

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN
SALAH-UD-DIN ... MEMBER (Judicial)

Service Appeal No. 1181/2014

Engineer Musharaf Shah, Assistant Engineer (Acting Charge Basis)
Rehabilitation of Irrigation System of Khyber Pakhtunkhwa Directorate
Peshawar. *(Appellant)*

Versus

Government of Khyber Pakhtunkhwa through Chief Secretary Khyber
Pakhtunkhwa Peshawar and 05 others. *(Respondents)*

Present:

Mr. Muhammad Farooq Malik, Advocate.....For the appellant
Mr. Asif Masood Ali, Deputy District AttorneyFor official respondents

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Date of presentation of Appeal.....24.09.2014
Date of Hearing.....30.10.2023
Date of Decision.....30.10.2023

JUDGMENT

SALAH-UD-DIN, MEMBER: Precisely stated facts as
per the averments raised in the appeal are that the appellant was
appointed as Sub-Engineer on 29.11.2006. The appellant at the
time of his appointment was having diploma of Associate
Engineering, however during the course of his service, he
improved his qualification and obtained degree of B.Sc
Engineering so as to be better equipped with advance knowledge
in the field of Civil Engineering and also in view of prospect of
promotion in light of recruitment rules notified vide Notification
No. SO(E) IRR:/23-5/73 dated 17.02.2011 wherein 10%
promotion quota was prescribed on the basis of seniority-cum-
fitness from amongst the Sub-Engineers who had acquired degree



in Civil or Mechanical Engineering from a recognized University. According to seniority list of in service graduate Sub-Engineers as it stood on 31.12.2010, the appellant was at serial No. 02 and was considered for promotion by the Departmental Promotion Committee and was promoted as Assistant Engineer (BPS-17) on acting charge basis vide order dated 13.12.2011. Through rules notified vide Notification No. SOE/IRR/2-3-5-2010-11 dated 25.06.2012, promotion quota of in service/pre service graduate was curtailed and thus the promotion rights of the appellant were affected adversely. The appellant had submitted representation against the said rules prior to its promulgation, however the same was not considered and the rules were notified. The amended rules could not be given retrospective effect, affecting the right of promotion of the appellant, however the respondent-department proposed to make regular promotion in violation of right of promotion of the appellant. The appellant submitted departmental appeal, however the same was not responded within the statutory period of 90 days, where-after he alongwith other affectees filed Writ Petition No. 2440-P of 2012 before Peshawar High Court, Peshawar, which was disposed of vide judgment dated 04.09.2014 by transmitting the same to this Tribunal for decision in accordance with law, hence the instant appeal.

2. On receipt of the appeal and its admission to regular hearing, respondents were summoned. Official respondents No. 1 to 3 as well as private respondents No. 4 to 6 contested the appeal

by way of filing written replies. Later on, private respondents remained absent, therefore, they were proceeded ex-parte vide order dated 03.07.2023.

3. Learned counsel for the appellant addressed his arguments supporting the grounds agitated by the appellant in his service appeal. On the other hand, learned Deputy District Attorney for the respondents has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by the respondents.

4. We have heard the arguments of learned counsel for the parties and have perused the record.

5. The appellant while possessing the qualification of diploma of Associate Engineering was appointed as Sub-Engineer on 29.11.2006, however during the course of his service, he improved his qualification and obtained degree of B.SC Engineering in the year 2006. The rules relating to initial recruitment and promotion to the post of Assistant Engineer (BPS-17) as amended vide Notification dated 17th February 2011 were as below:-

"a. Sixty five percent by initial recruitment.

b. ten percent by promotion, on the basis of seniority cum fitness, from amongst the Sub Engineer's who has acquired during service degree in Civil or Mechanical Engineering from a recognized university.

c. Five percent by promotion, on the basis of seniority cum fitness, from amongst the Sub Engineer's who joined service as degree holders in Civil/Mechanical Engineering and

d. twenty percent by promotion, on the basis of seniority-cum-fitness from amongst the Sub Engineer's, who hold a diploma of Civil, Mechanical, Electrical or Auto Technology

and have passed Departmental Grade A examination with ten years service as such.

Note: Provided that where candidate under Clause (b) & (c) above is not available for promotion, the vacancy shall be filled in by initial recruitment."

