

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 942/2024
in Service Appeal No. 1183 OF 2024

Mr. Inayat Ullah (BS-16)
SDO (OPS) C&W Department

--- Appellant

Versus

1. Secretary to Govt of Khyber Pakhtunkhwa
C&W Department Peshawar
2. Chief Engineer (Centre)
C&W Department, Peshawar

--- Respondents

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Deponent



Zeeshan,
Section Officer (Litigation)
C&W Department, Peshawar.

(1)

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR
EXECUTION PETITION NO. 942/24
IN SERVICE APPEAL NO. 1183 OF 2024

Mr. Inayat Ullah (BS-16)
SDO (OPS) C&W Department

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VERSUS

1. Secretary to Govt.
Of Khyber Pakhtunkhwa
C&W Department

2. Chief Engineer (Centre)
C&W Peshawar

-- Respondents

Khyber Pakhtunkhwa
Service Tribunal
Peshawar
No. 17539
Date: 01-11-24

REPLY ON BEHALF OF RESPONDENTS NO. 1 & 2

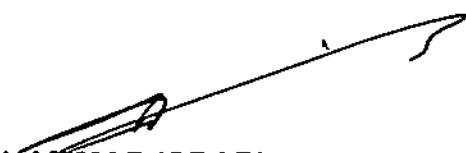
Respectfully Sheweth


1. In this regard it is clarified that C&W Department scheduled a Departmental Promotion Committee Meeting on 05.12.2022 to discuss the promotion case of B.Tech (Hons) Sub Engineers to the rank of Assistant Engineer / SDOs (BS-17), (Annex-I). However, Establishment Department intimated through letter dated 05.12.2022 that the scheduled meeting may be postponed till finalization of standing service rules committee (Annex-II), on the basis that in light of the Services Tribunal judgment dated 07.10.2022, the existing 10% quota reserved for promotion of B.Tech (Hons) degree holders sub-engineers to Assistant Engineers / SDOs (BS-17) C&W Department, was bifurcated on 20.01.2023 at the @ of 6% and 4% share to those B.Tech (Hons) Sub-Engineers who possess it before joining service in C&W Department and to those who acquire it during service in the Department respectively. The aggrieved Sub Engineer filed service appeal before the Khyber Pakhtunkhwa Service Tribunal for consideration of promotion to the post of Assistant Engineer as per old rules when petitioner was eligible. The Service Tribunal accepted their appeals on 25.07.2024 with the verdict that appellants are held entitled to be promoted to the position of Assistant Engineer (BS-17) as per the rules applicable when they were eligible. They should, therefore, be considered for promotion accordingly.
2. As explained in Para-I above, needs no comments.
3. Incorrect, as per procedure, the Judgment of the Khyber Pakhtunkhwa Service Tribunal dated 25.07.2024 forwarded to Law department with the request to place the same before the Scrutiny Committee of Law Department that as to whether the case is fit for filing of CPLA in the Supreme Court of Pakistan against the said judgment dated 25.07.2024. After threadbare discussion, it was decided with

consensus by the Scrutiny Committee that the subject case is fit for filing of Appeal / CPLA before the Supreme Court of Pakistan on the main grounds that vide judgment dated 07.10.2021 of the Khyber Pakhtunkhwa Service Tribunal in Service appeal No.954/2018 titled Awais-ur-Rehman Vs Government, the service rules were amended in pursuance of the earlier judgment dated 07.10.2021 and the judgment under discussion of the Khyber Pakhtunkhwa Service Tribunal are in contradiction with each other (Annex-III). Accordingly, the Department filed CPLA / Appeal before the Supreme Court of Pakistan with the prayer that the operation of the impugned judgment and orders of the Khyber Pakhtunkhwa Services Tribunal Peshawar passed in service appeal No.1183/2023 dated 25.07.2024 may graciously be suspended and to maintain status quo till the final decision of the case.

- 4. Incorrect, as explained in Para-3 above, the answering respondents have not violated any right of the appellant nor caused any malafide or discrimination in fact the Department followed rules / policy strictly in the cases of promotion of Officers/Officials of the Department.
- 5. In correct, as explained in Para-3 above.
- 6. The respondents would like to seek permission of this Hon'able Court to advance more grounds during the time of arguments.

