accounts Clerk	14	1	41091113
8	Head Draftsman	14	1	41091118
9	Draftsman	12	1	41091123
				41091183
				41091184
10	Sub Engineer	12	3	41091185
				41091186
				41091187
11	Quantity Surveyor	12	1	41091188
12	Autocad Operator	7	1	41091117
				41091125
13	Driver	6	1	41091116
14	Dallari	4	1	41091122
15	Nash Qasid	3	1	41091119

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S. No	Designation	BPS	No of posts	Position Codes
1	Executive Engineer	18	1	R104052
2	Sub Divisional Officer	17	1	R104059
3	Financial Accounts Officer	17	1	R104073
4	Assistant	16	1	R104066
5	Computer Operator	16	3	R104071 R104070 R104069
6	Senior Clerk	15	2	R104057 R104058
7	Accounts Clerk	14	1	R104065
8	Head Draftsman	14	1	R104053
9	Draftsman	12	1	R104072
10	Sub Engineer	12	6	R104061 R104062 R104063 R104064 R104065 R104066
11	Quantity Surveyor	12	1	R104064
12	Amalgamated Carpenter	7	1	R104063
13	Driver	6	2	R104061 R104062
14	Laborer	4	1	R104068
15	Math (Said)	3	2	R104069 R104070
16	Thoskadar	3	1	R104071
17	Sweeper	3	1	R104072
Total				25
19	Executive Engineer (Khidmat 1 over)	BPS	No of posts	Position Codes
1	Executive Engineer	18	1	R104052
2	Sub Divisional Officer	17	1	R104059
3	Financial Accounts Officer	17	1	R104073
4	Assistant	16	1	R104066
5	Computer Operator	16	3	R104071 R104070 R104069
6	Senior Clerk	15	1	R104057
7	Accounts Clerk	14	1	R104065
8	Head Draftsman	14	1	R104053
9	Draftsman	12	1	R104072
10	Sub Engineer	12	5	R104061 R104062 R104063 R104064 R104065
11	Quantity Surveyor	12	1	R104064
12	Amalgamated Carpenter	7	1	R104063
13	Driver	6	2	R104061 R104062
14	Laborer	4	1	R104068
15	Math (Said)	3	2	R104069 R104070
16	Thoskadar	3	1	R104071
17	Sweeper	3	1	R104072
Total				30

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S. No	Designation	BPS	No of posts	Position Codes
1	Sub Engineer	12	2	81093564 81093565
2	Quantity Surveyor	12	1	81093563
Total			3	
27. K17018-Executive Engineer Kohat				
S. No	Designation	BPS	No of posts	Position Codes
1	Sub Engineer	12	1	81093674
2	Quantity Surveyor	12	1	81093671
Total			2	
28. K17016-Executive Engineer Katak				
S. No	Designation	BPS	No of posts	Position Codes
1	Sub Engineer	12	1	81093672
2	Quantity Surveyor	12	1	81093671
Total			2	
29. LK7016-Executive Engineer Lakki Mairani				
S. No	Designation	BPS	No of posts	Position Codes
1	Sub Engineer	12	1	81093251
2	Quantity Surveyor	12	1	81093675
Total			2	
30. TK7013-Executive Engineer Tank				
S. No	Designation	BPS	No of posts	Position Codes
1	Quantity Surveyor	12	1	81093326
Total			1	
31. MD7016-Executive Engineer Matikand				
S. No	Designation	BPS	No of posts	Position Codes
1	Sub Engineer	12	1	81093732
2	Quantity Surveyor	12	1	81093738
3	Peon Imam	9	1	81093326
Total			3	
32. BD7015-Executive Engineer Buner				
S. No	Designation	BPS	No of posts	Position Codes
1	Sub Engineer	12	1	81025928
2	Quantity Surveyor	12	1	81093366
Total			2	
33. SH7014-Executive Engineer Shangle				
S. No	Designation	BPS	No of posts	Position Codes
1	Sub Engineer	12	1	81093351
2	Quantity Surveyor	12	1	81093358
Total			2	
34. C11012-Executive Engineer Chitral Upper				
S. No	Designation	BPS	No of posts	Position Codes
1	Sub Engineer	12	3	81093573
				80875060
				81093328
Total			3	
35. C17019-Executive Engineer Chitral Lower				
S. No	Designation	BPS	No of posts	Position Codes
1	Sub Engineer	12	2	81093571
				81093572
2	Quantity Surveyor	12	1	81083570
Total			3	
36. K17013-Executive Engineer Kohistan Upper				
S. No	Designation	BPS	No of posts	Position Codes

