

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

**Service Appeal No. 2086 of 2023**

Muhammad Iqbal-IV, Sub Engineer (BS-16),  
C&W Department, Khyber Pakhtunkhwa

.....**APPELLANT**

**VERSUS**

1. Govt of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar
2. Secretary to Govt of Khyber Pakhtunkhwa, C&W Department, Peshawar
3. Secretary to Govt of Khyber Pakhtunkhwa, Finance Department, Peshawar
4. Secretary to Govt of Khyber Pakhtunkhwa, Establishment Department, Peshawar
5. Chief Engineer (Centre), C&W, Peshawar

.....**RESPONDENTS**

**INDEX**

<b>S.No</b>	<b>Description of the documents</b>	<b>Annex</b>	<b>Pages</b>
1.	Para-wise comments reply	-	1-3
2.	Affidavit	-	4
3.	Khyber Pakhtunkhwa Service Tribunal Judgment dated 07/10/2021	I	5-16
4.	APT Rules, 2010 amendment dated 20/01/2023	II	17
5.	Minutes of DPC held on 17/07/2023	III	18-23
6.	Establishment Department tendered advice letter dated 20/09/2023	IV	24
7.	Writ Petition No. 3604/2023 with IR	V	25-30
8.	Order Sheet in WP No.3604/2023 dated 17/11/2023	VI	31-32
9.	Authority Letter	VII	33

  
Zahid Habib

**Administrative Officer**

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**BEFORE THE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL PESHAWAR**  
**APPEAL NO. 2086 OF 2023**

Muhammad Iqbal-IV, Sub Engineer (BS-16)  
C&W Department Khyber Pakhtunkhwa

--- Appellant

**VERSUS**

Khyber Pakhtunkhwa  
Service Tribunal

1. Govt of Khyber Pakhtunkhwa  
Through Chief Secretary  
Civil Secretariat, Peshawar
2. Secretary to Govt of Khyber Pakhtunkhwa  
C&W Department, Peshawar
3. Secretary to Govt of Khyber Pakhtunkhwa  
Finance Department, Peshawar
4. Secretary to Govt of Khyber Pakhtunkhwa  
Establishment Department, Peshawar
5. Chief Engineer (Centre)  
C&W, Peshawar

Diary No. 9777

Dated 08-12-23

--- Respondents

**JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1 TO 5**


Respectfully Sheweth,

**PRELIMINARY OBJECTIONS**

1. That the appeal is not maintainable.
2. That the appellant has never challenged in time any order in which <sup>allegedly</sup> his rights were ignored
3. That the appeal is premature.
4. That the appellant has no cause of action and locus standi.
5. That the appeal is time barred.
6. That the appeal is liable to be rejected on ground of non-joinder and mis-joinder of necessary parties
7. That the appellant is estopped by his own conduct to file the instant appeal

**FACTS**

1. Pertains to record, no comments
2. in light of Khyber Pakhtunkhwa Service Tribunal judgment dated 07.10.2021 (Annex-I), the existing 10% quota reserved for promotion of B-Tech (Hons) degree holders Sub-Engineers to BS-17, was bifurcated at the @ of 06% and 04% share to those B-Tech (Hons) Sub Engineers who possess it before joining service in C&W Department and to those who acquire it during service in the Department respectively (Annex-II). According to amended service rules, a DPC meeting held on 17.07.2023, in which the promotion cases of various cadres including B-Tech graduates also came under consideration. The DPC while pondering the promotion cases of B-Tech recommended according to the existing scenario meaning thereby, 06 numbers Pre-Service B-Tech (Hons) Sub-Engineers considered for promotion to the rank of Assistant Engineers/SDOs (BS-17) to ~~AS FAR~~ bring them <sup>at par</sup> (Annex-III) refer to item-IV of the minutes. In this regard, Establishment Department has also tendered advice (Annex-IV). A Note submitted to Chief Secretary Khyber Pakhtunkhwa for approval, the recommendations of DPC minutes, including the promotion of pre-service B-Tech (Hons) Sub Engineers to the post of Assistant Engineers/SDOs (BS-17), who approved and not yet materialized due to court litigation.

- 
3. Incorrect, as explained in para-2 above
  4. Incorrect, as explained in para-2 above
  5. Pertains to record, no comments
  6. In fact, seniority list of pre-service B-Tech (Hons) Sub Engineers has been issued by Chief Engineer (Centre) C&W Peshawar, and it was based for promotion of pre-service B-Tech (Hons) Sub Engineers to post of Assistant Engineer/SDO (BS-17) C&W Department, meaning thereby no relevancy with the seniority of in-service B-Tech (Hons) Sub Engineers. So far, the seniority list of in-service B-Tech (Hons) Sub Engineers is concerned, in this regard, it is clarified that Chief Engineer (Centre) C&W Peshawar has issued tentative seniority list of the referred cadre for any omission/reservations. Therefore, the same is to be finalized shortly.
  7. Incorrect, as explained in para-2 above
  8. Incorrect. The departmental appeals of the appellants received, which were properly processed and filed, having no weight-age.
  9. Incorrect. The in-service B-Tech (Hons) Sub Engineers filed a joint appeal dated **21.07.2023** to C&W Department, after DPC meeting held on 17.07.2023, which was processed and forwarded to Establishment Department by explaining the overall position since the judgment of Service Tribunal upto the referred DPC meeting. The Establishment Department has tendered their advice by endorsing the minutes of the DPC meeting held on **17.07.2023**. In the referred advice, the Establishment Department has also asked to move a Note to Hon'able Chief Secretary Khyber Pakhtunkhwa for approval of the DPC recommendations to which the department submitted the same and the Chief Secretary Khyber Pakhtunkhwa has approved accordingly.
  10. Incorrect. No discrimination to any individual, including appellant, was done nor any Rule or Principle of law infringed. The apprehension of the appellant is misplaced. In fact, the Department followed rules/policy strictly in the cases of promotion of officers/officials of the department.
  11. No comments

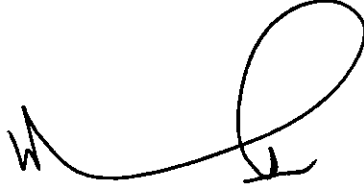
### GROUNDS

- A. Incorrect, and misconstrued, hence denied. Appellants cannot claim any vested right on policy decisions of the Government. The Government had formulated and framed its rules correctly and in public good. There is thus no scope/need of amending in order to accommodate few blue eyed and that too at the expense of overall functioning of the entire Department.
- B. Incorrect. No violation of constitution of Islamic Republic of Pakistan 1973 was made, hence, the claim of the appellant is not justified.
- C. Incorrect, neither discrimination to any individual, including the appellant was done nor any rule or principle of law infringed, the apprehensions of the appellant are misleading.
- D. Incorrect as explained in para-2 of the facts, there has no mala-fide, discrimination or violation of rights of the appellant has ever been made. In fact, the Department has followed rules/policy strictly in cases of promotion of officers/officials of the Department, hence the stance taken in the service appeal is not justified.
- E. Incorrect, the Government is empowered to frame or amend the Service Rules of the Departments.
- F. Incorrect, as explained in para-A of the grounds.
- G. Incorrect, as explained in para-2 of the facts.
- H. The Respondents would like to seek permission of this Hon'able Tribunal to advance more grounds during the time of arguments.

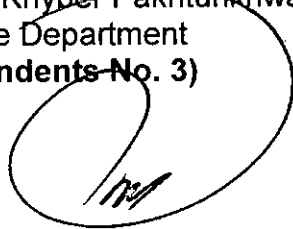
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It is further to state that the said Appellant has also sued the case on the same subject before the august High Court, Peshawar through a Writ Petition No.3604/2023 with IR, where the court has passed orders dated 17/11/2023, copy of Writ Petition and orders are (Annexed V & VI).

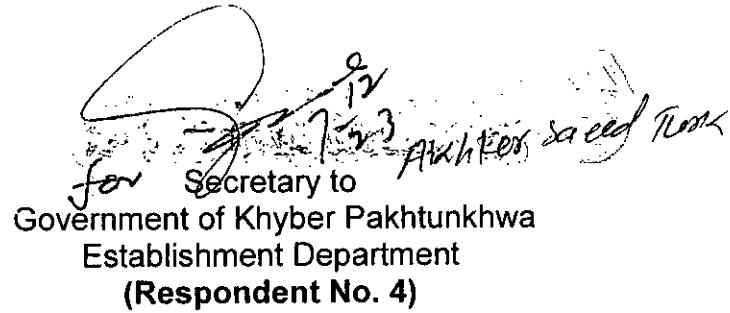
It is therefore, humbly prayed that the instant appeal being devoid of any merit may kindly be dismissed with cost along with the Service Appeal No. 2087/2023 titled Arshad Ali Shah vs Govt, having same & similar question of facts of law.