In view of the above, it is humbly prayed that the instant execution petition is not based on facts, may kindly be dismissed with cost.


 (MUHAMMAD ISRAR)
 SECRETARY TO
 Govt of Khyber Pakhtunkhwa
 C&W Department
 (RESPONDENT No. 1)


 (JAMSHID ALI KHAN)
 CHIEF ENGINEER (CENTRE)
 Communication & Works Peshawar
 (RESPONDENT No. 2)
 CHIEF ENGINEER (CENTRE)
 C&W DEPARTMENT
 KHYBER PAKHTUNKHWA PESHAWAR

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

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Execution Petition No. 942/2024
in Service Appeal No. 1183 OF 2024 3

Mr. Inayat Ullah (BS-16)
SDO (OPS) C&W Department

--- Appellant

Versus

1. Secretary to Govt of Khyber Pakhtunkhwa
C&W Department Peshawar

2. Chief Engineer (Centre)
C&W Department, Peshawar

--- Respondents

AFFIDAVIT

I, Muhammad Israr, Secretary to Govt of Khyber Pakhtunkhwa, C&W Department, Peshawar hereby affirm and declare that all the contents of the reply to the Execution Petition are correct to the best of my knowledge and belief and nothing has been concealed.

It is further stated on oath that in this appeal, the answering respondent neither has been placed ex-party nor their defense has been struck off *Cost*

Deponent




Muhammad Israr
MUHAMMAD ISRAR
SECRETARY
to Govt of Khyber Pakhtunkhwa
C&W Peshawar.
(Respondent No.1)



GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

AUTHORITY LETTER

Mr. Zeeshan, Section Officer (Litigation), C&W Peshawar having CNIC 17301-2418439-1 is hereby authorized to file reply to the Execution Petition in case titled "Execution Petition No. 942 of 2024 in Service Appeal No. 1183/2024" ³³ "Titled Inayat Ullah Vs Govt through Secretary C&W Peshawar" on behalf of Secretary C&W Department.


MUHAMMAD ISRAR
SECRETARY
to Govt of Khyber Pakhtunkhwa
C&W Peshawar.
(Respondent No.1)

Annex - I

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GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

No: SOE/C&WD/4-2/2022
Dated Peshawar, the Dec 01, 2022

- To
1. The Chief Engineer (Centre)
C&W Peshawar
 2. The Special Secretary (Regulation)
Establishment & Admn Department
Peshawar
 3. The Additional Secretary (Regulation)
Finance Department Peshawar

Subject: MEETING OF THE DEPARTMENTAL PROMOTION COMMITTEE

Dear Sir,

I am directed to refer to the subject noted above and to forward herewith working papers duly signed and to state that the Secretary C&W being chairman of the Departmental Promotion Committee has desired to convene meeting of Departmental Promotion Committee (DPC) on **05.12.2022 at 11:00 Hours** under his chairmanship in the Committee Room of C&W Secretariat to discuss the promotion case of B-Tech (Hons) Sub Engineers to the rank of Assistant Engineer/SDO (BS-17). Working papers are enclosed.

2. It is requested to kindly make it convenient to attend the subject meeting on the scheduled date, time and venue, please.

Yours' faithfully

(Signature)
(IAZ KHAN)
SECTION OFFICER (Estb)

Endst even No. & date

Copy forwarded to the:

1. PS to Secretary C&W Department, Peshawar
2. PA to Additional Secretary C&W Department, Peshawar
3. PA to Deputy Secretary (Admn) C&W Department, Peshawar

(Signature)
SECTION OFFICER (Estb)

(Signature)
Section Officer (Regulation)
Khyber Pakhtunkhwa
C&W Department

(Signature)

(6)

WORKING PAPER FOR DEPARTMENTAL PROMOTION COMMITTEE

Subject: PROMOTION OF B-TECH (HONS) SUB ENGINEERS TO THE POSTS OF ASSISTANT ENGINEERS/SDOs (BS-17) ON REGULAR BASIS IN THE C&W DEPARTMENT

