

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. 935/2024

Amjad Khan

Appellant

VERSUS

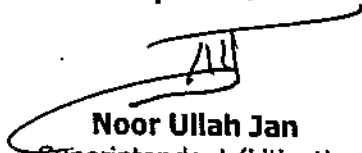
Chief Secretary, Khyber Pakhtunkhwa & others

Respondents

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Deponent


Noor Ullah Jan
Superintendent (Litigation)
Irrigation Department

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO. 935/2024

Amjad Khan

Appellant

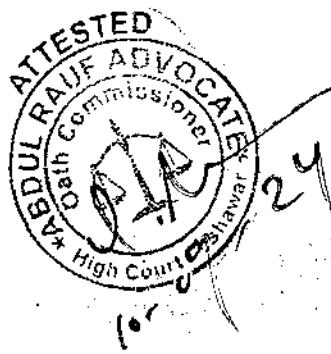
VERSUS

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

Respondents

AFFIDAVIT

I do hereby affirm and declare on oath that the contents of para-wise comments are true and correct to the best of my knowledge and belief that nothing has been kept concealed from this Hon'ble Tribunal. It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense/ struck off/ cost.




(Chief Secretary, Khyber Pakhtunkhwa) /

Chairman

**Provincial Selection Board,
Govt. of Khyber Pakhtunkhwa.**

Respondent No. 01 & 04

CHIEF SECRETARY

Govt. of Khyber Pakhtunkhwa

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA

Service Appeal No. 935/2024

Amjad Khan.....Appellant

Versus

Chief Secretary, Khyber Pakhtunkhwa and others Respondents

JOINT PARA-WISE COMMENTS ON BEHALF OF RESPONDENT No. 01 & 04

RESPECTFULLY SHEWETH:

Preliminary objections:

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

ON FACTS

1. Pertains to record.
2. Pertains to record.
3. Pertains to record.
4. Correct to the extent that meeting of the PSB was held on 07.09.2023 and discussed the agenda item of promotion of Superintending Engineers (BS-19) to the three (03) regular vacant posts of Chief Engineers (BS-20). The PSB recommended Engr. Zahoor Muhammad and Engr. Ghulam Ishaq Khan. The appellant was having Master degree in Mechanical Engineering whereas B.E (Civil) degree from a recognized University is required for promotion to the post of Chief Engineer (BS-20) under the existing service rules therefore, he was not considered for promotion (**Annex-I**).
5. Incorrect. The Service Rules of Irrigation Department were notified on 17.02.2011 in consultation with Establishment Department & Finance Department in accordance with law/rules with no malafide intention (**Annex-II**).
6. Incorrect. The existing service rules of the Department notified on 17.02.2011 has no provision for promotion of officer to the post of Chief Engineer (BS-20) having degree of B.E (Mechanical). Furthermore, the appellant didnot challenge the criteria laid down for promotion to the post of Chief Engineer (BS-20) in the service rules notified on 17.02.2011 till his retirement.
7. Pertains to record.
8. Correct to the extent that appellant filed representation/appeal before the Chief Minister. Accordingly, Special meeting of PSB was held on 31.01.2024 to reconsider the promotion of appellant due to the reason that he was retiring from service on 06.02.2024 on attaining the age of superannuation. The board discussed the case and found him ineligible for promotion to the post of Chief Engineer (BS-20) in view of the existing service rules (**Annex-III**).
9. Incorrect. No such letter has been issued from this office.

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 15628

Dated 10-09-24

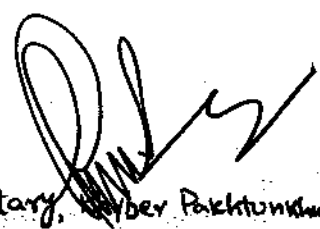
- 3
10. Correct to the extent that Special meeting of PSB was held on 31.01.2024 to reconsider the promotion of appellant due to the reason that he was retiring from service on 06.02.2023 on attaining the age of superannuation. The board discussed the case and found him ineligible for promotion to the post of Chief Engineer (BS-20) keeping in view the existing service rules.
 11. Correct to the extent that appellant filed appeal/representation before the Chief Minister, Khyber Pakhtunkhwa, which was examined by the Competent Authority and regretted being not covered under the rules vide letter dated 05.07.2024 (**Annex-IV**).
 12. As explained in Para-11 above, the appeal of the appellant was examined by the Competent Authority and regretted being not covered under the rules vide letter dated 05.07.2024 referred above.
 13. Incorrect. No vested right of the appellant was infringed. He is not entitled for proforma promotion to the post of Chief Engineer/Director General (BS-20). His promotion to the post of Chief Engineer/Director General (BS-20) was discussed by PSB in its meeting held on 07.09.2023 and 31.01.2024, but found him ineligible for promotion to the post of Chief Engineer (BS-20) for not having B.E (Civil) degree from a recognized University as required under the existing service rules.
 14. Incorrect. As explained in Para-13 above.
 15. Incorrect. As explained in Para-13 above.
 16. Incorrect. The service rules notified in 2011 have been issued in accordance with law with no malafide intention.
 17. Incorrect. As explained in Para-13 above.