(AMIR SULTAN TAREEN)  
Secretary to  
Government of Khyber Pakhtunkhwa  
Finance Department  
(Respondents No. 3)



(MUHAMMAD IDREES KHAN)  
Secretary to  
Government of Khyber Pakhtunkhwa  
C&W Department  
(Respondents No. 1 & 2)



for Secretary to  
Government of Khyber Pakhtunkhwa  
Establishment Department  
(Respondent No. 4)

(MUHAMMAD TARIQ)  
CHIEF ENGINEER (CENTRE)  
C&W Peshawar  
(Respondents No. 5)

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

4

**Service Appeal No. 2086 of 2023**

Muhammad Iqbal-IV, Sub Engineer (BS-16),  
C&W Department, Khyber Pakhtunkhwa

.....**APPELLANT**

**VERSUS**

1. Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar
2. Secretary to Govt. of Khyber Pakhtunkhwa, C&W Department, Peshawar
3. Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department, Peshawar
4. Secretary to Govt. of Khyber Pakhtunkhwa, Establishment Department, Peshawar
5. Chief Engineer (Centre), C&W, Peshawar

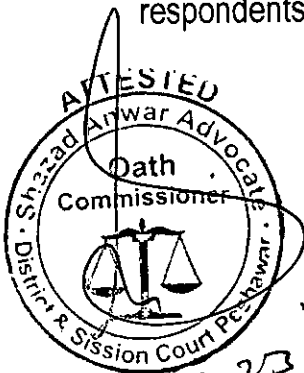
.....**RESPONDENTS**

**AFFIDAVIT**

We, the Respondents, do hereby solemnly affirm and state on Oath that the whole contents of these comments are true and correct to the best of our knowledge and belief that nothing has been concealed from this Khyber Pakhtunkhwa Service Tribunal Peshawar.

It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense has been struck off.

Deponents



08-12-2023

(**AMIR SULTAN TAREEN**)

Secretary to  
Government of Khyber Pakhtunkhwa  
Finance Department  
(Respondents No. 3)

(**AKHTAR SAEED TURK**)

Secretary to  
Government of Khyber Pakhtunkhwa  
Establishment Department  
(Respondent No. 4)

(**MUHAMMAD IDREES KHAN**)

Secretary to  
Government of Khyber Pakhtunkhwa  
C&W Department  
(Respondents No. 1 & 2)

(**MUHAMMAD TARIQ**)

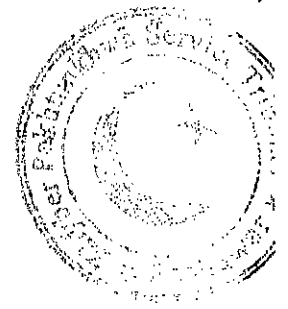
Chief Engineer (Centre)  
C&W Department Peshawar  
(Respondents No. 5)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR

Appeal No. 953/2018

Date of Institution ... 02.08.2018

Date of Decision ... 07.10.2021



Mr. Awais-ur-Rehman Sub Engineer, Building FATA Division,  
Khyber Agency. \_\_\_\_\_ (Appellant)

VERSUS

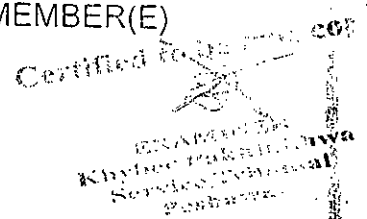
The Government of Khyber Pakhtunkhwa through Chief  
Secretary, Civil Secretariat Peshawar and two others.  
\_\_\_\_\_ (Respondents)

Present.

Mr. Muhammad Amin Ayub,  
Advocate. ... For appellant.

Mr. Muhammad Adeel Butt,  
Addl. Advocate General ... For respondents.

MR. AHMAD SULTAN TAREEN ... CHAIRMAN  
MR. MIAN MUHAMMAD ... MEMBER(E)



JUDGEMENT

AHMAD SULTAN TAREEN, CHAIRMAN:- Through the above titled as  
described in the heading and six other appeals as enclosed in brackets-(Appeal  
954/2018, 955/2018, 956/2018, 957/2018, 958/2018, 959/2018), the jurisdiction of  
Tribunal has been invoked by the appellants with the prayer as copied below:-

"On acceptance of the instant appeal, the impugned Notification dated  
26.03.2018 may graciously be modified to the extent of joint promotion  
quota for B.Tech (Hons) Degree holder Sub-Engineers by separating  
the same from those Sub-Engineers who were in possession of B.Tech  
(Hons) Degree at the time of joining service and for those who had

Administrative Officer (Centre)  
Communication & Works Deptt.  
Khyber Pakhtunkhwa Peshawar.

6

2

*acquired the same qualification during service on the analogy of B.E/B.Sc. Engineer Degree Holder with all back benefits."*

2. This single judgement shall stand to dispose of all the seven appeals in one place as they all are verbatim in facts and grounds giving rise to common questions of facts and law.

3. The factual account given in Service Appeal No. 953/2018 and copies of supporting documents annexed therewith would reveal that all the appellants are incumbents of the post of Sub Engineer in the Respondent Department. Their case in nutshell is that the Provincial Government vide Notification dated 13.01.1980 reserved 10% quota for promotion to the post of Assistant Engineer from amongst the holders of the post of Sub-Engineer possessing the degree as higher qualification. May be, due to vagueness of expression "degree" simply used in the previous notification, need was felt to specify the name of degree and vide Notification dated 18.10.1986, 10% separate promotion quota reserved for those Sub-Engineers who held a degree was restricted by naming degree being in Engineering and also the mode of determination of inter-se seniority was prescribed by the same amendment. This practice remained in field till 1992 when through amendments vide Notification dated 12.04.1992, 05% separate quota was reserved for promotion of those Sub Engineers who acquired Degree before joining the service and for those who acquired the requisite qualification during service. Vide Notification dated 12.01.1999, 05% promotion quota was also reserved for Sub Engineers who had joined the Service as Engineering Graduates and those who had acquired the same Degree during service. Vide Notification dated 16.12.2011, 20% promotion quota was reserved for promotion of Sub-Engineers holding Diploma (Civil/Mechanical/Electrical) and 08% promotion quota was reserved for those holding Degree of B.E/B.Sc. Engineering (Civil/Mechanical/Electrical) at the time of joining service and 07% quota for those who had acquired the Degree

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Administrative Officer (Genl.)  
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during service. It was for the first time that through an amendment vide Notification dated 14.10.2014, the category of the appellants i.e. B.Tech (Hons) Degree holders, a quota of 03.5% promotion was reserved including both who acquired such degree before service or who got it during service. In light of the judgement of the Hon'ble Peshawar High Court and after observing all the codal formalities, recommendation was made for reservation of 10% quota for promotion to the post of SDO/Assistant Engineer (BS-17) in respect of B.Tech.(Hons) Degree holder Sub Engineers. There are two categories of B.Tech. (Hons) Degree Holder Sub Engineers i.e one those who have acquired B.Tech (Hons) Degree before joining service and the other is that who have obtained the said degree during service. Vide impugned notification dated 26.03.2018, a separate quotas has been notified for promotion of other cadre of Graduate Sub Engineers holding Degree of B.E/B.Sc. Engineering to the post of SDO/Assistant Engineer proportionately 05% by promotion, on the basis of seniority of the Sub Engineers who acquired/possessed Degree of B.E or B.Sc. Engineering (Civil, Mechanical or Electrical) at the time of their joining service; and 03.5% for Sub-Engineers who acquired similar Degree during service. On the other hand, vide the same Notification, a different yardstick has been used for promotion quota in respect of Sub Engineers who acquired B.Tech. (Hons) Degree during service and who were in possession of such degree before joining their service; and combined 10% quota was reserved for their promotion to the post of SDO/Assistant Engineer. The appellant being aggrieved of the Notification dated 26.03.2018 *ibid*, preferred Departmental Representation dated 16.04.2018 before the competent authority but the same was not responded within the statutory period of 90 days, and in follow up, they have preferred the instant appeals.

4. The respondents were put on notice after admission of the appeals for regular hearing. They joined the proceedings and submitted joint parawise



comments with legal as well as factual objections and prayed for dismissal of the appeal with cost.

