

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. 2482/2023

Alamzeb Khan

Appellant

VERSUS

**Chief Secretary Khyber Pakhtunkhwa through &
others**

Respondents

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Deponent



Roz/Amin
Superintendent (Litigation)
Irrigation Department

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Khyber Pakhtunkhwa
Service Tribunal

SERVICE APPEAL NO. 2482/2023

Diary No. 10434

Dated 09-01-2024

Alamzeb Khan

Appellant

VERSUS

**Government of Khyber Pakhtunkhwa through
Chief Secretary & others**

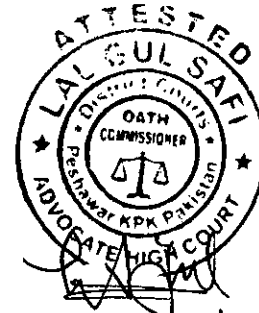
Respondents

AFFIDAVIT

I, Muhammad Tahir Orakzai, Secretary to Government of Khyber Pakhtunkhwa, Irrigation Department on behalf of following respondents (No.03 & 04) do hereby affirm and declare on oath that the contents of para-wise comments are true and correct to the best of my knowledge and belief that nothing has been kept concealed from this Hon'ble Tribunal. It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense/ struck off/ cost.

(Muhammad Tahir Orakzai)

Secretary to Govt. of Khyber Pakhtunkhwa,
Irrigation Department
Respondent No. 3



09/01/2024

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA

Service Appeal No. 2482/2023

Alamzeb Khan **Appellant**

Versus

Chief Secretary, Khyber Pakhtunkhwa and others **Respondents**

JOINT PARA-WISE COMMENTS ON BEHALF OF THE RESPONDENTS NO. 03 & 04.

RESPECTFULLY SHEWETH:

Preliminary objections:

1. That the appellant has got no cause of action/locus standi.
2. That the appellant has not come to this tribunal with clean hands.
3. That the appellant has concealed some material facts from this Hon'ble Tribunal.
4. That the appellant is disentitled for the relief claimed.
5. That the appeal is barred by law and limitation.

ON FACTS

1. Pertains to record.
2. Correct to the extent that vide gazette notification dated 02.04.2011 lays down method of recruitment, qualification and other conditions in the service rules. **(Annex-A)**.
3. Correct to the extent that the appellant was promoted to the post Assistant Engineer (BS-17) vide notification dated 11.10.2011. **(Annex-B)**.
4. Correct to the extent that vide gazette notification dated 24.08.2021 amendments were made in the service rules. **(Annex-C)**.
5. That after issuance of the above notification dated 24.08.2021, Engr. Imtiaz Khan, filed service appeal No. 7917/2021 before the Service Tribunal Peshawar on 21.12.2021. **(Annex-D)**. The Tribunal vide order dated 31.01.2022 directed status quo in the instant appeal **(Annex-E)**. The appeal remained pending before the Khyber Pakhtunkhwa Service Tribunal till 12.07.2023, when the learned Tribunal vide order dated 13.07.2023 dismissed the appeal **(Annex-F)**. As the case was sub-judice before the Tribunal, therefore, no working paper for promotion of Assistant Engineer (BS-17) to the post of Executive Engineer (BS-18) was submitted to the PSB for consideration.
6. As explained in Para-5 above.
7. As explained in Para-5 above.
8. Correct to the extent that he was retired from govt. service on attaining the age of superannuation on 13.04.2023. **(Annex-G)**.
9. Pertains to record.
10. Correct to the extent that appellant has submitted departmental appeal which was filed being not covered under the rules/ policy in vogue.
11. Pertains to record.

