

23.06.2015

None present for appellant. Mr. Shams-ud-Din, Assistant alongwith Assistant A.G for official respondents and private respondent No. 6 in person present. Notice be repeated to counsel for the appellant for 25.8.2015 for preliminary hearing before S.B.

Noted  
abj

Chairman

25.08.2015

~~Counsel for the appellants, Mr. Kabirullah Khan Khattak~~  
(Assistant A.G for official respondents and private respondent No. 6 in person present. Learned counsel for the appellants argued that the appellants have already preferred separate service appeals in proper format which are pending before this Tribunal for hearing and due to the said appeals there is no need to proceed with the instant appeal except the record placed on the file of this appeal.

Learned counsel for the appellants, in the afore-stated situation, requested for withdrawal of appeal and informed the Tribunal that in case of need the instant appeal would be requisitioned by the Tribunal in the said appeals pending before the Tribunal.

In view of the above, the appeal is dismissed as withdrawn. File be consigned to the record.

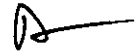
Chairman  
25.08.15

ANNOUNCED  
25.8.2015

6.

19.03.2015

Clerk of counsel for the appellant present and requested for adjournment. Request accepted. To come up for preliminary hearing on 06.05.2015.



Member

06.05.2015

Clerk of counsel for the appellant present, and requested for adjournment. To come up for preliminary hearing on 03.06.2015 before S.B.



Member

03.06.2015

None for the appellant present. Mr. Shams-Ud-Din, Junior Clerk alongwith Asstt: AG for official respondents and private respondent No.6 in person present. Private respondent No.6 submitted copy of judgment of the august Supreme Court of Pakistan in civil appeals No. 795 to 805/2014 dated 11.11.2014 copy of which placed on file. Notice be issued to the appellant/counsel for the appellant. To come up for preliminary hearing on 23.06.2015 before S.B.

*Noted  
for PH*



Member

3.

10.10.2014

Clerk of counsel for the appellant and Mr. Niaz Badshah, private respondent No. 6 present. Clerk of counsel for the appellant requested for adjournment due to pre-occupation of learned counsel for the appellant in the Peshawar High Court, Peshawar. Request accepted. To come up for preliminary hearing on 16.12.2014.

  
Member

4.

Reader Note:

16.12.2014


Clerk of counsel for the appellant and Mr. Niaz Badshah, private respondent NO. 6 present. Since the Tribunal is incomplete, therefore, case is adjourned to 17.02.2015 for the same.

  
Reader

5.

17.02.2015


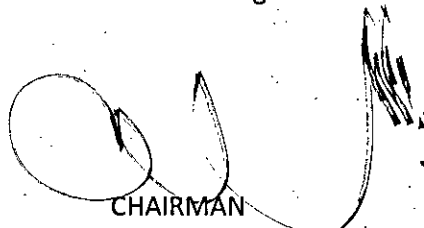
No one is present on behalf of the appellant. Mr. Niaz Badshah, private respondent No. 6 in person present. To come up for preliminary hearing on 19.03.2015

  
Member

Form- A  
**FORM OF ORDER SHEET**

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

Case No. 1182/2014

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	24/09/2014	<p>The present appellant initially went in Writ Petition before the Hon'ble High Court and the Hon'ble High Court vide its order dated 04.09.2014 treated the Writ Petition into an appeal and sent the same to this Tribunal for decision in accordance with law. The same may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	24/09/2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on 10/10/2014 as per order of the Hon'ble High Court.</p> <p style="text-align: right;"> CHAIRMAN</p>

**JUDGMENT SHEET  
PESHAWAR HIGH COURT, PESHAWAR  
JUDICIAL DEPARTMENT**

Writ Petition No 3388/12

**JUDGMENT**

Date of hearing.....4.9.2014.....

Petitioner(s) *by Mr. Khalid Rehman, Advocate*

Respondent(s) *by Syed Qasim Ali Shah, M.A. M/S G. Iqbal Juddin Malik and Saeedullah Khan*

**YAHYA AFRIDI**:- For reasons recorded in the connected Writ Petition No. 2440-P/2012 (Engineer Musharaf Shah vs. Govt. of Khyber Pakhtunkhwa and others), this Writ Petition is disposed of.

  
JUDGE

  
JUDGE

\*Nawab Shah\*

*14/9/14  
28/9/14*

1

IN THE PESHAWAR HIGH COURT PESHAWAR

Appeal No-1182/2014

WRIT PETITION No. 3388-2012

Asif Khan and others

The Govt. of KPK  
and others

Versus

..... Petitioners

..... Respondents

INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Writ petition with Affidavit			1-10
2.	Addresses of Parties			0-11
3.	Seniority List as stood on 31.12.2009		A	12-13
4.	Notification/Rules	27.02.1999	B	0-14
5.	Notification/Rules	17.02.2011	C	15-17
6.	Departmental Representation	14.07.2010	D	18-19
7.	Departmental Representation	28.02.2011	E	20-21
8.	Letter	19.03.2011	F	0-22
9.	Letter	07.04.2011	G	0-23
10.	Promotion order	13.12.2011	H	24-26
11.	Notification/Rules	26.06.2012	I	0-27
12.	Departmental Representation		J	28-29
13.	Stamp Paper			
14.	Wakalat Nama			

Through

Petitioners

  
Khaled Rahman  
Advocate, Peshawar

9-B, Haroon Mansion,  
Khyber Bazar, Peshawar.  
Cell # 0345-9337312

Dated: \_\_\_ / \_\_\_ / 12/ 2012

FILED TODAY

Deputy Registrar

01 DEC 2012

IN THE PESHAWAR HIGH COURT PESHAWAR

Appeal No. 1182/2014

WRIT PETITION No. 3388/P/2012

1. Mr. Asif Khan,  
Sub Divisional Officer (Irrigation)  
Shahbaz Garhi, Mardan.
2. Mr. Shaukat Bacha,  
Assistant Director,  
Baizi Irrigation Project, Mardan.
3. Mr. Bakhtiar,  
Sub Divisional Officer (Irrigation)  
Sub Division Swat at Gul Kada..... Petitioners

Versus

1. The Govt. of Khyber Pakhtunkhwa  
through Chief Secretary,  
Civil Secretariat, Peshawar.
2. The Secretary,  
Govt. of Khyber Pakhtunkhwa,  
Irrigation Department,  
Civil Secretariat, Peshawar.
3. The Chief Engineer (North)  
Irrigation Department,  
Warsak Road, Kababiyah, Peshawar
4. The Chief Engineer (South)  
Irrigation Department,  
Warsak Road, Kababiyah,  
Peshawar ..... Respondents

*As per court order dt. 28/1/13  
the following have been impleaded  
in the panel of respondents*

*(5) Amanullah, Sub Divisional Officer  
(OPS) Swat Irrigation Division, Swat*

*(6) Niaz Badshah, Sub Divisional Officer  
(OPS) Flood Division Warsak Road Peshawar*

*(7) Saifullah, Sub Divisional Officer  
(OPS) Kabul River Canal Warsak  
Road, Peshawar*

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

Respectfully Sheweth,

FILED TODAY

Deputy Registrar

21 DEC 2012

Facts giving rise to the present writ petition are as under:-

1. That Petitioners joined the Irrigation Department as Pre-service Graduate Sub-Engineers (BPS-11) on 20.05.1995, 18.12.1990 and 22.03.1992 and at the moment have got about more than 17, 22 and 20 years unblemished and outstanding service record at their credit. (Seniority List *Annex:-A*).
2. That as per the previous service rules of the Irrigation Department notified in the year 1979 as further amended vide Notification dated 27.02.1999 (*Annex:-B*), the posts of Sub-Divisional Officers/Assistant Directors/Assistant Engineers (BPS-17) were to be filled in as follows:

*“(a) Sixty percent of the total posts by initial recruitment;*

*(b) Ten percent of the total posts by promotion, on the basis of seniority-cum-fitness from amongst the Sub Engineers possessing Diploma at the time of their induction into service but acquired degree in Engineering during service;*

*(c) Ten percent of the total posts by promotion, on the basis of seniority-cum-fitness from amongst the Sub Engineers who joined service as Degree holders in Engineering; and*

*(d) fifteen percent of the total posts by selection on merit with due regard to seniority, from amongst the officiating Assistant Engineers/Senior Scale Sub-Engineers who hold a diploma in Engineering and have passed departmental examination.”*

The rules *ibid*, were again amended vide Notification dated 17.02.2011 (*Annex:-C*) relevant portion of which provided as follows:



1	2	3	4	5
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 Engineers 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 Engineers 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) &amp; (c) above is not available for promotion, the vacancy shall be filled in by initial recruitment.</p>

Before framing of rules *ibid*, Petitioners have submitted a departmental Representation on 14.07.2010 (*Annex:-D*) to the competent authority thereby bringing the grievances of Petitioners in his notice and requesting for not reducing the quota of Petitioners but their request bore no fruitful result and consequently the rules *ibid* were further amended and thereby abridging the quota of direct graduate Sub-Engineers/Pre-Service Graduate Sub-Engineers, therefore, again a combined Representation/appeal on 28.02.2011 (*Annex:-E*) was filed before the competent authority, which was processed as would be evident from the letter dated 19.03.2011 (*Annex:-*

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Deputy Registrar

01 DEC 2012

F) wherein a detailed Working Paper for consideration before holding SSRC meeting was called from the Chief Engineer (O&M) who vide his letter dated 07.04.2011 (*Annex:-G*) clarified the position but then the matter could not move ahead.

3. That during this period meeting of the Departmental Promotion Committee was held wherein Petitioners being eligible as well as seniors, were duly recommended for promotion to the next higher grade and accordingly they were promoted vide Notification dated 13.12.2011 (*Annex:-H*) to the posts of Assistant Engineers/Sub-Divisional Officers (BPS-17) but on acting charge basis instead of regular basis and on such promotion were posted at the positions mentioned in the titled of the petition.
4. That once again the rules *ibid*, were subjected to another amendment vide Notification dated 25.06.2012 (*Annex:-I*). Relevant portion of the amendment is reproduced as follows;-

1	2	3	4	5
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. twelve percent by promotion, on the basis of seniority cum fitness from amongst the Sub Engineers, having degree in Civil Engineering or Mechanical Engineering from a recognize University and have passed the Departmental grade B and A Examination with five years service as such.</p> <p><u>Note.</u> For the purpose of Clause (b) a joint seniority list of the Sub-Engineers having Degrees in Civil Engineering or Mechanical</p>

FILED TODAY  
Deputy Registrar  
01 DEC 2012

				<p>Engineering shall be maintained and their seniority is to be reckoned from the date of their 1st appointment as Sub-Engineer.</p> <p>c. Eight percent by promotion, on the basis of seniority cum fitness, from amongst the Sub Engineers having degree in B.Tech (Honrs) and having passed Departmental Grade B and A Examination with five years service as such; and</p> <p><u>Note.</u> For the purpose for Clause (C) a seniority list of Sub-Engineers having degree in B.Tech (Honrs) shall be maintained and their seniority is to be reckoned from the date of their 1st appointment as Sub-Engineer.</p> <p>d. Fifteen percent by promotion, on the basis of seniority cum fitness from amongst the Sub Engineers who hold a diploma of Associate Engineer, Civil, Mechanical, Electrical or Auto Technology and have passed Departmental Grade B and A examinations with five years service as such.</p> <p><u>Note:-</u> For the purpose of clause (d) a seniority list of Sub-Engineers having Diploma of Associate Engineering in Civil, Mechanical, Electrical or Auto Technology shall be maintained and their seniority is to be reckoned from the date of their 1st appointment as sub-Engineer.</p> <p><u>Note:-</u> The quota of Clause (b), (c) and (d) above respectively shall be filled in by initial recruitment, if no suitable Sub-Engineer is available for promotion.</p>
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Thus the quota of Pre-Service and post-service Graduate Sub-Engineers was reduced from 15% to 12% thereby adversely affecting their rights, therefore, Petitioners again preferred a

  
 11 DEC 2013

departmental Representation (*Annex:-J*) before the Respondent No.1 against the Notification dated 25.06.2012 but the same is still lying pending.

5. That now Respondents have initiated the process of promotion of others to the next higher grade but to the misfortune of Petitioners have unlawfully ignored the cases of Petitioners on the false pretext of the newly promulgated Rules albeit the same cannot adversely affect the vested rights of Petitioners inas much as they being seniors and eligible for promotion to the next higher grades were promoted alongwith others to the post of Assistant Engineer/Sub-Divisional Officer (BPS-17) on the recommendation of properly constituted Departmental Promotion Committee on 13.12.2011 much before the promulgation of the those rules on 25.06.2012 but on acting charge basis instead of regular basis and since then have been serving as such.
6. That being aggrieved of the acts and actions of Respondents, Petitioners having no other adequate and efficacious remedy, file this constitutional petition inter-alia on the following grounds:-

**Grounds:**

- A. That Respondents have not treated Petitioners 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 ignored the Petitioners for regular promotion to the next higher grade, which is unjust, unfair and hence not sustainable in the eye of law.

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Deputy Registrar  
01 DEC 2012

- B. That Petitioners were granted promotion to next higher grade in view their long standing seniority, eligibility and fitness for promotion after observing all codal formalities including due consideration by properly constituted Departmental Promotion committee but instead of regular promotion they were promoted on acting charge basis, therefore now they cannot be denied the benefit of regular promotion on misplaced excuses including the framing of the new Rules.
- C. That the right of promotion which accrued to Petitioners due to their long previous service cannot be denied on the ground of adopting new Rules because notifications impairing existing rights cannot be read into retrospect so as to adversely affect the available vested rights of the incumbents. Viewed from this angle the denial on the part of the Respondents to promote Petitioners to the next higher grade on regular basis is unwarranted, arbitrary and not sustainable.
- D. That the Petitioners have put considerable long-prime time of their precious lives in the service of the Department with a hope that they would once grab the chance of promotion to the next higher grade and after long wait when the time has ripened to reap the fruit, the Respondents have started creating needless bottlenecks and attempting to deprive them of their due rights which has resulted in serious miscarriage of justice.
- E. That Petitioners have been holding the posts of Assistant Engineers BPS-17 since 13.12.2011 for almost a year and have performed up-to-the-mark

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Deputy Registrar

01 DEC 2012

till date and now they cannot be deprived of the same under the principle of locus Poenitentiae and for that matter the principle of promissory estoppel.

For the aforesaid reasons, it is therefore, humbly prayed that on acceptance of this writ petition, this Hon'ble Court may graciously be pleased to declare the acts and actions of the Respondents and their refusal to promote Petitioners to the next higher grade on regular basis as without lawful authority and hence of no legal effect and this August Court may further be pleased to direct the Respondents to act in the matter in accordance with law and to allow regular promotion to Petitioners to the posts of Assistant Engineers BPS-17 with effect from the due date with all consequential back benefits.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to Petitioners.

### **Interim relief**

By way of interim relief, the Respondents may graciously be restrained from processing the promotion cases to the posts of Assistant Engineers (BPS-17) and further not to change the present nature of services of Petitioners till the final disposal of the instant writ petition.

Through

Petitioners

  
Khaleed Rahman  
Advocate, Peshawar.

Dated: 1 / 11 / 2012

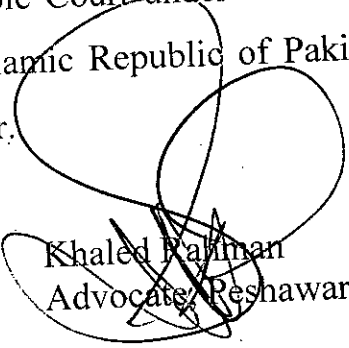
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Deputy Registrar

01 DEC 2012

CERTIFICATE

Certified on instruction that Petitioners have not previously moved this Hon'ble Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 regarding present matter.

  
Khaled Rahman  
Advocate, Peshawar.

List of Books

1. The Constitution of the Islamic Republic of Pakistan, 1973.
2. Services Law.

NOTE

1. Three spare copies of the Writ Petition are enclosed in a separate file cover.
2. Memo of addresses is also attached.

  
Khaled Rahman  
Advocate, Peshawar

FILED TO

Dep

01 DEC 2012

10

1. The first part of the document  
describes the general situation  
of the country and the  
state of the economy.  
2. The second part of the document  
describes the state of the  
economy and the state of the  
country.



IN THE PESHAWAR HIGH COURT PESHAWAR.

WRIT PETITION No. 3388 / 2012

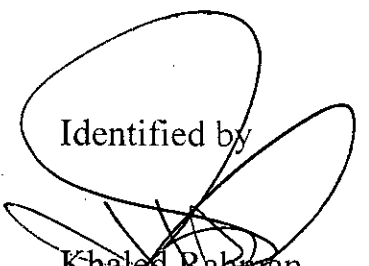
Mr. Asif Khan & Others..... Petitioners


Versus


The Govt. of Khyber Pakhtunkhwa  
through Chief Secretary & others..... Respondents

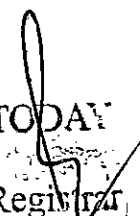
**Affidavit**

I, Mr. Shaukat Bacha, Assistant Director, Baizi Irrigation Project, Mardan, do hereby solemnly affirm and declare on oath that the contents of this writ petition are true and correct to the best of my knowledge, and nothing has been concealed from this Hon'ble Court.

Identified by  
  
Khaled Rahman  
Advocate, Peshawar

  
Deponent  
16102-6616622-7

No. .... 5364 .....  
Certified that the above was verified on solemnly  
affirmation before me in office, this 7<sup>th</sup> Dec.....  
day of Dec..... 2007 by Shaukat Bacha  
s/o Assistant Director Peshawar  
who was identified by Khaled Rahman, Adv  
Who is personally known to me:  
  
Oath Commissioner  
Peshawar High Court

  
FILED TODAY  
Deputy Registrar  
01 DEC 2012

## IN THE PESHAWAR HIGH COURT PESHAWAR.

WRIT PETITION No. \_\_\_\_\_/2012

Mr. Asif Khan &amp; Others..... Petitioners

Versus

The Govt. KPK &amp; others..... Respondents

Addresses of Parties.

1. Mr. Asif Khan,  
Sub Divisional Officer (Irrigation)  
Shahbaz Garhi, Mardan.
2. Mr. Shaukat Bacha,  
Assistant Director,  
Baizi Irrigation Project, Mardan.
3. Mr. Bakhuiar,  
Sub Divisional Officer (Irrigation)  
Sub Division Swat at Gul Kada..... Petitioners

Versus

1. The Govt. of Khyber Pakhtunkhwa  
through Chief Secretary,  
Civil Secretariat, Peshawar.
2. The Secretary,  
Govt. of Khyber Pakhtunkhwa,  
Irrigation Department,  
Civil Secretariat, Peshawar.
3. The Chief Engineer (North)  
Irrigation Department,  
Warsak Road, Kababiyar, Peshawar
4. The Chief Engineer (South)  
Irrigation Department,  
Warsak Road, Kababiyar,  
Peshawar..... Respondents

Petitioners

Through

Khalid Rahman

Advocate, Peshawar.