5. It was argued on behalf of the appellant that the impugned Notification dated 26.03.2018 is in violation of Section 8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule 17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989; that the department discriminated the appellant on one hand vis-a-vis similarly placed persons while on the other hand, their colleagues acquiring B. Tech qualification during service were bestowed with double chance of the career progression both in terms of seniority and in terms of qualification due to introduction of the 10% combined promotion quota for B.Tech (Hons) Degree Holders including those who were possessing the said qualification at the time of joining the service and those who later on acquired such qualification during service; that discriminatory treatment meted out to the appellants is in conflict to the fundamental rights provided under Article 4 and 25 of the Constitution of Islamic Republic of Pakistan; that the respondents in the same impugned rules set a precedent of providing separate 05% promotion quota for those Sub Engineers who possessed the degree of B.E or B.Sc. Engineering (Civil, Mechanical or Electrical) at the time of joining their service, and separate 03.5% quota for those Sub Engineers who acquired the Degree of B.E or B.Sc. Engineer (Civil/Mechanical/Electrical) during service; and despite the said precedent was brought into practice in case of Sub Engineers possessing the qualification of B.E or B.Sc. Engineering was not followed in the case of appellants who having possessed the Degree of B.Tech (Hons) at the time of joining the service were at par for reservation of quota with those Sub Engineer who possessed B.E or B.Sc. Engineering at the time of joining the service. The learned counsel for the appellant concluded his arguments with the submission that 10% quota reserved collectively for holders of the Degree of B.Tech

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(Honors) in the category of Sub Engineers is liable to bifurcation in line with the separate quota in other categories of Sub Engineers possessing the Degree of B.E or B.Sc. Engineering and prayed for issuance of appropriate direction for separation of 10% quota fixed under Clause (e) of the Appendix to the impugned rules in relation to Degree holders of B. Tech. (Honors).'

6. Conversely, it was argued on behalf of the respondents that there is no final order in case of the appellants making their appeals not maintainable under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. It was the argument on factual side that Sub Engineers having B.Tech. (Honors) Degree submitted a joint application for reservation of quota for their promotion to the post of SDO BS-17. In this connection a Committee was constituted to submit recommendations. The committee proposed 03.5% share for Sub Engineers having B. Tech (Hons) on the basis of seniority-cum-fitness by curtailing 07% share quota reserved for Sub Engineer who acquired Degree of B.Sc. Engineering (Civil/Mechanical/Electrical) during service. The Establishment Department placed the case before the SSRC for consideration on 19.06.2013. As per Law Department advice the case was referred to Public Service Commission for requisite NOC who agreed with the proposed amendments for the post of Assistant Engineer/SDO/Junior Engineer/Assistant Research Officer BS-17. In view of SSRC recommendations, draft Notification was forwarded to Law Department for vetting before circulation. Law Department vetted the notification with the observations and advised for minute examination. Consequently, a note was submitted to the Chief Secretary for approval of the Notification regarding the said amendment in the existing service rules but the case was returned from the said quarter with direction to submit a revised working paper highlighting the observations of Law Department for placement before the SSRC for consideration/concurrence. It was in this background that the revised Working Paper was placed before the

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Khyber

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SSRC on 16.04.2014 which decided that the seniority in all cadres shall be determined from the date of initial appointment, therefore, the Department again submitted a note to the Chief Secretary for proper approval of the notification which was approved and after completion of all codal formalities, the notification dated 14.10.2014 was issued with necessary amendments duly recommended by SSRC and approved by the Chief Secretary. It was further pointed out on behalf of the respondents that Writ Petition No. 1320-P/2017 was filed seeking enhancement of the share for promotion as Assistant Engineers/SDOs in BS-17 in which direction was issued though for instant notice to Addl. AG who was present in the Court accepted the same without consultation of the department; but in pursuance to the direction of the Hon'ble Court to consider the grievance of the petitioner, the quota fixed as 03.5% earlier was enhanced to 10% vide notification dated 26.03.2018 as impugned before this Tribunal. So, it was argued that the appellants are stopped by their conduct to seek further changes *inter-se* in quota reserved in pursuance to direction of Hon'ble Peshawar High Court vide the impugned notification. While concluding the arguments, learned AAG submitted that the Government is empowered to frame or amend the service rules of the department and in case of the appellant was nothing beyond the authority of the government and the rules were rightly amended by reservation of the 10% quota which the appellants have impugned without any justification. He submitted that the appeals are liable to dismissal with costs.

7. Having heard the arguments on behalf of the parties and perused the record in light of pro and contra arguments, we deem it appropriate to dilate upon the method of appointment of the post of Assistant Engineer. According to the Communication & Works Department (Recruitment and Appointment) Rules, 1979 notified on 13.01.1980, besides the conditions prescribed in other columns of Schedule I of the said rules, proportion of quota for initial



11

7

recruitment and for proportion was also prescribed in the last column of said schedule. Accordingly, 75% quota was reserved for initial recruitment, 10% by selection on merit with due regard to seniority from amongst Sub Engineers of the Department who hold a degree; and 20% by selection on merit with due regard to seniority from amongst Senior Scale Sub Engineers of the Department, who hold a Diploma and have passed Departmental Professional Examination. As discussed in the factual part herein above, the basic quota reserved for promotion of In-service Sub Engineers was altered time and again through different amendments in the entries in the last column meant to prescribe quota relating to the post of Assistant Engineer at Serial No. 4 of Appendix to the basic rules. However, all the amendments in the appendix relating to said post were to provide variation in ratio of quota for promotion including quota for graduate engineers holding the post of Sub Engineer. In the series of amendments, in one made vide notification dated 16.12.2011, besides certain other additions it was also prescribed that the higher qualification for the purpose of promotion against particular quota will be the B.E/B.Sc. Engineering(Civil/Mechanical/Electrical). Before the amendment made vide notification dated 14.10.2014 whereby 03.5% quota was provided for promotion of Sub Engineers having Degree of B.Tech (Hons), the quota as reserved previously pertained only for graduate Sub Engineers in possession of Engineering degree. Lastly, 03.5% quota as reserved vide entry in clause (e) in column No. 5 against Serial No. 4 in the Appendix in 2014, was enhanced upto 10% by promotion keeping the other conditions intact. The prayer of the appellants in plain terms reveals that they claim the modification in clause (e) pertaining to 10% quota exclusively reserved for B-Tech (Hons) Degree holders seeking its separation into two sub categories of the Sub Engineers, one comprising those who were in possession of B-Tech (Hons) degree at the time of joining service and the other who acquired the same qualification during

Adm. ...  
Comptroller

service, on analogy of B.E/B.Sc. Engineering Degree Holders, with all back benefits.

8. Needless to say that holders of the post of Sub Engineers, as far as their original post is concerned, are required at the time of initial appointment to possess minimum qualification as prescribed in relevant column of the appendix but they after regular appointment are separately dealt for appointment through promotion and have been placed differently in the matter of quota reserved for promotion having regard to the minimum qualification and the higher relevant qualification. So, they from their origin were categorized in 'two main categories:'one comprising those who possess only basic qualification prescribed for the post and the second including those Sub Engineers who possess the degree of BE/BSc Engineering or they are holders of B.Tech (Hons) degree. The matter in issue before us relates to a part of second category covering the Sub Engineers who happen to have possessed the degree of B.Tech (Hons). Although there is no issue about part of the second category comprising Sub Engineers who happen to have possessed the degree of BE/BSc. Engineering but for the sake of understanding the grievance of appellants, it is useful to mention that this part of the second category has been further divided in to two sub categories:"one comprising those Sub Engineers who happened to have possessed the degree of BE/B.Sc. Engineering at the time of their initial recruitment and other comprising of those Sub Engineers who happened to have acquired such degree during service after their initial appointment. The appellants, making part of the second category in main categories discussed before, are aggrieved that when one sub category making part of the second main category has been divided further into two sub categories for proportional quota on subject of the BE/BSc. Engineering degree with reference to the timeline of its acquisition, the same treatment was befitting for the other part including holders of the B. Tech (Hons) degree. Contrarily, Sub

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13

9

Engineers possessing B.Tech (Hons) Degree have been kept combined for quota on the subject of their degree irrespective of the timeline of its acquisition. According to the impugned notification dated 26.03.2018 in respect of the amendment in the Appendix of the department Notification dated 25.03.2010, the Sub Engineers who possessed the B.E or B.SC. Engineering degree at the time of joining the service were separately dealt with for the purpose of quota while those who albeit have happened to possess the same degree but acquired later on during service have been dealt separately with a proportional quota in the same category. The substituted entries under Clause (b) and clause (c) against Serial No. 4 in Column No. 05 in the Appendix respectively provide 05 % quota for those Sub Engineers who happened to have possessed the B.E or B.Sc. Engineering degree at the time of appointment while 03.5 % for others in the same category who happened to have acquired such degree during service. However, by the substituted entry vide Clause (e) in the same Appendix against S.No. 4 in Column No. 05, the Sub Engineers possessing the Degree of B.Tech (Hons) were held entitled for 10% quota without making distinction between the Sub Engineers who were in possession of such degree at the time of joining the service and who acquired such degree during service. The appellants purport to have possessed the degree of B.Tech (Hons) at the time of their joining the service. The accumulation of the Sub Engineers having the Degree of B.Tech (Hons) in a single queue for 10% promotion quota, irrespective of distinction between holders of said qualification at the time of induction into service and the holders of the degree who acquired such degree after joining the service, is perceptibly not efficacious for the appellants; when they are always exposed to a risk of thumping from behind to leave place to one who comes forward from the sideways after acquiring B.Tech (Hon) Degree during service. Needless to say that the apportionment of quota between the Sub Engineers, who happened to have possessed the degree of BE or BSC Engineering at the time of appointment and

