

| Sr. No. | Date of order/ proceedings | Order or other proceedings with signature of Judge/ Magistrate  |
|---------|----------------------------|---|
| 1       | 2                          | 3   |
| 1.      | 15.07.2015                 | <p style="text-align: center;"><b>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.</b></p> <p style="text-align: center;">Appeal No. 355/2013<br/>Engr. Abdul Wahab Shahid Abbasi Versus the Government of KPK through Chief Secretary, Peshawar etc.</p> <p style="text-align: center;"><b><u>JUDGMENT</u></b></p> <p style="text-align: center;"><b><u>PIR BAKHSH SHAH, MEMBER.</u></b>- Counsel for the appellant (Mr. Khalid Rahman, Advocate) and Government Pleader (Mr. Ziaullah) with Muhammad Iqbal, Supdt. for the respondents present.</p> <p>2. The appellant, Engr. Abdul Wahab Shahid Abbasi joined Public Health Engineering Department as Assistant Engineer (BPS-17) on adhoc basis in April, 1978. Lateron, on the recommendation of Khyber Pakhtunkhwa Public Service Commission, he was regularized in the year, 1981. In the relevant service rules amendment in respect of promotion to the post of Chief Engineer was made vide notification No. SO(Estt)/PHED/1-9/2010, dated 06.3.2010 whereby Superintending Engineer having B.E/B.Sc. Engineering (Civil) only from a recognized university were eligible for promotion to the post of Chief Engineer. This means that Superintending Engineering having degrees in other disciplines were excluded. Departmental appeal of the appellant against the impugned notification was also rejected on 28.2.2013, hence the present appeal.</p> |

3. The learned counsel for the appellant submitted that the appellant had rendered 23 years of service, and got retired from service in BPS-19 on attaining the age of superannuation. That Chief Engineer Mr. Ziaud Din retired on 14.08.2010 and to fill his post Mr. Sikandar Khan, B.E (Civil) was recommended for promotion to the post of Chief Engineer, ignoring the appellant having degree of Mechanical Engineering. That appellant was precluded from consideration for promotion to the post of Chief Engineer under the impugned service rules because appellant was a Mechanical Engineer and not a Civil Engineer. That the appellant formally received notification about amendment in service rules on 27.4.2012 against which he filed departmental appeal on 09.5.2012, which was rejected on 28.1.2013, hence the instant appeal which is well within time. He also submitted that the Tribunal has all jurisdictions even in those cases in which vires of rules are questioned. The learned counsel for the appellant submitted that the appellant had been discriminated. He requested that though the appellant had been retired from service but by setting aside the impugned amendment in the rules appropriate relief may be granted to the appellant.

4. This appeal was resisted by the learned Government Pleader on the ground that the appellant had challenged amendment in the service rules for which there is no jurisdiction with this Tribunal. He further submitted that the impugned amendment in the rules was made on 06.3.2010 against which departmental appeal of the appellant dated

09.5.2012 was absolutely time barred which was rejected on 28.1.2013. He submitted that after due deliberation, it was found that the concerned post was having orientation of the civil technology therefore, mechanical engineers were rightly precluded from promotion to the post of Chief Engineer and requested that the appeal may be dismissed.

5. We have heard learned counsel for the appellant and learned Government Pleader for the respondents-department quite at length and perused the record with their assistance.

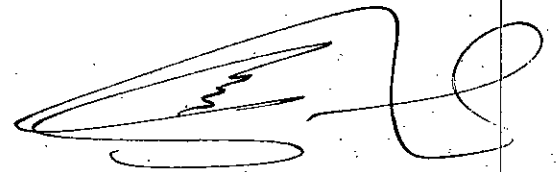
6. The service rules were amended vide notification dated 06.3.2010. According to para-4 of the parawise comments of the respondents No. 1 to 3 it is evident that under the same amended rules, the appellant was granted promotion as Superintending Engineer (BPS-19), therefore, his acquiescence at that time coupled with no documentary proof that amendment in the rules was communicated to him on 27.4.2012, clearly convey that his departmental appeal on 09.5.2012 was quite time barred. Time barred departmental appeal makes a service appeal also liable to dismissal (2012-SCMR-195). That the question of limitation is a significant question which cannot be considered simply a technicality (2013-SCMR-911). Evidently, the appellant had challenged amendment in the service rules but such amendment in service rules is the prerogative of the government and cannot be undone in service appeal (2006-SCMR-1427 (b)). In so far as the question of discrimination is concerned we were not shown

any case that after the amended rules, a mechanical engineer was ever promoted to the post of Chief Engineer. Interestingly, no such instance was cited by the appellant even before promulgation of the amended service rules. Promotion to a particular post cannot be claimed as of right. In the present case it is also evident that the appellant got retired from service in the year, 2013 and it could not be substantiated that this appellant was not considered for promotion on any other *ground* except lack of qualification of the civil technology. Hence it was rightly argued by the learned Government Pleader that the appellant had ceased to have any cause of action.

7. For the stated reasons, this Tribunal is of the considered view that the instant appeal is devoid of merits and is liable to be dismissed, hence dismissed accordingly. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
15.07.2015.

  
(ABDUL LATIF)  
MEMBER

  
(PIR BAKHSH SHAH)  
MEMBER

12.06.2015

Appellant with counsel (Mr. Khalid Rahman, Advocate) and Mr. Ziaullah, GP for the respondents present. Arguments heard. Judgment reserved.

*Zia*  
*N. Zia*



MEMBER

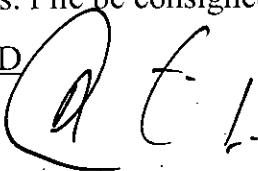


MEMBER

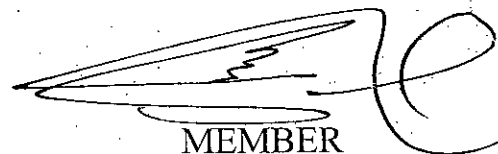
15.07.2015

Counsel for the appellant and Mr. Ziaullah, GP with Muhammad Iqbal, Supdt. for the respondents present. Arguments heard and record perused. Vide our detailed judgment of to-day and placed on file, this appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
15.07.2015



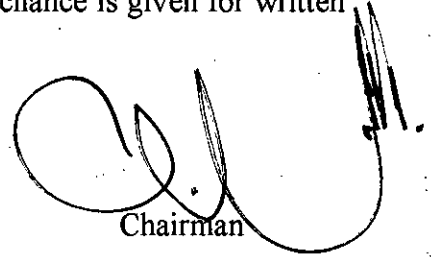
MEMBER



MEMBER

28.3.2014

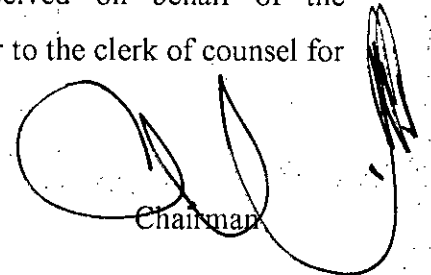
Appellant with counsel and Mr. Nasir Latif, Design Engineer on behalf of respondents with AAG present. Written reply has not been received, and request for further time made on behalf of the respondents. A last chance is given for written reply/comments on 23.6.2014.



Chairman

23.6.2014

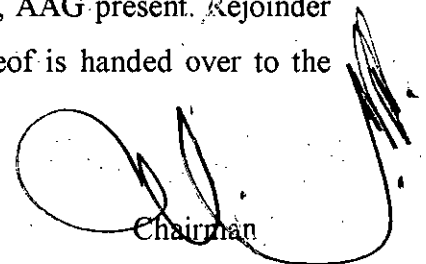
Clerk of counsel for the appellant and Mr. Nasir Latif, Design Engineer on behalf of respondents with AAG present. Written reply/para-wise comments received on behalf of the respondents, copy whereof is handed over to the clerk of counsel for the appellant for rejoinder on 17.10.2014.



Chairman

17.10.2014

Appellant in person and Mr. Nasir Latif, Design Engineer on behalf of respondents with Mr. Muhammad Adeel Butt, AAG present. Rejoinder received on behalf of the appellant, copy whereof is handed over to the learned AAG for arguments on 14.4.2015.