Dated: \_\_\_\_\_ / 11/ 2012

pre-service graduate  
ANNEX A

12

IRRIGATION DEPARTMENT NWFP  
TENTATIVE SENIORITY LIST OF GRADUATE SUB ENGINEERS WHO JOINED SERVICE ON THE BASIS OF GRADUATION  
IN THE DEPARTMENT AS STOOD ON 31-12-2009

NOTIFICATION NO. 4750-04

IB/ A/3-E(iii) Dated Peshawar the 03/03/2010


#	Name of Sub Engineer with Academic Qualificatoin	Date of Birth	Domicile	Date of 1st Entry into Govt Service	Regular Appointment / Promotion		Present Appointment	Remarks	
					Dated	BPS			
1	2	3	4	5	6	7	8	9	10
o.p.	1 Muhammad Hayat B.Sc Engg (Civil) Pesh. University	01/02/1960	Malakand	01/09/1986	01/09/1986	11	By initial Recruitment	Sub Engineer	Working as SDO (OPS)
o.p.	2 Mr. Fazal Subhan B.Sc (Mechl.) Peshawar University	30/03/1963	Mardan	10/12/1990	10/12/1990	11	-do-	-do-	-do-
o.p.	3 Mr. Roohul Amin B.Sc Civil Engg: Peshawar University	03/03/1964	Swabi	12/12/1990	12/12/1990	11	-do-	-do-	-do-
o.p.	4 Mr. Shaukat Badsha B.Sc Civil Engg: Peshawar University	10/02/1963	Mardan	18/12/1990	18/12/1990	11	-do-	-do-	-do-
o.p.	5 Mr. Saeedullah B.Sc Civil Engg: Nawabshah University	05/03/1962	FR Bannu	25/03/1992	25/03/1992	11	-do-	-do-	
X	6 Mr. Sajjad Ali Shah B.Sc Civil Engg: Peshawar University	19/02/1960	Nowshera	17/08/1992	17/08/1992	11	-do-	-do-	
o.p.	7 Mr. Bakhtiar B.Sc Civil Engg: Peshawar University	07/05/1964	Swat	22/03/1992	22/03/1992	11	-do-	-do-	Working as SDO (OPS)
o.p.	8 Mr. Faridullah B.Sc Civil Engg: Peshawar University	01/05/1966	FR Bannu	24/08/1992	24/08/1992	11	-do-	-do-	
o.p.	9 Mr. Asif Khan B.Sc Civil Engg: Kabul University	01/02/1969	Malakand Agency	20/05/1995	20/05/1995	11	-do-	-do-	
	10 Mr. Farid Usman B.Sc Civil Engg: Peshawar University	03/07/1967	Kerak	31/03/1996	31/03/1996	11	-do-	-do-	

9  
P-1-82


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13  
p-2 of 2

Sr	Name of Sr. Engineer with Academic Qualification	Birth	Place	Date of Entry into Govt. Service	Date of Appointment	BPS	Method of Recruitment / Appointment	Present Appointment	Remarks
1	2	3	4	5	6	7	8	9	10
11	Mr. Yanya Hameed B Sc Civil Engg Peshawar University	07/04/1965	D.Khan	05/03/1996	05/03/1996	11	-cc-	-cc-	-cc-
12	Mr. Aftab Alam B Sc Civil Engg Peshawar University	01/01/1961	Charsadda	11/12/2006	11/12/2006	11	-cc-	cc	cc

  
 Administrative Officer

Copy of the above is forwarded to the :-  
 1 Secretary to Govt of NWFP Irrigation & Power Deptt. Peshawar  
 2 Chief Engineer (Dev) Irrigation Deptt. Peshawar  
 3 All Superintending Engineers Irrigation Deptt. NWFP  
 4 All Executive Engineer (concerned) Irrigation Deptt. NWFP  
 For information and Necessary action Tentative Seniority list is hereby  
 circulated for information of concerned. Any objections, errors & omissions  
 should be intimated within 30 days for rectification.  
 Sd/- DG Small Dams, Irrigation Peshawar.

  
 Administrative Officer

S

114

Vegetable Dept. Rules

GOVERNMENT OF N.W.F.P.  
IRRIGATION DEPARTMENT

Dated Pesh: the 27/02/1999

NOTICE

In pursuance of the provisions contained in sub-rule (2) of rule 3 of the North West Frontier Province Civil Services (Appointment, Promotion and Transfer) Rules, 1989 the Irrigation and Public Health Engineering Department, in consultation with the Services and General Administration Department and the Finance Department, hereby directs that in the North West Frontier Province Irrigation and Public Health Engineering Department (Recruitment and Appointment) Rules, 1978, the following further amendments shall be made namely:-

AMENDMENTS

In the Schedule:

- (a) For the existing entries in column 7 against serial No. 1, the following shall be substituted namely:
  - (a) Sixty five percent of the total posts by initial recruitment;
  - (b) Ten percent of the total posts by promotion, on the basis of seniority-cum-fitness from amongst the Sub Engineers possessing Diploma at the time of their induction into service but acquired degree in Engineering during service;
  - (c) Ten percent of the total posts by promotion, on the basis of seniority-cum-fitness, from amongst the Sub Engineers who joined service as degree holders in Engineering; and
  - (d) Fifteen percent of the total posts by selection on merit, with due regard to seniority, from amongst the officiating Assistant Engineers/Senior Scale Sub Engineers, who hold a Diploma in Engineering and have passed Departmental Examination;

APPROVED

1/3

Provided that where a candidate in (b) above is not available, the vacancy shall be filled from amongst Diploma holders Sub

Provided further that where a candidate in clause (c) above is not available, the vacancy shall be filled by special recruitment.

SECRETARY TO GOVT OF PUNJAB & POWER DEPT

Order No. SO(E)LR/725 517/1123/10000 Dated 27/02/1995

Copy forwarded to the

- 1. All Administrative Secretaries to Govt of NWFP.
- 2. Secretary to Governor, NWFP Peshawar.
- 3. Secretary to Chief Minister NWFP.
- 4. Private Secretary to Chief Secretary, NWFP.
- 5. Chief Engineer, Irrigation.
- 6. Chief Engineer (Development).
- 7. Manager Government Printing Press, Peshawar, for publication in the next issue of Government Gazette.
- 8. Secretary, NWFP Public Service Commission, Peshawar.
- 9. Section Officer (R-T) S & GAD, Peshawar.
- 10. Assistant Draftsman-II, Law Department.

*[Signature]*  
SECTION OFFICER (R-T)  
IRRIGATION DEPARTMENT

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1/22  
2/22/95  
9/3/95  
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Provided that where a candidate under clause (b) above is not available, the vacancy shall be filled from amongst Diploma holders Sub Engineers.

Provided further that where a candidate under clause (c) above is not available, the vacancy shall be filled by initial recruitment.

SECRETARY TO GOVT. OF N.W.F.P.  
IRRIGATION & POWER DEPARTMENT

Endst: No. SO(E)IRR:/23-5/73/1423/36

Dated 27/02/1999

Copy forwarded to the:

1. All Administrative Secretaries to Govt. of NWFP.
2. Secretary to Governor, NWFP Peshawar.
3. Secretary to Chief Minister NWFP.
4. Private Secretary to Chief Secretary, NWFP.
5. Chief Engineer, Irrigation.
6. Chief Engineer, (Development).
7. Manager Government Printing Press Peshawar, for publication in the next issue of Government Gazette.
8. Secretary, NWFP, Public Service Commission, Peshawar.
9. Section Officer (R-I) S&GAD, Peshawar.
10. Assistant Draftsman-II, Law Department.

Sd/-  
SECTION OFFICER (ESTT)  
IRRIGATION DEPARTMENT.

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ANNEX B<sup>2</sup> (14)  
GOVERNMENT OF N.W.F.P.  
IRRIGATION DEPARTMENT.

Dated Pesh: the 27/02/1999

NOTIFICATION

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 the Irrigation and Public Health Engineering Department, in consultation with the Services General Administration Department and the Finance Department, hereby directs that in the North West Frontier Province Irrigation and Public Health Engineering Department (Recruitment and Appointment) Rules, 1979, the following further amendments shall be made namely:-

AMENDMENTS

*Assistant Engineer BMS-17*

In the Schedule:

- (1) For the existing entries in column 7 against serial No.4, the following shall be substituted namely:
- (a) Sixty five percent of total posts by initial recruitment;
  - (b) Ten percent of the total posts by promotion, on the basis of seniority-cum-fitness from amongst the Sub Engineers possessing Diploma at the time of their induction into service but acquired degree in Engineering during service;
  - (c) Ten percent of the total posts by promotion, on the basis of seniority-cum-fitness from amongst the Sub Engineers who joined service as Degree holders in Engineering; and
  - (d) Fifteen percent of the total posts by selection on merit with due regard to seniority, from amongst the officiating Assistant Engineers/Senior Scale Sub Engineers, who hold a Diploma in Engineering and have passed Departmental Examination;

.....2.....

ATTESTED

ATTESTED



EXTRAORDINARY  
GOVERNMENT

ANNEX C 15



REGISTERED NO. PIII

GAZETTE

**KHYBER PAKHTUNKHWA**

Published by Authority

PESHAWAR, SATURDAY, 2ND APRIL, 2011.

GOVERNMENT KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT,

**NOTIFICATION**

Dated Peshawar the 17<sup>th</sup> 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,  
Staty. & Ptg. Deptt., Khyber Pakhtunkhwa, Pesh.

## APPENDIX

S#	Nomenclature of Post	Qualification for appointment	Age Limit	Method of recruitment
1	2	3	4	5
<b>PART-I-ENGINEERING STAFF</b>				
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 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 Engineer's 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) &amp; (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>

KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 2ND APRIL, 2011. 690

6	Geologist (BPS-17)	MSc: Geology from a recognized University with 03 years experience in the relevant field.	18 to 32 years	By initial recruitment.
PART-II-MINISTERIAL ESTABLISHMENT				
7	Administrative Officer/ Budget and Accounts Officer (BPS-16)			By promotion, on the basis of seniority-cum-fitness, from amongst the Superintendents of the Department having at least three years service.
8	Superintendent (BS-16)			By promotion, on the basis of seniority-cum-fitness, from amongst the Assistants, Head Clerks and Senior Scale Stenographers with at least five years service as such.  Note 1:- For the purpose of promotion, a joint seniority list of Assistants and Senior Scale Stenographers shall be maintained. If the date of appointment of both the officials is the same, then Assistant shall rank senior.  Note 2. Promotion to the post of Superintendents in Regional Office cadre shall be considered from amongst the Assistants, Head Clerks and Senior Scale Stenographers of Regional Office cadre and that of Circle Office Cadre from the Assistants, Head Clerks and Senior Scale Stenographers of Circle Office Cadre.
9	Senior Scale Stenographer (BPS-15)	a. Bachelor's Degree/ B.Com from a recognized University; and b. A speed of 100 words per minute in short hand in English and 40 words per minute in English typing.	18 to 30 years	a. Forty percent by initial recruitment; and b. sixty percent by promotion, on the basis of seniority-cum-fitness, from amongst the Junior Scale Stenographers with at least three years service as such.
10	Assistants/Head Clerk (BPS-14)	Second Class Bachelor's Degree with Economics/ Statistics as one of the subject or B.Com, from a recognized University.	18 to 30 years	<u>In Regional Office Cadre</u> a. Twenty five percent by initial recruitment; and b. seventy five percent by promotion, on the basis of the seniority cum fitness, from amongst Accounts Clerks and Senior Clerks in Regional Office Cadre with at least 5 years service as such.  <u>In Circle Office Cadre</u> By promotion, on the basis of seniority-cum-fitness, from among the Accounts Clerks and Senior Clerks with at least 5 years service as such, in the Circle where the vacancies occurs.

11	Junior Scale Stenographer (BPS-12)	(a) Intermediate or D.Com From a recognized Board; and  (b) A speed of 50 words per minute in Short hand in English and 35 words per minute in English typing with computer knowledge of Microsoft Words and Excel.	18 to 30 years	By Initial Recruitment
12	Accounts Clerk/ Senior Clerk (BPS-9)			By promotion, on the basis of seniority cum fitness, from among the Junior Clerks with atleast 5 years service in the respective regional or Circle cadre as such;  Note. Promotion to the post of Accounts Clerk or Senior clerk in Regional Office cadre shall be considered from amongst the Junior Clerks of Regional Office Cadre and that of Circle Office Cadre from amongst the Junior Clerks of Circle Office Cadre).
13	Junior Clerk (BPS-7)	(a) Secondary School Certificate from a recognized Board; and (b) A speed of 30 words per minute in English typing.	18 to 30 years	(a) Sixty Seven percent by initial recruitment; and  (b) Thirty three percent by promotion, from amongst the Daftaries, Record Lifters, Naib Qasids, Chowkidars and other equivalent posts who have Secondary School Certificate and are under 45 years of age and have at least two years service as such in the respective Regional and Circle Office Cadre  Note For the purpose of promotion, there shall be maintained a joint seniority list of Daftaries, Record Lifters, Naib Qasids, Chowkidars with reference to the date of regular appointment to the post or that of acquiring the Secondary school certificate which ever 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.
<b>PART-III COMPUTER ESTABLISHMENT</b>				
14	Data Processing Supervisor (BPS-14)	Bachelor's Degree from a recognized University with 03 years Diploma in Computer Science, from recognize institute	18 to 30 years	(a) Twenty five percent by initial recruitment; and (b) Seventy five percent by promotion, on the basis of seniority cum fitness, from amongst the Data Entry Operators and Key Punch Operators with five years service as such.

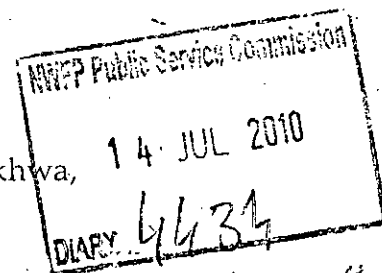
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**KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 2ND APRIL, 2011.**

6.	Geologist (BPS-17)	M.Sc. Geology, from a recognized University with 03 years experience in the relevant field.	18 to 32 years	By initial recruitment.
<b>PART-II-MINISTERIAL ESTABLISHMENT</b>				
7	Administrative Officer/ Budget and Accounts Officer (BPS-16)			By promotion, on the basis of seniority-cum-fitness, from amongst the Superintendents of the Department having at least three years service.
8	Superintendent (BS-16)			By promotion, on the basis of seniority-cum-fitness, from amongst the Assistants, Head Clerks and Senior Scale Stenographers with at least five years service as such.  Note 1: For the purpose of promotion, a joint seniority list of Assistants and Senior Scale Stenographers shall be maintained. If the date of appointment of both the officials is the same, then Assistant shall rank senior.  Note 2: Promotion to the post of Superintendents in Regional Office cadre shall be considered from amongst the Assistants, Head Clerks and Senior Scale Stenographers of Regional Office cadre and that of Circle Office Cadre from the Assistants, Head Clerks and Senior Scale Stenographers of Circle Office Cadre.
9.	Senior Scale Stenographer (BPS-15)	a. Bachelor's Degree/ B.Com from a recognized University; and b. A speed of 100 words per minute in short hand in English and 40 words per minute in English typing.	18 to 30 years	a. Forty percent by initial recruitment; and b. sixty percent by promotion, on the basis of seniority-cum-fitness, from amongst the Junior Scale Stenographers with at least three years service as such.
10	Assistants/Head Clerk (BPS-14)	Second Class Bachelor's Degree in Economics/ Statistics as one of the subject or B.Com, from a recognized University.	18 to 30 years	<u>In Regional Office Cadre</u> a. Twenty five percent by initial recruitment; and b. seventy five percent by promotion, on the basis of the seniority cum fitness, from amongst Accounts Clerks and Senior Clerks in Regional Office Cadre with at least 5 years service as such.  <u>In Circle Office Cadre</u> By promotion, on the basis of seniority cum fitness, from among the Accounts Clerks and Senior Clerks with at least 5 years service as such, in the Circle where the vacancies occurs.

11	Junior Scale Stenographer (BPS-12)	(a). Intermediate or D.Com From a recognized Board; and  (b) A speed of 50 words per minute in Short hand in English and 35 words per minute in English typing with computer knowledge of Microsoft Words and Excel.	18 to 30 years	By Initial Recruitment.
12	Accounts Clerk/ Senior Clerk (BPS-9)			By promotion, on the basis of seniority cum fitness, from among the Junior Clerks with atleast 5 years service in the respective regional or Circle cadre as such;  Note. Promotion to the post of Accounts Clerk or Senior clerk in Regional Office cadre shall be considered from amongst the Junior Clerks of Regional Office Cadre and that of Circle Office Cadre from amongst the Junior Clerks of Circle Office Cadre).
13	Junior Clerk (BPS-7)	(a) Secondary School Certificate from a recognized Board; and (b) A speed of 30 words per minute in English typing.	18 to 30 years	(a) Sixty Seven percent by initial recruitment; and  (b) Thirty three percent by promotion, from amongst the Dairies, Record Lifters, Naib Qasids, Chowkidars and other equivalent posts who have Secondary School Certificate and are under 45 years of age and have at least two years service as such in the respective Regional and Circle Office Cadre  Note For the purpose of promotion, there shall be maintained a joint seniority list of Dairies, Record Lifters, Naib Qasids, Chowkidars with reference to the date of regular appointment to the post or that of acquiring the Secondary school certificate which ever 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.
<b>PART-III COMPUTER ESTABLISHMENT.</b>				
14	Data Processing Supervisor (BPS-14)	Bachelor's Degree from a recognized University with 03 years Diploma in Computer Science, from recognize institute.	18 to 30 years	(a). Twenty five percent by initial recruitment; and (b). Seventy five percent by promotion, on the basis of seniority cum fitness, from amongst the Data Entry Operators and Key Punch Operators with five years service as such.



To

The Secretary to Govt of Khyber Pakhtunkhwa,  
Irrigation Department, Peshawar.

Through: Proper Channel.

SUBJECT:

**REQUEST FOR RETAINING THE SHARE QUOTA RESERVED FOR  
DIRECT GRADUATE/INSERVICE GRADUATE SUB-ENGINEERS  
i.e. 10% 10% HAS BEEN PROPOSED FOR AMENDMENT IN THE  
RECRUITMENT RULES.**

Dear Sir,

It is with due remuneration submitted that after due consideration by the Administrative Department, certain amendments in the recruitment rules of Assistant Engineers BS-17 of Irrigation Department were made in 1989 after fulfillment all codal formalities and on the recommendations of Standing Service Rules Committee the following method of recruitment for the post of Assistant Engineer was approved:

- a. Sixty five percent (65%) of the total posts by initial recruitment ;
- b. Ten percent (10%) of the total posts by promotion, on the basis of seniority cum fitness, from amongst the Sub Engineer possessing diploma at the time of their induction into service but required degree in engineering during service;
- c. Ten percent (10%) of the total posts by promotion, on the basis of seniority cum fitness, from amongst the Sub Engineer who joined service as Degree Holders in Engineering ; and
- d. Fifteen percent (15%) of the total posts by selection on merit, with due regard to seniority, from amongst the officiating Assistant Engineers/ Senior Scale Sub Engineer, who hold a diploma in Engineering and have passed Departmental Examination;

We the direct /In-Service Graduate Sub-Engineers having more than 20 years service are waiting for promotion since decades;. Now it has been learnt that the department is amending the recruitment rules for the post of Assistant Engineer by reducing the reserved quota in respect of Direct/In-Service Graduate Sub-Engineers as per the following share quota:-

- a. Sixty five percent (65%) of the total posts by initial recruitment
- b. Ten percent (10%) of the total posts by promotion, on the basis of seniority cum fitness, from amongst the Sub Engineer possessing diploma at the time of their induction into service and acquired degree in Civil/Mechanical Engineering during service;
- c. Five percent (5%) of the total posts by promotion, on the basis of seniority cum fitness, from amongst the Sub Engineer who joined service as Degree Holders in Civil/Mechanical Engineering and
- d. Twenty percent (20%) of the total posts by selection on merit, with due regard to seniority, from amongst the Sub Engineer, who hold a diploma of Civil/Mechanical Engineering and have passed Departmental Grade A

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It would not be out of place to mention here that after amendment in 1999 in recruitment rules and reserving 10% quota for Direct Graduate Sub-Engineers and 10% quota for In-Service Graduate Sub-Engineers, 12 No Sub-Engineers have been promoted as Sub-Division Officers on regular basis in the share quota of Direct Graduate Sub-Engineers and 7 Nos. In-Service Graduate Sub-Engineer have been promoted as Sub-Divisional Officers on regular basis in share quota of In-Service Graduate Sub-Engineers whereas 6 No. Direct Graduate Sub-Engineers have been posted as Sub-Divisional Officers in their own pay and scale in their share quota and 1 No. In-Service Graduate has been posted in his own pay and scale in share quota of In Service Graduate Sub-Engineers.