GROUND

- A. Para-A is incorrect, the service rules notified in 2011 have been issued in accordance with law with no malafide intention. No vested right of the appellant was infringed. He is not entitled for proforma promotion to the post of Chief Engineer/Director General (BS-20). His promotion to the post of Chief Engineer/Director General (BS-20) was discussed by PSB in its meeting held on 07.09.2023 and 31.01.2024, but found him ineligible for promotion to the post of Chief Engineer (BS-20) for not having B.E (Civil) degree from a recognized University as required under the existing service rules.
- B. Incorrect as explained in Para-A of the grounds above.
- C. Incorrect as explained in Para-A of the grounds above.
- D. Incorrect as explained in Para-A of the grounds above.
- E. Incorrect as explained in Para-A of the grounds above.
- F. Incorrect as explained in Para-A of the grounds above.
- G. Correct to the extent that he was on the top of seniority list of Superintending Engineer (BS-19) but could not be considered for promotion due to the reasons, explained in Para-A of the grounds above.
- H. No Comments.
- I. No Comments.
- J. No Comments.
- K. No Comments.
- L. No Comments.
- M. No Comments.

- N. No Comments.
- O. No Comments.
- P. No Comments.
- Q. Incorrect as explained in Para-A of the grounds above.
- R. Incorrect Engr. Parvez Khan Jadoon having B.Sc (Mechanical) was promoted to the post of Chief Engineer (BPS-20) prior to notification of service rules in 2011.
- S. Incorrect, the service rules notified in 2011 have been issued in accordance with law with no malafide intention.
- T. As explained in Para-S of the grounds above.
- U to SS. Incorrect. As explained in Para-A of the grounds above.

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



(Chief Secretary, Khyber Pakhtunkhwa)
Chairman Provincial Selection Board
Govt. of Khyber Pakhtunkhwa,
Respondent No. 01 & 04

CHIEF SECRETARY
Govt. of Khyber Pakhtunkhwa

ITEM NO. (22)

IRRIGATION DEPARTMENT
(Meeting of PSB held on 07.09.2023)

SUBJECT: - PROMOTION OF SUPERINTENDING ENGINEER BS-19 TO THE POST OF CHIEF ENGINEER / DIRECTOR GENERAL BS-20

Secretary Irrigation apprised the Board that due to retirement, three (03) posts of Chief Engineer / Director General BS-20 are lying vacant in Irrigation Department.

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

"By selection, on merit from amongst the Senior Superintending Engineers and Directors with at least seventeen years' service in BPS-17 and above, possessing Degree in B.E/B.Sc Engineering (Civil) from a recognized University and have successfully completed the Senior Management Course"

Note: The officer who is likely to retire within two years from service on attaining the age of superannuation on the scheduled date of commencement of training shall be exempted from the respective mandatory training of MCMC, SMC/NMC and NDC.

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

S#	NAME OF OFFICER	RECOMMENDATIONS OF THE BOARD
1.	Engr: Amjad Khan B.E (Mechanical) <i>Attested</i> <i>[Signature]</i>	His date of birth is 07.02.1964. He joined government service on 02.10.1989 in BS-17. He was promoted to BS-19 on 06.08.2021. He has completed prescribed length of service for promotion. He is exempted from mandatory training due to age factor. According to service rules, degree in B.E/B.Sc Engineering (Civil) from a recognized University is required whereas the officer possess degree in B.E (Mechanical) which is not available in the relevant service rules. The Board did not consider his promotion.
2.	Engr: Wilayat Khan B.E (Civil)	His date of birth is 17.02.1968. He joined government service on 05.12.1991 in BS-17. He was promoted to BS-19 on 06.08.2021. He has completed prescribed length of service for promotion. He has not undergone mandatory training for promotion. The Board recommended to defer his promotion.
3.	Engr: Zahoor Muhammad BSc (Civil)	His date of birth is 01.01.1965. He joined government service on 05.12.1991 in BS-17. He was promoted to BS-19 on 06.08.2021. He has completed prescribed length of service for promotion. He is exempted from mandatory training due to age factor. No inquiry is pending against him. His PERs dossier is complete.