Chairman

14.04.2015

Clerk of counsel for the appellant and Mr. Ziaullah, GP for the respondents present. Due to strike of the Bar, counsel for the appellant is not available. Therefore, case is adjourned to 12.6.2015 for arguments.



MEMBER



MEMBER

5.6.13

The Honor Bench is on Poles,  
Therefore, case is adjourned to 11-<sup>9</sup>/<sub>13</sub>

  
Reader

11.9.2013

Appellant in person present. Notices to the respondents have not been issued, and the office has reported that notices could not be issued due to late deposit of security and process fee. The appellant, on the other hand, stated that he had deposited the security and process fee 4/5 months ago and had supplied receipts to the office at that time. Call for the explanation of official concerned, to be made available for further appropriate action within a week. Notices be issued immediately to the respondents for written reply/comments on 2.1.2014.

  
Chairman

02.01.2014

Appellant with counsel present. Respondents are not present despite their service through the concerned officials. However, AAG is present and would be contacting the respondents for written reply/comments on 28.3.2014.

  
Chairman

Engr. Abdul Wahab Shaid Al-Jishi

S.A No. 355/2013

3. 29.03.2013

Appellant deposited  
Rs 180/- Security & Process fee  
& attached with  
Bank receipt  
JWA

Counsel for the appellant present and heard. Contended that the appellant has not been treated in accordance with the law. The appellant is the senior most officer of the department and at the moment is serving in BPS-19. The appellant came to know that the previous rules of the department have been replaced by the impugned Notification dated 6.3.2010, whereby the officers holding B.Sc (Mechanical) have been barred from promotion to the post of Chief Engineer (BPS-20). The appellant moved a representation on 9.5.2012 but the same was rejected on 28.1.2013. Counsel for the appellant further contended that the appellant being senior most has earned the right of promotion but the same has been usurped by means of the impugned notification retrospectively which is against the law/rules. Points raised need consideration. The appeal is admitted to regular hearing, subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, notice be issued to the respondents. Case adjourned to 5.6.2013 for submission of written reply.

29.3.2013

This case be put up before the Final Bench for further proceedings.

  
CHAIRMAN

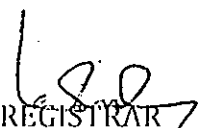

  
CHAIRMAN

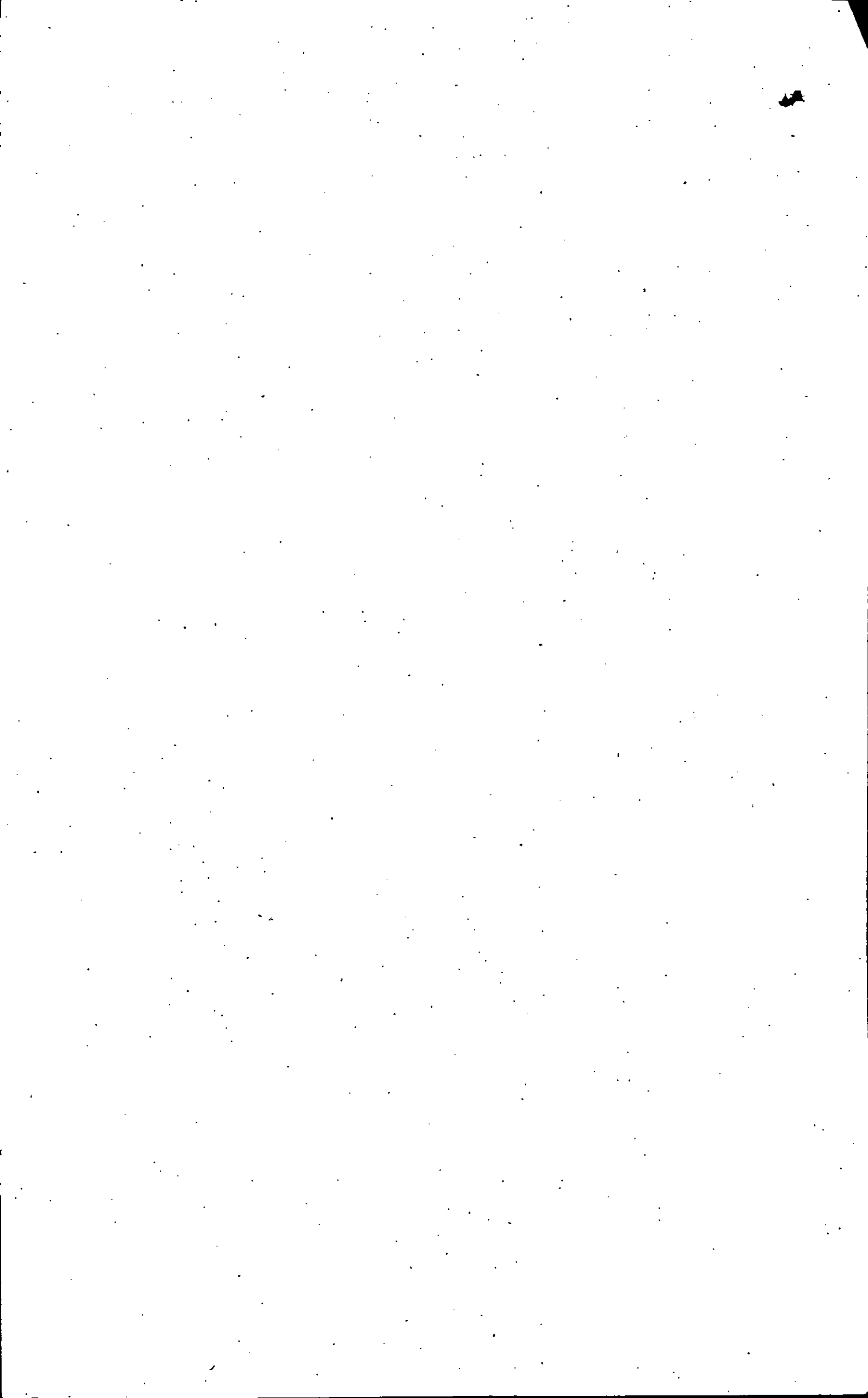


Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 355/2013

| S.No. | Date of order Proceedings | Order or other proceedings with signature of judge or Magistrate   |
|-------|---------------------------|--|
| 1     | 2                         | 3  |
| 1     | 11/02/2013                | <p>The appeal of Engr. Abdul Wahab Abbasai presented today by Mr. Khaled Rehman Advocate may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"><br/>REGISTRAR</p> |
| 2     | 14-2-2013                 | <p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>29-3-2013</u>.</p> <p style="text-align: right;"><br/>CHAIRMAN</p>   |



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 355 /2013

Engr. Abdul Wahab Shahid  
Abbasi

Versus

The Govt. of KPK and  
others

.....Appellant

.....Respondents

**INDEX**

| S.No. | Description of Documents       | Date       | Annexure | Pages |
|-------|--------------------------------|------------|----------|-------|
| 1.    | Memo of Service Appeal         |            |          | 1-6   |
| 2.    | Extracts from the Notification | 30.04.1979 | A        | 7-10  |
| 3.    | Letter                         | 21.12.2012 | B        | 11-12 |
| 4.    | Impugned Notification †        | 06.03.2010 | C        | 13-22 |
| 5.    | Departmental Representation    | 09.05.2012 | D        | 23-25 |
| 6.    | Rejection letter               | 28.01.2013 | E        | 0-26  |
| 7.    | Wakalat Nama                   |            |          |       |

Through

Appellant

**Khaled Rahman**  
Advocate, Peshawar  
9-B, Haroon Mansion,  
Khyber Bazar, Peshawar.  
Cell # 0345-9337312

Dated: 9 / 02 / 2013

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No. 355 /2013**

Engr. Abdul Wahab Shahid Abbasi,  
Superintending Engineer (BPS-19),  
office of the Chief Engineer (South)  
PHED, Peshawar.....Appellant.

**PHED Peshawar**  
**397**  
**11-2-13**

Versus

1. The Govt. of Khyber Pakhtunkhwa,  
through Chief Secretary,  
Civil Secretariat, Peshawar.
2. The Secretary to Govt. of Khyber Pakhtunkhwa  
Public Health Engineering Department,  
Civil Secretariat, Peshawar.
3. The Secretary to Govt. of Khyber Pakhtunkhwa  
Establishment & Administration Department,  
Civil Secretariat, Peshawar. ....Respondents.

