

BEFORE THE WORTHY SERVICES TRIBUNAL KPK, PESHAWAR

Khyber Pakhtukhwa
Service Tribunal

Service Appeal No.6330/2020

Diary No. 12500

Dated 2/5/24

Syed Atiq-Ur-RehmanV/S.....Govt of KPK & Others

WRITTEN ARGUMENTS ON BEHALF OF THE APPELLANT

RESPECTFULLY SHEWETH:-

The appellant submit as under.

- 1. That** the appellant is a civil servant & has served the C&W department for about 32 years who initially joined the same department as Sub-Engineer in 1988. **The copy of Appointment Letter is available at Page-12 of the Main Appeal.**
- 2. That** thereafter the appellant got study leave from the department & with the permission of the department got admission in B.Sc in Civil Engineering & as such completed the same in 2002 & obtained the Degree in B.Sc Civil Engineering from CECOS University Peshawar & verification of Degree by the department. **Copy of Study Leave available at Page-16 while Copy of the Degree is available at Page-13.**
- 3. That** thereafter the appellant while got Certificate of Registration from the Pakistan Engineering Council (PEC) under the Pakistan Engineering Council Act, on March 8, 2006 & submitted the same to the department which is duly verified by the department & further Register Engineer to Professional Engineer 15/01/2008. **Copy of Certificate of Registration is available at Page-15.**
- 4. That** after obtaining the Engineering Degree the appellant has become in-service Graduate Engineer / Engineer & as such the appellant was entitled to be promoted from BPS-11 to BPS-17 from the year 2002 onward but in-spite of that the appellant was not given promotion but the appellant was given the post of Sub-Divisional Officer (SDO) in Own Pay Scale (OPS) in the year 2007 who served the same till December 2019 & also the appellant was transferred as SDO from one station to the

other station on the same post. **Copy of his Transfer on the Same Post is available in Additional documents which is Submitted Subsequently & the same is available at Page-19, 20, 21, 22, 23 & onwards.**

5. **That** thereafter the appellant was demoted from the post of SDO & was brought to the post of Sub-Engineer BPS-16 vide Order dated: 24/12/2019 & Engineer / Graduate Engineer were deleted only Sub-Engineer before one & half month of the retirement. **Copy of which is available at Page-19 of the Appeal.**
6. **That** against the above order the appellant filed departmental appeal on 02/01/2020 but the same was not decided as such the appellant impugned the same before the Honorable High Court Peshawar vide Writ Petition No. 1659-P/2020, which was disposed of vide Order dated: 04/03/2020 & with the direction to approach the proper forum. **Copy of Appeal is available 41 while the Copy of Judgment of the Honorable Peshawar High Court Peshawar is available at Page-39 of the main Appeal.**
7. **That** the respondents did not reply the departmental appeal & remained mum on the same as such the appellant filed instant appeal on 01/06/2020 against the original order as well as against the appellate order, if any, passed later on.
8. **That** it is pertinent to mention here that previously the promotion policy which is available at **Page-23** of the main appeal dated 16/12/2011, as per Para-A of the said policy, 20% was given to the to the Sub-Engineer who hold the diploma in the Civil, or Electrical Engineering & who passed the departmental professional examination with 10 years experience, as per Para-B 8% was given on the basis of Seniority-Cum-Fitness to the Sub-Engineer who possess the degree of BS.c Engineering & according to Para-C 7% quota was given to Sub-Engineer who acquired the Engineering Degree during service & as per Seniority List the appellant being the senior most was entitle to be promoted to the said post because the appellant was at Serial No.2 of the seniority list. **Copy of Promotion Policy dated:16/12/2011 is available at Page-23 of the Main Appeal while Copy**

of Seniority List of the appellant is available at Page-09 of the Additional Documents, the Seniority List pertains to the year 2014 according to which the appellant was at Serial No.2 of the said Seniority List & as such entitle to be promoted to BPS-17 being the most Senior Officer of the department Serial No.1 but Merit List was not issued up to 2011.