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

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PSB meeting 07.09.2023

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		<p>His service record upto 2022 is generally good. His quantified score is 55 and the Board awarded him 15 out of 30 marks.</p> <p>The Board recommended the officer for promotion to the post of Chief Engineer / Director General BS-20 on regular basis. He will be on probation for a period of one year.</p>
4.	<p>Engr. Ghulam Ishaq Khan B.E (Civil)</p> <p><i>Attested</i> <i>[Signature]</i> SECTION OFFICER (LITIGATION) IRRIGATION DEPARTMENT PESHAWAR</p>	<p>His date of birth is 14.08.1965. He joined government service on 05.12.1991 in BS-17. He was promoted to BS-19 on 06.08.2021. He has completed prescribed length of service for promotion. He is exempted from mandatory training due to age factor. No inquiry is pending against him. His PERs dossier is complete. His service record upto 2022 is generally good. His quantified score is 55 and the Board awarded him 15 out of 30 marks.</p> <p>The Board recommended the officer for promotion to the post of Chief Engineer / Director General BS-20 on regular basis. He will be on probation for a period of one year.</p>

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

EXTRAORDINARY
GOVERNMENT



REGISTERED NO. PIII
GAZETTE

5973

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, SATURDAY, 2ND APRIL, 2011.

GOVERNMENT KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT,

NOTIFICATION

Dated Peshawar, the 17th February, 2011

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

Secretary to Government of the Khyber Pakhtunkhwa Province
Irrigation Department.

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

Attested

Section Officer (Litigation)
Irrigation Department Peshawar

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

APPENDIX

S#	Nomenclature of Post	Qualification for appointment	Age Limit	Method of recruitment
1	2	3	4	5
PART-I-ENGINEERING STAFF				
1.	Chief Engineer/ Director General (BPS-20)			By selection, on merit from amongst the Senior Superintending Engineers and Directors with at least seventeen years service in BPS-17 and above, possessing Degree in B.E/BSc Engineering (Civil) from a recognized University.
2.	Superintending Engineer/Director (BPS-19)			By promotion, on the basis of seniority-cum-fitness, from amongst the Executive Engineers/Deputy Directors with at least twelve years service in BPS-17 and above.
3.	Executive Engineer/ Deputy Director (BPS-18)			By promotion, on the basis of seniority cum fitness, from amongst the Sub Divisional Officers, Assistant Engineers and Assistant Directors possessing Degree in B.E/BSc Engineering (Civil or Mechanical) from a recognized University, with at least five years service as such, and have passed the Professional or Revenue Examination under the prescribed rules.
4.	Assistant Engineer/Sub Divisional Officer/ Assistant Director (BPS-17)	BE/BSc Degree in Civil/Mechanical Engineering from a recognized University	21 to 32 years	<p>a. Sixty five percent by initial recruitment.</p> <p>b. ten percent by promotion, on the basis of seniority cum fitness, from amongst the Sub 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) & (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>

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Attested
ADMINISTRATIVE OFFICER
IRRIGATION DEPARTMENT
KHYBER PAKHTUNKHWA
PESHAWAR

Attested
Senior Officer (Litigation)
Irrigation Department Peshawar

Annex-1

CONFIDENTIAL

PSB meeting 31.01.2024

ITEM NO. (01)

IRRIGATION DEPARTMENT

(Meeting of PSB held on 31.01.2024)

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

At the very outset, the Board was informed that the instant special meeting of Provincial Selection Board has been scheduled for the officers being eligible and senior most in the seniority list falling in promotion who are going to be retired in a week.

2. Secretary Irrigation apprised the Board that due to retirement, a post of Chief Engineer BS-20 is lying vacant in Irrigation Department.

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

"By selection, on merit from amongst the Senior Superintending Engineers and Directors with at least seventeen years' service in BPS-17 and above, possessing Degree in B.E/B.Sc Engineering (Civil) from a recognized University and have successfully completed ten (10) weeks In-service Technical Training Course, as prescribed by the Department".