**SERVICE APPEAL UNDER SECTION 4 OF THE  
KHYBER PAKHTUNKHWA SERVICE TRIBUNALS  
ACT, 1974 AGAINST THE IMPUGNED ORDER  
COMMUNICATED VIDE LETTER DATED 28.01.2013  
WHEREBY THE DEPARTMENTAL  
REPRESENTATION AGAINST THE NOTIFICATION  
DATED 06.03.2010 WAS REJECTED.**

~~DATED 03/03/13~~

**PRAYER:**

On acceptance of the instant appeal, the impugned order communicated vide letter dated 28.01.2013 and the impugned Notification No.SO(Estt)/PHED/1-9/2010 dated 06.03.2010 to the extent of Appendix at Serial No.1, Column No.5 may graciously be set aside by restoring the eligibility of Superintending Engineer/

**PHED Peshawar**  
**11/2/13**

Director Design/Director Planning & Monitoring (BPS-19) holding B.E./B.Sc. Engineering (Mechanical) to the post of Chief Engineer (BPS-20) with any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant..

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Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

1. That appellant joined the Department of Public Health Engineering in April 1978 as Assistant Engineer (BPS-17) on adhoc basis and later on he was regularized on the recommendations of the Public Service Commission way-back in the year 1981. He is one of the senior-most officers of the Department and at the moment is serving in BPS-19. Thus appellant at the moment has got an unblemished and outstanding service record for a period of almost 33 years at his credit and is going to retire in august 2013.
2. That as per Notification No.SORI(S&GAD)1-12/74 dated the Peshawar 30.04.1979 (*Annex:-A*) the post of Chief Engineer (BPS-20) was to be filled in as follows:-

*“By Selection on merit from amongst four senior most officers in case of Irrigation Department and three in case of Public Health Engg; Deptt; with at least seventeen years experience as Government servant, seniority being considered only in the case of Officers of practically the same standard of merit.”*

3. That as per Seniority List of Superintending Engineers (BPS-19) at Serial No.1 Mr. Sikandar Khan has recently been promoted to the post of Chief Engineer (BPS-20) as would be evident from the letter dated 21.12.2012 (*Annex:-B*) and thus after his promotion appellant dwells at serial No.1 and hence eligible for promotion to BPS-20 under the rules *ibid*.
4. That quite recently when the cases of promotion of the appellant and others were being processed by the Department, appellant came to know that the previous rules of the Department have been replaced by the impugned Notification No.SO (Estt)/PHED/1-9/2010 dated the Peshawar March 6, 2010 (*Annex:-C*) whereby the Officers holding B.Sc (Mechanical) have been barred from promotion to the post of Chief Engineer (BPS-20).
5. That the impugned Notification *ibid* was communicated to the appellant after much efforts on 27.04.2012, therefore, on obtaining the copy of the Notification, Appellant preferred a departmental Representation against the same before Respondent No.1 on 09.05.2012 (*Annex:-D*).
6. That later on appellant moved the Hon'ble Peshawar High Court, Peshawar in Writ Petition challenging the impugned Notification, however, the Hon'ble Court was of the opinion that the matter was relatable to the terms and conditions of the service, therefore, a direction was issued to

Respondent No.1 to decide the Departmental Representation of the appellant pending before him.

7. That the departmental Representation of the appellant was then processed but was unlawfully rejected and communicated vide letter dated 28.01.2013 (*Annex:-E*), hence this appeal inter-alia on the following grounds:-

**Grounds:**

- A. That Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully issued the impugned notification and order, which are unjust, unfair and hence not sustainable in the eye of law.
- B. That the impugned Notification and order militate against Articles 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973 and the Provisions of the Khyber Pakhtunkhwa Civil Servants Act, 1973 and the Rules framed thereunder, inas much as the same have caused utter discrimination between two classes of officers of the same Department without any lawful justification. Thus the impugned Notification and order being ultra vires of the constitution and law are not tenable and liable to

be set aside.

- C. That the classification made by the impugned Notification is not based upon reasonable and intelligible differentia inas much as the appellant being Mechanical Engineers and others being Civil Engineers both are serving in identical manner under similar circumstances, therefore, the classification is illogical, irrational and therefore, not sustainable.
- D. That the services of Mechanical Engineers and Civil Engineers both are of equal importance to the Department in view of Mechanical and Civil Works in the Department, therefore, placing one set of officers at a higher pedestal at the expense of the other is without any lawful justification, therefore, the impugned Notification is arbitrary, coram-non-judice, void ab-initio and thus liable to be struck down.
- E. That appellant has earned the right of promotion by dint of his previous long service in the Department and such right of promotion has, prejudicially, been usurped by means of the impugned Notification retrospectively and by now it has become a trite law that Notifications snatching away vested rights cannot be read into retrospect. Viewed from this angle the impugned Notification and the impugned order are nullity in the eye of law and therefore, are of no legal consequence.



- F. That the departmental Representation of the appellant has been rejected in a perfunctory manner without having recourse to the merits of the case, which is violative of the mandatory provisions of Article 24-A of the General Clauses Act, 1897, therefore, the impugned appellate order is also unwarranted and liable to be set aside.
- G. That appellant begs to submit other grounds at the time of arguments.

Through

  
Appellant

  
Khaled Rahman  
Advocate, Peshawar.

Dated: 9 / 02 / 2013

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Government of N.W.F.P  
Services, Genl: Admn: Tourism &  
Sports Department.

7

ANNEX A

NOTIFICATION.

Dated Peshawar the 30<sup>th</sup> April, 1979.

No.SORI (S&GAD) 1-12/74. In exercise of the powers conferred by Section 26 of the North West Frontier Province Civil Servants Act, 1973 (N.W.F.P. Act XVIII of 1973) and in supersession of all previous rules on the subject in this behalf, the Governor of the North West Frontier Province is please to make the following rules, namely;

NORTH WEST FRONTIER PROVINCE IRRIGATION AND PUBLIC HEALTH ENGINEERING DEPARTMENT (RECRUITMENT AND APPOINTMENT) RULES, 1979.

1. (1) These rules may be called the North West Frontier Province Irrigation and Public Health Engg: Deptt: (Recruitment and Appointment) Rules, 1979.  
(2) They shall come into force at once.
2. The method of recruitment, minimum qualification, age limit and other matters related thereto for the posts specified in column (2) of the schedule annexed shall be such as given in column (3) to (7) of the said schedule.

Secretary to Government of  
North West Frontier Province,  
Services and General Administration  
Department.

Endst: No. SORI (S&GAD) 1-12/74.

Dated Peshawar the 30<sup>th</sup> April, 1979

Copy forwarded to the:-

1. All Administrative Secretaries to Govt. of N.W.F.P.
2. All Divisional Commissioners in N.W.F.P.
3. Secretary to Governor, N.W.F.P.
4. Secretary, N.W.F.P., Public Service Commission, Peshawar.
5. All Heads of Attached Departments in N.W.F.P.
6. All Deputy Commissioners/Political Agents in N.W.F.P.
7. All District & Sessions Judges in N.W.F.P.
8. Registrar, High Court, N.W.F.P., Peshawar.
9. All Section Officers in S&GAD.
10. Manager, Government Printing Press Peshawar, for publication in the Government Gazette. He is requested to supply 50 copies of the printed Notification.

Sd/-  
(Syed Noor Badshah)  
Section Officer  
(Regulation-I)

ATTESTED

ATTESTED

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8

THE NORTH WEST FRONTIER PROVINCE IRRIGATION AND PUBLIC HEALTH  
ENGINEERING DEPARTMENT (RECRUITMENT AND APPOINTMENT) RULES. 1979.