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S. No	Designation	IPS	No of posts	Position Codes
2	Quantity Surveyor	12	1	R109333
Total				
3				
44. B1701B-Executive Engineer Building II - Lower				
S. No	Designation	IPS	No of posts	Position Codes
1	Sub Engineer	12	2	R109335 R109337
2	Quantity Surveyor	12	1	R109336
Total				
3				
45. B1701B-Executive Engineer Building III - Lower				
S. No	Designation	IPS	No of posts	Position Codes
1	Sub Engineer	12	2	R109338 R109340
2	Quantity Surveyor	12	1	R109339
Total				
3				
46. B1701B-Executive Engineer Provincial Administration - Lower				
S. No	Designation	IPS	No of posts	Position Codes
1	Sub Engineer	12	2	R109341 R109343
2	Quantity Surveyor	12	1	R109342
Total				
3				
47. B1701B-Executive Engineer Building II - Lower				
S. No	Designation	IPS	No of posts	Position Codes
1	Sub Engineer	12	2	R109344 R109346
2	Quantity Surveyor	12	1	R109345
Total				
3				
48. B1701B-Executive Engineer Mega Project - Performance				
S. No	Designation	IPS	No of posts	Position Codes
1	Sub Engineer	12	1	R109347
2	Quantity Surveyor	12	1	R109348
Total				
2				
49. B1701B-Executive Engineer Mega Project - II Performance				
S. No	Designation	IPS	No of posts	Position Codes
1	Sub Engineer	12	2	R109349 R109351
2	Quantity Surveyor	12	1	R109350
Total				
3				
50. B1701B-Executive Engineer Building II - Lower				
S. No	Designation	IPS	No of posts	Position Codes
1	Sub Engineer	12	2	R109352 R109354
2	Quantity Surveyor	12	1	R109353
Total				
3				
51. B1701B-Executive Engineer Building II - Lower				
S. No	Designation	IPS	No of posts	Position Codes
1	Sub Engineer	12	2	R109355 R109357
2	Quantity Surveyor	12	1	R109356
Total				
3				
52. B1701B-Executive Engineer Building III - Lower				
S. No	Designation	IPS	No of posts	Position Codes
1	Sub Engineer	12	2	R109358 R109360
2	Quantity Surveyor	12	1	R109359
Total				
3				



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				81093685
				81093686
				81093687
				81093688
				81093689
				81093690
				81093691
				81093692
				81093693
				81093694
				81093695
				81093696
				81093697
				81093698
				81093699
				81093700
				81093701
				81093702
				81093703
				81093704
				81093705
				81093706
				81093707
				81095182
			53	Total (B)
			596	Grand Total (A)+(B)

2. Audit copy containing detailed financial implications may kindly be submitted to this department for authentication. However, authentication of the Audit Copy shall be subject to the provision of DDO wise breakup of redundant/unnecessary vacant posts for abolition.

Yours faithfully,

(SAEED AHMAD KHAN)
BUDGET OFFICER-I

Encl: Even No. and Date:

Copy is forwarded to:-

- 1) The Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 2) The Director, FMJU, Finance Department, Peshawar
- 3) All District Accounts Officer, Khyber Pakhtunkhwa.
- 4) The PS to Minister Finance, Khyber Pakhtunkhwa, Peshawar.
- 5) The PS to Secretary Finance, Khyber Pakhtunkhwa, Peshawar.
- 6) Master File.

BUDGET OFFICER-I

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SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Mr. Justice Gulzar Ahmed
Mr. Justice Qazi Fazl Isa
Mr. Justice Sarder Tariq Hussain

C.P.No.78-K of 2015
(An appeal against order dated 21.11.2014
passed by the Sindh Service Tribunal,
Karachi, in Appeal No.195 of 2014)

Haula Bux Shaikh & others Petitioner(s)

VERSUS

Chief Minister Sindh & others Respondent(s)

- For Petitioner No.1 : Mr. Salah-ud-Din Ahmed, ASC
- For Petitioner Nos.2-3 : Mr. Rasheed A Rizvi, Sr. ASC
- For Respondent Nos.1-4 : Mr. Sabtain Mahmood, Asstt.A.C. Sindh
- For Respondent No.5 : Mr. Ghulam Haider Shaikh, ASC
- For Respondent Nos.6-7 & 9 : Nemo
- For Respondent Nos.8 & 10 : Dr. Muhammad Farooq Haseem, ASC
- For Respondent Nos.10-11, 13-17 : Mr. M. Aql Awan, Sr. ASC
- Date of Hearing : 24.04.2018