From perusal of the above it is crystal clear that if proposed amendment is approved for the service rules, the Direct Graduate Sub-Engineers will be deprived from their due right of promotion which will be great injustice with Direct Graduate Sub-Engineers, therefore, are requesting the Administrative Department to re-consider the proposed amendments in the recruitment rules of Assistant Engineers.

It is further added that in case of not consideration of genuine request of Direct Graduate Sub-Engineers, there would be no option left for us except to knock the door of court of law and in that case all the litigation expenses will lie upon the Administrative Department.

Yours Faithfully,

In-Service Graduate Sub-Engineer working as SDO in OPS.

1. Faizal Maule *[Signature]*

Direct Graduate Sub-Engineers working as SDOs in OPS.

1. Shaukat Badshah *[Signature]*
2. Fazlizubhan *[Signature]*
3. Baig *[Signature]*
- 4.
- 5.
- 6.

Copy in advance is forwarded to:

1. Chief Minister, Khyber Pakhtunkhwa, Peshawar.
2. The Registrar Khyber Pakhtunkhwa Service Tribunal, Peshawar.
3. The Registrar Peshawar High Court Peshawar.
4. The Chairman, Khyber Pakhtunkhwa Public Service Commission, Peshawar.

(5) [Chief Engr. (O & M)] Peshawar  
[Irrigation Dept]

*[Signature]*  
13/7



TO

The secretary irrigation  
Khyber pukhtun khwa irrigation department  
peshawar

1420  
28/12  
2012  
ANNEX E<sup>3</sup>

subject:- APPEAL FOR ENHANCEMENT OF SHARE QUOTA FOR PROMOTION OF DIRECT GRADUATE SUB ENGINEER IN IRRIGATION DEPARTMENT

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Sir, It is submissively stated that the post of sub engineers BS-11 in irrigation department was regulated under S.No 5 Qf schedule to the NWFP irrigation and PHE department (Recruitment and Appointment) rules 1979 (Annex;i) under which the following share quota of different categories of sub engineers was provided:-

- (i) 70% by initial recruitment
- (ii) 10% for promotion of graduate sub engineers
- (iii) 20% for promotion of senior scale BS-16 sub engineers.

(1) Under the above mentioned rules separate seniority lists of civil/Mechanical sub engineers (Graduate/diploma holders) was maintained and as such the promotion of civil/mechanical were considered as the case may be. At the passage of time the mechanical graduate sub engineers BS-11 Requested to combined the seniority list of civil/mechanical (Graduate) sub engineers which were accepted to the detriment of civil graduate sub engineers vide No 23150/IB/A/3-E(iii) dated pesh;29/8/1991. (Annex;II). Against which appeal were Preferred. The same were neither replied nor considered and promotion case of senior graduate sub engineer (Mechanical) was considered and notified vide No SO(E) I&PHE/4-6/73/126-30 Dated 01/01/1994 (Annex;III). It is pertinent to mention that total 9NO sanction post of assistant engineer (Mechanical) are in the irrigation department out of which they have promoted 5NO mechanical graduate sub engineer up till now. while there share quota is becoming 1NO as per above rules.

(2) Subsequently on the request of in service graduate sub engineers 10% share quota were Bifurcated vide notification No SO(E)PHE/6-12/94 dated 30/5/1994 (Annex;IV) as under

- (i) 5% for in-service graduate sub engineer
- (ii) 5% for pre-service graduate sub engineer

(3) The above bifurcation subsequently again reconsidered vide notification No SO(E)IRRI/23-5/ Dated 27/02/1999 (Annex;V) as under and promotion case of in-service graduate sub engineers who were too junior than pre-service graduate sub engineers were considered vide notification No SO(E) IRRI/4-3/91 Dated Peshawar 13/08/1999 (Annex;vi)

- (i) 10% for in-service graduate sub engineer
- (ii) 10% for pre-service graduate sub engineer

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(4) Now another notification no SO(E) IRR;/23-5/73 dated 17/02/2011 (Annex vii) the 10% share quota for pre-service graduate sub engineers has been reduced to 5% which added insult to injury. Although your good self has been approached against the said expected notification but it all in vain.

(5) We the pre-service graduate sub engineers acquired degree from different universities in civil technology and joined the department after proper competitive examination through public service commission and rendered about 15 to 21 year service to the entire satisfaction of our high ups but we are deprived from our legal right of promotion as narrated below

a) By maintaining joint seniority list of civil/mechanical graduate sub engineers

b) BY bifurcation of 10% share quota for in-service/pre-service graduate sub engineers

c) BY reducing the share quota of promotion from 10% to 5%

(6) BY doing so the benefit of promotion was snatched from the undersign and granted to mechanical and in-service graduate sub engineers. At the moment 11 (eleven) graduate sub engineers (pre-service) and one in-service graduate sub engineer is working in the department but the SSRC while considering the service rules have reduced the share quota of 10% of pre-service graduate sub engineers to 5% (11 person) and left 10% share quota for in-service graduate sub engineer remained the same (1 person) and enhanced the share quota of diploma holders from 15% to 20% which is lower in qualification. The action of the department is therefore seems to be favoritism to the mechanical/ in-service graduate sub engineers and nepotism to the pre-service graduate sub engineers and as well as favoritism to the diploma holders sub engineers which is against the spirit of law and justice.

In view of the foregoing reason and position as explained above, it is humbly prayed that the issue may kindly be re-considered and enhance share quota of promotion from existing to 30% so as to compensate the applicants against the past injustices committed against them. It is also worthy to mention that presently seven out of eleven (pre-service) graduate sub engineers are working as assistant engineer in their own pay scale at different position in the department.

Yours obediently

(1) Per Shaukat Badshah

(2) Rozul Ruhul AMIN

(3) Hammy ASIF Khan

(4) Bhazar BAKHTIAR

(5) Wahid Saeed

(6) Per Muneer Faridullah



GOVERNMENT OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT

ANSWER<sup>n</sup> 2

22

NO.SO(E)IRR/23-5/73-Service Rules  
Dated Peshawar the 19<sup>th</sup> March, 2011.

To

The Chief Engineer (O&M),  
Irrigation Department,  
Peshawar.

SUBJECT:

APPEAL FOR ENHANCEMENT OF SHARE QUOTA FOR  
PROMOTION OF DIRECT GRADUATE SUB-ENGINEER IN  
IRRIGATION DEPARTMENT.

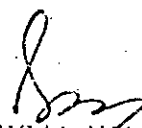
I am directed to refer to the subject noted above and to forward herewith a copy of joint appeal, submitted by Engineer Shaukat Badshah and others, pre-service graduate sub-Engineers whereby they have requested to enhance their share quota of promotion from 5% to 30%.

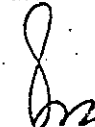
I am, therefore, directed to request that a detailed Working Paper on all such like appeals may be forwarded for consideration before holding SSRC meeting. The working paper in light of the appeal in hand etc must reach in this department within one week positively.

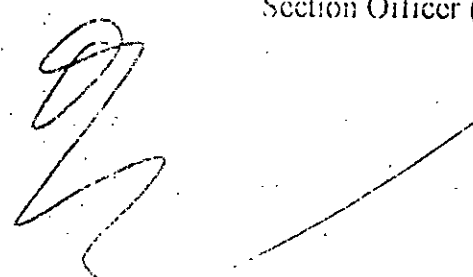
Encls: No. & date as above.

C.C

P.S to Secretary, Irrigation Department, Peshawar

  
(MISAL KHAN)  
Section Officer (Establishment)

  
(MISAL KHAN)  
Section Officer (Establishment)





OFFICE OF THE CHIEF ENGINEER (O&M) WING  
IRRIGATION DEPARTMENT KHYBER PAKHTUNKHWA PESHAWAR

Phone No. 091-9212116 Fax No. 091-9212652

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No. 8336 /IB/3-E

Dated Peshawar the 7/04/2011.

ANNEX 6<sup>1</sup> 23

The Secretary to Govt of  
Khyber Pakhtunkhwa  
Irrigation Deptt: Peshawar.

Subject: - APPEAL FOR ENHANCEMENT OF SHARE QUOTA FOR PROMOTION OF  
DIRECT GRADUATE SUB ENGINEER IN IRRIGATION DEPARTMENT.

Reference: - Your office letter No.SO(E)/IRR/23-5/73-Service Rules Dated 19/03/2011.

It is clarified that the post of Sub Divisional Officer, BS-17 was regulated under S.No.4 of schedule to the NWFP Irrigation & PHE Deptt: (Recruitment & appointment) Rules 19/79 (Annexure-I), whereby 70% quota for initial recruitment, 10% quota for graduate Sub Engineer and 20% quota for promotion of Diploma holders was provided. But the rules ibid were amended time and again and the share quota of graduate was increased/decreased and bifurcated as well and as such the junior in service graduate Engineers and Mechanical Sub Engineers were promoted. In the rules notified vide notification No.SO(E)/IRR/23-5/73 dated 17/2/20011 (Annexure-I E) once again the share quota of pre-service graduates Sub Engineers has been reduced to 5%.

2. It is further clarified that Civil/Mechanical Engineers are two separate/different cadres who having separate courses at university levels. The Mechanical Engineers have no knowledge of civil works. Moreover separate requisition for induction of Civil/Mechanical Engineers is being made to the Khyber Pakhtunkhwa Public Service Commission. In light of which the Mechanical Engineers can not apply to civil job and civil to mechanical job. Besides the Mechanical Engineers are exempted from professional papers of Department Professional Examination being conducted under Para 29 of the PWD Code.


3. In this connection the Resolution passed in 2<sup>nd</sup> Annual General Body meeting of Pakistan Engineering Council contained in Additional Registrar No.PEC/CPD/AGM/2010, dated 15-11-2010 received vide Secretary Irrigation letter NO. SO(Dev.)IRR/2-30/2010, dated 13-12-2010 is referred. In light of which joint posting of Civil/Mechanical Engineers is against the policy and in violation of Govt: of Khyber Pakhtunkhwa PHE Department circular letter No.SO(Estab.)PHED/1-9/09, dated 12-05-2010. (Copy enclosed).

In this regard joint appeal preferred by the Civil Engineer (Copy enclosed) is also referred.

In view of the above, it is recommended to accept the appeal so that proper case is presented to the Standing Service Rules Committee please.

Draft Working Papers are enclosed for perusal/approval please.

Encl: As above

  
CHIEF ENGINEER 6/4/11



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GOVERNMENT OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT

Answer H

24

Dated Peshawar 13<sup>th</sup> Dec, 2011.

NOTIFICATION

2554-69

NO. SO(E)/IRR/4-5/2011 Vol-II/Consequent upon the recommendations of the Departmental Promotion Committee, the Competent Authority is pleased to appoint the following Sub Engineers to the posts of Assistant Engineers / Sub Divisional Officers (BS-17) of Irrigation Department on acting charge basis with immediate effect: -

- i. Mr. Muhammad Sadiq
- ii. Mr. Muhammad Parwish
- iii. Mr. Farid Gul
- iv. Mr. Abdur Rahim
- v. Mr. Shabaz Khan
- vi. Mr. Muhammad Akhtar Jan
- vii. Mr. Inayatullah Jan
- viii. Mr. Fatihullah
- ix. Mr. Riaz Muhammad
- x. Mr. Waqar Shah
- xi. Mr. Musharaf Shah
- xii. Mr. Fazli Subhan
- xiii. Mr. Roohul Amin
- xiv. Mr. Shoukat Badshah
- xv. Mr. Saadedullah
- xvi. Mr. Bakhtiar
- xvii. Mr. Farid Ullah
- xviii. Mr. Asif Khan

2-E

2- Upon their appointment on acting charge basis as Assistant Engineers / Sub Divisional Officers (BS-17), the competent authority is further pleased to order the transfers / postings of the following officers of Irrigation Department with immediate effect, in the public interest: -

Sr. No.	Name of Officer	From	To	Remarks
1	Mr. Muhammad Sadiq	Sub Engineer, Irrigation Sub Division, Kohistan	Sub Divisional Officer, Hydrology Abbottabad	Relieving Mr. Abdur Rahim, SDO Irrigation Sub Division, Abbottabad from additional charge of the post.
2	Mr. Muhammad Parwish	Sub Engineer, Irrigation Sub Division, Timergara	Sub Divisional Officer, Irrigation Sub Div: Chitral	Vice at Sr. No: 19
3	Mr. Farid Gul	Assistant Engineer (OPS), Leave Reserve Post in Peshawar Canal Divn.	Assistant Engineer, Leave Reserve Post in Peshawar Canal Divn.	The officer will continue to perform the duties of AD-IV, FDRD.

AD-IV

4	Mr. Abdur Rahim	Sub Divisional Officer (OPS), Irr: Sub Divn: Abbottabad	Sub Divisional Officer, Irr: Sub Divn: Abbottabad	The officer will continue to perform his duties against his existing posting.
5	Mr. Shabaz Khan	Sub Divisional Officer (OPS), Flood Sub Divn: No. 2, Flood Divn: Peshawar	Sub Divisional Officer, Flood Sub Divn: No. 2, Flood Divn: Peshawar	The officer will continue to perform his duties against his existing posting.
6	Mr. Muhammad Akhtar Jan	Sub Divisional Officer (OPS), Mech: Irr: Sub Divn: D. I. Khan	Sub Divisional Officer, Mech: Irr: Sub Divn: D. I. Khan	The officer will continue to perform his duties against his existing posting.
7	Mr. Inayatullah Jan	Sub Engineer, Tube Well Irr: Divn: Peshawar	Sub Divisional Officer, Mech: Irr: Sub Divn: Mardan	Relieving SDO Workshop Sub Divn: Peshawar from looking after duties of the post.
8	Mr. Fatihullah	Sub Divisional Officer (OPS), Hydrology Irr: Sub Divn: Bannu	Sub Divisional Officer, Hydrology Irr: Sub Divn: Bannu	The officer will continue to perform his duties against his existing posting.
9	Mr. Muhammad Riaz	Sub Engineer, Warsak Canal Irr: Divn: Peshawar	Assistant Director, Office of the P. D. Rehabilitation of Irr: System, Pesh.	Against the vacant post.
10	Mr. Waqar Shah	Sub Engineer, Flood & Drainage Divn: Peshawar	Assistant Director, Office of the P. D. Rehabilitation of Irr: System, Pesh.	Relieving Miss. Tabinda Nosheen, AD (Rehab:) from looking after charge of the post.
11	Mr. Musharaf Shah	Sub Engineer, Mkd: Irr: Div: Mkd.	Assistant Director (Design), Office of the Chief Engineer (South), Irrigation Department.	Vice at Sr. No. 22
12	Mr. Fazli Subhan	Sub Divisional Officer (OPS), Tube Well Irr: Sub Divn: Pabbi	Sub Divisional Officer, Tube Well Irr: Sub Divn: Pabbi	The officer will continue to perform his duties against his existing posting.
13	Mr. Reehul Amin	Sub Divisional Officer (OPS), Irr: Sub Divn: Gohati, Swabi	Sub Divisional Officer, Irr: Sub Divn: Gohati, Swabi	The officer will continue to perform his duties against his existing posting.
14	Mr. Shoukat Badshah	Assistant Director (OPS), Bazai Irr: Project Mardan	Assistant Director, Bazai Irr: Project Mardan	The officer will continue to perform his duties against his existing posting.
15	Mr. Saeedullah	Sub Engineer, Irr: Sub Divn: Civil Canal: Bannu	Sub Divisional Officer, Irr: Sub Divn: Shangla	Relieving SDO, Irr: Sub Divn: Swat from additional charge of the post.
16	Mr. Bakhtiar	Sub Divisional Officer (OPS), Swat Irr: Sub Divn: Swat	Sub Divisional Officer, Swat Irr: Sub Divn: Swat	The officer will continue to perform his duties against his existing posting.
17	Mr. Farid Ullah	Sub Divisional Officer (OPS), Jani Khel Irr: Sub Divn: Bannu	Sub Divisional Officer, Jani Khel Irr: Sub Divn: Bannu	The officer will continue to perform his duties against his existing posting.

25

Bazai

9

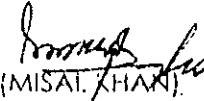
18	Mr. Asif Khan	Sub Divisional Officer (ORS), Shahbz Ghari Irr: Sub Divn: Swabi	Sub Divisional Officer, Shahbz Ghari Irr: Sub Divn: Swabi	The officer will continue to perform his duties against his existing posting. (26)
19	Mr. Faiz ur-Rehman	Sub Divisional Officer, Irr: Sub Divn: Chitrai	Assistant Director (Design), Office of the Chief Engineer (South)	Against the vacant post.
20	Mr. Muhammad Idrees	Asstt: Director (Rehabilitation)	Assistant Engineer (leave reserve) Office of the Chief Engineer (South)	The officer will continue to perform his duties as Assistant Director-V, FDRD
21	Mr. Wasim Malik	Sub Divisional Officer, Hydrology Abbottabad	Assistant Engineer (leave reserve) attached with Dy: Director (Plg) O/O Chief Engineer (North)	The officer will continue to perform his duties as Dy: Project Director-II, FDRD.
22	Mr. Hazrat Hassan	Assistant Director (Design), Office of the Chief Engineer (South), Irrigation Department.	Sub: Divisional Officer, Hydrology Irr: Sub Divn: Pesh	Against the vacant post.

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT

Endst. No. & date as above.

Copy of the above is forwarded to:

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Chief Engineer (South), Irrigation Department, Peshawar.
3. The Chief Engineer (North), Irrigation Department, Peshawar.
4. The Director General, Small Dams Organization, Peshawar.
5. The Director General, Flood Damages Restoration, Khyber Pakhtunkhwa, Peshawar.
6. The Project Director Baizai Irrigation Project, Mardan.
7. The Project Director, Rehabilitation of Irrigation System, Peshawar.
8. All Superintending Engineers of Irrigation Department.
9. All the Districts Accounts Officer, in Khyber Pakhtunkhwa.
10. The Manager, Govt. Stationery & Printing Department, Peshawar.
11. PS to Minister for Irrigation Khyber Pakhtunkhwa, Peshawar.
12. PS to Chief Secretary, Khyber Pakhtunkhwa.
13. PS to Secretary, Establishment & Administration Department.
14. PS to Secretary, Irrigation Department, Peshawar.
15. Officer concerned.
16. Personal File.
17. Master File.

  
(MISAT KHAN)  
Section Officer (Establishment)

Better Copy

GOVERNOR

OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT

Islamabad Peshawar the 25<sup>th</sup> June, 2012

ANNEX I

27

NOTIFICATION

No.SO(E)IRR/23-5/2010-11: 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 the Finance Department, hereby directs that in this Department's Notification No.SO(E)IRR/23-5/73 dated 17.02.2011, the following amendments shall be made namely:-

AMENDMENTS

In the Appendix:-

I. Against Serial No.4, in column No.5, for the existing entries in clause (b), (c) and (d), the following shall be respectively substituted, namely:-

"(b). twelve percent by promotion, on the basis of seniority cum fitness from amongst the Sub Engineers, having degree in Civil Engineering or Mechanical Engineering from a recognize University and have passed the Departmental grade B & A examination with five years service as such.

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

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

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

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

Note: For the purpose of clause (d) a seniority list of Sub-Engineers having Diploma of Associate Engineering in Civil, Mechanical, Electrical or Auto Technology shall be maintained and their seniority is to be reckoned from the date of their 1st appointment as sub-Engineer.

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

II. Against serial No.5 in column No.5, for the existing entries in clause \_\_\_\_\_ following shall be substituted, namely:-

TESTED



GOVERNMENT OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT

Dated: \_\_\_\_\_

NOTIFICATION

No. SOE/IRRI/23-5/2010-11: In pursuance of the provisions contained in  
Article 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment and  
Promotion) Rules, 1999, the Irrigation Department, Government of  
Khyber Pakhtunkhwa and the Finance Department hereby direct  
that the following shall be read and construed as if they were  
inserted in the said Rules.

AMENDMENTS

Article 3, Serial No. 4, in column No. 2, for the existing entries, shall  
be deleted and the following shall be respectively substituted, namely:-  
Twelve percent by promotion on the basis of seniority amongst  
amongst the Sub Engineers, having degree in Civil Engineering or  
Engineering from a recognized university and have completed  
Grade B+A examination with two year service or such.