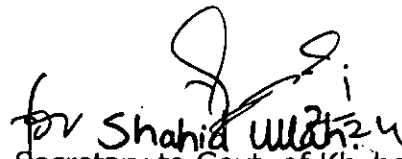
3

GROUND

- A. Incorrect as explained in Para-05 of the facts above, the service rules amendments dated 24.08.2021 were challenged in service tribunal and the status quo was granted by the Service Tribunal on the amended services rules, furthermore, the case was subjudice and the appellant retired on 13.04.2023.
- B. Incorrect as explained in Para-05 of the facts above.
- C. Incorrect as explained in Para-05 of the facts above.
- D. Incorrect as explained in Para-05 of the facts above.
- E. Incorrect as explained in Para-05 of the facts above.
- F. Incorrect as explained in Para-05 of the facts above.
- G. That the respondents also seek permission to raise further points at the time of arguments.

It is, therefore, requested that the appeal being devoid of merits may be dismissed with cost.


Secretary to Govt. of Khyber Pakhtunkhwa,
Irrigation Department
Respondent No. 03


Secretary to Govt. of Khyber Pakhtunkhwa,
Establishment Department
Respondent No. 04

EXTRA-ORDINARY
GOVERNMENT



REGISTERED NO. P/III
GAZETTE

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, SATURDAY, 2ND APRIL, 2011.

GOVERNMENT KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT,

NOTIFICATION

Dated Peshawar the 17th February, 2011

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

Secretary to Government of the Khyber Pakhtunkhwa Province
Irrigation Department.

688

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

Attested
[Signature]
Section Officer (Litigation)
Irrigation Department Peshawar

APPENDIX

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

A. H. S. Qadri
 10/04/2011
 ADMINISTRATIVE OFFICER
 IRRIGATION DEPARTMENT
 PESHAWAR

176

A. H. S. Qadri
 Section Officer (Litigation)
 Irrigation Department Peshawar

GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

23

Dated Peshawar the 11 Oct., 2011.

NOTIFICATION

Consequent upon the recommendations of the Departmental Promotion Committee, the competent authority is pleased to promote the following Diploma Holder Sub Engineers to the posts of Assistant Engineers (BS-17) in the Irrigation Department on regular basis, with immediate effect:

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

Annexure
"B"

Attested
[Signature]
Section Officer (Litigation)
Irrigation Department Peshawar

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

875 14/10/2011

ATTESTED

ATTESTED



GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

7 e

Dated Peshawar the 24th August, 2021

NOTIFICATION

No. SO(E)/IRRI/23-5/73/Vol-VI: In pursuance of the provisions contained in sub-rule (2) of rule-3, of the Khyber Pakhtunkhwa, Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Irrigation Department, in consultation with the Establishment Department and Finance Department, hereby direct that in this Department's Notification No. SO(E)IRR/23-5/73 dated 17.02.2011, the following further amendments shall be made namely:-

AMENDMENTS

In the APPENDIX,-

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

5	
(a)	Eighty percent (80%) by promotion, on the basis of seniority-cum-fitness, from amongst the holders of the post of Assistant Engineer, Sub Divisional Officer and Assistant Director possessing Degree in B.E/B.Sc Engineering (Civil or Mechanical) from a recognized University with at least five years service as such and have passed the Professional or Revenue Examination under the prescribed rules;
(b)	twelve percent (12%) by promotion, on the basis of seniority-cum-fitness, from amongst the holders of the post of Assistant Engineer, Sub Divisional Officer and Assistant Director possessing Degree in B. Tech (Hons) from a recognized University with at least five years service as such and have passed the Professional and Revenue Examination under the prescribed rules; and
(c)	eight percent (08%) by promotion, on the basis of seniority-cum-fitness, from amongst the holders of the post of Assistant Engineer, Sub Divisional Officer and Assistant Director possessing Diploma of Associate Engineering in (Civil, Mechanical, Auto and Electrical) Technology from a recognized Board of Technical Education with at least five years service as such and have passed the Professional and Revenue Examination under the prescribed rules.
Note:	A separate seniority list of all the three categories of the Assistant Engineers, Sub Divisional Officers and Assistant Directors shall be maintained for the purpose of promotion"; and

Accepted
Jm
Section Officer (Litigation)
Irrigation Department Peshawar

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

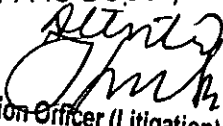
5	
"(a)	Seventy percent (70%) by promotion, on the basis of seniority-cum-fitness, from amongst the holders of the post of Tracer who have qualified the prescribed Examination of Draftsman with three years service as such; and
(b)	thirty percent (30%) by initial recruitment".