There are 234 sanctioned posts of Assistant Engineers (BS-17) in C&W Department whereas 107 Assistant Engineers (BS-17) are available in the Department. Therefore 127 posts of Assistant Engineers (BS-17) are lying vacant in the Department. As per existing service rules of C&W Department, there are 05 channels for recruitment/promotion to the post of Assistant Engineers/SDOs (BS-17). Ratio of each share as well as their occupancy against the present strength i.e. 234 Nos, may be perused is as under:

| Sl. No. | Category | Share of Each Category | Presently Working | Short Fall/ Excess |
|---------|---|------------------------|-------------------|--------------------|
| a. | Initial Recruitment through Public Service Commission (65%) | 152.10 say = 152 | 49 | (-) 103 |
| b. | Diploma Holder Sub Engineer (16.5%) | 38.60 say = 39 | 20 | (-) 19 |
| c. | Pre- Service Graduate Sub Engineer (5%) | 11.70 say = 12 | 11 | (-) 01 |
| d. | In-service Graduate Sub Engineer (3.5%) | 8.19 say = 08 | 07 | (-) 01 |
| e. | B-Tech (Hons) Sub Engineer (10%) | 23.40 say = 23 | 20 | (-) 03 |

Note: For posts at Sr.No.a, requisition has been already placed before PSC

Agenda Item: PROMOTION OF B-TECH (HONS) SUB ENGINEERS TO THE POSTS OF ASSISTANT ENGINEERS/SDOs (BS-17) ON REGULAR BASIS IN THE C&W DEPARTMENT

2. 10% quota reserved for promotion of B-Tech (Hons) Sub Engineers, as per Sr.No.e (Annex-I), worked out as 23, out of which 20 numbers B-Tech (Hons) Assistant Engineers (BS-17) are available. Hence 03 Nos vacancies are lying vacant due to retirements (Annex-II), which are required to be filled-in by way of promotion from amongst the B-Tech (Hons) Sub Engineers as per service rules.

3. For filling up the above 03 Nos vacancies on regular basis, a panel 06 Nos of B-Tech (Hons) Sub Engineers is placed for consideration of the Departmental Promotion Committee. The officials are in the line of promotion according to the seniority list (Annex-III). The particulars of each Sub Engineers are given as under:

| Sr. No. | Name of Officials | Date of Entry into Govt Service as Sub Engineer | Whether Departmental Examination Passed |
|---------|-------------------|---|--|
| 1 | Tariq Hussain | 28.06.1994 | The official was involved in VR case with NAB amounting Rs.6,985,355/-. In pursuance of Supreme Court of Paki judgment dated 24.10.2016, he was proceeded against under I Rules 2011. After fulfillment of all codal formalities, a major per of "reduction to a lower stage in a time scale for three (03) ye has been imposed upon him on 19.03.2021 (Annex-III). Departmental Professional Exam passed. |
| 2 | Sami-ud-Din Shah | 01.10.2006 | Departmental Professional Exam passed. |
| 3 | Inayatullah | 01.10.2006 | Departmental Professional Exam passed. |
| 4 | Imdad Hussain | 01.10.2006 | Departmental Professional Exam passed. |
| 5 | Zahidullah Khan | 01.10.2006 | Departmental Professional Exam passed. |
| 6 | Fida Hussain | 01.10.2006 | Departmental Professional Exam passed. |

Alw...

4. It is certified that all the officials included in the panel for promotion:
- i. Hold the lower post on regular basis and not on adhoc basis
 - ii. Have the prescribed minimum length of qualifying service/experience as required under the service/recruitment rules.
 - iii. No penalty has been imposed on the above officials, except Sr.No.1.
 - iv. No departmental/judicial inquiry is pending against the above named officials, neither involved in any NAB case nor entered into plea bargain or VR with National Accountability Bureau (NAB) Annex-V, except Sr.No.1.
 - v. The seniority list of B-Tech (Hons) Sub Engineer is final and un-dispute.
5. Attested copies of synopsis from PERs of the above officials are enclosed.
6. The Departmental Promotion Committee is therefore requested to determine the suitability of 03 Nos B-Tech (Hons) Sub Engineers for promotion to the posts of Assistant Engineer (BS-17) on regular basis in the C&W Department.

----- XXX -----

Attested
CZ/2

Annex - II

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

No.SOR-V(E&AD)/1-978/C&W/2022
Dated 5th December, 2022.