Note: For the purpose of clause (a), a joint seniority list shall be  
maintained and their seniority shall be determined from the date  
of appointment or subsequent promotion on the basis of seniority amongst  
amongst the Sub Engineers having Degree in Mechanical Engineering  
or diploma of grade 5 and 6 examination with two year service or such.

For the purpose of clause (c), a seniority list of Sub Engineers  
shall be maintained and their seniority shall be determined from the date of their  
appointment or subsequent promotion on the basis of seniority amongst  
amongst the Sub Engineers who hold a Diploma of Association of  
Mechanical Engineers, Auto Technology and such.

For the purpose of clause (d), a seniority list of Sub Engineers  
shall be maintained and their seniority shall be determined from the date of their  
appointment or subsequent promotion on the basis of seniority amongst  
amongst the Sub Engineers who hold a Diploma of Association of  
Mechanical Engineers, Auto Technology and such.

The copies of clause (a) and (b) shall be available to the  
Sub Engineers concerned if they are not available to the  
Sub Engineers concerned.

*[Handwritten Signature]*

To

Chief Secretary  
Khyber Pakhtun Khwa  
Peshawar

*Amir J*  
20.5.2012  
ISSUE NO. 23  
CHIEF SECRETARY  
GOVT. OF KHYBER PAKHTUNKHWA  
PESHAWAR

*Amir J* (28)

Subject;

**APPEAL AGAINST SERVICE RULES NOTIFIED ON 25/06/2012 & PROMOTION OF GRADUATE SUB ENGINEERS IN IRRIGATION DEPARTMENT**

Sir,

It is humbly stated that according to Recruitment & Appointment Rules 1979 NWFP Irrigation & PHE 10 % Share Quota were provided to graduate Sub Engineers. But after ward the Service Rules are constantly changed to favour some individuals Resultantly pre service graduate Sub Engineer deprived from promotion detail of which as under.

- (1) In 1991 the Mechanical graduate Sub Engineers Requested to combine the seniority list of civil / Mechanical graduate Sub Engineers which were accepted and the promotion case of Senior graduate Sub Engineer (Mechanical) were considered total sanction post of BPS-17 (Mechanical) were 06 no while 05 no Sub Engineer promote so far.
- (2) In 1994 on the Request of in Service graduate Sub Engineer 10 % share Quota were bifurcated.
- (3) In 1999 the above bifurcation were Reconsidered & increased the share Quota 10 % for each category due to which 7 no in service graduate Sub Engineer promoted.
- (4) In 17/06/2011 the Service Rules are changed and share Quota of pre service graduate Sub Engineers reduced from 10% to 5 % (for 11 person), while in service graduate Sub Engineer remained the same i.e 10 % (for one person) and increased the Quota of diploma holder from 15% to 20 % against which appeal were preferred.
- (5) On 25/06/2012 another amendment /change in the service Rules were notified brief of which as under.
  - a) 12 % share Quota for in service/ pre service graduate Sub Engineers who have passed Grad B & A examination with joint seniority list shall be maintained.
  - b) Share Quota of diploma holders reduced from 20 % to 15 %.
  - c) 8 % share Quota are provided to B-tech (Hons) for the first time on their request on the basis of ambiguous / time bart decision copies of high court / supreme court and which is the prime theme of this amendments.
- (6) Initial recruitment is 65 % one no was shortfall in this Quota while the deptt; recruited 13 no Assistant Engineers (12 no extra from its due share)

In view of above fact it is requested to withdraw the condition of Grade B & A examination because we are professional Engineer and the service Rules Changes / amendment cited above no one have this condition before, it is a new Barrier put across in our promotion. Total Post of Assistant Engineers is 76 in Irrigation Department and 9 no post becoming to graduate sub engineer according 12 % share Quota. it is requested to promote 9 no graduate sub engineer into the post of Assistant Engineers BPS-17 immediately please.

Your's Faithfully

- 1- Shoukat Badsha
- 2- Bakhtiar *Bakhtiar*
- 3- Asif Khan



**BEFORE PESHAWAR HIGH COURT PESHAWAR**

Writ-Petition No: 3388-P/2012

Asif Khan

.....V/S.....

Govt. of Khyber Pakhtunkhwa and others

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Respondents-

Through

Advocate General  
Khyber Pakhtunkhwa

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.

Writ Petition No. 3388-P/2012

Asif Khan, Sub Divisional Officer, Irrigation & others

(Petitioners)

VERSUS

Govt. of Khyber Pakhtunkhwa,  
& others

(Respondents)

Subject:- JOINT PARAWISE COMMENTS IN W.P. NO. 3388-P/2012 FILED BY ASIF KHAN, SUB DIVISIONAL OFFICER & OTHERS V/S GOVT. OF KHYBER PAKHTUNKHWA AND OTHERS

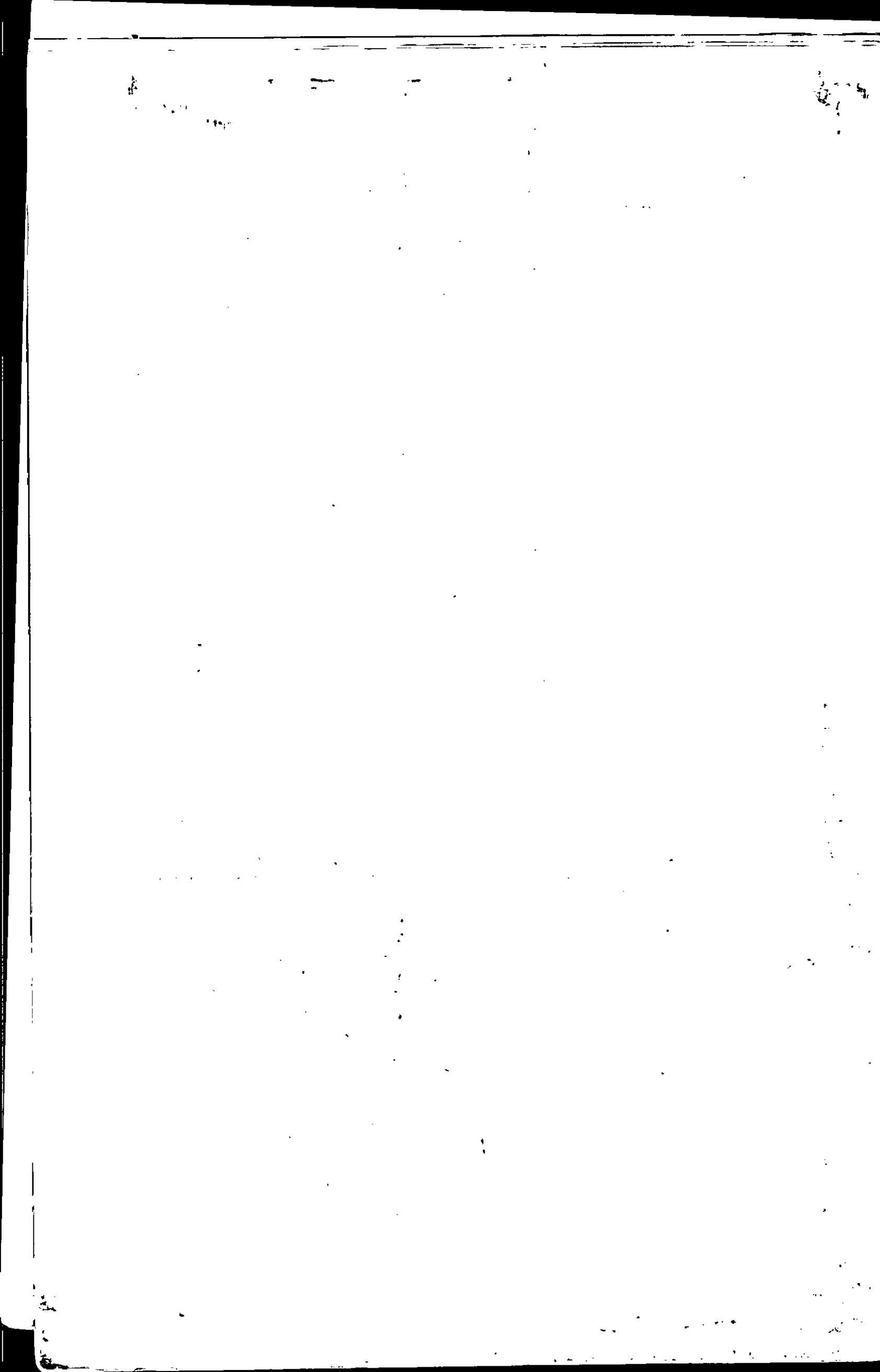
Respectfully Sheweth:

Preliminary objections

- i. That the petition of the petitioner is in-competent, without cause of action and locus standi.
- ii. That respondents have no enmity with any class/category/cadre and the rules in question have been framed for betterment of the department/petitioners.
- iii. That the subject matter has already been decided by the Honourable Peshawar High Court Peshawar as well as Service Tribunal.
- iv. That amendments in the rules cannot be claimed as a vested right.
- v. That it is a service matter and the jurisdiction of this honourable court is barred by Article 212 of the Constitution of the Republic of Pakistan 1973.
- vi. That the petitioners were appointed on Acting Charge basis which is clear from the appointment order dated 13.12.2011 and not promoted to the BPS-17 on regular basis.
- vii. That acting charge basis appointment creates no right of regular promotion of the petitioners as settled by the higher courts as a question of law.
- viii. That they are estopped by their acts of accepting appointments as Assistant Engineers on Acting Charge Basis.
- ix. That the Writ Petition is too late because they were appointed on 13.12.2011 on Acting Charge Basis if they were aggrieved by the order of acting charge basis appointments why they did not challenge it before the competent forum at proper time.
- x. That there is mis-joinder and non-joinder of necessary parties.

ON FACTS

- 1) That Para- 1 is admitted to the fact that the petitioners have joined the department as a Pre Service Graduate Sub Engineers on their respective dates.



- 2) That Para 2 is not fully correct. They have concealed material facts from the august court regarding their own share of quota in the rules. The rules were framed and amended from time to time by the competent authority at competent forum for the betterment of the department as well as their incumbents of all categories with due regard to the seniority cum-fitness and suitability for the posts, keeping in view the strength of each category of Sub Engineers to the posts of Assistant Engineers in the department. So far the representation of the petitioners is concerned, the same was considered by the competent forum by providing 12% quota to the graduate Sub Engineers.
- 3) In correct. They were not promoted to the post of Assistant Engineers but have been appointed on acting charge basis vide notification dated 13<sup>th</sup> Dec. 2011 (Annex-A) against the posts vacated due to posting of regular Assistant Engineers against the project/ex-cadre posts of Assistant Engineers, which are temporary and is a stop gap arrangements to run the affairs of department and provide incentive to the incumbents of the department for their betterments. The petitioners have their own category of graduate Sub Engineers holding B. Sc Engineering in their own share of quota. They will be promoted on their turn subject to the availability of posts in their respective cadre.
- 4) That in response to this para the subject quota for each category was taken into consideration and fixed 12% quota for the Graduates Sub Engineers against their total strength of 13 number Sub Engineers is more than sufficient (Annex-B). The senior incumbents of this cadre have already been promoted to the post of Assistant Engineers on the previous rules. The quota is highly saturated and exhausted and there is no single vacancy to promote the petitions to the post of Assistant Engineers. So far as departmental representation of the petitioner is concerned, the same is under consideration of the competent authority. However, previously similar nature departmental representations, filed by other category of Sub Engineers have been filed by the competent authority, having no tenable justification (**Annex-C**).

- 5) In correct. As stated earlier not a single vacancy is lying vacant in their category to be promoted to the post of Assistant Engineer while some senior incumbents having B. Tech (Hons) degree who have not ever availed the quota as Assistant Engineers were considered for promotion to the post of Assistant Engineers and got approved by the competent authority according to the rules notified on 25.06.2012 but promotion notification could not be issued due to status quo granted by the honourable court. No vested right of the petitioners have been accrued to promotion nor it is violated by any of the respondents. All the employees of the department are equal in the eye of law and rules. The petitioners have no cause of action to approach this honourable court.
- 6) Not correct. The matter pertains to service matter, therefore Article 212 of the Republic of Pakistan Constitution 1973 provides no jurisdiction for this honourable court, the petitioners have no locus standi and the petition is also time barred.


#### GROUNDS

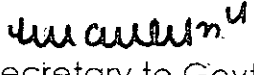
- a. Not correct. No omission nor any violation has been made by the respondents. Each and every employee of the department is equally treated in accordance with the law and rules in vogue. They have no vested right to be promoted to the post of Assistant Engineers as a rule of law.
- b. Not correct. The petitioners were not promoted but were appointed on acting charge basis as Assistant Engineers for the time being on the posts vacated due to posting of regular Assistant Engineers against the project/ex-cadre posts. Their appointment on acting charge basis will be withdrawn on completion of the project and return of regular Assistant Engineers from ex-cadre posts. As their quota was exhausted by their senior incumbents according to the rules, therefore, no vacancy is available for promotion of the petitioners in their quota. This is the main point for the consideration before the august court.



- c. Not Correct. The rules amended were for the benefit of all categories of the Sub Engineers and no one has been given any preference. The rules are framed by the competent forum in pursuance of Section 3 of (Appointment, Promotion & Transfer) Rules, 1989 of Khyber Pakhtunkhwa. The petitioners will be considered on their turn for promotion according to the law and availability of posts in their respective cadre.
- d. Not correct. The petitioners are govt. servants and have to abide by rules and regulations. The rules framed under the mandate of Section 3 of the APT Rules, 1989 of Khyber Pakhtunkhwa for the betterment of each categories of Sub Engineers of the department. No one has been deprived from his due right. The matter is a policy of the department and approved by the competent authority under the theory of delegated legislation.
- e. Not correct. Acting Charge appointment creates no right of confirmation of a Civil Servant to be considered for the next higher grade as a matter of right. This is subject to the availability of posts and seniority-cum-fitness from the respective cadre.

It is therefore humbly prayed that the petition of the petitioners is devoid of merit and without substance be dismissed with cost and the status quo may also be vacated.

  
27 Dec 2012  
Chief Secretary,  
Govt. of Khyber Pakhtunkhwa  
(Respondent No. 1)

  
Dec. 26, 12  
Secretary to Govt. of  
Khyber Pakhtunkhwa  
Irrigation Department  
(Respondent No. 2)



GOVERNMENT OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT

6

Dated Peshawar 13<sup>th</sup> Dec, 2011

NOTIFICATION

NO. SO(E)/IRR:/4-5/2011 Vol-II: Consequent upon the recommendations of the Departmental Promotion Committee, the Competent Authority is pleased to appoint the following Sub Engineers to the posts of Assistant Engineers / Sub Divisional Officers (BS-17) of Irrigation Department on acting charge basis with immediate effect: -

- i. Mr. Muhammad Sadiq
- ii. Mr. Muhammad Parwish
- iii. Mr. Farid Gul
- iv. Mr. Abdur Rahim
- v. Mr. Shabaz Khan
- vi. Mr. Muhammad Akhtar Jan
- vii. Mr. Inayatullah Jan
- viii. Mr. Fatjullah
- ix. Mr. Riaz Muhammad
- x. Mr. Waqar Shah
- xi. Mr. Musharaf Shah
- xii. Mr. Fazli Subhan
- xiii. Mr. Roohul Amin
- xiv. Mr. Shoukat Badshah
- xv. Mr. Saeedullah
- xvi. Mr. Bakhtiar
- xvii. Mr. Farid Ullah
- xviii. Mr. Asif Khan

2- Upon their appointment on acting charge basis as Assistant Engineers / Sub Divisional Officers (BS-17), the competent authority is further pleased to order the transfers / postings of the following officers of Irrigation Department with immediate effect, in the public interest:

Sr. No.	Name of Officer	From	To	Remarks
1	Mr. Muhammad Sadiq	Sub Engineer, Irrigation Sub Division, Kohistan	Sub Divisional Officer, Hydrology Abbottabad	Relieving Mr. Abdur Rahim, SDO Irrigation Sub Division, Abbottabad from additional charge of the post.
2	Mr. Muhammad Parwish	Sub Engineer, Balambat Irrigation Sub Divn: Timergara	Sub Divisional Officer, Irrigation Sub Div: Chitral	Vice at Sr. No..19
3	Mr. Farid Gul	Assistant Engineer (OPS), Leave Reserve Post in Peshawar Canal Divn:	Assistant Engineer, Leave Reserve Post in Peshawar Canal Divn:	The officer will continue to perform the duties of AD-IV, FDRD

*[Handwritten signature]*

*[Handwritten text]*

4	Mr. Abdur Rahim	Sub Divisional Officer (OPS), Irr: Sub Divn: Abbottabad	Sub Divisional - Officer, Irr: Sub Divn: Abbottabad	The officer will continue to perform his duties against his existing posting.
5	Mr. Shabaz Khan	Sub Divisional Officer (OPS), Flood Sub Divn: No. 2, Flood Divn: Peshawar	Sub Divisional Officer, Flood Sub Divn: No. 2, Flood Divn: Peshawar	The officer will continue to perform his duties against his existing posting.
6	Mr. Muhamamad Akhtar Jan	Sub Divisional Officer (OPS), Mech: Irr: Sub Divn: D. I. Khan	Sub Divisional Officer, Mech: Irr: Sub Divn: D. I. Khan	The officer will continue to perform his duties against his existing posting.
7	Mr. Inayatullah Jan	Sub Engineer, Tube Well Irr: Divn: Peshawar	Sub Divisional Officer, Mech: Irr: Sub Divn: Mardan	Relieving SDO Workshop Sub Divn: Peshawar from looking after duties of the post.
8	Mr. Fatihullah	Sub Divisional Officer (OPS), Hydrology Irr: Sub Divn: Bannu	Sub Divisional Officer, Hydrology Irr: Sub Divn: Bannu	The officer will continue to perform his duties against his existing posting.
9	Mr. Riaz Muhammad	Sub Engineer, Warsak Canal Irr: Divn: Peshawar	Assistant Director, Office of the P. D, Rehabilitation of Irr: System, Pesh.	Against the vacant post.
10	Mr. Waqar Shah	Sub Engineer, Flood & Drainage Divn: Peshawar	Assistant Director, Office of the P. D, Rehabilitation of Irr: System, Pesh.	Relieving Miss. Tabinda Nosheen, AD (Rehab:) from looking after charge of the post.
11	Mr. Musharaf Shah	Sub Engineer, Mkd: Irr: Div: Mkd.	Assistant Director (Design), Office of the Chief Engineer (South), Irrigation Department.	Vice at Sr. No. 22
12	Mr. Fazli Subhan	Sub Divisional Officer (OPS), Tube Well Irr: Sub Divn: Pabbi	Sub Divisional Officer, Tube Well Irr: Sub Divn: Pabbi	The officer will continue to perform his duties against his existing posting.
13	Mr. Roothul Amin	Sub Divisional Officer (OPS), Irr: Sub Divn: Gohati, Swabi	Sub Divisional Officer, Irr: Sub Divn: Gohati, Swabi	The officer will continue to perform his duties against his existing posting.
14	Mr. Shoukat Badshah	Assistant Director (OPS), Bazai Irr: Project Mardan	Assistant Director, Bazai Irr: Project Mardan	The officer will continue to perform his duties against his existing posting.
15	Mr. Saeedullah	Sub Engineer, Irr: Sub Divn: Civil Canal Bannu	Sub Divisional Officer, Irr: Sub Divn: Shangla	Relieving SDO, Irr: Sub Divn: Swat from additional charge of the post.
16	Mr. Bakhtiar	Sub Divisional Officer (OPS), Swat Irr: Sub Divn: Swat	Sub Divisional Officer, Swat Irr: Sub Divn: Swat	The officer will continue to perform his duties against his existing posting.
17	Mr. Farid Ullah	Sub Divisional Officer (OPS), Jani Khel Irr: Sub Divn: Bannu	Sub Divisional Officer, Jani Khel Irr: Sub Divn: Bannu	The officer will continue to perform his duties against his existing posting.