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same during service, has emboldened the appellants for the claim of apportionment of the 10% quota of their category in the similar manner as applied for the category of holders of the degree of BE or BSC Engineering. The claim of appellants for the treatment alike for bifurcation of quota within limits of 10% quota on the subject of degree of B.Tech (Hons) is not unreasonable when juxtaposed to bifurcation of quota on the subject of degree of BE/BSc. Engineering degree with reference to the timeline of its acquisition. If date of appointment of some Sub Engineers not in possession of B.Tech (Hons) degree is the same or earlier than the appellants but they i.e. the former happen to have acquired the relevant degree at any stage during service, there will always be a room for customization and readjustment of the seniority list of the competitors for 10% quota on the subject of B.Tech (Hons) degree because of difference in the order of their merit in one selection or difference in dates of their appointment. The date of regular appointment among other points is a significant factor for determination of seniority within the meaning of Rule 17 Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. The seniority of the appellants will remain fluctuating in case of the combined category of Sub Engineers for competition within limits of 10% quota on the subject of B.Tech (Hons) degree. It is not difficult to assume that if a Sub Engineer having been appointed on the basis of his original qualification earlier than the appellants, happens to have acquired the Degree of B.Tech (Hons) during service after appointment of the appellants, he will stand senior to them on the strength of prior date of appointment irrespective of the fact that he was not possessing such qualification when the appellants holding the same had joined the service. So, the appellants were entitled to be treated alike with the categories of Sub Engineers who were provided separate quota within their own category because of their possessing of B.E or B.Sc Engineer (Civil/Mechanical/Electrical) degree at the time of joining the service. A copy of the tentative seniority list of B.Tech Degree Holders

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C&W Department Khyber Pakhtunkhwa as stood on 31.03.2021 was produced at the bar on behalf of the appellants. It was contended that according to the said seniority list, the B.Tech (Hons) Degree Holder Sub Engineers are 70 in number; and all among them except the appellants (07 in numbers) and some others if any, are those who acquired the qualification of B.Tech (Hons) after joining the service but having the date of their appointment prior in time to that of the appellants; and they have got senior number in the seniority list than the appellants.

9. In view of the foregoing discussion, if the appellant having possessed B.Tech Honors Degree at the time of joining their service are not treated distinctively than those Sub Engineers possessing the similar qualification but having acquired the same during service, they i.e. appellants will always remain not only caught up in uncertainty in the matter of seniority but also prone to the risk of relegation in the seniority for the reason already discussed herein above. When a particular treatment has been meted out to a class of Sub Engineers by separation of their inter-se quota proportionately with reference to timeline of acquisition of BE/BSc. Engineering degree, the appellants for bifurcation of quota on the subject of their degree with reference to timeline of its acquisition are similarly placed. If the appellants are not treated in the said manner, the infringement of their fundamental rights of equality of the treatment with similarly placed persons will perpetuate. Certainly, the amendments made by the impugned notification for 10% quota on the subject of B.Tech(Hons)degree irrespective of the timeline as to acquisition of such qualification, has deprived the appellants from protection as granted to the Sub Engineers with separate quota who at the time of joining the service have held the Degree of B.E/B.Sc. Engineering (Civil/Mechanical/Electrical). Needless to say that the rules as impugned in the appeals have got the force of law and by virtue of sub article (1) of Article 25 of the Constitution of Islamic Republic of Pakistan, all citizens



16

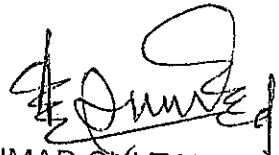
are equal before law and are entitled to equal protection of law. So, we hold that the appellants have got a good case for the relief as prayed for.

10. For what has gone above, all the appeals enumerated above at the outset are accepted as prayed for. Consequently, the respondents are directed to proceed under due course for substitution of Clause (e) of the Appendix against Serial No. 4 in Column No. 5 to provide for separation of 10% quota with appropriate proportion having regard to the number of Sub Engineers who happened to have possessed the Degree of B.Tech (Hons) at the time of their joining the service and those who happened to have acquired such degree while in service after their appointment. There is no order as to cost. File be consigned to record room.



(MIAN MUHAMMAD)  
Member(E)

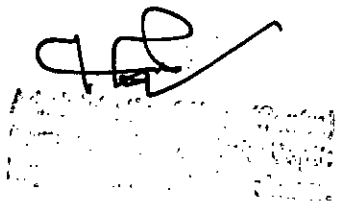
**ANNOUNCED**  
07.10.2021



(AHMAD SULTAN TAREEN)  
Chairman

*Certified to be true copy*

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar





GOVERNMENT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar, the Jan 20, 2023

**NOTIFICATION:**

No.SO.E/C&WD/8-12/2023: 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 the Finance Department, hereby direct that in this Department Notifications' No.SO.E/C&WD/8-12/2009, dated 25<sup>th</sup> March, 2010, the following further amendments shall be made, namely:

**AMENDMENTS**

In the APPENDIX, against serial No.4, in column No.5, for the existing entries, the following shall respectively be substituted, namely:

- "(i) Sixty five percent (65%) by initial recruitment; and
  - (ii) thirty five (35%) by promotion, on the basis of seniority-cum-fitness, in the following manner, namely:
    - (a) sixteen and half percent (16.50%) by promotion, from amongst the holders of the posts of Sub-Engineer who hold a Diploma of (Civil, Mechanical or Electrical) and have passed Departmental Professional Examination, with ten (10) years service as such;
    - (b) five percent (5%) by promotion, from amongst the holders of the posts of Sub-Engineer who possess Degree of B.E or B.Sc Engineering (Civil, Mechanical or Electrical) at the time of their joining service and have passed Departmental Professional Examination, with 03 (three) years service as such;
    - (c) three and half percent (3.5%) by promotion, from amongst the holders of the posts of Sub-Engineer who acquired Degree of B.E or B.Sc Engineering (Civil, Mechanical or Electrical) during service and have passed Departmental Professional Examination, with 03 (three) years service as such;
- Provided that if no suitable candidate is available for promotion, then the post shall be filled in the manner, as prescribed at clause (b) and vice-versa;
- (d) four percent (4%) by promotion, from amongst the holders of the posts of Sub-Engineer who have acquired B.Tech (Hons) four (04) years degree during service and have passed Departmental Professional Examination, with five (05) years service as such;
- and
- (e) six percent (6%) by promotion, from amongst the holders of the post of Sub-Engineers who possesses B.Tech (Hons) four (04) years degree at the time of appointment and have passed Departmental Professional Examination, with five (05) years service as such.";

made

Note-I: The seniority in all cases shall be determinate from the date of Initial appointment:

Provided that for the purpose of promotion to the post of Sub Divisional Officer, Assistant Engineer, Junior Engineer and Assistant Research Officer, the seniority of Sub Engineers, mentioned in the clause (c), shall be determined from the date of acquiring the Degree in B.E/B.Sc Engineering (Civil, Mechanical or Electrical) from a recognized University.

Note-II: (a) For the purpose of promotion to the post of Sub Divisional Officer, Assistant Engineer, Junior Engineer and Assistant Research Officer, the seniority of Sub Engineers under clause (d) in case of service graduates shall be determined from the date of acquiring B.Tech (Hons) four (04) years Degree; and

Administrative Officer (Centre)  
Communication & Works Deptt:  
Khyber Pakhtunkhwa, Peshawar.

Annex-III 18

**MINUTES OF DEPARTMENTAL PROMOTION COMMITTEE MEETING  
HELD ON 17.07.2023 AT 11:00 HOURS UNDER THE CHAIRMANSHIP OF  
SECRETARY COMMUNICATION & WORKS DEPARTMENT**

Meeting of the Departmental Promotion Committee of the C&W Department was held on 17.07.2023 at 11:00 Hours under the Chairmanship of Secretary C&W in the committee room of C&W Department. The following attended the meeting:

- |  |     |                 |
|--|-----|-----------------|
| 1. Mr. Syed Imtiaz Hussain Shah<br>Secretary C&W Department                  | --- | In Chair        |
| 2. Engr. Muhammad Tariq<br>Chief Engineer (Centre)<br>C&W Peshawar           | --- | Member          |
| 3. Mr. Jamshid Khan<br>Deputy Secretary (R-III)p<br>Establishment Department | --- | Member          |
| 4. Mr. Saleem Khan<br>Deputy Secretary (SR)<br>Finance Department            | --- | Member          |
| 5. Zahid Mahsud<br>Deputy Secretary (Admn)<br>C&W Department                 | --- | Secy-Cum-Member |

2. The meeting started with the recitation from Holy Quran. The chair welcomed all the participants. The forum was informed that as per recruitment rules of the Department, the following position are required to be filled-in by way of promotion from amongst suitable officials.