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Endst: No and date even

Copy of the above is forwarded:-

1. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. The Secretary to Governor, Khyber Pakhtunkhwa.
3. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
4. The Accountant General, Khyber Pakhtunkhwa.
5. The Additional Accountant General (PR, Sub Office), Peshawar.
6. All the Commissioners in Khyber Pakhtunkhwa.
7. The Chief Engineers (North)/South & Merged Areas) Irrigation Department, Khyber Pakhtunkhwa.
8. All Deputy Commissioners in Khyber Pakhtunkhwa.
9. The Registrar, Peshawar High Court, Peshawar.
10. The Secretary, Board of Revenue, Khyber Pakhtunkhwa.
11. The Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
12. The Secretary, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
13. PS to Chief Secretary, Khyber Pakhtunkhwa.
14. PS to Secretary Irrigation Department, Peshawar.
15. The Manager Govt. Printing Press, Khyber Pakhtunkhwa, Peshawar.
16. PA to Additional Secretary, Irrigation Department, Peshawar
17. PA to Deputy Secretary (Admn) Irrigation Department.


Section Officer (Litigation)
Irrigation Department Peshawar


(ABDUL RAUF)
Section Officer (Estt)

9

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

SERVICE APPEAL NO. 7917 /2021

IMTIAZ KHAN

V/S

IRRIGATION DEPTT:

I N D E X

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DATED: 12.2021

Imtiaz Khan
Section Officer (Litigation)
Irrigation Department Peshawar

APPELLANT

Through:
NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO. _____/2021

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

..... **APPELLANT**

VERSUS

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

..... **RESPONDENTS**

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

RESPECTFULLY SHEWETH:

Brief facts giving rise to the present writ petition is as

Accepted
Shah
Section Officer (Litigation)
Irrigation Department Peshawar

Appellant is the employee of respondent Department and is working quite efficiently and up to the entire satisfaction of the respondent. Any of the service record/appointment order is **A.**

a. A highly qualified Civil/Mechanical Engineer and member of Engineering Council and having command over the services in respect of Professional Engineering works under the existing rules of the respondent
b.
far.

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

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

[Handwritten Signature]
 Senior Officer (Litigation)
 Irrigation Department Peshawar

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

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

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

GROUND:

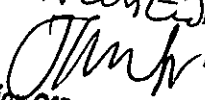
1. That agenda item No.4 passed by the standing service rules committee dated 29.4.2021 is against the law, facts, Norms of natural justice and materials on the record hence not tenable and liable to be set aside.
2. That the appellant have not been treated in accordance with law and rules and as such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

Secretary
J.M.S.
Section Officer (Litigation)
Irrigation Department Peshawar

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

"That B-Tech (hons) qualification is not equivalent to BE/BSc Engineering. As basic qualification required for posting / appointment against the position of Assistant Engineer / Assistant Director / SDO etc. in BS-17 and above is BE/BSc Engineering in Civil / Mechanical / Electrical as per requirement of a department, there B-Tech (Hon) qualification holder may not be promoted and / or posted against such position(s) that involve performance of professional engineering works/services. However, such qualification (i.e., B-Tech) holders cannot be denied promotion to higher scale; provide no law/Rule is violated and for which non engineering positions (Technologists) may be created, if not already existing"