18	Mr. Asif Khan	Sub Divisional Officer (OPS), Shahbz Ghari Irr: Sub Divn: Swabi	Sub Divisional Officer, Shahbz Ghari Irr: Sub Divn: Swabi	The officer will continue to perform his duties against his existing posting.
19	Mr. Faiz ur Rehman	Sub Divisional Officer, Irr: Sub Divn: Chitral	Assistant Director (Design), Office of the Chief Engineer (South)	Against the vacant post.
20	Mr. Muhammad Idrees	Asstt: Director (Rehabilitation),	Assistant Engineer (leave reserve) Office of the Chief Engineer (South).	The officer will continue to perform his duties as Assistant Director-V, FDRD
21	Mr. Wasim Malik	Sub Divisional Officer, Hydrology Abbottabad	Assistant Engineer (leave reserve) attached with Dy: Director (Plg) O/O Chief Engineer (North).	The officer will continue to perform his duties as Dy: Project Director-II, FDRD.
22	Mr. Hazrat Hassan	Assistant Director (Design), Office of the Chief Engineer (South), Irrigation Department.	Sub Divisional Officer, Hydrology Irr: Sub Divn: Pesh	Against the vacant post.

SECRETARY TO GOVT: OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT

Endst: No. & date as above.

Copy of the above is forwarded to:

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Chief Engineer (South), Irrigation Department, Peshawar.
3. The Chief Engineer (North), Irrigation Department, Peshawar.
4. The Director General, Small Dams Organization, Peshawar.
5. The Director General, Flood Damages Restoration, Khyber Pakhtunkhwa, Peshawar.
6. The Project Director Baizai Irrigation Project, Mardan.
7. The Project Director, Rehabilitation of Irrigation System, Peshawar.
8. All Superintending Engineers of Irrigation Department.
9. All the Districts Accounts Officer, in Khyber Pakhtunkhwa.
10. The Manager, Govt. Stationery & Printing Department, Peshawar.
11. PS to Minister for Irrigation Khyber Pakhtunkhwa, Peshawar.
12. PS to Chief Secretary, Khyber Pakhtunkhwa.
13. PS to Secretary, Establishment & Administration Department.
14. PS to Secretary, Irrigation Department, Peshawar.
15. Officer concerned.
16. Personal File.
17. Master File.

Attested  
[Signature]

[Signature]  
(MISAL KHAN)  
Section Officer (Establishment)



## **KHYBER PAKHTUNKHWA**

Published by Authority

PESHAWAR, MONDAY, 25TH JUNE, 2012.

### **GOVERNMENT OF KHYBER PAKHTUNKHWA,** **IRRIGATION DEPARTMENT.**

#### **NOTIFICATION**

Dated: 25<sup>th</sup> June, 2012.

**No. SOE/IRRI/23-5/2010-11.** --- 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 the Finance Department, hereby directs that in this Department's Notification No. SO(E)Irr./23-5/73 dated 17.02.2011, the following amendments shall be made namely:-

#### **AMENDMENTS**

In the Appendix,

i. Against Serial No. 4, in column No. 5, for the existing entries, in clause (b), (c) and (d), the following shall be respectively substituted, namely:

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

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

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

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

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

Note- For the purpose of clause (d), a seniority list of Sub Engineers having Diploma of Associate Engineering in Civil Mechanical, Electrical or Auto Technology shall be maintained and their seniority is to be reckoned from the date of their 1<sup>st</sup> appointment as Sub Engineer.

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

- ii. against serial No. 5, in column No. 5, for the existing entries in clause (b), the following shall be substituted, namely:
- “(b) fifteen percent by promotion, on the basis of seniority-cum-fitness, from amongst the Canal Inspectors, Work Takers, Gauge Readers, Surveyors, having Diploma of Associate Engineering in Civil, Mechanical, Electrical or Auto Technology from a recognized Board of Technical Education, having passed the departmental Grade-B and Grade-A examination, with at-least seven years service as such; and
- (c) five percent by promotion, on the basis of seniority-cum-fitness, from amongst the Canal Inspectors, Work Takers, Work Munshi, Surveyors, and work superintendent, having passed the departmental Grade-B examination with at-least ten years service as such;
- iii. Against serial No. 7, in column No. 5, for the words “three years” the words “one year” shall be substituted;
- iv. against serial No. 9, in column No. 3, for the existing entry the following shall be substituted, namely:
- a. Bachelor Degree or equivalent qualification from a recognized University; and  
b. A speed of 80 words per minute in short hand in English and 40 words per minute in English typing; and
- v. against serial No. 13, in column No. 5, in clause (b), the words and figures “and are under 45 years of age” shall be deleted.

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT.

*Attested*

*[Handwritten signature]*

Printed and published by the Manager,  
Staty. & Ptg. Deptt., Khyber Pakhtunkhwa, Pesh.



11

**GOVERNMENT OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT**

**NOTE FOR CHIEF SECRETARY, KHYBER PAKHTUNKHWA**

Subject: WRIT PETITION NO. 2098-P/2012 WITH INTERIM RELIEF - FILED BY FARID GUL, ASSISTANT DIRECTOR, FDRD IRRIGATION & OTHERS V/S GOVT. OF KPK & OTHERS

The Additional Registrar (Judicial) Peshawar High Court, Peshawar has forwarded a copy of order dated 08.08.2012 passed by division bench of the Peshawar High Court, Peshawar regarding Writ Petition No. 2098-P/2012, filed by Farid Gul, Sub Engineer Irrigation and others V/s Govt. of Khyber Pakhtunkhwa and others (**Annex-I**). The Peshawar High Court Peshawar has disposed of the writ petition with direction to the respondents to dispose of the appeals/representations of the petitioner before initiating any process of promotion to the post of Assistant Engineer (BS-17), within a fortnight.

2. Briefly, background of this case is that for promotion to the post of Assistant Engineer (BS-17), earlier the quota of different streams of services was fixed as under:-

- a. 65% by initial recruitment.
- b. 10% by promotion, on the basis of seniority cum-fitness, from amongst the Sub Engineers who have acquired during service degree in Civil or Mechanical Engineering from a recognize University.
- c. 5% by promotion, on the basis of seniority cum-fitness, from amongst the Sub Engineers who joined service as degree holders in Civil/Mechanical Engineering and
- d. 20% by promotion, on the basis of seniority cum-fitness from amongst the Sub Engineers who hold a diploma of Civil, Mechanical, Electrical or Auto Technology and have passed Departmental Grade A examination with ten years service as such.

Cont/P-2

3. Sequel to a decision of Higher Education Commission, duly upheld by the courts, B.Tech (Hons) degree was recognized only for the purpose of pay, grade and promotion (**Annex- II & III**), some of the B. Tech (Hons) degree holder Sub Engineers preferred representations with the request that they may be included in the panel of In-service graduate sub engineers on the basis of acquiring B. Tech (Hons) degree for availing promotion chance to the post of Assistant Engineer (BS-17). In order to dispose of the appeals, a Sub Committee under the chairmanship of Superintending Engineer Irrigation Department was constituted to examine the appeals with all the references quoted above and give specific recommendations with regard to the equivalency of B. Tech (Hons) degree with that of B.E/B.Sc Engineering degree for promotion to the post of Assistant Engineer (BS-17) or otherwise. The committee recommended that B. Tech (Hons) is not equivalent to B. Sc engineering but is at par and compatible with B.E/B.Sc engineering for the purpose of grade, pay and promotion.

4. In view of the recommendation of the Sub Committee, amendments in the Service Rules of Irrigation Department 2011 were carried out by providing 8 percent quota for promotion to the post of Assistant Engineer (BS-17) to the B. Tech (Hons) degree holder Sub Engineers. Hence the long standing issue of B. Tech (Hons) degree holder sub engineers was disposed of.

5. The petitioners namely Farid Gul, Sub Engineer & other 13 Sub Engineers have preferred appeals (**Annex-IV**) against the amendments in the Service Rules of Irrigation Department notified on 25.06.2012 (**Annex-V**). The appellants have challenged the provision of 8% quota for B. Tech (Hons) degree holders sub engineers and reduction of 20 percent quota reserved for Diploma Holder Sub Engineers to 15 percent for promotion to the post of Assistant Engineers. The original quota for diploma holders Sub Engineers was 20% while 5% and 10% quota was reserved for pre and in service graduate Sub Engineers respectively.



CAICS No. 4402  
Hydr. Engrg. Division  
13-9-12  
Secy Irrigation Data 422  
Diary No. 13-9-12  
Date 12-09-2012

WORKING COPY  
Diary No. 151  
Date 17-9-12

Special Secretary Irrigation  
Diary No. 1423  
EPA, Ministry of Agriculture  
Dated 14/9/12  
Diary No. 1768-3  
Dated 14/8/12

6. In order to accommodate the B. Tech (Hons) Degree Holders Sub Engineers 8% quota has been allocated in the said service rules for promotion to the post of Assistant Engineers. Hence 5% share from diploma holders and 3% from degree holders have been apportioned and allocated for B. Tech (Hons) degree holders.

7. In view of the above, if deemed appropriate, the Chief Secretary may like to file the appeals having no tenable justification please.

*Khalid Pervez*  
(Khalid Pervez)  
Secretary Irrigation  
Sep 12, 12

~~CHIEF SECRETARY~~

6. Please examine.

*[Signature]*  
CHIEF SECRETARY  
13.09.2012

SECRETARY ESTABLISHMENT

*[Handwritten mark]*

*Next page*

8. The matter has been examined. The proposal contained in para-7/n is supported.

*MS*  
(Shahrukh Arbab)  
Secretary Establishment  
September 26, 2012

Chief Secretary  
Khyber Pakhtunkhwa

Dist. No. 1423-5  
Date: 26/9/12

9. Para 7 agreed.

*[Signature]*  
CHIEF SECRETARY  
27.09.2012

SECRETARY IRRIGATION

C.A.C.S Khyber Pakhtunkhwa  
No. 44.02  
Date: 27/9/12

Attested  
*[Signature]*

A.S  
*[Signature]*  
28/9  
SA *[Signature]* 28/9

PS/Secy Irrigation  
Diary No. 6678  
Date 13-9-2012

1552  
17/9/12

15



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

SOR-V(E&AD)6-1/SSRC/2011-12  
Dated 11<sup>th</sup> September, 2012.

To

The Secretary to Govt. of Khyber Pakhtunkhwa,  
Irrigation Department.

Subject: DEPARTMENTAL REPRESENTATION FOR EXTENDING SENIORITY TO THE SUB ENGINEER WHO QUALIFIED B.TECH (HONS) DEGREE (DURING SERVICES) W.E.F THE DATE OF ACQUIRING THE DEGREE AS WELL AS STRIKING DOWN THE CONDITION IN THE AMENDED RULES FOR PASSING DEPARTMENTAL B&A EXAMS FOR THEIR PROMOTION TO THE NEXT HIGHER GRADE.

Dear Sir,

I am directed to refer to your letter No.SOE/Irr:/23-5/73 dated 27-7-2012 on the subject and state that this department endorses the views offered in the letter referred to above by the Administrative Department. The request of Mr. Khurshid Ahmed, B.Tech (Hons), Sub-Engineer being not entertainable under the rules is to be regretted please.

Yours faithfully,

(MUSHTAQ HUSSAIN)  
Deputy Secretary (Reg-III)

Secy Irrigation

AS  
  
17/9

Attested

p.u. on file  
  
SA 17/9

SOE

**IN THE PESHAWAR HIGH COURT**  
**PESHAWAR**

**Writ Petition No. 3388-P of 2012**

Asif Khan & others .....(PETITIONERSS)

**VERSUS**

Govt: of KPK through Chief Secretary &  
others.....(RESPONDENTS)

**I N D E X**

<b>S.NO</b>	<b>Description of Documents</b>	<b>Annexs</b>	<b>Pages</b>
1	Written statement		1-7
2	Affidavit		8
3	Copy of letter of HEC	R/1	9

**Respondents**

Through



**Ghulam Nabi Khan**

Advocate Supreme Court

Address: Haroon Mansion,  
Khyber Bazar, Peshawar  
City.

Cell No. 0300-5845943

Dated: 12/03/2013

**IN THE PESHAWAR HIGH COURT**  
**PESHAWAR**

**Writ Petition No. 3388-P of 2012**

Asif                      Khan                      &                      others  
.....(PETITIONERSS)

**VERSUS**

Govt. of KPK through Chief Secretary &  
others.....(RESPONDENTS)

**Written statement on behalf of private**  
**replying respondents arrayed as party.**

**Respectfully Sheweth:**

**PRELIMINARY OBJECTIONS:**

1. That the petitioners have got no cause of action.
2. That the petition is not maintainable in its present form.
3. That the matter being pertaining to terms and conditions of the service, hence, as according to Article-212 of the Constitution of Islamic Republic of Pakistan, 1973, the jurisdiction exists only before the Honourable Service Tribunal, hence, this

2/

Honourable Court has got no jurisdiction in connection with the amendments of rules/regulations which has already been declared as a matter of terms and conditions by the Apex Courts.

4. That the petition is based on the malafide intentions of the petitioners at the sense that the replying respondents have never been considered for promotion in quota system by the department after going through a detailed litigation process, the respondent's department has fixed their quota for the promotion.
5. That the petition is bad in the eyes of law for misjoinder/nonjoinder of necessary parties.
6. That the petition is time barred.

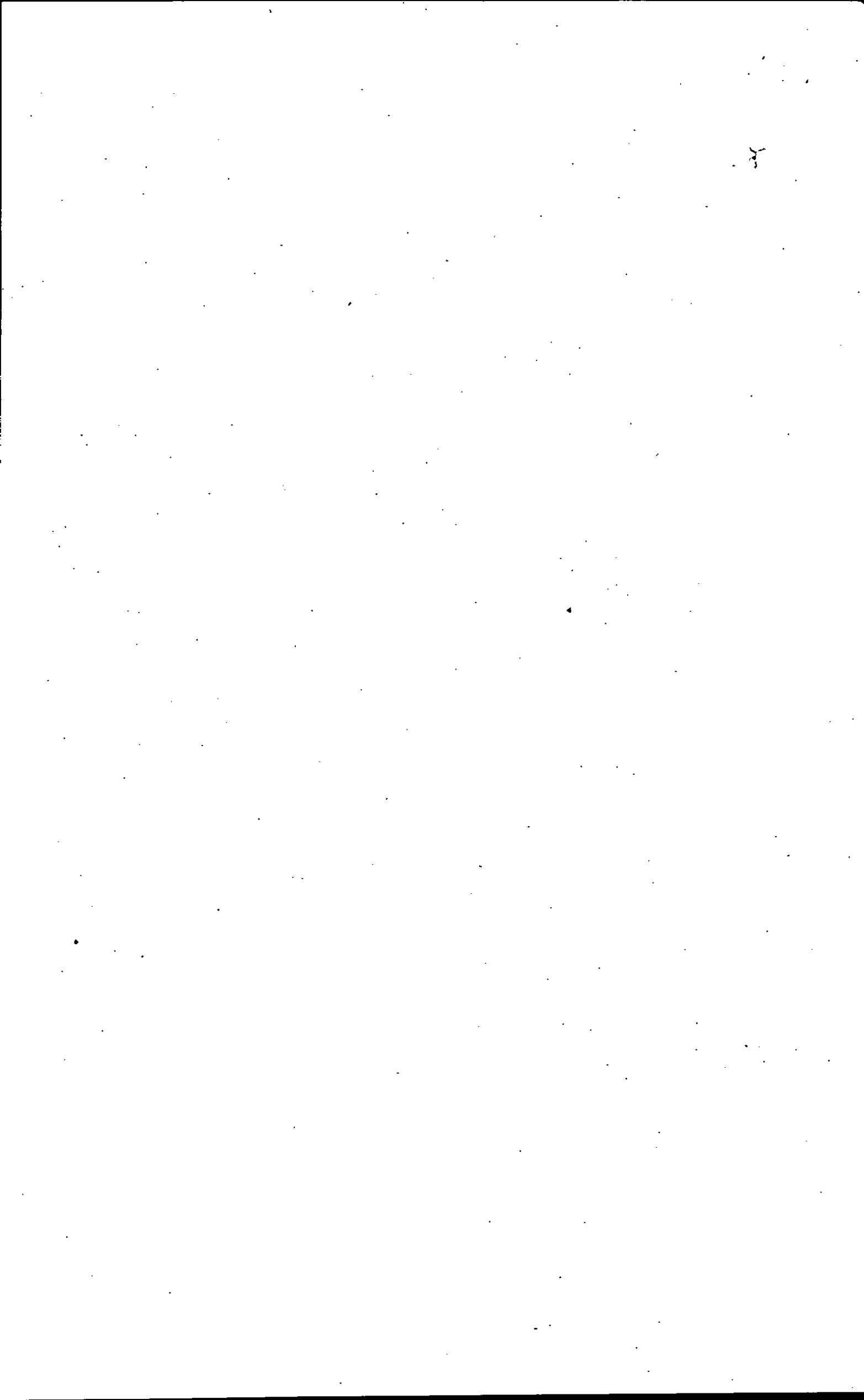
**FACTS:**

1. Pertained to record, hence, needs no comments. It is pertinent to bring into the kind notice of this Honourable Court that the replying respondents have already been appointed as Sub-Engineers in BPS-11 in the years 1987, 1990 & 1992 i.e. much

3

before or almost along with the above said petitioners.

2. Admitted correct to the extent that the rules mentioned have been amended vide amendment Notification dated: 17/12/2011.
3. Correct to the extent that the petitioners were promoted to the post of Assistant Engineer (BPS-17) on 13/12/2011 on acting charge basis, however, it was not a regular promotion, hence, the petitioners being posted on acting charge basis cannot claim the promotion to the said posts as vested right as they have not still promoted to the said posts after going through the proper process/procedure nor he has been regularly promoted the above said posts.
4. Correct to the extent that on 25/6/2012, the amendment was brought therein by the respondent's department whereby in the first instance 8% quota was allotted to the replying respondents have the degrees of B.Tech (Honors) which is at par with B.Sc (Engg). However, it is bring into the kind notice of this Honourable Court that the petitioners should approach the Honourable Service Tribunal instead of this





Honourable Court as the matter of amendments in the rules and regulations has been declared the matter of terms and conditions as held by the apex courts including Supreme Court of Pakistan. It is also bring into the kind notice of this Honourable Court that the petitioners and his colleagues have playing duel game as on one hand they have approached this Honourable Court through the Writ Petition whereas on the other hand, their cases have been filed before the Honourable Service Tribunal on the same grounds and have getting the same relief from Honourable Service Tribunal, hence, the matter of jurisdiction before proceeding any further, should be decided by this Honourable Court which is exclusive jurisdiction of Honourable Service Tribunal.

5. Wrong and denied. The cases with regard to the seniority were taken to the Honourable Service Tribunal by the employees of the respondent's department where it was held by the said Tribunal that the seniority of the employees of the respondent's department should be drafted on combine list and from the date of initial

5

appointment, hence, his case of promotion could not be considered on regular basis due to the fact that their quota has already been exhausted and there is no single vacancy in the cadre of the petitioners to be promoted to the next higher scale i.e. Assistant Engineer (BPS-17), however, the senior eligible incumbents/replying respondents of B.Tech (Honors) Degree holders were considered by the DPC in their respective cadre for promotion which was declared fit for promotion and the competent authority have approved the recommendations of DPC. It is further added that the Degree of B.Tech (Honors) is at par with B.Sc (Engg) for the purpose of pay and promotion (Copy of letter of HEC is attached and marked as Annexure-R/1).

6. Needs to comments.

**GROUND:**

A. Wrong and denied. The petitioners have duly been treated as according to law. Furthermore, no violation of Article-4 of the Constitution of Islamic Republic of Pakistan has been made nor the petitioners are successful for the promotion,

6

however, as the quota of promotion as granted by the respondent's department has been fulfilled and the petitioners has not right to the promotion on the above said posts.