SCHEDULE

Irrigation and Public Health Engineering Department

| Sl:<br>No. | Nomenclature of Posts. | Minimum qualification for appointment |              | Age for initial recruitment. |         | Method of recruitment |
|------------|------------------------|---------------------------------------|--------------|------------------------------|---------|-----------------------|
|            |                        | By initial recruitment or by transfer | By promotion | Minimum                      | Maximum |                       |
| 1          | 2                      | 3                                     | 4            | 5                            | 6       | 7                     |

POSTS COMMON TO IRRIGATION AND PUBLIC HEALTH ENGG: DEPARTMENT

|    |                          |   |   |   |   |  |
|----|--------------------------|---|---|---|---|--|
| 1. | Chief Engineer           | - | -   | - | - | By selection on merit from amongst four senior most officers in case of Irrigation Department and three in case of Public Health Engg: Deptt: with at least seventeen years experience as Government Servant, seniority being considered only in the case of officers of practically the same standard of merit! |
| 2. | Superintending Engineer. | - | Degree in Engineering from a recognized University. | - | - | By selection on merit from amongst the Executive Engineers or holders of equivalent posts in the Department concerned, in which the vacancy occurs, with at least twelve years service in grade-17 and 18, seniority being considered only in case of officers of practically the same standard of merit.        |
| 3. | Executive Engineer.      | - | -   | - | - | By selection on merit with due regard to seniority from amongst Assistant Engineers of the Department concerned in which the vacancy occurs, with at least six years service as such.  |

(Next Page .....)

9

DRKAS/102

NOTIFICATION

Dated Peshawar the 30th April, 1979.

No. SORI (SEGAD) 1-12/74. In exercise of the powers conferred by Section 26 of the North West Frontier Province Civil Service Act, 1973 (N.W.F.P. Act VIII of 1973) and in supersession of all previous rules on the subject in this behalf, the Governor of North West Frontier Province is please to make the following rules, namely;

THE NORTH WEST FRONTIER PROVINCE IRRIGATION AND PUBLIC HEALTH ENGINEERING DEPARTMENT (RECRUITMENT AND APPOINTMENT) RULES, 1979.

- (1) These rules may be called the North West Frontier Province Irrigation and Public Health Engg: Deptt: (Recruitment and Appointment) Rules, 1979.
- (2) They shall come into force at once.

The method of recruitment, minimum qualification, age limit and other matters related thereto for the posts specified in column (2) of the schedule annexed shall be such as given in column (3) to (7) of the said schedule.

Secretary to Government of  
North West Frontier Province,  
Services and General Administration  
Department.

Encls: No. SORI (SEGAD) 1-12/74 Dated Peshawar the 30th April, 1979.

Copy forwarded to the:-

- 1. All Administrative Secretaries to Government of N.W.F.P.
- 2. All Divisional Commissioners in N.W.F.P.
- 3. Secretary to Governor, N.W.F.P.
- 4. Secretary, N.W.F.P. Public Service Commission, Peshawar.
- 5. All Heads of Attached Departments in N.W.F.P.
- 6. All Deputy Commissioners/Political Agents in N.W.F.P.
- 7. All District & Sessions Judges in N.W.F.P.
- 8. Registrar, High Court, N.W.F.P. Peshawar.
- 9. All Section Officers in the SEGAD.
- 10. Manager, Government Printing Press Peshawar, for publication in the Government Gazette. He is requested to supply 50 copies of the printed notification.

Attested

*W. M. Khan*  
Administrative Officer,  
Office of the Chief Engineer,  
Irrigation, Peshawar.

18/2/93

Sd/-  
( Syed Noor Badshah )  
Section Officer  
(Regulation-1)

ATTESTED

ATTESTED

A

10

THE HONORABLE ENGINEERS' BOARD IRRIGATION AND  
PUBLIC HEALTH ENGINEERING DEPARTMENT (RECRUITMENT AND  
APPOINTMENT) RULES, 1979.

SCHEDULE.

Irrigation and Public Health Engineering Department.

| Sl. No. | Nomenclature of post. | Minimum qualification for appointment. |               | Age for initial recruitment. |         | Method of recruitment. |
|---------|-----------------------|--|---------------|------------------------------|---------|------------------------|
|         |                       | By initial recruitment or by transfer. | By promotion. | Male.                        | Female. |                        |

POSTS COMMON TO IRRIGATION AND PUBLIC HEALTH ENGG. DEPARTMENTS.

|    |                          |  |   |  |  |   |
|----|--------------------------|--|---|--|--|---|
| 1. | Chief Engineer.          |  |   |  |  | By selection on merit from amongst four senior most Officers in case of Irrigation Department and three in case of Public Health Engrg. Deptt. with at least seventeen years experience as Government servant, seniority being considered only in the case of Officers of practically the same standard of merit. |
| 2. | Superintending Engineer. |  | Degree in Engineering from a recognized University. |  |  | By selection on merit from amongst the Executive Engineers or holders of equivalent posts in the Department concerned, in which the vacancy occurs, with at least twelve years service in grade 17 and 18, seniority being considered only in case of Officers of practically the same standard of merit.         |
| 3. | Executive Engineer.      |  |   |  |  | By selection on merit with seniority from amongst Engineers of the Department in which the vacancy occurs, with at least six years  |

STED

**CONFIDENTIAL**  
**IMMEDIATE**

ANNEX B



**GOVERNMENT OF KHYBER PAKHTUNKHWA**  
**ESTABLISHMENT DEPARTMENT**

No. SO(PSB)ED/1-15/2012/P-16  
Dated Peshawar, the 21.12.2012

To

The Secretary to  
Government of Khyber Pakhtunkhwa,  
PHE Department

**SUBJECT: - MINUTES OF THE MEETING OF PROVINCIAL SELECTION BOARD  
HELD ON 14.12.2012**

**PROMOTION OF SUPERINTENDING ENGINEER BS-19 TO THE  
POST OF CHIEF ENGINEER BS-20**

Dear Sir,

I am directed to refer to PHE Department letter No. SO (Estt) /PHED/1-17/2010 dated 29.11.2012 on the subject and to forward herewith an extract of **item No.36** of the minutes/recommendations of the meeting of Provincial Selection Board held on **14.12.2012** for further necessary action/obtaining approval of the competent authority.

Yours faithfully

*(Signature)*  
**(JAN SAID)**  
SECTION OFFICER (PSB)

Encl: As Above  
Endst. of even No. & date.

A copy is forwarded to the SO (Estt), Govt of Khyber Pakhtunkhwa, PHE Department. He is requested to depute his representative to collect working papers from this office immediately.

**ATTACHED**

SECTION OFFICER (PSB)

SO- Estt PHED  
Diary No. 1326  
Date: 26-12-12.

Secretary, PHE Deptt.  
Diary No. 1328  
Dated: 21-12-12  
1024  
26-12-12  
DSA  
26/12/12  
SO(E)  
C. M. P. M. M. M.  
Summary  
26/12

**SUBJECT:- PROMOTION OF SUPERINTENDING ENGINEER BS-19 TO THE POST OF CHIEF ENGINEER BS-20**

Secretary PHE apprised the Board that due to retirement of Mr. Zia-ud-Din on 14.8.2010, the post of Chief Engineer PHE BS-20 is lying vacant.

2. According to service rules the post is required to be filled as under:-

“By promotion on the basis of Selection on merit from amongst the Superintending Engineers/ Directors Design / Directors Planning and Monitoring with at least seventeen years service in BS-17 and above, possessing degree in B.E./B.Sc Engg. (Civil), from a recognized University”

3. The service record of the officers included in the panel was discussed as follows: -

| S. NO. | NAME OF OFFICER                 | RECOMMENDATIONS OF THE BOARD  |
|--------|---------------------------------|---|
| 1      | Mr. Sikandar Khan<br>BE (Civil) | <p>His date of birth is 01.01.1955. He joined government service on 30.3.1981 in BS-17. He was promoted to BS-18 on 11.11.2010. The Board in its meeting held on 25.05.2012 recommended to defer his promotion as an enquiry was pending against him. He has now been exonerated of the charges leveled against him vide notification dated 15.10.2012. No enquiry is pending against him. His service record upto 2011 is generally good.</p> <p>The Board recommended the officer for promotion to the post of Chief Engineer BS-20 on regular basis. He will be on probation for a period of one year.</p> |

*Alexis*

*[Signature]*  
Secretary (PSB)  
Govt. of Khyber Pakhtunkhwa  
Establishment Department

**ATTESTED**


GOVERNMENT OF THE NORTH-WEST FRONTIER PROVINCE  
PUBLIC HEALTH ENGINEERING DEPARTMENT

NOTIFICATION

ANNEX C<sup>13</sup>  
13

Peshawar, dated 06-03-2010.