**Item-I: PROMOTION OF DIPLOMA HOLDER SUB ENGINEERS TO THE POSTS OF ASSISTANT ENGINEERS/SDOs (BS-17) ON REGULAR BASIS IN THE C&W DEPARTMENT**

According to clause (a) of the Service Rules of C&W Department, 16:50% posts of Assistant Engineer/SDO (BS-17) are to be filled "By Promotion", on the basis of seniority- cum-fitness, from amongst the Diploma Holder Sub Engineers having passed Departmental Professional Examination with at least ten years service as such".

After examining all relevant record of the officials and threadbare discussion, the promotion case of Diploma Holder Sub Engineers to the post of Assistant Engineer/SDO (BS-17) was considered against **Twenty two (22)** numbers clear vacancies on regular basis of the officials included in the panel in order of their seniority/fitness and made the following recommendations.

01	Hamidullah-I	The DPC recommended deferment of the official for promotion due to lack of his ACRs besides issuing Departmental Warning to him. The DPC further recommended to ask Chief Engineer (Centre) C&W Peshawar to conduct fact finding inquiry with-regard to not completing the ACRs.
02	Tariq Hussain Shah	The DPC recommended deferment of the official for promotion due to lack of ACRs as well as pending inquiry and further recommended to ask Chief Engineer (Centre) C&W Peshawar to conduct fact finding inquiry with-regard to not completing the ACRs, besides issuing Departmental Warning to the official.
03	Mumtaz Ahmad Malik	The DPC recommended for promotion to the post of Assistant Engineer/SDO (BS-17) on regular basis. He will be on probation for a period of one year.
04	Ukrumullah-II	The DPC recommended deferment of the official for promotion due to non-clearing/passing departmental professional Exam and lack of his ACRs and further recommended to ask Chief Engineer (Centre) C&W Peshawar to conduct fact finding inquiry with-regard to not completing the ACRs, besides issuing Departmental Warning to the official.
05	Muhammad Shaukat	The DPC recommended deferment of the official for promotion due to pending inquiry.

Administrative Officer (Centre)  
Communication & Works Deptt.  
Peshawar

06	Rehman Saeed	The DPC recommended deferment of the official for promotion due to non-clearing/passing departmental professional Exam.
07	Syed Jaffar Shah	The DPC recommended for promotion to the post of Assistant Engineer/SDO (BS-17) on regular basis. He will be on probation till his retirement.
08	Shah Tamas Khan	The DPC recommended for promotion to the post of Assistant Engineer/SDO (BS-17) on regular basis. He will be on probation till his retirement.
09	Muhammad Jamil-II	The DPC recommended for promotion to the post of Assistant Engineer/SDO (BS-17) on regular basis. He will be on probation till his retirement.
10	Muhammad Iqbal-IV	The DPC recommended deferment of the official for promotion due to lack of ACRs as well as pending inquiry and further recommended to ask Chief Engineer (Centre) C&W Peshawar to conduct fact finding inquiry with-regard to not completing the ACRs, besides issuing Departmental Warning to the official.
11	Tariq Muhammad	The DPC recommended for promotion to the post of Assistant Engineer/SDO (BS-17) on regular basis. He will be on probation till his retirement. The Chief Engineer (Centre) C&W Peshawar has forwarded the XEN Highway Division Swabi letter. In the letter, it has certified that in the previous result of Departmental Promotion Exam Mr. Tariq Muhammad Sub Engineer may be considered as qualified.
12	Fida Muhammad	The DPC recommended deferment of the official for promotion due to lack of his ACRs besides issuing Departmental Warning to him. The DPC further recommended to ask Chief Engineer (Centre) C&W Peshawar to conduct fact finding inquiry with-regard to not completing the ACRs.
13	Noor Zeb	The DPC recommended for promotion to the post of Assistant Engineer/SDO (BS-17) on regular basis. He will be on probation for a period of one year.
14	Muhammad Abdul Khair	The DPC recommended for promotion to the post of Assistant Engineer/SDO (BS-17) on regular basis. He will be on probation for a period of one year.
15	Asmatullah Khan-II	The DPC recommended for promotion to the post of Assistant Engineer/SDO (BS-17) on regular basis. He will be on probation till his retirement.
16	Salim Khan-III	The DPC recommended for promotion to the post of Assistant Engineer/SDO (BS-17) on regular basis. He will be on probation for a period of one year.
17	Luqman Tariq	The DPC recommended for promotion to the post of Assistant Engineer/SDO (BS-17) on regular basis. He will be on probation for a period of one year.
18	Syed Ali Raza Gillani	The DPC recommended for promotion to the post of Assistant Engineer/SDO (BS-17) on regular basis. He will be on probation for a period of one year.
19	Muhammad Iqbal-V	The DPC recommended for promotion to the post of Assistant Engineer/SDO (BS-17) on regular basis. He will be on probation till his retirement.
20	Muhammad Tariq-III	The DPC recommended deferment of the official for promotion due to lack of his ACRs besides issuing Departmental Warning to him. The DPC further recommended to ask Chief Engineer (Centre) C&W Peshawar to conduct fact finding inquiry with-regard to not completing the ACRs.
21	Mudassir Shah	The DPC recommended for promotion to the post of Assistant Engineer/SDO (BS-17) on regular basis. He will be on probation for a period of one year.
22	Fayyaz Gul-II	The DPC recommended for promotion to the post of Assistant Engineer/SDO (BS-17) on regular basis. He will be on probation for a period of one year.

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**Item-II: PROMOTION OF PRE-SERVICE/IN-SERVICE GRADUATE SUB ENGINEERS TO THE POST OF ASSISTANT ENGINEERS / SDOs (BS-17) IN THE C&W DEPARTMENT**

05% quota reserved for promotion of Pre-Service Graduate Sub Engineers to the Post of Assistant Engineer/SDO (BS-17) worked out as 12, all the posts are filled. Moreover, 3.5% quota reserved for promotion of In-service Graduate Sub Engineers to the post of Assistant Engineer/SDO (BS-17) worked out as 08, out of which 07 numbers In-service Graduate Assistant Engineers (BS-17) are available and one number vacancy remained vacant from the last DPC held on 21.02.2022. However, in the referred quota only one In-service Graduate Sub Engineer has promoted on 20.12.2021 and not completed the required length of service i.e 03 Years meaning thereby not eligible for promotion to the post of Assistant Engineer/SDO (BS-17) on regular basis. In such like scenario, Clause (c) against Sl. No.4, column No.5 provides that if no suitable candidate is available for promotion, then the post shall be filled in the manner, as prescribed at clause (b) and vice-versa. In the instant case, Engr. Muhammad Waqar In-service Graduate Sub Engineer has submitted an application for promotion as Assistant Engineer/SDO (BS-17). However, he has not completed the required length of service i.e 03-Years. Therefore, the DPC Forum has deferred the case.

**Item-III: PROMOTION OF PRE-SERVICE B-TECH (Hons) SUB ENGINEERS TO THE POST OF ASSISTANT ENGINEER/SDO (BS-17) ON REGULAR BASIS IN THE C&W DEPARTMENT**

According to clause (e) of the Service Rules of C&W Department, 06% posts of Assistant Engineer/SDO (BS-17) are to be filled "By Promotion", from amongst the Holders of the Post of Sub Engineers who possess B-Tech (Hons) four (04) Years degree at the time of appointment and have passed Departmental Professional Examination, with Five (05) Years' service as such. The DPC forum also thoroughly discussed the request of In-service B-Tech (Hons) Sub Engineers regarding considering the share of promotion of In-service B-Tech (Hons) Sub Engineers and Pre-service B-Tech (Hons) Sub Engineers against the available Six (06) numbers vacant posts of Assistant Engineer. However, the forum opined that the promotion of any category is made under the existing promotion share of quota under the Existing Promulgated Rules. The position is as under:

Sl. No.	Category	Share of Each Category	Presently Working	Short Fall/ Excess
1	Pre- Service B-Tech (Hons) Sub Engineer (06%)	14.04 say = 14	00	(-) 14
2	In-Service B-Tech (Hons) Sub Engineer (04%)	9.36 say = 09	17	(+) 08

Therefore, after examining all relevant record of the officials and threadbare discussion, the promotion case of Pre-service B-Tech (Hons) Sub Engineers to the post of Assistant Engineer/SDO (BS-17) was considered against Six (06) numbers clear vacancies on regular basis of the officials included in the panel in order of their seniority/fitness and made the following recommendations.