B. Wrong and denied. No codal formalities have been observed while promoting the petitioners to the posts of Assistant Engineers (BPS-17) has they were not regularly promoted but their promotion were on acting charge basis and he will have to go to the process/procedure as well as during the DPC at the time of regular promotion. Furthermore, the petitioners have never agitated their promotion on acting charge basis till todate and now after a long time where the rules have been amended, they have brought their grievances before this Honourable Court in a single writ petition.

C. Again wrong and denied. The tenure of service of the petitioners is not effected and all the employees of the respondent's department have got their seniority from the date of their appointments. Furthermore, no vested right

7

whatsoever have been created for the promotion as claimed in this para.

D. Again wrong and denied. Not only the petitioners but all the replying respondents have also given their prime time to the respondent's department with hope that they could get the chance of their promotion. Furthermore, after long litigation, the respondent's department has granted 8% quota to the B.Tech (Honors), hence, the petitioners has brought their writ petitions before this Honourable Court just to grab the right of the replying respondents and to take over the right of promotion of the replying respondents.

E. Wrong and denied. The acting charge basis promotion does not create any vested right of the promotion.

In the aforesaid circumstance, it is, therefore, respectfully prayed that on acceptance of this written statement, the Writ Petition of the petitioners may please be dismissed with costs.

**Respondents**

Through



**Ghulam Nabi Khan**  
Advocate Supreme Court

Dated: 12/03/2013

8

**IN THE PESHAWAR HIGH COURT**  
**PESHAWAR**

**Writ Petition No. 3388-P of 2012**

Asif Khan & others .....(PETITIONERSS)

**VERSUS**

Govt: of KPK through Chief Secretary &  
others.....(RESPONDENTS)

**AFFIDAVIT**

I, Niaz Badshah (Respondent), SDO OPS, Flood Division, Irrigation Department, Warsak Road, Peshawar do hereby solemnly affirm and declare that the contents of the accompanying written statement are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Honourable Court.

*Niaz Badshah*  
**DEPONENT**

**Identified by:**  
*Ghulam Nabi Khan*  
**Ghulam Nabi Khan**  
Advocate, Supreme Court

11201-9775828-9

9268-

I, *Niaz Badshah*, do hereby solemnly affirm and declare that the contents of the written statement of *Niaz Badshah*, who was identified by *Ghulam Nabi Khan*, who is personally known to me, are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Honourable Court.

12/3/2013

Oath Commissioner  
Peshawar High Court, Peshawar



ہائر ایجوکیشن کمیشن  
HIGHER EDUCATION COMMISSION

Sector H-9, Islamabad, (Pakistan), Phono: + 92-51-9257508, 9040708  
Fax: + 92-51-9040713, URL: http://www.hec.gov.pk

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

R-1  
9  
No.8-36/HEC/A&A/2007  
May 21, 2007

1088  
Mr. Majid Rafi,  
Block # 12-D, Flat # 02,  
Cat-IV, I-9/4 Islamabad

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

Dear Sir,

With reference to your application dated May 21, 2007 on the subject, the decision regarding equivalence of B.Tech (Hons) degree was taken in its 39<sup>th</sup> meeting of Equivalence Committee of erstwhile UGC held on 12.2.1998 had declared B.Tech (Hons) degree as compatible and at par to BE/B.Sc Engineering for purpose of employment. The decision of the Committee is reproduced below for your information:

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

Yours faithfully,

*M. J. Khan*  
23/5/07  
Muhammad Javed Khan

*M. J. Khan*



(8) R/H

**GOVERNMENT OF NORTH WEST FRONTIER PROVINCE  
IRRIGATION DEPARTMENT**

Dated Peshawar the 12<sup>th</sup> October, 2012

**NOTIFICATION**

**NO. SO(E)/IRR:/4-3/DPC/PSB/2012:** The competent authority in consultation with Provincial Selection Board is pleased to promote the following Assistant Engineers (BS-17) to the post of Executive Engineers (BS-18) of Irrigation Department on regular basis with immediate effect: -

27  
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(27)

- i. Mr. Hayat-ud-Din.
- ii. Mr. Izzat Khan.
- iii. Mr. Abdur-Rehman Badshah.
- iv. Mr. Musleh-ud-Din.
- v. Mr. Amjad Khan.
- vi. Mr. Sher Aman Khan.
- vii. Mr. Wilayat Khan.

2- The officers on promotion will remain on probation for one year extendable for further one year in terms of Section 6 (2) of NWFP Civil Servants Act, 1993 read with Rule 15 (1) of NWFP Civil Servants (Appointment, Promotion & Transfer) Rules, 1989.

سید علی  
پرویز  
2012

3- The Competent Authority in consultation with Provincial Selection Board is further pleased to appoint the following Assistant Engineers (BS-17) to the posts of Executive Engineers (BS-18) of Irrigation Department on acting charge basis with immediate effect: -

- i. Mr. Zahoor Muhammad.
- ii. Mr. Rab Nawaz Khan.

(retired) AZIZ UR REHMAN  
Chief

4- Consequent upon their promotion on regular basis and appointment on acting charge basis as Executive Engineers (BS-18), the competent authority is further pleased to order the transfer / posting of the following officers of Irrigation Department with immediate effect, in the public interest: -

S.No	Name of Officer	From	To	Remarks
1	Engr: Hayat-ud-Din (BPS-18)	XEN Malakand Irrigation Division	Retained on his existing place of posting	
2	Engr: Izzat Khan (BPS-18)	Section Officer (Operation) Irrigation Department	XEN, Mechanical Irrigation Division, Peshawar	After actualization the officer will rejoin his present post.
3	Engr: Abdur Rehman Badshah (BS-18)	XEN Kohat Irrigation Division	XEN Chitral Irrigation Division	Vice No.10
4	Engr: Musleh-ud-Din (BS-18)	Deputy Director (Planning) o/c Chief Engineer (North)	Retained on his existing place of posting.	
5	Engr: Amjad Khan (BS-18)	Deputy Director Remodeling of Wasak Canal System	Dy: Director (Design) Chief Engineer (North) Office.	After actualization the officer will rejoin his present post.

6	Engr: Sher Aman Khan (BS-18)	XEN Peshawar Canal Division.	Retained on his existing place of posting.	
7	Engr: Wilayat Khan (BS-18)	Deputy Director-II Bazai Irrigation Project Mardan.	Deputy Director (Planning) o/o Chief Engineer (South)	After actualization the officer will rejoin his present post
8	Engr: Zahoor Muhammad (BS-18)	XEN (acting charge) Hydrology Division Peshawar	Retained on his existing place of posting.	--
9	Engr: Rab Nawaz Khan (BS-18)	Assistant Director Leave Reserved O/O Chief Engineer (North) Irrigation.	Deputy Director (Design) acting charge o/o Chief Engineer (North) Irrigation	Against the vacant post
10	Engr. Aziz-ur-Rehman (BS-17)	XEN (OPS) Chitral Irrigation Division	Dy: Director (Design) Office of Chief Engineer (South) Irrigation.	Vice No.11
11	Engr. Abdul Sattar Khan (BS-17)	Dy: Director (Design) (OPS) Office of Chief Engineer (South) Irri.	XEN(OPS) Kohat Irrigation Division	Vice No.3

Secretary to Govt. of Khyber Pakhtunkhwa  
Irrigation Department

Endst: No and date even.

Copy forwarded to:-

1. The Secretary to Governor, Khyber Pakhtunkhwa.
2. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. The Secretary, Coordination & Administration, FATA Secretariat, Peshawar.
4. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
5. The Chief Engineer (South) Irrigation Department.
6. The Chief Engineer (North) Irrigation Department.
7. The Project Director, Bazai Irrigation Project, Mardan
8. The Director (Tech) Planning & Monitoring Cell, Civil Sectt. Peshawar.
9. All Superintending Engineers of Irrigation Department.
10. Director Information, Khyber Pakhtunkhwa, Peshawar for publication in official gazette.
11. The Districts Accounts Officers, Swat, Kohat, Mardan & Chitral.
12. The Agency Accounts Officer, Malakand.
13. PS to Minister for Irrigation, Khyber Pakhtunkhwa.
14. PS to Secretary to Govt. of Khyber Pakhtunkhwa, Establishment Deptt.:
15. PS to Secretary to Govt. of Khyber Pakhtunkhwa, Irrigation Deptt., Peshawar.
16. Officers Concerned.
17. Manager, Govt. Printing & Stationary Department, for publication in the next official gazette.
18. Master File.
19. Personal Files.

(MISAL KHAN)

Section Officer (Establishment)



Rg/2 (9)

STATEMENT SHOWING DETAIL OF SUB ENGINEERS  
WORKING AS SUB DIVISIONAL OFFICERS (OPS)

S.No	NAME OF SDO (OPS)	PRESENT PLACE OF POSTING	DATE FROM WHICH POSTED AS SDO
1.	Mr. Bahadur Khan Kundi	Flood Irr; S/ Divn D I Khan	25-06-2010
2.	Mr. Haroon Rashid	Bunair Irr; S/Divn;	21-06-2010
3.	Muhammad Younas	Shangla Irr; S/Divn;	24-03-2010
4.	Mr. Sabir Hussain	Hazara Irr; Divn;	01-09-2010
5.	Mr. Farmanullah	Small Dams Pesh;	01-03-2006
6.	Mr. Asadullah Jan	Flood Divn; DI Khan	06-01-2012
7.	Mohammad Yaqoob	Small Dams Pesh;	01-02-2011
8.	Mr. Daud Khan	Charsadda S/Divn;	14-04-2011
9.	Mr. Ismail Khan	Head works S/Divn;	02-09-2009
10.	Mr. Javed Khattak	Small Dams Pesh;	12-07-2011
11.	Mr. Kifayatullah	Drainage S/Divn; Mardan	14-12-2010
12.	Mr. Sher Akbar	Pabbi S/Divn; T/well	12-03-2012
13.	Muhammad Ashraf	Rod Kohi S/Divn; DI Khan	04-07-2009
14.	Mohammad Tufail Anwar	Small Dams Kohat	05-01-2011
15.	Shiekh Ijaz ud Din	Rehabilitation Project	12-10-2011
16.	Mr. Amanullah ✓	Irr; S/ Divn; Dir	03-01-2006 ✓
17.	Mr. Sifatullah ✗	S/ Divn; Civil Canal	28-09-2010
18.	Mr. Saifullah ✓	KRC S/Divn; Pesh;	12-09-2012 ✓
19.	Mr. Niaz Bad Shah ✓	Flood Divn; Pesh;	27-11-2012 ✓
20.	Muhammad Hayat	Rehabilitation project	12-05-2010

Registration  
No. 40  
Date: 11/11/12

CONFIDENTIAL

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11/12  
RS/3

RS/3  
10  
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K.P.K. PUBLIC SERVICE COMMISSION  
Plot Road, Peshawar Cantt. (Near Governor House)  
PHONE: 2215563  
FAX NO: 9211225



No. K.P.K-PSC-SR-VII

Dated: 21.11.2011

BSI- 2 done  
11/11/11

To  
The Secretary to Govt of Khyber Pakhtunkhwa,  
Irrigation Department  
Peshawar

Subject: RECFE OF (3) POSTS OF ASSISTANT ENGINEER CIVIL (A/S-17) IN IRRIGATION DEPARTMENT (ADVT. NO.01/2011.S.NO.24)

Dear Sir

I am directed to refer to our letter No. K.P.K-PSC-SR-VI/054906 Dated 27.10.2011 on the subject noted above and to state that the Commission recommends the following to the Government for appointment against the subject noted post:

1<sup>st</sup> Block

Vacancy Rotation	Allocation	Merit Order	Name with Father's Name	Domicile/Zone	Adjust:
14 <sup>th</sup>	Zone-5	10	Qamar Shahzad Hussain Shah S/O Riaz Hussain Shah	Abbottabad/5	Own Quota
20 <sup>th</sup>	Zone-5	24	Rabia Abbasi D/O Abdul Qayyum Abbasi	Manshera/5	Own Quota
23 <sup>rd</sup>	Zone-2	32	Syed Ahmad Amin Shah S/O Syed Muhammad Shah	Peshawar/2	Own Quota
24 <sup>th</sup>	Zone-3	11	Syed Suliman S/O Sayed Salar	Swat/3	Own Quota

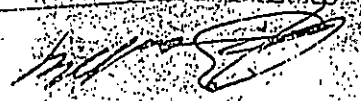
2<sup>nd</sup> Block

Vacancy Rotation	Allocation	Merit Order	Name with Father's Name	Domicile/Zone	Adjust:
1 <sup>st</sup>	Merit	01	Anwar Ullah Khan S/O Ghayas Ullah Khan	N.W. Agency/2	Merit Quota
2 <sup>nd</sup>	Zone-1	05	Mustafa Ali S/O Murtaza Hussain	Kurram Agency/1	Own Quota
3 <sup>rd</sup>	Zone-2	03	Mamraz Khan S/O Ibadat Gul	Peshawar/2	Own Quota
4 <sup>th</sup>	Zone-3	12	Rajab Ali S/O Habib Khan	Swat/3	Own Quota
5 <sup>th</sup>	Merit	04	Ayisha Amir D/O Amir Ali	Peshawar/2	Merit Quota
6 <sup>th</sup>	Zone-4	06	Mazhar Hussain S/O Sadiq Hussain	Kohat/4	Own Quota
7 <sup>th</sup>	Zone-5	38	Abdul Shakoor S/O Abdul Qadeer Qureshi	Abbottabad/5	Own Quota
8 <sup>th</sup>	Zone-1	09	Shoaib Khan S/O Hassan Khan	Mohmand Agency/1	Own Quota

7.5 = ⑧ + 2 = 16 + 5 = 20  
7.5

20

31.12.2011  
DIRECTOR (REGISTRATION)  
(BAZAL RAB SHAH)



Yours faithfully,

5. Original applications (with enclosures) of the above recommendees are sent here-with for your record. Please acknowledgment receipt.

3. Recommendation in favour of the recommendees is provisional subject to their Medical fitness.

11

2

3



**OFFICE OF THE CHIEF ENGINEER (SOUTH)**

IRRIGATION DEPARTMENT KHYBER PAKHTUNKHWA PESHAWAR

Phone No. 091-9212118 Fax No. 091-9212652

12

No. 2516-17 IIB/A/3

Dated Peshawar the 17/7/2011

Res/4

To

The Secretary to Government of  
Khyber Pakhtunkhwa Irrigation  
Department Peshawar.

Subject:- MEETING OF DEPARTMENTAL PROMOTION COMMITTEE  
TO EXAMINE SUITABILITY OF IN SERVICE GRADUATE /  
DIPLOMA HOLDER SUB ENGINEERS BS-11 TO THE RANK OF  
ASSISTANT ENGINEERS/ SDOs BS-17

Reference:- Your letter No. SO(E)-IRR:/ 4-3/DPC/91 dated 5-7-2011 and No. SO (E)  
IRR:/4-3/DPC/91 dated 4-7-2011.

I am directed to invite your kind attention to para 4 of the Working Paper for promotion of in Service Graduate Sub Engineer BS-11 to the rank of Assistant Engineer BS-17 where in detail of various share quota of Sub Engineers has shown as under:-

Sl. NO	CATEGORY	SHARE QUOTA	PRESENT WORKING STRENGTH	SHORT FALL	REMARKS
a	65% by initial recruitment	48.75	49	-	-
b	10% quota for in-service graduate Sub Engineers	7.5	7	1	-
c	10% quota for direct graduate Sub Engineer	7.5	12	-	5 Nos excess due to court decision.
d	15% quota for diploma holders	11.25 (say 11)	01	10	To be filled through promotion

In this connection it is clarified that the above position of Share Quota is a part of the old rules 1979 while the DPC is schedule under the Irrigation Department (Appointment, promotion and transfer) Rules 2011 notified vide your letter No. SO(E) IRR:/23-5/73 dated 17-2-2011 vide which the position of share quota of the post of Assistant Engineer is tabulated as under:-

Sl. NO	CATEGORY	SHARE QUOTA	PRESENT WORKING STRENGTH	SHORT FALL	REMARKS
a	65% by initial recruitment	48.75 (say 49)	47	2	-
b	10% quota for in-service graduate Sub Engineers	7.5 (say 7)	7	0	-
c	5% quota for direct graduate Sub Engineer	3.75 (say 4)	12	0	Excess 8
d	20% quota for diploma holders	15	0	15	-

Keeping in view of the position there seems no vacant post under share quota of in service Graduate therefore this agenda item may kindly be re-considered / dropped for the present.

(13)

Beside the above the Law Department Khyber Pakhtunkhwa in a meeting held on 9-7-2011 under the Chairmanship of Additional Advocate General decided that the case is fit for filing CPLA alongwith an application for suspension of proceeding if any before the Supreme Court of Pakistan vide letter No. Lit/LD/1-9. (50 )Irr/2011/0913-15 dated 13-7-2011 addressed to Advocate General with copy to Secretary Irrigation as well as this office and legal notice from Mr. Abdur Rehman Siddiqui (copy enclosed) may also be taken into consideration while discussing the case of diploma holder Sub Engineer to the rank of Assistant Engineer BS-17 please.

Encl: As above

SUPERINTENDING ENGINEER  
(HEADQUARTER)



ANCKUN...

14

12

GOVERNMENT OF N.W.F.P.,  
IRRIGATION DEPARTMENT.

NO.SO(E) I&PHE/4-6/73/126-30.  
Dated Peshawar the 1-1-1994.

NOTIFICATION.

Consequent upon the recommendations of Departmental Promotion Committee, the Governor, NWFP has been pleased to promote the following Graduate Sub Engineers of the Irrigation Department to the rank of Assistant Engineers (BFS-17), with immediate effect, in the public interest.

- 1/ Mr.Misal Khan.
- 2/ Mr.Samiullah.
- 3/ Mr.Mohammad Aqeel Azhar.

*Mehar*

2/ On their promotion as Assistant Engineer (BFS-17) the following posting/transfer amongst the SDOs of the Irrigation Department are hereby ordered with immediate, effect in the public interest.

SL:NO.	NAME OF OFFICERS.	F R O M	T O
1/	Mr.Misal Khan.	Already working as SDO CRBIP Consultants in his own pay and scale.	On promotion as SDO posted as SDO CRBIP Consultants, D.I.Khan.
2/	Mr.Samiullah.	Sub Engineer Pabbi Tubewell Sub Division.	On promotion as SDO posted as SDO ISRP, Peshawar against the vacant post.
3/	Mr.Mohammad Aqeel Azhar.	Already posted as SDO CRBC in his own pay & scale.	On promotion as SDO posted as SDO CRBIP Consultants, D.I.Khan.

All concerned

-: Sd :-  
SECRETARY TO GOVT: OF NWFP  
IRRIGATION DEPARTMENT

Endst:NO. and dated as above.

Copy forwarded for information and necessary action to the Chief Engineer, Irrigation Department, NWFP, Peshawar and others concerned.

-: Sd :-  
SECTION OFFICER (ESTT:)  
IRRIGATION DEPARTMENT.

4

Court decision

4

15

19

1-9-99

GOVERNMENT OF N.W.F.P.  
IRRIGATION DEPARTMENT.

Dated Pesh: the 01/09/1999

O R D E R

The Governor, NWFP, in consultation with the Departmental Promotion Committee, is pleased to appoint the following four (04) Graduate Sub Engineers (BPS-11) as Assistant Engineers (BPS-17), on acting charge basis, purely on temporary measures, with immediate effect, in accordance with Rule-9 of the NWFP Government Servants (Appointment & Promotion) Rules, 1979 and S&GAD circular letter No. SORI (S&GAD) /1-29/75/Volume-IV, dated 13-1-1999.

1. Mr. Mohammad Tahir.
2. Mr. Amir Muhammad.
3. Mr. Akbar Khan.
4. Mr. Hayatullah.

Consequent upon their appointment on acting charge basis as Assistant Engineer (BPS-17) they are hereby adjusted against the following positions noted against each, with immediate effect, in the public interest.