No. SO(ES#)PHED/1-9/2de - 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 pursuance of all previous notifications issued in this behalf, the Public Health Engineering Department in consultation with the Establishment Department and the Finance Department, hereby lays down the method of recruitment, qualifications and other conditions specified in Column No. 3 to 5 of the Appendix appended to this Notification which shall be applicable to the post as mentioned in Column No. 2 of the said Appendix.

  
Section Officer (Establishment)  
Public Health Engineering Department  
NWP, Peshawar

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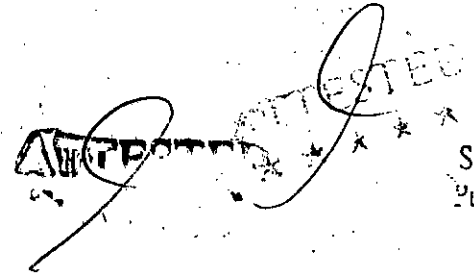


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APPENDIX

| S.No.                        | Nomenclature of post.   | Minimum qualification required for appointment. | Age limit. | Method of recruitment.   |
|------------------------------|---|---|------------|--|
| 1.                           | 2.  | 3.  | 4.         | 5.   |
| <b>I. Engineering Cadre:</b> |   |   |            |  |
| 1.                           | Chief Engineer (BS-20).   | <i>Please see last page attached</i>            |            | By promotion, on the basis of selection on merit, from amongst the Superintending Engineers/Directors Design/Directors (Planning and Monitoring) with at least seventeen years service in BS-17 and above, possessing degree in B.E/B.Sc Engineering (Civil) from a recognized University. |
| 2.                           | Superintending Engineer / Director Design / Director (Planning and Monitoring) (BS-19). |   |            | By promotion, on the basis of seniority-cum-fitness, from amongst the Executive Engineers/ Design Engineers/Technical Officers with twelve years of service in BS-17 and above, possessing degree in B.E/B.Sc Engineering (Civil) from a recognized University.                            |
| 3.                           | Executive Engineer/ Design Engineer/ Technical Officer (BS-18).                         |   |            | By promotion, on the basis of seniority-cum-fitness, from amongst Assistant Engineers/ Assistant Design Engineers/Sub Divisional Officers possessing degree in B.E/B.Sc Engineering (Civil) from a recognized University with five years service as such.                                  |


  
 APPROVED

*[Handwritten Signature]*

Section Officer (Establishment)  
 Public Health Engineering Department  
 NWFP, Feshawa

15

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|    |   |   |                   |   |
|----|---|---|-------------------|---|
|    | Assistant Engineer/<br>Assistant Design<br>Engineer/Sub<br>Divisional Officer<br>(BS-17). | Degree in B.E/B.Sc<br>Engineering (Civil)<br>from a recognized<br>University.                                     | 21 to 32<br>years | <p>(a) Ten per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Sub-Engineers who possessed Degree of B.E/B.Sc Engineering (Civil) from a recognized University;</p> <p><b>Note:</b> The seniority for the purpose of promotion shall be reckoned from the date of acquiring degree of B.E/B.Sc Engineering. (Civil) from a recognized University or. date of appointment which ever is later.</p> <p>(b) twenty per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Sub-Engineers who hold a diploma and have passed Departmental Professional Examination with at least ten years service as such; and</p> <p>(c) seventy per cent by initial recruitment.</p> |
| 5. | Sub Engineer<br>(BS-11).  | Diploma of Associate<br>Engineering (Civil) /<br>Electrical / Mechanical<br>from a recognized<br>Technical Board. | 18 to 30<br>years | <p>(a) Ten per cent by transfer, from amongst the Draftsmen with seven years service as such, having Diploma in Civil/Electrical/Mechanical Technology from a recognized Board; and</p> <p>ninety per cent by initial recruitment.</p>  |

II. Ministerial Establishment:

|    |   |  |  |  |
|----|---|--|--|--|
| 6. | Budget and Accounts<br>Officer/Administrative<br>Officer (BS-17). |  |  | By promotion, on the basis of seniority-cum-fitness, from amongst the Superintendents with five years service as such.   |
| 7. | Superintendent<br>(BS-16).  |  |  | <p>(a) Seventy per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Assistants with five years service as such; and</p> <p>(b) thirty per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Senior Scale Stenographers with five years service as such.</p> |

ATTESTED

*[Signature]*  
 Section Officer (Ministerial)  
 Public Health Department  
 NWFP, Islamabad

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|    |                                     |   |                |  |
|----|-------------------------------------|---|----------------|--|
| 8. | Senior Scale Stenographers (BS-15). | <p>(a) -- Second Class Bachelor's Degree or equivalent qualification from a recognized University; and</p> <p>(b) a speed of 100 words per minute in English shorthand and 40 words per minute in English typing.</p> | 18 to 30 years | <p>By promotion, on the basis of seniority-cum-fitness, from amongst the Stenographers BS-12 with five years service as such:</p> <p>Provided that if no suitable candidate is available for promotion, then by initial recruitment.</p> |
| 9. | Junior Scale Stenographer (BS-12).  | <p>(a) Second Class Intermediate/ D.Com or equivalent qualification from a recognized Board; and</p> <p>(b) a speed of 50 words per minute in English shorthand and 35 words per minute in English typing.</p>        | 18 to 30 years | <p>By initial recruitment.</p> <p><b>ATTESTED</b><br/>* * * * *</p>  |

**ATTESTED**

*[Handwritten Signature]*  
 Section Officer (Recruitment)  
 Public Works Deptt. Government  
 NWFP, Peshawar

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*[Signature]*

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|     |                             |  |                |   |
|-----|-----------------------------|--|----------------|---|
|     | Assitant/Head Clerk (BS-4). | Second Class Bachelor's Degree from a recognized University.   | 21 to 32 years | <p>(a) Twenty-five per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Accounts Clerks, having graduation with five years service as such;</p> <p>(b) fifty per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Accounts Clerk other than Graduates, with five years service as such:</p> <p style="text-align: center;">Provided that if qualified persons are not available for promotion, against he quota at (a), then the vacancy shall be filled in by way prescribed at (b); and</p> <p>(c) Twenty-five per cent by initial recruitment.</p>   |
| 11. | Accounts Clerk (BS-11).     | --   | --             | By promotion, on the basis of seniority-cum-fitness, from amongst the Senior Clerks with five years service as such.  |
| 12. | Senior Clerk (BS-09).       | --   | --             | By promotion, on the basis of seniority-cum-fitness, from amongst the Junior Clerks with three years service as such.   |
| 13. | Junior Clerk (BS-07).       | <p>(a) Second Division Intermediate or equivalent qualification from a recognized Board; and</p> <p>(b) a speed of 30 words per minute in English typewriting.</p> | 18 to 28 years | <p>(a) Twenty per cent by promotion, from amongst the Daftari, Record Lifter, Daffadar, Barkandaz, Naib Qasids and Chowkidars, who have passed Secondary School Examination and are under 45 years of age and have at least two years service as such; and</p> <p><b>Note:</b> For the purpose of promotion, the department shall maintain a joint seniority list of Daftary, Naib Qasids, Chowkidars, Record Lifter, Daffadar and Barkandaz based on the date of regular appointment to the post or that of acquiring the SSC whichever is later; provided that if two dates are the same the person older in age or having longer service, whichever is more beneficial to him, shall rank senior; and</p> <p>(b) eighty per cent by initial recruitment.</p> |

**ATTESTED**

*[Signature]*  
 Section Officer (Establishment)  
 Public Health Engineering Department  
 NWFP, Peshawar

|     |  |  |                   |  |
|-----|--|--|-------------------|--|
|     | Daftari/Record Lifter/<br>Daffadar/Barkandaz<br>(BS-02).                         | Preferably literate,<br>preference will be given<br>to Ex-Service Man.   | 18 to 35<br>years | By promotion, from amongst the Naib Qasids/Chowkidars having Middle Standard qualification:<br><br>Provided that if no suitable candidate is available for promotion, then by initial recruitment. |
| 15. | Naib Qasid<br>(BS-01).   | Middle Standard<br>qualification.  | 18 to 40<br>years | By initial recruitment.  |
| 16. | Driver<br>(BS-04).   | Possessing a valid LTV/<br>HTV Driving License<br>with five years<br>experience, having<br>Middle Standard<br>qualifications from a<br>recognized Board.   | 18 to 45<br>years | By initial recruitment.  |
| 17. | Chowkidar<br>(BS-01).  | Literate.  | 18 to 45<br>years | By initial recruitment.  |
| 18. | Sweeper<br>(BS-01).  |  | 18 to 45<br>years | By initial recruitment.  |
| 19. | Data Entry Operator /<br>Computer Aided<br>Design, Computer<br>Operator (BS-11). | Second Class<br>Intermediate Certificate<br>or equivalent<br>qualification from a<br>recognized Board and<br>one year Diploma in<br>Information Technology<br>or Computer Science<br>from a recognized<br>Board. | 18 to 30<br>years | By initial recruitment.  |