4. The service record of the officer included in the panel was discussed as follows:-

S #	NAME OF OFFICER	RECOMMENDATIONS OF THE BOARD
1.	Engr. Amjad Khan B.E (Mechanical)	His date of birth is 07.02.1964. He joined government service on 02.10.1989 in BS-17. He was promoted to BS-19 on 06.08.2021. He has completed prescribed length of service for promotion. He is exempted from mandatory training due to age factor. As per service rules, degree in B.E/B.Sc Engineering (Civil) from a recognized University is mandatory for promotion to BS-20 whereas the officer possesses degree in B.E (Mechanical). To a query from the Board that when the case was not covered under the relevant service rules and the officer has also been shown as "not eligible" by the Administrative Department, what was the reason for presenting the case to Board, Secretary Irrigation apprised the Board that the officer is going to be retired from service w.e.f. 06.02.2023 on attaining the age of superannuation as his date of birth is 07.02.1964 and

Attested
Secretary
Govt. of Punjab
Irrigation Department

Attested
Section Officer (Litigation)
Irrigation Department Peshawar.

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PSB meeting 31.01.2024

	<p><i>Attested</i> <i>[Signature]</i> Section Officer (PSB) Govt. of Khyber Pakhtunkhwa Establishment, Peshawar</p>	<p>submitted a representation to the Chief Minister, Khyber Pakhtunkhwa with the request to consider his promotion to the post of Chief Engineer BS-20 on the basis of Service Rules notified in 1979 and precedent available in the department. Secretary Irrigation further informed that working paper for amendment in the service rules providing avenues of promotion to the Superintending Engineers (BS-19) possessing B.E (Mechanical) degree was submitted for consideration of SSRC in October 2022. But due to the request / appeal of Superintending Engineers holding B.E / B.Sc Engineering (Civil), the working paper regarding amendment in the proposed service rules was withdrawn in November, 2022. He further apprised the Board that as far as precedent i.e. promotion of Superintending Engineers BS-19 to the post of Chief Engineer BS-20 holding B.E (Mechanical) degree is concerned, they were promoted prior to amendments in the relevant service rules i.e. 2011.</p> <p>The Board thoroughly discussed the case and found the officer ineligible for promotion to the post of Chief Engineer BS-20 in view of the existing service rules, hence could not recommend him for promotion.</p>
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Attested of
[Signature]
 Section Officer (Litigation),
 Irrigation Department Peshawar



GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

No. SO(E)/Irr:/1-17/89/PF
Dated Peshawar the 05th July, 2024

To

Engr. Amjad Khan,
Ex-Superintending Engineer (BS-19), Irrigation Department,
R/O of House No. 188, Street 06, Sector-J-1, Phase-II,
Hayatabad.

Letter received
05/7/24

Subject: **APPEAL/REPRESENTATION OF ENGR. AMJAD KHAN,
EX-SUPERINTENDING ENGINEER (BS-19).**

I am directed to refer to your appeal/representation dated 27.03.2024 to the Appellate Authority (Chief Minister, Khyber Pakhtunkhwa) against the decision of PSB dated 31.01.2024 has been examined and rejected being not covered under the rules, please.

(Maqsood Khan)
Section Officer (Estt:)

Endst: No and date even

Copy of the above is forwarded to: -

1. PS to Secretary Establishment, Khyber Pakhtunkhwa, Peshawar.
2. PS to Secretary Irrigation Department, Peshawar.
3. PA to Additional Secretary, Irrigation Department.
4. PA to Deputy Secretary (Admn) Irrigation Department.

Section Officer (Estt:)

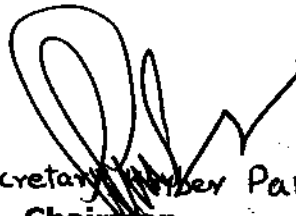
Attested

Section Officer (Litigation,
Irrigation Department Peshawar)

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POWER OF ATTORNEY

Mr. Noor Ullah Jan, Superintendent (Litigation Section) Irrigation Department is hereby authorized to file comments and make statement before the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No. 935/2024 filed by Amjad Khan V/S Government of Khyber Pakhtunkhwa through Chief Secretary & others.


(Chief Secretary, Khyber Pakhtunkhwa) /
Chairman
Provincial Selection Board
Govt. of Khyber Pakhtunkhwa.
Respondent No. 01 & 04
CHIEF SECRETARY
Govt. of Khyber Pakhtunkhwa