S. NO.	NAME OF OFFICERS	ADJUSTED AS:
1.	Mr. Mohammad Tahir.	Assistant Design Engineer, office of the Chief Engineer Irr:
2.	Mr. Amir Muhammad.	SDO Small Irr: Scheme Pesh:
3.	Mr. Akbar Khan.	SDO Mech: Irr: Sub Diva: D.I. Khan
4.	Mr. Hayatullah.	SDO Janikhel Irr: Sub Div: Bannu

SECRETARY TO GOVT. OF NWFP,  
IRRIGATION DEPARTMENT.

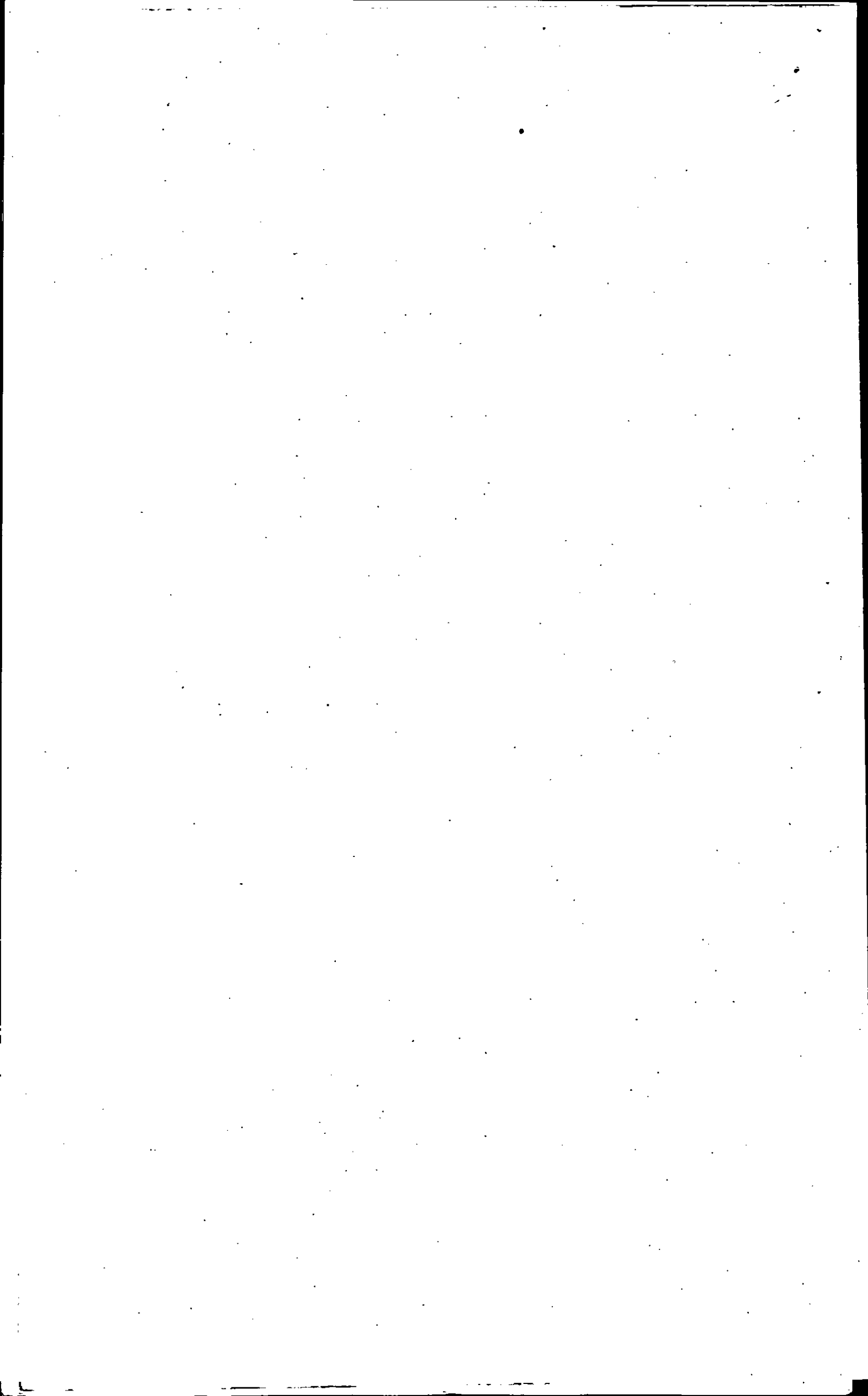
Endst: No. SO(E)IRR:/4-3/91.

Dated Pesh: the 01/09/1999

Copy forwarded to the:

1. Accountant General, NWFP, Peshawar.
2. Chief Engineer (O&M) Irrigation Department.
3. Chief Engineer (Dev:) Irrigation Department.
4. P.S. to Minister Irrigation.
5. District Accounts Officers, D.I. Khan, Bannu.
6. Section Officer (R-IV) S&GAD.
7. Section Officer (SR-II) Finance Department.
8. officers concerned.
9. P.Fs of the officers.

SECTION OFFICER (S&GAD)





Most Immediate.

17



GOVERNMENT OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT

No. SO(13)/Irr:4-1473/Vol II  
Dated Peshawar the 1<sup>st</sup> July, 2012

The Chief Engineer (South),  
Irrigation Department, Peshawar.

Subject: NOTIFICATION

I am directed to refer to your letter No. 8630/IB/A//E(ii) dated 21.06.2012 on the subject noted above and to state that under Provincial Government Policy (copy attached) out of 13, three (FATA domiciled) newly recruited Assistant Engineers have been placed at the disposal of FATA Secretariat, while the remaining 10 Assistant Engineers have been placed at your disposal for adjustment against the vacant and leave reserve posts for the purpose of salary during the 04 months training.

Instead of reverting acting charge SDOs, it would be appropriate to adjust the newly recruited Assistant Engineers against the vacant posts and the posts of SDOs which have been occupied by Sub Engineers in OPS, if needed.

I am, therefore, directed to request you kindly take necessary steps and on successful completion of the 04 months training, proposals for proper posting of these Assistant Engineers may be forwarded for approval of the Minister for Irrigation, please.

Encl: as above.

*Misal Khan*  
(Misal Khan)  
Section Officer (F&I)

5007


15/6  
5/7  
a/17



OFFICE OF THE CHIEF ENGINEER (SOUTH)  
IRRIGATION DEPARTMENT KHYBER  
PAKHTUNKHWA PESHAWAR

Phone No. 091-9212116 Fax No. 091-9212652

Dated Peshawar the 21/06/2012

PS/Secy Irrigation

No. 8630 /IB/A/7-E(ii)

Diary No. 4086

Date 21-6-12

The Secretary,  
to Government of Khyber Pakhtunkhwa,  
Irrigation Department Peshawar.

Subject: **NOTIFICATION**

Reference: Your Notification NO.SO(E)IRR;/4-14/73, dated 8-6-2012 and this office letter No.4814/IB/A/7-E(ii), dated 14-4-2012, and NO.7273/IB/A/7-E(ii), dated 31-5-2012.

I am directed to invite your kind attention to the notification issued vide your office No, mentioned under reference vide which 13 Nos newly recruited Assistant Engineers have been posted against the vacant and leave reserve posts, but proper place of posting against which they are posted have not been mentioned. Besides against 13 Assistant Engineers there are only 6 Nos vacant posts available in the Department.

It is submitted that the newly recruited Assistant Engineers would undergo 4 months initial practical training in line with Para-1-18 of the B&R Manual of Order and on expiry of the training (during the last week training period) an examination would be held under the supervision of Chief Engineer (South) Irrigation Department and if the Assistant Engineers qualify the examination, would be considered fit for assigning the regular charge.

The Chief Engineer (South) Irrigation Department will arrange the training plan for the new selectees, keeping in view of the field training/accounts / administration, the Chief Engineer will further make attachment for their training with respective Executive Engineers who after successful training will furnish a certificate to the effect duly countersigned by the Chief Engineer that the newly selected Assistant Engineers have availed the practical training of the Irrigation Department in all respect successfully.

It is added that recently 22 Nos Sub Engineers were promoted on acting charge vide your office order No.SO(E)IRR;/4-5/2011/Vol:II, dated 31-1-2012 over and above the prescribed share quota. According to the instructions contained in S&GAD letter No.SOR-(S&GAD)1-29/75/Vol:IV, dated 13-1-1999 the acting charge appointment are only admissible against the posts which are likely to fall vacant for a period of six months or more. It is added that further retention of acting charge appointees on these posts will create un-necessary litigation for the Department as already done in the case of Mr. Hayatullah and others.

It is requested that all the newly recruited Assistant Engineers including the Assistant Engineers at Sl: No.17 and 12 who were posted in FATA on deputation basis may kindly be directed to report to this office for obtaining training etc: and all the newly recruited Assistant Engineers may kindly be posted against the vacancies already occupied by the Sub Engineers on acting charge basis so as to avoid litigation in future please.


*[Signature]*  
SUPERINTENDING ENGINEER  
(HEADQUARTERS)

PS/Secy Irrigation

AS

18

4



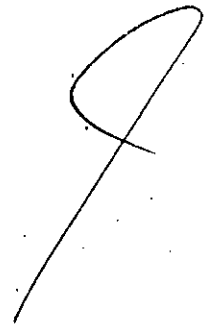
GOVERNMENT OF KHYBER PAKHTUNKHWA  
IRRIGATION DEPARTMENT

19

Dated Peshawar the 11 Oct., 2011.


NOTIFICATION

NO.SO.(E)IRR:/4-5/74: 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. Riaz 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. Naseerul Din
  - 14 Mr. Sherin Jan
  - 15 Mr. Hazrat Hassan
- 

(ii) 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 15/10/2011



IN THE PESHAWAR HIGH COURT PESHAWAR.

W.P. No. 3388 /2012

Asif Khan and others.....Petitioners

Versus

The Govt. of KPK and others.....Respondents

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3.	Schedule		Rj/2	9
4.	Letter Public Service Commission	02.01.2012	Rj/3	10-11
5.	Misc		Rj/4	12-

Through

Petitioners

Khaled Rahman  
Advocate, Peshawar

9-B, Hargon Mansion,  
Khyber Bazar, Peshawar.  
Cell # 0345-9337312

Dated: \_\_\_\_\_ / 03/ 2013

**IN THE PESHAWAR HIGH COURT PESHAWAR.****W.P. No. 3388 /2012**

Asif Khan and others.....Petitioners

Versus

The Govt. of KPK and others.....Respondents

---

**REJOINDER ON BEHALF OF PETITIONER IN  
RESPONSE TO PARA WISE COMMENTS FILED  
BY RESPONDENTS NO.1&2.**

---

Respectfully Sheweth,

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

- I. That valuable rights of petitioner have been impinged due to the acts and actions of answering Respondents which have been challenged by petitioners under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, therefore, petitioners have got a strong cause of action and for that matter locus standi to file the instant writ petition.
- II. The answering Respondents are applying the amended rules retrospectively without any legal sanction to the prejudice of Petitioners which is not

legally permissible.

- III. That the issue involved has never been raised earlier, therefore, the question of its decision is next to impossible.
- IV. That it is a settled and trite law that rules in the status of subordinate legislation, if affecting the existing rights, can have no retrospective operation.
- V. That it is also a settled legal principle that promotion is beyond the jurisdiction of Service Tribunal, therefore, the jurisdiction of this Hon'ble Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is not barred.
- VI-VII. That inspite of eligibility, seniority, the recommendation of a duly constituted Promotion Committee and availability of the vacancies, the Petitioners have been promoted to the disputed posts on acting charge basis instead of regular promotion and now due to malafide reasons, by application of the amended rules retrospectively, Petitioners are going to be deprived of their promotions on regular basis, which is illegal, therefore, not sustainable under the law.
- VIII. That Petitioners are entitled for regular promotion under the law and estoppel does not operate against the law.

- IX. That since now instead of giving regular promotions to Petitioner, they are being deprived by ignoring them from regular promotion, therefore, being aggrieved of the acts and actions of the Respondents they have approached this Hon'ble Court for the redressal of their grievances.
- X. That all necessary and proper parties have been arrayed as Respondents in the instant writ petition, hence the question of mis-joinder and non-joinder is misconceived.

**Facts:**

1. Being admitted needs no reply.
2. Misconceived hence denied. As a matter of fact the Representation of the Petitioners received no serious response from the answering Respondents inas much as the quota was abridged inspite of the request of Petitioners.
3. Incorrect. The Petitioners were appointed by way of promotion upon the recommendations of the Departmental Promotion Committee on the basis of their seniority and eligibility. Moreover, there are as many as 27 vacancies are lying vacant as would be evident from the Notification dated 12.10.2012 (*Annex:-Rj/1*) and the Schedule (*Annex:-Rj/2*). As per the Schedule as many as 20 junior most Sub-Engineers are holding BPS-17 in own pay scale since long including the added Respondents while 07 Assistant Engineers (BPS-

17) have been promoted as XENs in their own pay scales. It is pertinent to mention here that the answering Respondents have appointed 13 Assistant Engineers (BPS-17) on the recommendation of Public Service Commission against 2 due vacancies in the quota of initial recruitment as would be evident from the letter dated 02.01.2012 (*Annex:-Rj/3*).

4. Incorrect hence vehemently denied. Twice the quota of Petitioners was taxed in two successive amendments in the rules within a short span of one year. Firstly it was reduced from 20% to 15% and then from 15% to 12% thereby adversely affecting the rights of graduate Sub-Engineers. Previously though senior Graduate Sub-Engineers were promoted to the post of Assistant Engineer (BPS-17) when the quota of Graduates Sub-Engineers was 20% but those who were promoted were either Mechanical Graduate Sub-Engineers or in-service Graduate Sub-Engineers. Since the policy of favoritism was adopted, therefore, Petitioners and others Pre-Service Graduate Sub-Engineers were bitterly discriminated in violation of the legal mandate.
5. Incorrect hence vehemently denied. The B.Tech degree holders whose promotions have been processed, have acquired the graduate qualifications in the year 2010 and 2011 while Petitioners have acquired the graduation in the year 1988, 1989 and 1992. The new amendment is a malafide amendment only for the benefit of the



added Respondents because other senior B.Tech degree holders have also been thrown back. Numerous vacancies are available and the quota of Petitioners has not yet been exhausted until Petitioners' regular promotions are made.

6. Incorrect. The instant matter does not fall within the jurisdiction of the Hon'ble Tribunal.

**Grounds: -**

- A. Incorrect. Petitioners have been treated in violation of the law, therefore, have approached the Hon'ble Court for justice.
- B. Incorrect. Petitioners were promoted upon the recommendations of the properly constituted Departmental Promotion Committee on the basis of their eligibility, seniority and fitness and are entitled for regular promotion. Numerous vacancies are available and it is wrong to assume that the vacancies held by the Petitioners are temporary. The earlier promotions granted to the Graduate Sub-Engineers under the previous rules cannot be counted towards Petitioners.
- C. Incorrect. Successive amendments within a short span of time reflect considerations adverse to the rights of Petitioners and public interest. The quota of direct Graduate Sub-Engineers has been repeatedly sliced off thereby adversely affecting their chances of promotion. Petitioners have served

for long without any substantial advancement in their service lines.

D-E. Incorrect hence denied.

It is therefore, humbly prayed that the Parawise comments of Respondents No.1&2 may kindly be rejected and petition as prayed for may graciously be accepted.

  
Petitioners

Through

  
Khaled Rahman,  
Advocate, Peshawar

Dated: \_\_\_\_\_ / 03/ 2013

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

In Re: W.P No.3338 of 2012

Asif and others:.....Petitioners

**VERSUS**

Govt of KPK and others:.....Respondents

**AFFIDAVIT**

I, Shaukat Badshah, Assistant Director, Baizi Irrigation Project, Mardan (Petitioner No.2), do hereby solemnly affirm and declare on oath that the contents of the accompanying Rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

Identified by:

*Khaled Rehman*  
Advocate, Peshawar

*Shaukat Badshah*  
DEPONENT

16102-6616622-7

No. 9519-  
Certified that the above was verified on solemnly affirmation before me in office, this 13th day of March 2013 by Shaukat Badshah s/o Nawaz Badshah who was identified by Khaled Rehman Adv  
Who is personally known to me:  
*[Signature]* 13/3/2013  
Oath Commissioner  
Peshawar High Court, Peshawar.

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3- Upon their promotion on regular basis (BS-17), the competent authority is further pleased to order the transfer / posting of the following officers of Irrigation Department with immediate effect, in the public interest: -

Sr. No.	Name of the Officer	From	To	Remarks
1	Mr Shaukat Ali	Assistant Director (OPS), Irrigation Project, Mardan	Bazai Assistant Director, Irrigation Project, Mardan	
2	Mr. Riaz Ahmad	Sub Engineer, Kohat Irrigation Division Kohat	Sub Divisional Officer, Project Irrigation Division, Kohat.	On promotion he is allowed to continue against his present posting.
3	Mr. Habib Ullah	Sub Divisional Officer (OPS), Dargai Irrigation Sub Division, Dargai	Sub Divisional Officer, Dargai Irrigation Sub Division, Dargai	Against the vacant post.
4	Mr. Hidayat Ullah	Sub Divisional Officer (OPS), Flood Sub Division No. I, D. I, Khan	Sub Divisional Officer, Flood Sub Division No. I, D. I, Khan	
5	Mr. Faizur Rehman	Sub Divisional Officer (OPS), Chitral Irrigation Sub Division Chitral	Sub Divisional Officer, Chitral Irrigation Sub Division Chitral	
6	Mr. Waheed ur Rehman	Sub Divisional Officer (OPS), Warsak Gravity Canal Sub Division, Peshawar.	Sub Divisional Officer, Warsak Gravity Canal Sub Division, Peshawar.	
7	Mr. Fazl e Khuda	Sub Divisional Officer (OPS), Dir Irrigation Sub Division at Chakdara, Dir (Lower).	Sub Divisional Officer, Dir Irrigation Sub Division at Chakdara, Dir (Lower).	
8	Mr. Hassan Zulqarnain Haider	Sub Divisional Officer (OPS), Pharpur Irrigation Sub Division D. I. Khan.	Sub Divisional Officer, Pharpur Irrigation Sub Division D. I. Khan.	On their promotion in BS-17, they are allowed to continue their present postings.
9	Mr. Alamzeb	Sub Divisional Officer (OPS), Mardan Irrigation Sub Division Mardan.	Sub Divisional Officer, Mardan Irrigation Sub Division Mardan.	
10	Mr. Tahir Said	Sub Divisional Officer (OPS), Dir Irrigation Sub Division, Dir (Upper).	Sub Divisional Officer, Dir Irrigation Sub Division, Dir (Upper).	
11	Mr. Nasrullah	Sub Divisional Officer (OPS), Workshop Sub Division, Peshawar.	Sub Divisional Officer, Workshop Sub Division, Peshawar.	
12	Mr Jamshid Ahmad Races	Sub Divisional Officer (OPS), Drainage Sub Division D. I. Khan.	Sub Divisional Officer, Drainage Sub Division D. I. Khan.	
13	Mr. Naseerud Din	Sub Engineer, Swabi Irrigation Division, Swabi.	Assistant Director (Design), Office of the Chief Engineer (North), Irrigation Department.	Against the vacant post.
14	Mr Shenn Jan	Assistant Director (OPS), Leave Reserve Peshawar Canal Division, Peshawar	Assistant Director, Leave Reserve Peshawar Canal Division, Peshawar	On his promotion in BS-17, the officer is allowed to continue as Assistant Director, FDRD
	Mr. Hazrat Hassan	Sub Engineer, Tube Well Irrigation Division, Peshawar.	Assistant Director (Design), Office of the Chief Engineer (South), Irrigation Department.	Against the vacant post.

NB: be Promotion of the above named diploma holder Sub Engineers will subject to the final outcome of the court proceedings.