AS/1

To

The Secretary to Govt: of Khyber Pakhtunkhwa,
C&W Department.

Diary No: 1168
Date: 5-12-
Secretary C&W

Subject: MEETING OF THE DEPARTMENTAL PROMOTION COMMITTEE

Dear Sir,

I am directed to refer to your letter No.SOE/C&WD/4-2/2022 dated 01-12-2022 on the subject noted above and to state that the subject meeting scheduled for 05-12-2022 may be postponed till finalization of the Standing Service Rules Committee, please.

Your faithfully,

[Signature]

For. SECTION OFFICER (REG-V)

Endst: of even No. & Date.

Copy forwarded to the PA to Deputy Secretary Reg-III, Establishment Department.

SECTION OFFICER (REG-V)

CO. (E)

3/2
6/12

Attested
[Signature]

attested
SECTION OFFICER (REG-V)
Khyber Pakhtunkhwa
C&W Department



Annex-III 9

**GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS &
HUMAN RIGHTS DEPARTMENT**

(Agenda Item No. 05)

113/05-08

No. SOL/Law/9-26(7-8)/C&W/2024/
Dated Peshawar the 13-08-2024

To

1. The Advocate General,
Khyber Pakhtunkhwa, Peshawar.
2. The Secretary to Govt. of Khyber Pakhtunkhwa,
Communication & Works Department.
3. The Secretary to Govt. of Khyber Pakhtunkhwa,
Establishment Department.

Copy No: 5255
Date: 22-8-2024

Subject:

SERVICE APPEAL NO. 1183/2023 INAYAT ULLAH, 2. SERVICE APPEAL NO. 1184/2023 SAMI-UD-DIN VERSUS GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH SECRETARY C&W DEPARTMENT AND OTHERS

I am directed to refer to Govt. of Khyber Pakhtunkhwa, Communication & Works Department letter No.SO(Lit)/C&W/3-456/2021, dated: 02.08.2024 on the subject noted above and to state that a meeting of the Scrutiny Committee has been held on 13-08-2024 under the Chairmanship of Secretary Law Department in order to determine the fitness of the subject cases for filing of Appeals/CPLAs before the Supreme Court of Pakistan.

That the appellants filed the subject service appeals against the letter dated 05-12-2022 and for not considering the appellants for promotion to the post of Assistant Engineer (BPS-17) being eligible as per law. The Khyber Pakhtunkhwa Service Tribunal vide order dated 25-07-2024 accepted the subject service appeals and held the appellants entitled to be promoted to the position of Assistant Engineer as per rules when they were eligible.

After a threadbare discussion on the subject case, particularly hearing the stance of Administrative Department, it was decided with consensus by the Scrutiny Committee that the subject cases are **Fit** cases for filing of Appeals/CPLAs before the Supreme Court of Pakistan on the following main grounds amongst others:-

Grounds:-

That vide judgment dated 07-10-2021 of the Khyber Pakhtunkhwa Service Tribunal in Service Appeal No.953/2018 titled Awais-ur-Rehman VS Govt. of Khyber Pakhtunkhwa, the Service Rules were amended in pursuance of the earlier judgment dated 07-10-2021 and the judgment under discussion of the Khyber Pakhtunkhwa Service Tribunal are in contradiction with each other.

The details regarding limitation of the case are as under:-

| | |
|---|------------|
| Date of decision | 25-07-2024 |
| Date of application for obtaining attested copies of the judgment | |
| Date of preparation of copies of the judgment by the issuing copying branch | |
| Date of delivery of the attested copies of judgment by the issuing copying branch | |
| Expected date on which limitation period will expire | 23-09-2024 |

In view of the foregoing, the Administrative Department is advised to approach the office of Advocate General, Khyber Pakhtunkhwa through a well conversant departmental representative alongwith complete record of the case for doing the needful forthwith, please.

AS/CA (S) (SOLIT)

Yours faithfully,

(TAHIR IQBAL KHATTAK)
SOLICITOR
LAW DEPARTMENT

Encl: No & Date Even.

Copy forwarded to the.

1. PS to Secretary Law Department.

Attested
SOLICITOR