1	Ghani Khattak Khan	The DPC recommended deferment of the official for promotion due to lack of ACRs as well as pending inquiry and further recommended to ask Chief Engineer (Centre) C&W Peshawar to conduct fact finding inquiry with-regard to not completing the ACRs, besides issuing Departmental Warning to the official.
2	Awais-ur-Rehman	The DPC recommended for promotion to the post of Assistant Engineer/SDO (BS-17) on regular basis. He will be on probation for a period of one year.
3	Zia-ur-Rehman	The DPC recommended for promotion to the post of Assistant Engineer/SDO (BS-17) on regular basis. He will be on probation for a period of one year.
4	Farman Ullah	The DPC recommended for promotion to the post of Assistant Engineer/SDO (BS-17) on regular basis. He will be on probation for a period of one year.
5	Muhammad Maaz	The DPC recommended for promotion to the post of Assistant Engineer/SDO (BS-17) on regular basis. He will be on probation for a period of one year.
6	Amir Ali	The DPC recommended for promotion to the post of Assistant Engineer/SDO (BS-17) on regular basis. He will be on probation for a period of one year.

*[Signature]*  
Admin. Officer (Centre)

Item-IV:

**PROMOTION OF SUPERINTENDENTS TO THE POST OF ADMINISTRATIVE OFFICER/BUDGET & ACCOUNTS OFFICER (BS-17) ON REGULAR BASIS.**

According to Service Rules of C&W Department, the posts of Administrative Officer/Budget & Accounts Officer (BS-17) are filled "By promotion, on the basis of seniority-cum-fitness from amongst the Superintendents, with at least 05 years' service as such"

After examining all relevant record of the officers and threadbare discussion, the promotion case of Superintendents to the posts of Administrative Officer/Budget & Accounts Office (BS-17) were considered against Ten (10) numbers clear vacancies on regular basis of the officers included in the panel in order of their seniority/fitness and made the following recommendations.

1	Mehboob Ali	Recommended for promotion to the post of Administrative Officer/Budget & Accounts Officer (BS-17) on regular basis. He will be on probation for a period of one year.
2	Muddasir Anwar	Recommended for promotion to the post of Administrative Officer/Budget & Accounts Officer (BS-17) on regular basis. He will be on probation for a period of one year.
3	Shoaib Khan	Recommended for promotion to the post of Administrative Officer/Budget & Accounts Officer (BS-17) on regular basis. He will be on probation for a period of one year.
4	Muhammad Iqbal Jamshid	Recommended for promotion to the post of Administrative Officer/Budget & Accounts Officer (BS-17) on regular basis. He will be on probation for a period of one year.
5	Fazal Rabbi	Recommended for promotion to the post of Administrative Officer/Budget & Accounts Officer (BS-17) on regular basis. He will be on probation till his retirement.
6	Fazal Amin	Recommended for promotion to the post of Administrative Officer/Budget & Accounts Officer (BS-17) on regular basis. He will be on probation till his retirement.
7	Hazrat Umer	The DPC recommended deferment of the officer due to lack of required length of service i.e. 05 years.
8	Inamullah Shah	The DPC recommended deferment of the officer due to lack of required length of service i.e. 05 years.
9	Amanat Ali Shah	The DPC recommended deferment of the officer due to lack of required length of service i.e. 05 years.
10	Fazal Hadi	The DPC recommended deferment of the officer due to lack of required length of service i.e. 05 years.

Item-V:

**PROMOTION OF CIRCLE HEAD DRAFTSMAN TO THE POST OF CHIEF DRAFTSMAN (BS-17) ON REGULAR BASIS IN THE C&W DEPARTMENT**

According to Service Rules of C&W Department, the posts of Chief Draftsman (BS-17) are to be filled "By promotion, on the basis of seniority-cum-fitness; from amongst the Circle Head Draftsman, with at least (03) years' service as such".

After examining all relevant record of the officials and threadbare discussion, the promotion case of Circle Head Draftsman to the posts of Chief Draftsman (BS-17) were considered against Eight (08) numbers clear vacancies on regular basis of the officials included in the panel in order of their seniority/fitness and made the following recommendations.

1	Muhammad Ayub	The DPC recommended for promotion to the post of Chief Draftsman (BS-17) on regular basis. He will be on probation for a period of one year.
2	Saeed Ullah	The DPC recommended deferment of the official due to lack of required length of service i.e. 03 years.
3	S. Muhammad Ali Shah	The DPC recommended deferment of the official due to lack of required length of service i.e. 03 years.
4	Fayyaz Khan (Centre)	The DPC recommended deferment of the official due to lack of required length of service i.e. 03 years.

Administrative Officer  
Communication & Works Deptt.  
Khyber Pakhtunkhwa Peshawar.

5	Tila Muhammad	The DPC recommended deferment of the official due to lack of required length of service i.e. 03 years.
6	Ali Marjan	The DPC recommended deferment of the official due to lack of required length of service i.e. 03 years.
7	Iftikhar Ali	The DPC recommended deferment of the official due to lack of required length of service i.e. 03 years.
8	Shafqat Ullah	The DPC recommended deferment of the official due to lack of required length of service i.e. 03 years.

**Item-VI: PROMOTION OF ASSISTANTS & SENIOR SCALE STENOGRAPHER TO THE POST OF SUPERINTENDENT (BS-17) ON REGULAR BASIS**

According to Service Rules of C&W Department, the method of recruitment/ appointment of Superintendents is as under:-

"By Promotion, on the basis of seniority-cum-fitness, from amongst Assistants and Senior Scale Stenographers with at least five years service as such".

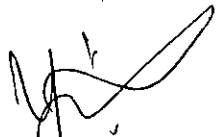
**Note:** For the purpose of promotion, a joint seniority list of Assistants and Senior Scale Stenographers will be maintained. If the date of appointment of both the officials is the same, then Assistant will rank senior"


After examining all relevant record of the officials and threadbare discussion, the promotion of Assistants/Senior Scale Stenographers to the posts of Superintendents (BS-17) on regular basis were considered against **Twenty (20)** clear vacancies and made the following recommendations:-


1	Javeria Tahir	The DPC recommended for promotion to the post of Superintendent (BS-17) on regular basis. He will be on probation for a period of one year.
2	Inayat Khan	The DPC recommended deferment of the official due to lack of required length of service i.e. 05 years.
3	Asadullah Khan	The DPC recommended for promotion to the post of Superintendent (BS-17) on regular basis. He will be on probation for a period of one year.
4	Nekam Khan	The DPC recommended for promotion to the post of Superintendent (BS-17) on regular basis. He will be on probation for a period of one year.
5	Badshah Hussain	The DPC recommended for promotion to the post of Superintendent (BS-17) on regular basis. He will be on probation for a period of one year.
6	Muhammad Idrees	The DPC recommended for promotion to the post of Superintendent (BS-17) on regular basis. He will be on probation for a period of one year.
7	Muhammad Tariq	The DPC recommended for promotion to the post of Superintendent (BS-17) on regular basis. He will be on probation for a period of one year.
8	Rahim Dad	The DPC recommended for promotion to the post of Superintendent (BS-17) on regular basis. He will be on probation for a period of one year.
9	Hayat Ali	The DPC recommended deferment of the official due to lack of required length of service i.e. 05 years.
10	Wali Ullah	The DPC recommended deferment of the official due to lack of required length of service i.e. 05 years.
11	Inamullah	The DPC recommended deferment of the official due to lack of required length of service i.e. 05 years.
12	Muhammad Ishtiaq	The DPC recommended deferment of the official due to lack of required length of service i.e. 05 years.
13	Jamshaid Khan	The DPC recommended deferment of the official due to lack of required length of service i.e. 05 years.
14	Arshad Iqbal	The DPC recommended deferment of the official due to lack of required length of service i.e. 05 years.
15	Riaz Ali Shah	The DPC recommended deferment of the official due to lack of required length of service i.e. 05 years.
16	Muhammad Ibrahim	The DPC recommended deferment of the official due to lack of required length of service i.e. 05 years.
17	Raza Muhammad	The DPC recommended deferment of the official due to lack of required length of service i.e. 05 years.


18	Muhammad Zeb	The DPC recommended deferment of the official due to lack of required length of service i.e. 05 years.
19	Rozi Gul	The DPC recommended deferment of the official due to lack of required length of service i.e. 05 years.
20	Miftahuddin	The DPC recommended deferment of the official due to lack of required length of service i.e. 05 years.