6. Vide Notification dated 25th June 2012, the relevant rule was further amended, which is reproduced as below:-

"(b) twelve percent by promotion, on the basis of seniority-cum-fitness, from amongst the Sub Engineers, having degree in Civil Engineering or Mechanical Engineering from a recognized university and have passed departmental grad B&A examination with five year service of such.

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

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

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

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

Note:- For the purpose of clause (d), a seniority list of Sub Engineers having Diploma of Associate Engineering in Civil Mechanical, Electrical or Auto Technology shall be



maintained and their seniority is to be reckoned from the date of their 1st appointment as Sub Engineer.

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

7. Through the impugned Notification dated 25.06.2012 8% quota has been allocated for B.Tech (Hon) degree holders Sub-Engineers by curtailing quota of Diploma holder Sub-Engineers from 20% to 15%, while that of degree holder Sub-Engineers from total of 15% to 12%. The appellant is of the view that the amendment introduced in the recruitment rules vide Notification No. SOE/IRR/2-3-5-2010-11 dated 25.06.2012 could not be attracted retrospectively to the case of the appellant. The amendments introduced vide the impugned Notification No. SOE/IRR/2-3-5-2010-11 dated 25.06.2012 were previously challenged by Diploma holder Sub-Engineers through filing Service Appeal No. 1175/2012 before this Tribunal, which was disposed of through consolidated judgment dated 26.02.2014 in the following terms:-

"As a sequel to the foregoing discussion, on the partial acceptance of the appeals, the case of amendments in-question is referred to the competent authority i.e Secretary to Government of KPK, Irrigation Department (Respondent No. 2) for reconsideration of the impugned amendment in the light of above discussion and observations made in the judgment for a just decision and further necessary action, under intimation to the Registrar of the Tribunal, within reasonable time. In order to avoid further legal

complications and frustration of the spirit of this judgment, promotions under the amended rules be put on hold in the meantime. There shall, however, be no order as to costs."

8. The above mentioned judgment dated 26.02.2014 passed by this Tribunal was challenged through filing of Civil Appeals No. 795 to 805 of 2014 before the Supreme Court of Pakistan, which were allowed vide judgment dated 24.11.2014 and the appeals partially allowed by this Tribunal vide judgment dated 26.02.2014 were dismissed. In para (13) of the said judgment, it was held as below:-

" 13. In conclusion, since it was a policy matter the Government was empowered to reduce the said quota of diploma holder Sub-Engineers for promotion to the post of Assistant Engineers and also to create a separate quota of B.Tech (Hons.) degree holders for promotion to the post of Assistant Engineers; the same was also not justiceable, and in directing the Government to reconsider the same and to hold in abeyance the promotions made in accordance with the Rules as finally amended the Tribunal exceeded its jurisdiction."

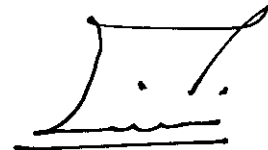
9. The amendments introduced in the relevant rules vide Notification dated 25.06.2012 were made applicable across the board and nothing is available on the record which could show that the same were introduced with a view of extending favour to any specific individual. Moreover, there is no allegation that amendments were introduced on account of any malafide or ulterior motive. The contention of learned counsel for the appellant that as the appellant was already promoted on acting



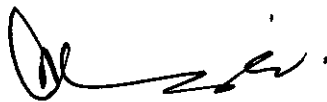
charge basis, therefore, the amendments introduced vide the impugned Notification dated 25.06.2012 would not be applicable to him, is misconceived for the reason that according to sub-rule 6 of the Appointment, Promotion and Transfer Rules, 1989, acting charge appointment shall not confer any vested right for regular promotion to the post held on acting charge basis. In such a situation, promotion of the appellant to the post of Assistant Sub-Engineer on regular basis was to be dealt with in accordance with rules amended vide the impugned Notification dated 25.06.2012 and not on the basis of rules existing prior to the said amendments.

10. Resultantly, the appeal in hand being devoid of any merit stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
30.10.2023



(SALAH-UD-DIN)
MEMBER (JUDICIAL)



(KALIM ARSHAD KHAN)
CHAIRMAN

ORDER
30.10.2023

Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand being devoid of any merit stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
30.10.2023



(Kalim Arshad Khan)
Chairman



(Salah-Ud-Din)
Member (Judicial)

Naeem Amin