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA IRRIGATION DEPARTMENT

**1979 RULES**

Direct Recruitment  
70 %

Graduate Sub Engineer  
10 %

Diploma Holder  
Sub Engineer  
20 %

**RULES 1994 1<sup>ST</sup> AMENDMENT**

70 %

In Service Graduate Sub Engineer  
5 %

Pre-service Graduates Sub Engineers  
5 %

20 %

**RULES 1999 2<sup>nd</sup> AMENDMENT**

Direct Recruitment  
65 %

Graduate in Service Sub Engineer  
10 %

Graduate Pre-Service Sub Engineer  
10 %

Diploma Holder  
15 %

**2011 RULES**

65 %  
Initial Recruitment

10 %  
Graduate in Service Sub Engineer

5%  
Graduate Pre Service Sub Engineer

20 %  
Diploma Holders Sub Engineer

**2012 RULES**

65 %  
Initial Recruitment

12 %  
Graduate in/ Pre-Service Sub Engineer

8%  
B.Tech (Hon) Sub Engineer

15 %  
Diploma Holder Sub Engineer



BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

C.M.No. 6-P/2013

In

W.P.No. 3388/2012

Mr. Asif Khan,

Sub Divisional Officer (Irrigation)

Shahbaz Ghari Mardan & 02 others.....Petitioners

Versus


Govt. of K.P.K., through Chief Secretary Civil Secretariat,  
Peshawar and 03 others.....Respondents

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5	Copy of the order dated 27.11.2012 of this Honourable Court	'C'	15-16

Petitioner

Through

  
Ghulam Nabi  
Advocate, Peshawar

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

C.M.No. 6-P/2013

In

W.P.No. 3388/2012

Mr. Asif Khan,

Sub Divisional Officer (Irrigation)

Shahbaz Ghari Mardan & 02 others.....Petitioners

Versus

Govt. of K.P.K., through Chief Secretary Civil Secretariat,

Peshawar and 03 others.....Respondents

Application for impleadment as respondents

in the above noted merit list

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Respectfully Sheweth:

1. That the petitioners are serving in the different posts in the respondent department in (BPS-11 to BPS-16) as mentioned against their names at the bottom of the appellant.
2. That the petitioners are having their education as Bachelor of Technology (Honours) from the recognized Universities.
3. That in the previous rules promulgated on 17.02.2011 the quota for the different categories of the engineer was fixed as under:

- a) 65% by initial recruitment
  - b) 10% by promotion on the basis of seniority-cum-fitness from amongst the Sub Engineers who have acquired during service degree in Civil or Mechanical Engineering.
  - c) 5% by promotion on basis of seniority-cum-fitness from amongst the Sub Engineers who joined service as degree holder in Civil/Mechanical Engineering.
  - d) 20% by promotion on the basis of seniority-cum-fitness from amongst the Sub Engineers who hold a diploma of Civil, Mechanical, Electrical or Auto Technology and have passed Departmental grade 'A' examination with 10 years service.
4. That the qualification of the applicants is declared equivalent to the Bachelor in Engineering Degree by the Higher Education Commission (HEC), however no quota whatsoever has been fixed for the petitioners in the above said criteria of promotion and they were to be considered simply diploma holders inspite of the fact that they have obtained their degrees after studying 04 years in the recognized universities after getting the diploma certificate from the technical colleges.



5. That in this connection the petitioners have been struggling throughout for their lawful right to get their own reasonable share within the above said quota of the promotion to the Assistant Engineer (BPS-17), however their legal and lawful struggle become successful when the respondent department issued a notification on 25<sup>th</sup> June, 2012, thereby bringing some amendments in the above said method of promotion.

6. That in the newly promulgated amendments

- a) 12% quota of the promotion with regard to the Sub Engineers having degrees in Civil Engineers or Mechanical Engineers and have passed departmental Grade -'B' & 'A' examination with 05 years experience for pre and in service employees
- b) 8% quota on the basis of seniority-cum-fitness from amongst the Sub Engineers having degree in B-Tech (Honours) and have passed Departmental Grade-B & 'A' examination with 05 years experience as such.
- c) 15% by promotion on the basis of seniority-cum-fitness from amongst the Sub-Engineers to hold a diploma of Associate Engineers in Civil, Mechanical, Electrical or Auto Technology

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and have passed Departmental Grade-'B' & 'A' examination with 05 years service as such.

7. That in this manner the quota for the promotion was distributed amongst all the categories of the Sub Engineers in a justified and proper manner.
8. That in the above said Writ Petition the petitioners have challenged the above said rules promulgated on 25<sup>th</sup> June, 2012, whereby the deprived applicants have been given their right of share in the promotion quota. to the post of Assistant Engineer
9. That in this connection the appeals some of the applicants whom have approached to the Service Tribunal for the above said grievance have also been disposed-of in the light of the above noted amended notification. (Copy of the said judgment of the Service Tribunal is attached herewith as Annexure-'A').
10. That non amongst the applicant have been made a party in the above said Writ Petition inspite of the fact that if the Writ Petition is accepted the future of the applicants and their service structure will be adversely affected.
11. That the applicants therefore are necessary party to be impleaded as respondents in the above noted Writ

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Petition otherwise they ~~will~~<sup>will not</sup> be able to explain their view point before this Honourable Court and they will be in that manner condemned unheard if the petition is to be decided without impleading them as respondents.

12. That it will also be pertinent to bring into the kind notice of this Honourable Court that the same grievance has been taken by some of the employees to the service tribunal and the same rules have been challenged over there, whereas some of the other employees been on the same footings have brought Writ Petitions before this Honourable Court. (Copy of the appeal pending before the Service Tribunal is attached herewith as Annexure-'B').

13. That in this connection a Writ Petition No. 2206/2012 submitted in this Honourable Court titled as Khurshid Ahmad Sub Engineer Hazra Irrigation Versus Govt. of K.P.K., through Chief Secretary Civil Secretariat, Peshawar has already been disposed-off by this Honourable Court with the directions to approach the proper forum i.e. Service Tribunal. (Copy of the order dated 27.11.2012 of this Honourable Court is attached herewith as Annexure-'C').

14. That in this connection the process of DPC has already been completed and the notification of the promotion has also been approved by the Competent Authority,

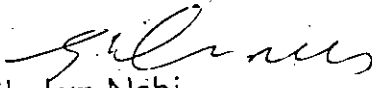
however because of the interim relief order passed by this Honourable Court the promotion of all the appellants have been stopped.

It is, therefore, prayed that on acceptance of this application this Honourable Court may please be kind enough to implead the applicants as respondents in the above noted Writ Petitions to meet the ends of the justice.

#### Applicants

- 1 Amanullah  
Sub Divisional Officer (OPS)  
Swat Irrigation Division, Swat.
- 2 Niaz Badshah  
Sub Divisional Officer (OPS)  
Flood Division Warsak Road, Peshawar
- 3 Saifullah  
Sub Divisional Officer (OPS)  
Kabal River Kanal Warsak Road,  
Peshawar

Through

  
Ghulam Nabi  
Advocate, Peshawar

7

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

C.M.No. 6-P/2013

In

W.P.No. 3388/2012

Mr. Asif Khan,  
Sub Divisional Officer (Irrigation)  
Shahbaz Ghari Mardan & 02 others.....Petitioners


Versus

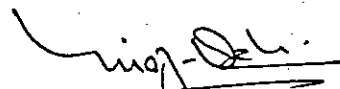
Govt. of K.P.K., through Chief Secretary Civil Secretariat,  
Peshawar and 03 others.....Respondents

AFFIDAVIT


I, Niaz Badshah S/o Saeed Badshah Sub Divisional Officer (OPS) Flood Division Warsak Road, Peshawar do hereby solemnly affirm and declare on oath that contents of the accompanying Application for impleadment are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Honourable Court.

Identified by:

  
Ghulam Nabi  
Advocate, Peshawar

  
Dependent

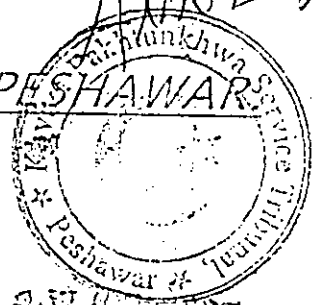
11201-9775828-9

No. 6683  
Certified that I have verified on solemn affirmation before me in office, this 2nd day of January 2013 by Saeed Badshah s/o Saeed Badshah Peshawar who was identified by Ghulam Nabi who is personally known to me:  
  
Oath Commissioner  
Peshawar High Court, Peshawar

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A  
ANNEX

BEFORE KPK SERVICE TRIBUNAL, PESHAWAR



Service Appeal No: 756 / 2011

NIAZ BADSHAH

Sub Engineer

Peshawar Canals Division, Peshawar.

..... APPELLANT

VERSUS

1. GOVERNMENT OF K.P.K

Through it's Chief Secretary, Peshawar.

Secretary,

Irrigations Department, KPK, Peshawar.

..... RESPONDENTS

APPEAL UNDER SECTION 4 OF KPK SERVICE TRIBUNAL ACT, 1974  
FOR PROMOTION OF THE APPELLANT TO THE POST OF ASSISTANT  
ENGINEER IN BPS-17

Prayer: That on acceptance of this Service Appeal, the Respondents be directed to consider the Appellant for Promotion to the Post of Assistant Engineer in BPS-17 as per law and the rules, with such other relief as may deem fit in the circumstances of the case may also be granted.

Respectfully Sheweth,

Short facts, giving rise to present Service Appeal, are as under:

1. That, Appellant is presently posted as Sub Engineer since 12.12.1990 upon the recommendations of the Public Service Commission.

ATTESTED  
*[Signature]*

ATTESTED

EXAMINER

Mod 10-207  
27/1/11

APPEAL NO. 75E/2011

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19.7.2012

Appellant with counsel and Mr. Arshad Alam, with Hidullah Shah, Admn. Officer for the respondents present. Representative of the respondent department submitted copies of notification dated 25.6.2012, according to which grievances of the appellant have been redressed. Copy handed over to counsel for the appellant. However, counsel for the appellant reiterated that the aforementioned notification should benefit the appellant with retrospective effect as per judgments reported in PLD 2005 Peshawar page-5, and PLD 1999 Supreme Court 1026. It is hoped that the case of the appellant be adhered to in view of the notification No. SOE/IRRI/23-5/2010-11, dated 25.6.2012 in due course of time. In view of the above the appeal stand disposed of.

ANNOUNCED  
19.7.2012.

Certified to be true copy

MEMBER

MEMBER

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Application 24-7-2012  
 Number of Words 500  
 Copying Fee 6-00  
 Urgent 2-00  
 Total 8-00  
 Name of Copy \_\_\_\_\_  
 Date of Completion of Copy 24-7-2012  
 Date of Delivery of Copy 24-7-2012

**ATTESTED**

*[Handwritten signature]*

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL, PESHAWAR

Service Appeal No. 1175 / 2012

"B"  
ANNEX

Muhammad Javed Sub Engineer B-11 Assistant Director  
(OPS) Small Dam Division Peshawar.

(Appellant)

VERSUS

1. Govt of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa Civil Secretariat Peshawar.
2. Secretary to Govt of Khyber Pakhtunkhwa Irrigation Department Civil Secretariat Peshawar.
3. Secretary to Govt of Khyber Pakhtunkhwa Finance Department Civil Secretariat Peshawar.
4. Chief Engineer (South) Irrigation Department Khyber Pakhtunkhwa Peshawar.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the Notification No. SOE/ IRR/2-3-5-2010-11 dated 25.6.2012 whereby amendment has been introduced curtailing the promotion quota of the appellant to 15 % against the existing quota of 20% thus seriously prejudicing and affecting the promotions rights of the appellant against which the departmental appeal dated / /2012 was not replied.

Prayer in Appeal: -

On acceptance of this service appeal Notification No. SOE/ IRR/2-3-5-2010-11 dated 25.6.2012 whereby amendment has been introduced curtailing the promotion quota of the appellant to 15 % against the existing quota of 20% may please be set aside and to allow regular promotion to the appellant & to place his case before the Departmental promotion committee for his confirmation / regular promotion against the post of Assistant Engineer BPS-17, similarly to declare the amendment introduced in the recruitment rules vide

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Notification No. SOE/ IRR/2-3-5-2010-11 dated 25.6.2012 are inapplicable to the case of the appellant and has no retrospective effect, similarly the respondents are legally not competent to process the promotion cases on such rules to the detriment of the rights of the petitioner or any other remedy deemed proper may also be allowed.

Respectfully Submitted:

1. That the appellant is serving in the Irrigation Department for the last about 20 years against the post of Sub-Engineer BPS-11.
2. That the appellant was initially appointed as Sub-Engineer (BPS-11), having the diploma of Associate Engineering a pre-requisite for this post.
3. That throughout the appellant being diploma holder enjoyed 20 % quota for promotion to the post of Assistant Engineer (BPS-17). This was the position in the Recruitment Rules, 1979 and thereafter, the same position remained in Recruitment Rules notified vide notification dated 17.2.2011. (Copies of the Rules are attached as Annexure A & B)
4. That there are large number of posts of Diploma Holder Sub-Engineer B-11 and limited quota in promotion, Sub-Engineers having more than 20 years of service are still in BPS-11, however in view of the availabilities of posts the appellant were allowed the posts of Assistant Engineer BPS-17 either on acting Charge basis or on own pay scale.
5. That after years of waiting when the name of the appellant came in the upper portions of the Seniority list and in the promotion zone, that all of a sudden the respondents notified the amended Rules vide notification No. SOE/ IRR/2-3-5-2010-11 dated 25.6.2012, curtailing the promotion quota of the appellant (diploma holder Sub-Engineer) to 15 % against the existing quota of 20% thus seriously prejudicing and affecting the promotions rights of the appellant. (Copies of the notification dated 25.6.2012 is attached as Annexure C)
6. That the appellant being aggrieved of the amended rules, submitted his representation dated 2-7-2012 to the respondent No. 1 against the rules amended to the detriments of the rights of the appellant, however it was not replied despite the lapse of 90

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days. (Copy of the departmental appeal is attached as Annexure D).

- 7. That the appellant prior to promulgation of these rules submitted representation against the proposed rules, however it was not considered while notifying the rules, similarly, the respondents proposed to make regular promotion excluding the case of the appellant on the ground that due to curtailing the quota the appellant will not be considered, while the case of the appellant is also that the amended rules have no retrospective effect and that his promotion can neither be withdrawn or rescinded.
- 8. That the above acts and omission of the respondents in not allowing regular promotion and applying the amended rules to the case of the appellant, and processing the promotion cases depriving the appellant of his due rights are illegal, unlawful in violation of the rules, the appellant along with others affectees initially filed writ petition No. 2098/2012 for restraining the respondents from processing the promotion cases till the finalization of the fate of his departmental appeal, the Honourable Peshawar High Court vide judgment and order dated 8.8.2012 directed the respondents to decide the representation of the appellant and till than the promotion cases shall not be finalized. (Copy of the judgment and order is attached as Annexure E):

Grounds of appeal:

- A. That the acts and omission of the respondents in notifying the amended rules is illegal, in violation of law, without lawful authority and against the rights of the Appellant.
- B. That the Appellant has not treated been in accordance with law and he remained throughout deprived of his promotion due to in action / slackness of the respondents, thus they are bound to follow the law and to act in accordance with law.
- C. That this Honourable court will appreciate that the rules amended were unreasonable, because while calculating the total quota of 35 % for promotion to the post of Assistant Engineer BPS-17 among the Sub- Engineer has not been kept in view, because the total strength of the In-Service Engineering Graduates is about 13, while they are allowed 12 % quota in promotion, similarly those Sub- Engineer who are holding the qualification of B- Tech Honour were allowed 8 % as against the total strength of 10, while the appellant (Diploma Holder Sub- Engineer) are about 130 in number, while their quota has been curtailed from 20 to 15

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%. Due to this unreasonable award of quota the appellant is going to be deprived of his rights as to promotion created after waiting for a long period.

- D. That the degree holders firstly took the benefit of their B. Sc Engineering at the time of initial recruitment in the Public Service Commission and then on the same degree they are allowed promotion, which amounts to double benefits on the same qualification, thus the rules are to that extent liable to be set at naught.
- E. That the appellant having enjoyed seniority in cadre of Diploma holder sub Engineer, hence when came in the promotion zone, the rules were amended to curtail the quota, vested rights having been created in favour of the appellant, the same can not be denied, the rules so amended have got no retrospective effect to snatch the accrued rights of the appellant. (Copy of the Seniority List is attached as annexure F)
- F. That the amended rules is against the service structure of the Sub- Engineer because it amounts to creating cadre with in the cadre without hearing the stack holder, thus the same is against the principles of natural justice as well.
- G. That by applying the amended rules and allowing promotion on the basis of simple higher qualification amount to out of turn promotion, the same is not permissible and always deprecated by the superior courts.
- H. That the Appellant is fit and eligible for the Assistant Engineer (BPS-17) therefore failure on the part of the respondents to follow the law and make promotion as per laid down criteria is seriously affecting the rights of the appellant.
- I. That the Appellant seeks the permission of this Honourable Court to rely on additional grounds at the hearing of this writ petition.

It is therefore prayed that On acceptance of this service appeal Notification No. SOE/ IRR/2-3-5-2010-11 dated 25.6.2012 whereby amendment has been introduced curtailing the promotion quota of the appellant to 15 % against the existing quota of 20%

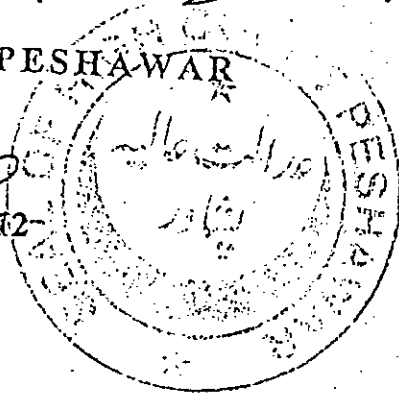
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ANNEX 15

IN THE PESHAWAR HIGH COURT PESHAWAR

WRIT PETITION No. 2206/2012



Mr. Khurshid Ahmad,  
Sub-Engineer, Hazara Irrigation Division,  
Abbottabad.....Petitioner.

Versus

1. The Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. The Secretary, Govt. of Khyber Pakhtunkhwa, Irrigation Department, Civil Secretariat, Peshawar.
3. The Secretary, Govt. of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar.
4. The Chief Engineer (O&M) Irrigation Department, Warsak Road, Kababiyar, Peshawar...Respondents

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

Respectfully Sheweth,

Facts giving rise to the present writ petition are as under:-

1. That the Govt. of Pakistan somewhere in early 1970s, on the insistence of Polytechnic Diploma Holders for providing them the opportunity of higher education, took a decision for initiating Degree Awarding Programs for Polytechnic

ATTESTED  
ENGINEER  
Peshawar High Court

ATTESTED

5 JUL 2012

PESHAWAR HIGH COURT, PESHAWAR.

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ORDER SHEET

Date of Order or Proceedings.	Order or other Proceedings with Signature of Judge or that of parties or counsel where necessary.
1	2
27.11.2012	<p><u>W.P NO-2206-P/2012 with C.M NO-991-P/2012 with I.R.</u>  <u>Present:</u> Mr. Khalid Rehman, Advocate, for petitioner.            Mr. Naveed Akhtar, AAG, for official respondents.            Mr. Saadullah Khan Marwat, Advocate, for private respondents.</p> <p align="center">* * *</p> <p><u>MIAN FASIH-UL-MULK, J.</u> After arguing this case at some length, learned counsel for petitioner when came to know that on the day of filing comments i.e 11.9.2012 the appellate departmental authority has dismissed the representation filed by the petitioner on the same date. Since the final departmental authority has passed the order on representation of the petitioner, which was communicated to him today, therefore, he would not press this petition and requests for withdrawal of the same in order to enable him to approach the Service Tribunal with a service appeal. The learned AAG is directed to provide the copy of the decision of the Appellate Departmental Authority to the petitioner today, so that he may approach the service Tribunal well within time.</p> <p align="center">With these observations, this writ petition along with interim relief is dismissed as withdrawn.</p> <p align="right">sd/ Mian Fasih ul Mulk            J</p> <p align="right">sd/ Urshad Qaiser            J</p>

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 office  
 28/11

CERTIFIED TO BE TRUE COPY

*SP* 28-11-12 sd/ Urshad Qaiser  
 J