- 6. That the recommendation of the committee in para-3, makes the previously SSRC approved Irrigation Department Notification No. SO(E)/IRR/23-5/2010-11 dated 25 June 2012 (**Annexure-K**) not maintainable for creating quota at first place for promotion of non-engineers to BPS-17 and performing engineering works. **As a Corollary to this, in the Medical profession or health department, nurses acquire qualification of three years diploma after which they is allowed to enhance their qualification in their field even to the Master level but they is never considered as MBBS doctors nor is they posted to the professional positions or Medical Officers nor is they registered by Pakistan Medical and Dental Council (PMDC) as registered medical practitioners (Doctors).**

Att. (L)

 Section Officer (Litigation)
 Irrigation Department Peshawar

That the recommendation produced in Para-3 has been completely ignored by the department and non-professional engineers have been placed in various engineering positions and even elevated higher positions, not meeting the job criteria and equivalent qualification required for the post. One such unjustified order was issued by the Secretary Irrigation Department vide notification No. SO(E)/IRR/4-10/77/Vol-VI: dated 18-12-2020 (**Annexure-L**) by placing a B-Tech Diploma holder Sub Divisional Officer on higher position of Deputy Director Jabba Dam. The present action of creating 20% quota clearly indicates that the Secretary Irrigation Department office wants to regularize the unjustified action / notification / orders issued.

- 8. That the Irrigation Engineers represented by the Advocate A. Latif Afridi has already served two weeks Legal Notice dated 06 April, 2021 to Chief Secretary Office, Secretary Irrigation Office and Secretary Establishment office (**Annexure-M**) against for your inaction in removing non-engineer from engineering practicing posts.

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

Attested

 Section Officer (Litigation)
 Irrigation Department Peshawar

- 13. That according to the PEC Act 1976 the management and supervision of the engineering works in respect of all engineering disciplines is **"Professional Engineering Works"** and that under **section 27** can only be under taken/ executed by engineers who is registered with PEC hence the statutory provisions of PEC Act 1976 is frequently violated by the authorities which is bad in law and also punishable act under the law, **as Section 27 (1) of PEC Act criminalizes the undertaking of engineering work by non-engineers making it an offence punishable with 6 months imprisonment or Rs.10,000 fine or both. Conversely, engaging a non-engineer for doing professional engineering work is also criminalized, being an offence punishable with 6 months imprisonment or Rs.5,000 fine or both.**
- 14. That Pakistan Engineering Council through various reference kept on reminding Provincial Government of Khyber Pakhtunkhwa & other competent authorities about the limitation of the PEC Act 1976, its implementation / repercussion in case of violations & even reminded to implement the decision of the afore mentioned judgment of Honorable Supreme Court C.P No.78-K of 2015, announced on 03/10/2018 but all in vain. **(Annexure-----O).**
- 15. That it is admitted fact regarding clarification of B-Tech degree from HEC which is not qualified engineers and for this reason PEC unable to registered them as engineer so promotion awarded and duties assigned to non-graduates, non-professional and non-registered by PEC by the competent authority on engineering works, this has caused a grave in justice and utter disregard of the mandatory statutory provision of the PEC Act 1976 hence the competent authority violated not only the provision of PEC Act 1976 but also its own rules and regulation beside involved in contempt of court proceeding, if initiated.

Settled
Thank
 Section Officer (Litigation)
 Irrigation Department Peshawar

- That appointment of in-eligible people to handle extremely technical works would be disaster for the public at large and rule of the regulatory body is to ensure professionalism and trust for the public. Furthermore, the question of the qualification B-Tech being equivalent to BSc Engineering has already been decided by the superior court of the country. PLD 2003 SC 143, as well as in the aforementioned judgment of 03/10/2018. Once forever.
- 17. That most recently, review petitions have also been dismissed by the Honorable Supreme Court vide order dated, 05/03/2019. **(Annexure-----P).**

18. **That the appellant through the forums of Khyber Pakhtunkhwa Association of Government Engineering (KPAGE)** previously prayed the competent forums for redressal of their genuine demands regarding subject issues but no action has so far been taken and blue-eyed favors its B-Tech degrees holder / diploma holder / non engineers is still enjoying the perks & privileges of their illegal appointments / posting status against the Professional

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

That the promotions awarded to B. Tech (Hon) employees and duties assigned to them against Professional Engineering Works (PEW) is the result of political victimization, illegal, injustice and also in effective upon the valid rights of the appellant.