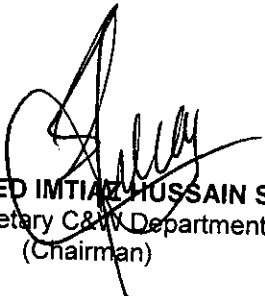
3. The meeting ended with mutual vote of thanks.


  
**(MR. JAMSHID KHAN)**  
 Deputy Secretary (Reg-III)  
 Establishment Department  
 (Member)

  
**(MR. Saleem Khan)**  
 Deputy Secretary (Reg)  
 Finance Department  
 (Member)

  
**(ENGR. MUHAMMAD TARIQ)**  
 Chief Engineer (Centre)  
 C&W Peshawar  
 (Member)

  
**(MR. ZAHID MAHSOD)**  
 Deputy Secretary (Admn) C&WD  
 (Secretary-Cum-Member)

  
**(ENGR SYED IMTIAZ HUSSAIN SHAH)**  
 Secretary C&W Department  
 (Chairman)

  
 Administrative Officer (Centre)  
 Communications  
 Khyber Pakhtunkhwa





Annex-IV

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

94

No.SOR-V(E&AD)/1-1035/C&W-D/2023

Dated Peshawar the 20<sup>th</sup> September 2023

Diary No: 6909  
Date: 20-9-23  
Secretary C&W Deptt.

AS/AD/SOE

To

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

Subject: **REQUEST FOR COMPLIANCE OF RULES FOR PROMOTION OF  
B-TECH (HONS) SUB ENGINEER AS ASSISTANT (BPS-17) C&WD**

Dear Sir,

I am directed to refer to your letter No.SOE/C&WD/4-2/2022 dated 11.08.2023 on the captioned subject and to state that Note may be moved for approval of Chief Secretary Khyber Pakhtunkhwa in light of recommendations of DPC meeting held on 17.07.2023, please.

Yours faithfully,

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

**Endst: of even No. & Date.**

Copy forwarded to: -

1. PA to Deputy Secretary (R-III) Establishment Department.
2. Master File.

Administrative Officer (Reg-V)  
Communication & Works Deptt.  
Khyber Pakhtunkhwa Peshawar.

SECTION OFFICER (REG-V)

Annex-V

85

1

IN THE PESHAWAR HIGH COURT PESHAWAR


Writ Petition No. \_\_\_\_\_/2023

1. **Muhammad Iqbal-VI Sub-Engineer (BS-16)**  
C&W Department Khyber Pakhtunkhwa
2. **Arshad Ali Shah Sub-Engineer (BS-12)**  
C&W Department Khyber Pakhtunkhwa
3. **Zahid Ullah Sub-Engineer (BS-16)**  
C&W Department Khyber Pakhtunkhwa
4. **Abdul Jamil Sub-Engineer (BS-12)**  
C&W Department Khyber Pakhtunkhwa
5. **Anwar Badshah Sub-Engineer (BS-12)**  
C&W Department Khyber Pakhtunkhwa
6. **Tariq Shah Sub-Engineer (BS-12)**  
C&W Department Khyber Pakhtunkhwa
7. **Ibad Ur Rehman Sub-Engineer (BS-12)**  
C&W Department Khyber Pakhtunkhwa
8. **Yasir Mehmood Sub-Engineer (BS-12)**  
C&W Department Khyber Pakhtunkhwa

..... Petitioners

*Versus*

1. **Government of KPK**  
Through Chief Secretary, KPK Peshawar  
Sahibzadn Abdul Qayum Rd, Civil Secretariat, KPK, Peshawar
2. **Government of KPK**  
Through Secretary C & W  
Civil Secretariat, KPK, Peshawar,
3. **Government of KPK**  
Through Secretary Establishment  
Civil Secretariat, KPK, Peshawar.
4. **Chief Engineer (Central)**  
C & W Department  
Khyber Rd, PTCL Colony, KPK, Peshawar

  
Adnan Ali, Chief Engineer  
C & W Department  
Khyber Pakhtunkhwa Peshawar

..... Respondents



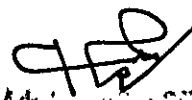
**WRIT PETITION UNDER ARTICLE 199 OF THE  
CONSTITUTION OF THE ISLAMIC REPUBLIC  
OF PAKISTAN, 1973**

Respectfully Sheweth:

1. That the petitioners herein are law abiding citizens of the Islamic Republic of Pakistan and are working in the Communication and Works Department KPK since 2010 onwards as Sub-Engineers (BPS-16/12) B.Tech (Hons) Degree Holders (In-Service) (Civil/Electric/Mechanical).
2. That as per the promotion policy vide Notification No.SOE/C&WD/8-12/2014 dated March 28<sup>th</sup>, 2018 the promotion of the petitioners along with other officials was processed as under: the exact text for reference is reproduced ad verbatim,

- “(a) sixty five percent (65%) by initial recruitment;
- (b) sixteen and half percent (16.50%) by promotion, on the basis of seniority-cum-fitness, from amongst the Sub-Engineers who hold the Diploma of (Civil, Mechanical or Electrical) and have passed Departmental Professional Examination with 10 (ten) years' service as such;
- (c) five percent (5%) by promotion, on the basis of seniority-cum-fitness from amongst the Sub-Engineers who possess Degree of B.E or B.Sc Engineering (Civil, Mechanical or Electrical) at the time of their joining service and have passed Departmental Professional Examination with 05 (five) years' service as such;
- (d) three and half percent (3.5%) by promotion, on the basis of seniority-cum-fitness from amongst the Sub-Engineers who acquired Degree of B.E of B.Sc Engineering (Civil, Mechanical or Electrical) during service and have passed Departmental Professional Examination with 05 (five) years' service as such;
- and
- (e) ten percent (10%) by promotion, on the basis of seniority-cum-fitness, from amongst the Sub-Engineers having degree of B-Tech (Hons) and have passed Departmental Professional Examination with 05 (five) years' service as such”

According to the above referred policy for promotion 10% quota had been allocated for Sub-Engineers having B-Tech (Hons) degree holders (presently the petitioners along with the similarly placed)

  
 Adm. Officer (C&WD) (P-16)  
 C. & W. D. (P-16)  
 Khyber Pakhtunkhwa

3. That later on vide Notification No.SOE/C&WD/8-12/2023 dated January 20<sup>th</sup>, 2023 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, an amendment had been brought in the above referred promotion policy, which is reproduced ad-verbatim:

- "(i) sixty five percent (65%) by initial recruitment; and
- (ii) thirty five percent (35%) by promotion, on the basis of seniority-cum-fitness, in the following manner, namely:
- (a) Sixteen and half percent (16.50%) by promotion, on the basis of seniority-cum-fitness, from amongst the Sub-Engineers who hold the Diploma of (Civil, Mechanical or Electrical) and have passed Departmental Professional Examination, with 10 (ten) years' service as such;
- (b) five percent (5%) by promotion, from amongst the holders of the posts of Sub-Engineers who possess Degree of B.E or B.Sc Engineering (Civil, Mechanical or Electrical) at the time of their joining service and have passed Departmental Professional Examination, with 03 (three) years' service as such;
- (c) three and half percent (3.5%) by promotion, from amongst the holders of the posts of Sub-Engineers who acquired Degree of B.E of B.Sc Engineering (Civil, Mechanical or Electrical) during service and have passed Departmental Professional Examination with 03 (three) years' service as such;

Provided that if no suitable candidate is available for promotion then the post shall be filled in the manner, as prescribed at clause (b) and vice versa

- (d) four percent (4%) by promotion, from amongst the holders of the posts of Sub-Engineer who have acquired B-Tech (Hons) four (04) years degree during service and have passed Departmental Professional Examination with five (05) years' service as such,

and

- (e) six percent (6%) by promotion, from amongst the holders of the post of Sub-Engineers who possesses B.Tech (Hons) four (04) years degree at the time of appointment and have passed Departmental Professional Examination with five (05) years' service as such.

Note-1

The seniority in all cases shall be determinate from the date of initial appointment

Provided that for the purpose of promotion to the post of Sub Divisional officer, Assistant Engineer, Junior Engineer and Assistant Research Officer, the seniority of Sub-Engineers, mentioned in the Clause "c", shall be determined from the date of acquiring the Degree in B.E/B.Sc Engineering (Civil, Mechanical or Electrical) from a recognized University.