JUDGMENT

GULZAR AHMED, J.— Haula Bux Shaikh, Petitioner No.1, (the Petitioner) had filed a Service Appeal before the Sindh Service Tribunal, Karachi, (the Tribunal) challenging Notification No.SOI(W&S)E/12-1/2005 dated 19.03.2014 to be ultra vires the Pakistan Engineering Council Act, 1976 (PEC Act). The circumstances under which the Service Appeal was filed by the Petitioner are that he was employed as Sub Engineer BS-11 in the year 1985 in the Works and Services Department, Government of Sindh, Karachi. He was

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S.C.P. No. 7947 of 2015

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promoted as Assistant Engineer BS-17 in the year 1997 and since then has been serving in such post in his said department. The case of the Petitioner is that he is a qualified engineer holding degree of Bachelor of Engineering. He has unblemished service record and is eligible for promotion to the post of Executive Engineer BS-18 but on account of the notification, referred to above, his chance for promotion as Executive Engineer BS-18 has been gravely diminished for the reason that said notification has provided 13% promotion quota to Diploma holders and 7% promotion quota to B.Tech (Hons) Degree holders for the post of Executive Engineer BS-18. The grievance of the Petitioner is that the post of Executive Engineer BS-18 being that of a purely professional engineering work could only be performed by a professional engineer holding accredited engineering qualification, as provided in the PEC Act.

2. We have heard learned ASCs for the parties at length and have gone through the record of the case. The learned ASCs for the parties have also filed their written note of arguments, which too have been perused by us.

3. The notification dated 19.03.2014 is as follows:

"NOTIFICATION"

No.501(W&S)E.W/12-1/2005: In pursuance of Sub-Rule (2) of Rule-3 of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules 1974 and in consultation with the Services, General Administration & Coordination Department, Government of Sindh, and in partial modification of this Department's Notification No. E1(C&W)1-34/01-84(86) dated 14.01.1987, the method, qualification and other conditions for appointment in respect of the post of Executive Engineer (BPS-18) (Civil/Mechanical/Electrical) in Works & Services Department, Government of Sindh mentioned in column-2 of the table below:-

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TABLE

Name of the post with BS	METHOD OF APPOINTMENT
1	2
Executive Engineer (Civil/Mechanical & Electrical) (BPS-18)	<p>i) Eighty percent by promotion from amongst the Assistant Engineers B.E. in Civil, Electrical or Mechanical Engineering with atleast five years service in BPS-17 on seniority-cum-fitness basis with their respective technology.</p> <p>ii) Thirteen percent by promotion from amongst the Diploma holder Assistant Engineers having Diploma in Civil, Electrical or Mechanical Engineering with atleast five years service in BPS 17 on seniority-cum-fitness basis with their respective technology and</p> <p>iii) Seven percent by promotion from amongst the Assistant Engineers having B.Tech (Hons) degree in Civil, Electrical or Mechanical Engineering with atleast five years service in BPS-17 on seniority-cum-fitness basis with their respective technology.</p>

QAZI SHAHID PERVEZ
SECRETARY TO GOVT. OF SINDH

4. In order to regulate the engineering profession, the Parliament has passed PEC Act on 10.01.1976. Section 2(ii) of the PEC Act defines accredited engineering qualification, which is as follows:

"accredited engineering qualification" means any of the qualification included in the First Schedule or the Second Schedule"

5. It is common ground that neither Diploma nor B.Tech (Hons) Degree are accredited engineering qualification for the reason that there is no reference to the Diploma and B.Tech (Hons) Degree in the accredited engineering qualification provided in the first and second schedule of the PEC Act. Thus, accredited engineering qualification is ascribed to those who hold Bachelor Degree in Engineering from

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accredited Engineering Universities/Institutions in Pakistan and abroad.

6. Professional Engineer is defined in Section 2(xxiii), which is as follows:

"professional engineer" means a person who holds an accredited engineering qualification and after obtaining a professional experience of five years, whether working privately or in the employment of an engineering public organization, has passed the prescribed engineering practice examination and is registered as such by the Council.

7. Professional Engineering Work is defined in Section 2(xv) as follows:

"professional engineering work" means the giving of professional advice and opinions, the making of measurements and layouts, the preparation of reports, computations, designs, drawings, plans and specifications and the construction, inspection and supervision of engineering works, in respect of—

(a) railways, aerodromes, bridges, tunnels and metalled roads;

(b) dams, canals, harbours, light houses;

(c) works of an electrical, mechanical, hydraulic, communication, aeronautical power engineering, geological or mining character;

(d) waterworks, sewers, filtration, purification and incinerator works;

(e) residential and non-residential buildings, including foundations framework and electrical and mechanical systems thereof;

(f) structures accessory to engineering works and intended to house them;