That the appellant seek permission to advance other grounds and proofs at the time of hearing.

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

Dated: 15.12.2021

Attested
Thurp

Section Officer (Litigation)
Irrigation Department Peshawar

[Signature]
APPELLANT

THROUGH:

[Signature]
NOOR MOHAMMAD KHATTAK,
ADVOCATE

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

(8)

17

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. _____ /2021

IMTIAZ KHAN

VS

IRRIGATION DEPTT:

AFFIDAVIT

Stated on oath that the contents of the accompanying service appeal are correct to best of my knowledge and belief and nothing has been concealed from this Honorable Service Tribunal.



DEPONENT

CERTIFICATE:

Certify that no earlier service appeal has been filed by the appellant in the instant matter before this Honorable Service Tribunal.

CERTIFICATION

BEFORE THE KHYBER

KHWA SERVICE TRIBUNAL,
JAR

18

C.M NO. _____/2021

IN

APPEAL No. _____/2021

IMTIAZ KHAN

VS

GOVT: OF KP

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

R/SHEWETH:

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

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

Dated: 15.12.2021

APPLICANT

IMTIAZ KHAN

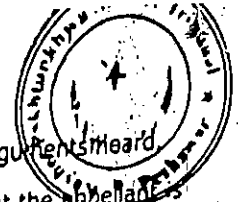
THROUGH:

NOOR MOHAMMAD KHATTAK

&

KAMRAN KHAN
ADVOCATES

Appel No. 7917/2021
Engr. Imtiaz Khan vs Govt
Counsel for the appellant present. Preliminary arguments heard.



Annex-E
31.01.2022

Annex-E

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

The appeal is admitted to regular hearing subject to all just legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to respondents for submission of reply/comments. To come up for reply/comments on 11.02.2022 before S.B.

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

(Mian Muhammad)
Member(E)

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Attested

Sector Officer (Litigation)
Irrigation Department Peshawar

Date of Registration of Notification 01/02/22
Number 809
415
131
Date of Issuance of Copy 01/02/22
Date of Recovery of Copy 01/02/22

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR



Service Appeal No. 7917/2021

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MISS FARHIA PAUL ... MEMBER(E)

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

Versus

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

Mr. Noor Muhammad Khattak,
Advocate

...

For appellant

Mr. Muhammad Jan,
District Attorney

...

For official respondents

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Section Officer (Litigation)
Irrigation Department Peshawar

Mr. Zartaj Anwar & Mian Afrasiab Gul ...
Kakakhel, Advocates

For private respondents

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

ATTESTED

EXAMINED
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL

[Signature]

JUDGEMENT

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

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

ATTESTED

FAREEHA PAUL
Khyber Pakhtunkhwa
Service Tribunal

Accepted
Section Officer (Litigation)
Irrigation Department Peshawar

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

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

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Section Officer (Litigation)
Irrigation Department Peshawar

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

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

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

since last SSRC and still allotted 20% quota to B-Tech/Diploma holders

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Section Officer (Litigation)
Irrigation Department Peshawar

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Irrigation Department Peshawar

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

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

Honor Degree and 8% quota for promotion of Diploma Holder SDCs.