**ANNEXED**

Section Officer (Public Health)  
Public Health Engineering Department  
NWFP, Peshawar

18

17

**Drawing Branch Establishment:**

|   |  |                |   |
|---|--|----------------|---|
| 20. Chief Draftsman (BS-17).                            |  |                | By promotion, on the basis of seniority-cum-fitness, from amongst the Circle Head Draftsmen with five years service as such.  |
| 21. Circle Head Draftsman (BS-16).                      |  |                | By promotion, on the basis of seniority-cum-fitness, from amongst the Head Draftsman/ Divisional Head Draftsman with five years service as such.  |
| 22. Head Draftsman / Divisional Head Draftsman (BS-14). |  |                | By promotion, on the basis of seniority-cum-fitness, from amongst the Draftsman with five years service as such.  |
| 23. Draftsman (BS-11).                                  | <p>(a) Second Division Secondary School Certificate from a recognized Board; and</p> <p>(b) two years duration Certificate Course in Civil Draftsmanship from a recognized Board of Technical Education.</p> | 18 to 30 years | <p>(a) Twenty-five per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Tracers having Certificate of Civil Draftsman Course of two years duration from recognized Board of Technical Education with three years service as such:</p> <p>(b) twenty-five per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Tracers who have qualified the prescribed Departmental Examination of Draftsman, and having three years service as such:</p> <p>Provided that if no suitable candidates are available for promotion against the quota at (a) then the vacancy shall be filled in by way prescribed at (b) and vice versa; and</p> <p>(c) fifty per cent by initial recruitment.</p> |

*[Signature]*  
 Sr. (P) (General)  
 Public Health Engineering Department  
 NWFP, Peshawar

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|     |  |  |                |   |
|-----|--|--|----------------|---|
|     | Tracer (BS-05).                        | (a) Second Class Secondary School Certificate from a recognized Board; and<br><br>(b) Survey course of at least 6-9 months duration. | 18 to 30 years | (a) Twenty-five by promotion, from amongst the Ferro-Printer/Ferro Khalasi having Secondary School Certificate with two years service as such; and<br><br>(b) seventy-five per cent by initial recruitment. |
| 25. | Ferro- Printer/ Ferro Khalasi (BS-02). | Middle Standard Qualification.   | 18 to 30 years | By initial recruitment.   |

IV. Water Quality (WQ) Laboratory's Technical Staff:

|     |   |   |                |  |
|-----|---|---|----------------|--|
| 26. | Water Scientist / Senior Research Officer (WQ) (BS-18). | Second Division M.Sc (Micro-biology or Chemistry) from a recognized University. |                | By promotion, on the basis of seniority-cum-fitness, from amongst the members of service holding the post of Research Officer (Water Quality) BS-17 with five years service as such.   |
| 27. | Research Officer (WQ) (BS-17).                          | Second Division M.Sc (Micro-biology or Chemistry) from a recognized University. | 21 to 32 years | (a) Fifty per cent by promotion, on the basis of seniority-cum-fitness, from amongst the members of service holding the post of Assistant Research Officer (Water Quality) with three years service as such; and<br><br>(b) fifty per cent by initial recruitment; and |
| 28. | Assistant Research Officer (WQ) (BS-16).                | Second Division B.S. (Microbiology or Chemistry) from a recognized University.  | 21 to 30 years | By initial recruitment.  |

**ATTESTED**

*[Signature]*  
 Section Officer (Personnel)  
 Public Health Department  
 NWFP - Rawalpindi

|  |  |  |                |   |
|--|--|--|----------------|---|
|  | Laboratory Technician (BS-06).                 | Second Division Secondary School Certificate or equivalent qualification from a recognized Board and relevant Laboratory Technician Course from a recognized Technical Board/Institute.                      | 18 to 30 years | By initial recruitment.   |
| 30.  | Laboratory Attendant (BS-01).                  | Literate.  | 18 to 45 years | By initial recruitment.   |
| V. <u>Hydrogeology/Resistivity Survey Staff:</u> |  |  |                |   |
| 31.  | Research Officer/ Hydro-Geologist (BS-17).     | Second Division M.Sc (Hydro-Geology) or B.Sc (Civil/Agriculture Engineering) with two years relevant experiences or Second Division M.Sc. (Water Resources/ Civil Engineering) from a recognized University. | 21 to 32 years | (a) Fifty per cent by promotion, on the basis of seniority-cum-fitness, from amongst the members of service holding the post of Assistant Research Officer (Resistivity Survey) with three years service as such; and<br>(b) fifty per cent by initial recruitment. |
| 32.  | Assistant Research Officer (R/Survey) (BS-16). | Second Division M.Sc (Hydro-Geology) or B.Sc (Civil/Agriculture Engineering) or Second Division M.Sc. (Water Resources/ Civil Engineering) from a recognized University.                                     | 21 to 30 years | By initial recruitment.   |

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Section Officer (Establishment)  
Public Health Department  
NWFP, Peshawar



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|                         |   |                |                         |
|-------------------------|---|----------------|-------------------------|
| Technician,<br>(2S-06). | Second Class Secondary School Certificate or equivalent qualification from a recognized Board and relevant Technician Course from a recognized Technical Board/Institute. | 18 to 30 years | By initial recruitment. |
|-------------------------|---|----------------|-------------------------|

**I. Community Development/Health Hygiene Promotion Staff:**

|  |   |                |                         |
|--|---|----------------|-------------------------|
| Assistant Social Organizer<br>(BS-16). | Second Class Master's Degree in Social Sciences from a recognized University. | 21 to 30 years | By initial recruitment. |
|--|---|----------------|-------------------------|

**ii. EIA/Environment Section Staff:**

|                           |  |                |  |
|---------------------------|--|----------------|--|
| Environmental<br>(BS-17). | Second Class Master's Degree in Environmental Sciences/Environmental Engineering from a recognized University. | 21 to 30 years | By initial recruitment or by deputation from Environmental Protection Agency North-West Frontier Province. |
|---------------------------|--|----------------|--|

SECRETARY TO GOVERNMENT OF THE NORTH-WEST FRONTIER PROVINCE  
PUBLIC HEALTH ENGINEERING DEPARTMENT.

*[Handwritten signature]*  
Awe

To

The worthy Chief Secretary,  
Govt. of Khyber Pakhtunkhwa,  
Civil Secretariat, Peshawar.

Received

9/5  
P.S. ANNEX

23

ANNEX D  
23

**Subject: Departmental Representation against the Notification No.SO(Estt)/PHED/1-9/2010 dated the Peshawar March 6, 2010 communicated on 27.04.2012 whereby appellant's right of promotion to the post of Chief Engineer (BPS-20) has unlawfully been denied.**

Respected Sir,

With due respect I have the honour to submit this departmental representation for your kind consideration and favourable action on the following facts and grounds:

1. That appellant joined the Department in April 1978 as Assistant Engineer (BPS-17) on adhoc basis and later on he was regularized on the recommendations of the Public Service Commission way-back in the year 1981. He is one of the senior-most officers of the Department and at the moment is serving in BPS-19. Thus appellant at the moment has got an unblemished and outstanding service record for a period of almost 33 years at his credit and is going to retire in august 2013.