(g) imparting or promotion of engineering education, training and planning, designing, development construction, commissioning, operation, maintenance and management of engineering works in respect of computer engineering, environmental engineering, chemical engineering, structural engineering, industrial engineering, production engineering, marine engineering and naval architecture, petroleum and gas engineering, metallurgical engineering, agricultural engineering, telecommunication engineering, avionics and space engineering, transportation engineering, air-conditioning ventilation, cold storage works, system engineering, electronics, radio and television engineering, civil

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engineering, electrical engineering, mechanical engineering and biomedical engineering etc;

(h) organizing, managing and conducting the teaching and training in engineering universities, colleges, institutions, Government colleges of technology, polytechnic institutions and technical training institutions;

(i) preparing standard bidding or contract documents, construction cost data, conciliation and arbitration procedures; guidelines for bid evaluation, prequalification and price adjustments for construction and consultancy contracts; and

(j) any other work which the Council may, by notification in the official Gazette, declare to be an engineering work for the purposes of this Act;

8. Registered Engineer is defined in Section 2(xxvii) as follows:

"registered engineer" means a person who holds an accredited engineering qualification, whether working privately or in the employment of an engineering public organization and is registered as such by the Council. Registered Engineer shall perform all professional engineering works except independently signing design.

9. Section 10(1) of the PEC Act provides:

"The engineering qualifications granted by engineering institutions in Pakistan which are included in the First Schedule shall be the accredited engineering qualifications for the purposes of this Act."

10. While section 11(1) provides:

"The engineering qualifications granted by engineering institutions outside Pakistan which are included in the Second Schedule shall be accredited engineering qualifications for the purposes of this Act."

11. Section 27 of the PEC Act provides for penalties and procedure, which is as follows:

"27. Penalties and procedure.-- (1) After such date as the Federal Government may, after consultation with the Council, by notification in the official Gazette, appoint in this behalf, whoever undertakes any professional engineering work shall, if his name is not for the time being borne on the Register, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both, and, in the case of a continuing offence, with a further fine which may extend to two hundred rupees for every day after the first during which the offence continues.

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(2) After the date appointed as aforesaid, whoever employs for any professional engineering work any person whose name is not for the time being borne on the Register shall be punishable, on first conviction, with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both, and on a second or subsequent conviction, with imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both.

(3) Whoever willfully procures or attempts to procure himself or itself to be registered under this Act as a registered engineer, professional engineer, consulting engineer, constructor or operator by making or producing or causing to be made or produced any false or fraudulent representation or declaration, either orally or in writing, and any person who assists him therein shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(4) Whoever falsely pretends to be registered under this Act, or not being registered under this Act, uses with his name or title any words or letters representing that he is so registered, irrespective of whether any person is actually deceived by such pretence or representation or not, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(5) No person undertaking any professional engineering work shall, unless he is registered under this Act, be entitled to recover before any court or other authority any sum of money for services rendered in such work.

(5A) 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.

(6) No court shall take cognizance of any offence punishable under this Act save on complaint made by, or under the authority of, the Council.

(7) No court inferior to that of a Magistrate of the first class shall try any offence punishable under this Act."

1.2. The main gist of the arguments of the learned ASC appearing for the petitioners is that the work of Executive Engineer BS-18 is strictly that of a Professional Engineer and it can only be performed by a Professional Engineer, who has engineering degree from an Accredited Engineering Institution of Pakistan or abroad as included in the first and second schedule of the PEC Act, Diploma holders and B.Tech

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(Hons) Degree holders are not professional engineers and cannot perform work of a Professional Engineer and that law specifically provides penalties to those who perform professional engineering work without possessing accredited engineering qualification and registered as Professional Engineer by the Pakistan Engineering Council (the Council).

13. On the other hand, learned ASC appearing for the respondents have contended that this very issue has come up before this Court number of times and this Court has dealt with it time and again and held that in the matter of employment and promotion etc, the Government Institutions are legally entitled to take decisions as a matter of policy to grant promotion to employees in Engineering Public Organization who are Diploma holders in engineering and B.Tech (Hons) Degree holders.

14. We have noted that the Tribunal in the impugned judgment has referred to number of judgments of this Court and the point in issue in those judgments substantially also deals with the present controversy before us. Thus before dilating upon the matter, it is essential that we examine the judgments, which this Court has already delivered and are also referred in the impugned judgment of the Tribunal. The first case in line is a judgment of three members bench of this Court in the cases of PAKISTAN DIPLOMA ENGINEERS FEDERATION (REGISTERED) THROUGH ITS CHAIRMAN V/s FEDERATION OF PAKISTAN THROUGH SECRETARY MINISTRY OF WATER & POWER, GOVERNMENT OF PAKISTAN, ISLAMABAD & 9 OTHERS (1994 SCMR 1807). In this case the question involved was whether the Diploma Engineers employed in Pakistan Railways can be debarred from promotion to Grade-18 on the

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