(98)

- Note-II (a) For the purpose of promotion to the post of Sub Divisional Officer, Assistant Engineer, Junior Engineer and Assistant Research Officer, the seniority of Sub-Engineers under clause (d) in case of service graduates shall be determined from the date of acquiring B.Tech (Hons) four (04) years Degree; and
- (b) For the purpose of promotion to the post of Sub Divisional Officer, Assistant Engineer, Junior Engineer and Assistant Research Officer, the seniority of Sub-Engineers, under clause (e) from the date of their regular appointment:

Provided that, if two or more officials have acquired B.Tech (Hons) four years degree on the same date or two or more Sub Engineers are appointed on the same date, then their seniority shall be determined from the order of merit in the final merit list.

based on the above mentioned notification 4% quota had been allocated to In-Service B.Tech (Hons) Sub-Engineers (presently the petitioners) and 6% for Pre-Service B.Tech (Hons) Sub-Engineers.

4. That in pursuance of the latest amendment, seniority lists were maintained separately by the Communication and Works Department for both In-Service B. Tech (Hons) Sub-Engineers and Pre-Service B. Tech (Hons) Sub-Engineers being 4% and 6% quota holders, respectively.<sup>3</sup>
5. That surprisingly, the respondent department in its meeting of the Departmental Promotion Committee dated July 7<sup>th</sup>, 2023 by completely overlooking and disregarding the amendment and law in field provided a seniority list at Agenda Item-IV for promotion of B.Tech (Hons) Sub-Engineers to the post of Assistant Engineers/SDOs (BS-17) on regular basis which enlisted only those candidates who possesses Pre-Service B.Tech (Hons) being 6% quota holders while completely turning a blind eye towards the 4% quota holders (presently the petitioners).<sup>4</sup>
6. That afterwards, the petitioners made a representation before the respondent department for compliance of the amended rules of the promotion of B.Tech (Hons) Sub-Engineers as Assistant Engineers (BS-17) dated 21-7-2023 whose fate has not yet been decided and the petitioners are left hanging in the balance of probabilities.<sup>5</sup>
7. That the inactions on part of the respondent department of completely overlooking and disregarding the amended rules and ignoring the petitioners being 4% quota

<sup>3</sup> Copy of relevant seniority lists dated 27-3-2023 - Appendix "C & D"

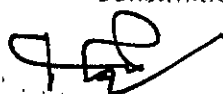
<sup>4</sup> Copy of Meeting of Departmental Promotion Committee dated July 7<sup>th</sup>, 2023 - Appendix "E"

<sup>5</sup> Copy of representation for request of compliance of amended rules dated 21-7-2023 - Appendix "F"

holders for promotion as well as being quiet over the representation made by the petitioners have left them feeling aggrieved and having no other efficacious, alternate and adequate remedy available the petitioners approach this Hon'ble court on the following grounds inter-alia.

**GRUNDS :**

- A. That the petitioners are entitled to be guaranteed their basic fundamental rights, including equality of opportunity, law and justice, subject to law and public morality which is the basic spirit in which the provisions of the Constitution of Islamic Republic of Pakistan have been laid down leaving behind no room for the respondents to violate such fundamental rights of the petitioners as guaranteed by the Constitution.
- B. That the acts of the respondents by not observing the legal position are completely in derogation towards the Article 4 of the Constitution of Islamic Republic of Pakistan 1973 which provides for everyone to be dealt in accordance with law and it is inalienable right of every citizen to be dealt in the manner provided by the law.
- C. That it is one of the basic fundamental inalienable rights of the petitioners to be protected and treated in accordance with law but the actions and inactions on part of the respondents show a clear violation of this fundamental right and an arbitrary deviation from the course of law which is against the spirit of the Constitutional guarantees.
- D. That it is a fundamental Constitutional guarantee that no citizen otherwise qualified for promotion along with other similarly placed in the service of Pakistan shall be discriminated against in such service. On the contrary, the conduct of the respondents towards the petitioners by not implementing the law in its true letter and spirit despite being quota holders and having due qualifications and experience is completely illegal, void ab-initio and against the basic spirit of the fundamental guarantees of the Constitution.
- E. That the respondents are under a legal obligation to do which the law requires them to do, failure to do which would offend the basic spirit in which the Constitution of the Islamic Republic of Pakistan, 1973 has been laid down.

  
 Khyber Pakhtunkhwa Government  
 Peshawar

F. That to enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen as enshrined by the Article 4 of the Constitution of the Islamic Republic of Pakistan but on the other hand the violation of law in terms of Notification No.SOE/C&WD/8-12/2023 dated January 20<sup>th</sup>, 2023 by the respondents is clear violation of the said basic fundamental right.

G. Any other ground which may be raised at the bar with the prior permission of this Hon'ble Court.

**PRAYER:**

It is, therefore, most humbly prayed that on acceptance of this writ petition this august court may be pleased to;

Direct that the respondents shall not act in negation to law and implement the Notification No.SOE/C&WD/8-12/2023 dated January 20<sup>th</sup>, 2023 and shall not deprive the petitioners of their accrued rights.

**INTERIM RELIEF:**


May it please your lordship pending final decision in this instant writ petition, as an interim relief, the respondents may kindly be restrained from issuing/notifying the final promotion list till the final disposal of this writ petition.

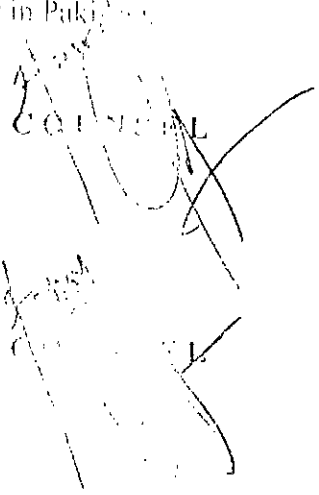
Petitioners  
Through  
HASSAM RAOON  
LLM UK  
Advocate High Court

**Note:** Certified that no such writ petition except as mentioned in the body of this petition has earlier been filed by the petitioner in this august court or any court of law in Pakistan.

**List of Books:**

1. Constitution of the Islamic Republic of Pakistan, 1973.
2. Case Law shall be produced at the time of hearing.

  
Advocate Hassam Raoun  
Commissioner of Motor Vehicle  
Khyber Pakhtunkhwa Secretariat.

  
COURT CLERK

## PESHAWAR HIGH COURT, PESHAWAR

## ORDER SHEET

Date of Order or Proceedings	Order or others Proceedings with Signature of Judge
1	2
17.11.2023	<p><b><u>W.P No.3604/2023 with IR.</u></b></p> <p>Present: Mr. Hassan Raoun, Advocate, for the petitioners.</p> <p>Mr. Mubashir Manzoor, AAG, for the respondents.</p> <p>*****</p> <p>Through the instant petition, the petitioners seek implementation of the Notification dated 20.01.2023 whereby the promotion criteria for those Sub-Engineers who have acquired B.Tech (Hons) four years degree during service were given 4% quota whereas the other Sub-Engineers with similar qualification who have obtained the same at the time of appointment were given 6% quota. Prior to the said notification, both the categories were jointly considered for the 10% quota.</p> <p>It appears from the comments of the respondents that probably the persons who were similarly placed with the petitioners have already availed the said quota proportionally more than the other category, therefore, the petitioners were not considered for the promotion in the said Policy dated 20.01.2023. However, in order to comprehend the issue, <u>we would like to direct the respondents to file better comments bifurcating the detail of promotions in the aforesaid two categories who were promoted so far prior to the Notification</u></p>



39

dated 20.01.2023. Adjourned to a short date in office.

JUDGE

JUDGE

(D.B) (Hon'ble Mr. Justice Syed Arshad Ali & Hon'ble Mr. Justice Wiqar Ahmad)  
Mahmood Shah, SSS

22



OFFICE OF THE CHIEF ENGINEER (CENTRE)  
COMMUNICATION & WORKS DEPARTMENT  
KHYBER PAKHTUNKHWA, PESHAWAR

No. CEC/C&WD/S.A.No.2086/2023 /96

Dated Peshawar the 04/18/2023

**AUTHORITY LETTER**

Mr. Zahid Habib, Administrative Officer (Centre) (BPS-17), C&W Department, Peshawar is hereby authorized to file the para-wise comments and attend the Honorable Service Tribunal Peshawar on behalf of Respondent No.5 in connection with Service Appeal No. 2086 of 2023 titled "Muhammad Iqbal vs Govt. of KPK" on each date as and when fixed by the Honorable Service Tribunal.

CHIEF ENGINEER (CENTRE)

**COPY FORWARDED TO THE:**

1. Section Officer (Lit.), C&W Department, Peshawar w/r to his office No. SO(Lit)C&W/3-1/2023, dated 16/11/2023 above for information.
2. Mr. Zahid Habib, Administrative Officer (Centre) (BPS-17), C&W Department, Peshawar for information and necessary action.
3. PS to Secretary, C&W Department, Peshawar for information.
4. P.A. to Deputy Secretary, C&W Department, Peshawar for information.

  
CHIEF ENGINEER (CENTRE)