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Irrigation Department Pesha

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DISTRICT ATTORNEY

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

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 Section Officer (Litigation)
 Irrigation Department Peshawar

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

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 Section Officer (Litigation)
 Irrigation Department Peshawar

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

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 Section Officer (Litigation)
 Irrigation Department, Peshawar

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

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

The question raised before us is that the post of Executive Engineer is a

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

Mustafa
M. S.
 Section Officer (Litigation)
 Irrigation Department Faisalabad

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

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

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


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Section Officer (Litigation)
Irrigation Department Peshawar

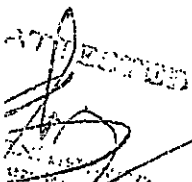
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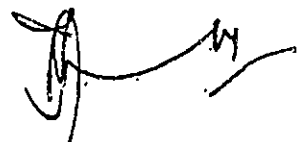
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issued under sub-rule (2) of Rule 3 of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, which rules have been made under section 26 of Sindh Civil Servants Act, 1973. Neither rule 3(2) of the said rules nor section 26 of the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

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

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 Section Officer (Litigation)
 Irrigation Department Peshawar

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

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

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

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 Section Officer (Administration)
 Irrigation Department, Faisalabad

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

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

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

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 Section Officer (Litigation)
 Irrigation Department

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

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

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

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

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 Section Officer (Litigation)
 Irrigation Department Peshawar

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 (FAREEHA PAUL)
 Member(I)

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 (KALIM ARSHAD KHAN)
 Chairman

Fate Subhan, P.S

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 Khushal Singh
 Section Officer
 Peshawar

Date of Presentation of application 14/7/23
 Number page 13
 Copying Fee 25/-
 Urgent 25/-
 Total _____
 Name of the Applicant _____
 Date of Completion of work 03/8/23
 Date of Delivery of Copy 03/8/23



GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT
(Establishment Section)

Dated Peshawar, the 13th March, 2023

NOTIFICATION:

No.SO(E)/IRR/1-73/2006/PF: The Competent Authority (Secretary Irrigation) in terms of provision of Rule-20 of the Khyber Pakhtunkhwa Civil Servant Revised Leave Rules 1981 and instructions there-under issued from time to time, sanction is hereby accorded for encashment of 365 days in lieu of Leave Preparatory to Retirement (LPR) in respect of **Mr. Alam Zeb**, Sub Divisional Officer (BS-17).

2. In pursuance of sub-section (2) of section 13(A)(1) of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), read with sub-section (3) thereof; **Mr. Alam Zeb**, Sub Divisional Officer (BS-17), Irrigation Department, shall stand retired from Government Service with effect from 13.04.2023 (A.N) on attaining sixtieth (60th) year of age, as his date of birth is 14.04.1963.

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Endst. No. & date even.

Copy forwarded to: -

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Chief Engineers (North) Irrigation Department, Peshawar w/r to the letter No. 866/North/A-II/1-E(ii) dated 28.02.2023.
3. Officer Concerned.
4. PS to Secretary Irrigation Department, Peshawar.
5. PA to Deputy Secretary (Admn), Irrigation Department.
6. Personal file of the officer.
7. Master File.

Section Officer (Litigation)
Irrigation Department Peshawar

(Maqsood Khan)
Section Officer (Estt:)

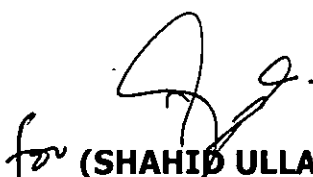
14-3-23

POWER OF ATTORNEY

I, Secretary to Govt. of Khyber Pakhtunkhwa Irrigation Department do hereby authorize Mr. Roz Amin, Superintendent (Litigation Section), Irrigation Department to file comments and make statement before the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No. 2482/2023 filed by Alamzeb Khan VS Government of Khyber Pakhtunkhwa through Chief Secretary & others.


(MUHAMMAD TAHIR ORAKZAI)

Secretary to Govt. of Khyber Pakhtunkhwa,
Irrigation Department
Respondent No. 3



(SHAHID ULLAH)

Secretary to Govt. of Khyber Pakhtunkhwa,
Establishment Department
Respondent No. 4

S. (with)
9/23/56

8/5

St. at Lab.

ASJ