9. **That** it is also pertinent to mention here that when the department was established originally the total sanctioned post was 170 & the promotion was to be made in accordance with quota system & policy of the year 2011 is available at **Page-23** & according to this policy the appellant being the most senior most officer was to be entitled to the promotion as there was 7% promotion by Seniority-Cum-Fitness from among the Sub-Engineer who acquired the degree of BE, BS.c of Sub-Engineer during service as the appellant acquired the BS.c Engineering degree in Civil Engineers during service as such he was also entitle for the said promotion in the quota of 7% as per Para-C of **Page-23** of the Main Appeal but in-spite of that appellant was not given the promotion.
10. **That** it is pertinent to mention here that thereafter the said promotion policy was amended & the amended copy is available at **Page-24** of the Main Appeal which is dated: 14/10/2014 according to which amended was made in Para-C according to which 3.5% promotion was given on Seniority-Cum-Fitness from among the Sub-Engineer having Engineering Degree acquired during service which is Para-D while according to Para-E 3.5% quota promotion was given on Seniority-Cum-Fitness among the Sub-Engineer having Degree of B-Tech Honors the **Copy of which is available at Page-24** but keeping in view the total number of seats which is available at **Page-18** of the Additional Documents which are sanctioned posts & the number of which are 170 according to which the present working direct recruitment is 97 while the direct graduate, Sub-Engineers are 14 in-service graduate Sub-Engineers are 10, B-Tech Sub-Engineers presently were nil while Diploma Holder Sub-Engineers was 23.
11. **That** the amended policy has not given retrospective effect as such it shall deem to

be prospective in nature & the number of vacancies available in the year 2014 when this policy came were 17 as such 17 posts were to be divided among the graduate Sub-Engineers & among the Diploma Holder Sub-Engineers & if the same would have been divided then 50% must go to the graduate Sub-Engineers & 50% must go to the Diploma Holder Sub-Engineers according to which at least 6/7 posts must go to the graduate Sub-Engineers who got Engineering degree during service & in that case as the appellant was at Serial No.2 of the Seniority List should have been promoted to BPS-17 in the year 2014 but in-spite of that the same was no done in accordance with law by the respondents & the respondents had given all the 17 posts to the Diploma Holder Sub-Engineers & the Diploma Holder Sub-Engineers who were junior to the appellant were promoted from the BPS-11 to BPS-17 which is available at **Page-18** of the Additional Documents & keeping in view the said policy 17 Diploma Holder Sub-Engineers were promoted to BPS-17 illegally & unlawfully Copies of which is available at **Page-15** & **Page17** of the Additional Documents which clearly speaks that they have been promoted against the law & rules as the respondents have given these posts to the Diploma Holder Sub-Engineers from the very initial establishment of the department which is not the theme of the policy of 2014 as no retrospective effect is given to the quota policy in the shape of amended policy enforced in the year 2014 which is available at **Page-24** of the Main Appeal.

12. That it is pertinent to mention here that the Honorable Supreme Court of Pakistan in the CP No.76-K of 2015 has held that all those Sub-Engineers who have not got Engineering Degree shall not be allowed to work as Sub-Engineer & they shall not be given any promotion as they are not the Registered Engineer under the relevant Act of Pakistan Engineering Council as such the act of the respondents by promoting the B-Tech or the Diploma Holder Sub-Engineer vide the impugned order is against the law & facts & liable to be struck down & in this respect the judgment of the Honorable Supreme Court which is duly circulated to all the department is available at **Page-26** of the Main Appeal.

13. That all these order have been impugned by the appellant through the instant appeal & the appellant is entitle to be promoted from the year 2002 when the

appellant got Engineering Degree in Civil Engineering & his cadre was also change from the Diploma Holder Engineer to Graduate Engineer & further more as the Honorable Supreme Court has held that the B-Tech of Diploma Holder Engineer shall not be given any promotion neither they be allowed to work but in-spite of that the respondents have given promotion to them to BPS-17 & they have been allowed to work as SDO in the department & seat was given the initial of the department on merit list 2014 in the utter disregard of the judgment of the Honorable Supreme Court mentioned above.

14. **That** keeping in view the above factual as well as legal aspect of the appeal all the acts of the respondents are against the law & facts which need to be turned down & the judgments of the Honorable Supreme Court be implemented in letter & spirit & the quota policy of the year 2014 through which the quota of the graduate Sub-Engineers have been reduced from 7% to 3.5% shall also be declared illegal, against the law & facts & the respondents be directed to give promotion to the appellant from the year 2002 when the appellant got Engineering Degree in Civil Engineering & also Registered Engineer / Professional Engineer with the Pakistan Engineering Council.

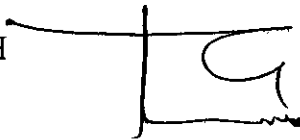
It is therefore most humbly prayed that the appeal the appellant may very kindly be allowed as prayed for in the heading of the appeal.

Dated: 2 / 5 / 2024


(Appellant)

Eng. Atiq-Ur-Rehman

THROUGH



SAIFULLAH KHALIL (SR)


ZEESHAN KHALIL

Adv's, High Court Peshawar