2. That as per Notification No.SORI(S&GAD)1-12/74 dated the Peshawar 30.04.1979 (*Annex:-A*) the post of Chief Engineer (BPS-20) was to be filled in as follows:-

*"By Selection on merit from amongst four senior most officers in case of Irrigation Department and three in case of Public Health Engg; Deptt; with at least seventeen years experience as Government servant, seniority being considered only in the case of Officers of practically the same standard of merit.*

3. That as per Seniority List of Superintending Engineers (BPS-19) appellant dwells at serial No.2 and thus was eligible for promotion to BPS-20 under the rules ibid, however, recently when the case of promotion of the appellant and others were processed by the Department, appellant came to know that the

**ATTESTED**

ATTESTED

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previous rules of the Department have been replaced by the impugned Notification No.SO(Estt)/PHED/1-9/2010 dated the Peshawar March 6, 2010 (*Annex:-B*) whereby the Officers holding B.Sc (Mechanical) have been barred from promotion to the post of Chief Engineer (BPS-20).

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4. That the impugned Notification *ibid* was communicated to the appellant after much efforts on 27.04.2012, therefore, appellant being aggrieved of the same, files this departmental Representation before your good-self for your kind consideration and favourable action on the following amongst other grounds:-

**GROUND:-**

- A. That appellant has not been treated in accordance with law and rules on subject and has been treated in violation of Article-4 of the Constitution of Islamic Republic of Pakistan, 1973 by issuing the impugned Notification whereby his right of promotion to the next higher grade has permanently been barred, thus the impugned Notification is unjust, unfair and hence not legally maintainable.
- B. That the impugned Notification militates against Article 25 of the Constitution of Islamic Republic of Pakistan, 1973 inas much as it has caused utter discrimination between two classes of officers of the same Department without any lawful justification. Thus the impugned Notification being *ultra vires* of the constitution is not tenable and liable to be set aside.
- C. That the classification made by the impugned Notification is not based upon reasonable and intelligible differentia inas much as the appellant being Mechanical Engineers and others being Civil Engineers both are serving in identical manner under similar circumstances, therefore, the classification is illogical, irrational and therefore, not sustainable.
- D. That the services of Mechanical Engineers and Civil Engineers both are of equal importance to the Department in view of Mechanical and Civil Works in the Department, therefore, placing one discipline at a higher pedestal at the expense of the other is without any lawful justification.

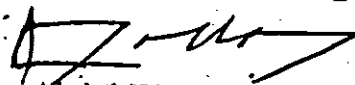
It is, therefore, humbly requested that on acceptance of this departmental Representation, the impugned Notification No.SO(Estt)/PHED/1-9/2010 dated 06.03.2010 may kindly be modified by enabling the appellant to avail his right of promotion to the next higher grade in the best interest of justice and fair play. Meanwhile

ATTESTED

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the promotion cases of BPS-19 to BPS-20 may kindly be stopped till the decision of the instant representation.

Yours faithfully



Engr. Abdul Wahab Shahid Abbasi,  
Superintending Engineer (BPS-19),  
office of the Chief Engineer (South)  
PHED, Khyber Pakhtunkhwa,  
Peshawar.

Dated: 9.05.2012

ATTESTED

ATTESTED  
\* \* \* \* \*



**GOVERNMENT OF KHYBER PAKHTUNKHWA  
PUBLIC HEALTH ENGG: DEPARTMENT**

No.SO(Estt)/PHED/1-5/97  
Dated Peshawar, the January 28, 2013

To

✓  
Mr. Abdul Wahab Shahid Abbasi,  
Superintending Engineer,  
Office of Chief Engineer (South) PHE Peshawar.

ANNEE E  
26

Subject: **Departmental representation against Notification No. SO(ESTT)PHED/1-9/2012 dated Peshawar, March 6, 2010, communicated on 27-04-2012 whereby appellant's right of promotion to the post of Chief Engineer (BPS-20) has unlawfully been denied.**

Dear sir,

I am directed to state that the competent authority has been pleased to reject your representation dated 07-05-2012 on the subject noted above.

Yours faithfully,

*Muhammad Yunas*  
28/1/13

**( MUHAMMAD YUNAS )  
SECTION OFFICER (ESTT)**

|                 |         |
|-----------------|---------|
| Diary No.       | 595     |
| Date            | 29/1/13 |
| Case No.        |         |
| C.E.P.H.E. (S)  |         |
| S.E.H.O.        |         |
| Director Design |         |
| Design Engr.    |         |
| A.O.            |         |
| SAO             |         |
| S.D.            |         |

# بعدالت



20/9 مخائب اللات  
 ايجز عدل لو اب پن نام حکومت و عدل

مورخ  
 مقدمہ  
 دعویٰ  
 جرم

## باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی و کل کارروائی متعلقہ  
 آن مقام کیلئے ۱۵/۹/۲۰۱۹ کے لئے  
 مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوفہ کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز  
 وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے جو اب دعویٰ اور اقبال دعویٰ اور  
 بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ از عرضی دعویٰ اور درخواست بر قسم کی تصدیق  
 زرا میں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یک طرفہ یا اپیل کی برآمدگی اور منسوخی  
 نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت، مقدمہ مذکور  
 کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار  
 ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ  
 پرواختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب سے ہوگا۔  
 کوئی تاریخ پیشی مقام دور پر ہو یا حدتے باہر ہو تو وکیل صاحب پابند ہوں گے کہ پیروی  
 مذکورہ کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

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المرقوم

واہ

کے لئے منظور ہے۔

بمقام

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

No. 1282 /ST

Dated 13/09 /2013

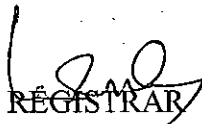
To,

Syed Haris Shah,  
Junior Clerk, Service Tribunal,  
Peshawar.

Subject:- EXPLANATION

You Syed Haris Shah, Junior Clerk, have not issued notices to the respondents in appeal No. 355/2013, Engineer, Abdul Wahab-Vs-Govt. etc on the pretext that appellants had not deposited process fee and security but it is evident from the challan that appellants had deposited process fee and security well in time i.e on 2<sup>nd</sup> April, 2013.

You are, therefore, directed to explain the reason for not issuing notices and be made available yourself for further appropriate action within a week, positively.

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR.

**Rejuvenate**  
**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR**

**Service Appeal No.355/2013**

Engr. Abdul Wahab Shahid Abbasi,  
Superintending Engineer / Director Design (South),  
Public Health Engineering Department  
Peshawar.....Appellant

**VERSUS**

- 1) Government of Khyber Pakhtunkhwa,  
through Chief Secretary KPK Peshawar.
- 2) Secretary to Govt. of Khyber Pakhtunkhwa,  
Public Health Engineering Department Peshawar
- 3) Secretary to Govt. of Khyber Pakhtunkhwa,  
Establishment & Admn: Department  
Peshawar.....Respondents

**PARA-WISE COMMENTS ON BEHALF OF RESPONDENTS NO.1 TO 3**

**Respectively Sheweth**

**PRELIMINARY OBJECTIONS:**

1. The appellant has no cause of action
2. The appellant has no locus standi.
3. The appeal is not maintainable in its present form.
4. The appellant is estopped by his own conduct to bring present appeal.
5. That the appeal of the appellant is badly time barred.

**FACTS OF THE CASE**

1. Factual to the extent that the appellant joined the Department in April 1978 as Assistant Engineer (BPS-17) on adhoc basis and was later-on regularized on the recommendations of the Public Service Commission in the year 1981. He stood retired on attaining the age of superannuation in August 2013.
2. No comments.



3. Correct to the extent that Mr. Sikandar Khan has been promoted to the post of Chief Engineer (BPS-20), the appellant is the next senior most officer, however, being Mechanical Engineer, he is not eligible for promotion to the post of Chief Engineer (BPS-20) as per existing Service Rules of PHE Department. It may be noted that the PHE, being Civil oriented Department, requires the effective knowledge of Civil Engineers for key positions.
  
4. Incorrect. The Service Rules of PHE Department were reframed in 2007 in the merged Works & Services Department on the basis of its requirements wherein only Civil Engineers were declared eligible for promotion to various positions in its hierarchical structure. However, special amendments in the Services Rules were made vide Notification dated 06-12-2010, wherein against Serial No.2 and 3, in Column No.5, the word and brackets, "(Civil)" were deleted and thus the appellant, being the Mechanical Engineer, was granted access for promotion to the post of Superintending Engineer (BPS-19). It may be noted that in order to avail the benefits from the said Rules for promotion from BPS 17-19, the appellant remained silent and has now challenged the same so that the rules could be twisted for his personal benefits. The post of Chief Engineer (BPS-20), being the controlling officer for execution, supervision, maintenance and operation of Water Supply Schemes across the Province, was purely reserved for promotion of Civil Engineers in the best public interest. The appointment rules in vogue make only Civil Engineers eligible for appointments in PHE Department which further nullify the standpoint of the appellant.
  
5. Incorrect. The Services Rules were reframed in 2007 wherein the Mechanical Engineering Degree Holders were barred from promotion. The appellant was serving in the department and had better knowledge of the new Service Rules. However, he did not agitate / resist against these Rules. On bifurcation of Works & Services Department into C&W & PHE Departments, the Service Rules of 2007 were re-notified for the newly established PHE Department known as PHE Department's (Recruitment & Appointments) Rules 2010. Against these rules, the appellant filed appeal to the Chief Secretary Khyber Pakhtunkhwa. This appeal of the appellant was time barred. However, the competent authority, after thorough consideration, rejected the appeal of the appellant. The appellant was informed accordingly.


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- 6. Correct to the extent that on direction of the Hon'ble Peshawar High Court Peshawar to decide the representation of the appellant, a case was moved to the competent authority for decision. The competent authority, after consideration, rejected the representation of the appellant.
- 7. As per Para 6 of the facts above.

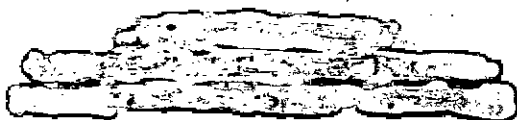
**GROUND**

- A. Incorrect. The appellant has been treated in accordance with law, rules and policy on the subject and no violation of the constitution has been committed in this regard.
- B. Incorrect. As per Para A of the grounds.
- C. Incorrect. The appellant being Mechanical Degree holder was promoted up-to the position of BPS-19. However, the position of BPS-20, being Civil oriented and key position controlling entire affairs of the Department, was purely reserved for Civil Engineers in the best public interest. Therefore, the motive behind Doing so was to ensure efficient service delivery and good governance, thus, no discrimination has been made with the appellant.
- D. As per Para C above.
- E. As per Para C of the grounds and Para 4 of the facts.
- F. As per Para 5 & 6 of the facts.

Besides above legal & factual position, it may kindly be noted that presently there is no vacant post of Chief Engineer to consider the appellant for promotion. It is, therefore, humbly prayed that the appeal of the appellant may be dismissed *with Cost*.

  
SECRETARY ESTT & ADMN  
GOVT OF KHYBER PAKHTUNKHWA  
(RESPONDENT NO. 3)

  
SECRETARY PHE  
GOVT OF KHYBER PAKHTUNKHWA  
(RESPONDENT NO. 1-2)





**GOVERNMENT OF KHYBER PAKHTUNKHWA  
PUBLIC HEALTH ENGG: DEPARTMENT**

Dated Peshawar, the September 4, 2013

**NOTIFICATION**

**No. SO(ESTT)/PHED/1-5/97**. In terms of Section-13 of the Khyber Pakhtunkhwa Civil Servants Act 1973, Mr. Abdul Wahab Shahid Abbasi, Director Design (South) PHE Peshawar, stood retired from service on 19/08/2013 (Afternoon) on attaining the age of superannuation. His date of birth according to official record is 20/08/1953.

**SECRETARY**

**Endst No. SO(ESTT)/PHED/1-5/97**

**Dated Peshawar, the September 4, 2013**

Copy forwarded for information & necessary action to the:-

1. Accountant General Khyber Pakhtunkhwa Peshawar.
2. Chief Engineer (South) PHE Peshawar.
3. Director Design (South) PHE Peshawar.
4. PS to Secretary PHE Department.
5. Officer concerned.
6. O/O File / Personal File.

*Muhammad Yunas*  
9/9/13

**( MUHAMMAD YUNAS )  
SECTION OFFICER (ESTT)**

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

**Service Appeal No.355/2013**

Engr. Abdul Wahab Shahid Abbasi,  
Superintending Engineer / Director Design (South),  
Public Health Engineering Department  
Peshawar.....Appellant

**VERSUS**

- 1) Government of Khyber Pakhtunkhwa,  
through Chief Secretary KPK Peshawar.
- 2) Secretary to Govt. of Khyber Pakhtunkhwa,  
Public Health Engineering Department Peshawar
- 3) Secretary to Govt. of Khyber Pakhtunkhwa,  
Establishment & Admn: Department  
Peshawar.....Respondents

**PARA WISE COMMENTS OF RESPONDENTS NO.1 – 3**

**AFIDAVIT**

I, Jauhar Ali Shah, Section Officer (Estt) PHED Peshawar, do hereby solemnly declare that contents of the Para-wise comments are correct to the best of my knowledge and record and nothing has been concealed from this honourable Court.

**Deponent**



**SECTION OFFICER (ESTT)  
PHE DEPARTMENT**

Identified by

Senior Government Pleader  
KPK Service Tribunal Peshawar

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR****Service Appeal No. 355-P /2012**

Engr. Abdul Wahab Shahid Abbasi.....Appellant

Versus

The Govt. and others.....Respondents

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**REJOINDER ON BEHALF OF APPELLANT IN  
RESPONSE TO REPLY FILED BY  
RESPONDENTS NO. 1-3.**

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Respectfully Sheweth,

**Preliminary Objections:**

Preliminary objections raised by answering respondents are erroneous and frivolous, the detailed replies thereof are as under:-

I&II. That valuable rights of the appellant have been infringed through the impugned Notification which has been challenged through the instant appeal under the law, therefore, appellant has got a strong cause of action and for that matter locus standi to file the instant appeal.

III. That all codal formalities as per the Khyber Pakhtunkhwa Service Tribunal Act, 1974 have been complied with and therefore the appeal is in its correct form and shape.

- IV. That appellant has challenged the impugned Notification within the meaning of Article-4 & 25 of the Constitution of the Islamic Republic of Pakistan, 1973. It is a settled principle that estoppel does not operate against the law.
- V. That the instant appeal is well within time.

**Facts:**

1. Being admitted needs no further clarification.
2. Being not replied hence amounts to admission.
3. Correct to the extent of promotion of Mr. Sikandar Khan, the rest of the para is misconceived. The existing Service Rules are discriminatory and therefore have been challenged on that ground. PHE is not only civil but also mechanical oriented Department requiring both fields of engineering. Be that as it may, since the appellant and others being Mechanical Engineers have been selected more than 30 years back by then they were eligible for promotion then subsequently with the change of rules they cannot be deprived of their due right of promotion. Moreover, Notifications affecting existing rights cannot be read retrospectively. The right of promotion is incurred on the basis of past service, therefore, the Notification does not affect the promotion rights of appellant.
4. Incorrect. The impugned Notification was communicated to the appellant on 27.04.2012 and

appellant has challenged the same in due course of time. The earlier Notification varying the terms and conditions of service of the appellant, was never communicated to the appellant nor appellant was aware of it either, therefore, the same was not challenged. The reservation of the post only for Civil Engineers is squarely discriminatory and malafide to deprive the appellant being senior-most and eligible for promotion to the next higher grade, therefore, impugned Notification is violative of the law and thus not sustainable.

5. Incorrect. As explained above, however, the appeal of the appellant was well within time and has wrongly been rejected.
6. Incorrect. The Representation of appellant was rejected in violation of the law.
7. Incorrect.

**Grounds:**

- A. misconceived. Appellant has not been treated in accordance with law.
- B. Being not replied hence admitted.
- C. Misconceived. PHE equally and invariably requires the expert hands of both Engineers and for that reasons in the earlier rules both were equally eligible for promotion but the impugned Notification was issued malafide which has

adversely affected the promotion rights of appellant in violation of law.

D-E. Being not replied hence admitted.

It is, therefore, humbly prayed that the reply of answering Respondents No.1-3 may graciously be rejected and the appeal as prayed for may graciously be accepted with costs.

Through

Appellant

Khaled Rahman  
Advocate, Peshawar.

Dated: 16 /10/2014

Affidavit

I, Engr. Abdul Wahab Shahid Abbasi, Ex-Superintending Engineer, Office of the Chief Engineer (South) PHED, Peshawar, do hereby affirm and declare on oath that the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Deponent

