

Government of Jammu and Kashmir
Public Works (R&B) Department
(HRM Section)
Civil Secretariat, Jammu.

Subject: Clarification regarding regularization of Engineers vis-a-vis Seniority fixation amongst Direct and Promotees.

1. The direct recruit Assistant Engineers of 2007 and 2017 batch have been approaching this department time and again for issuing their seniority list and for regularization of their service as Assistant Executive Engineers. It is therefore, clarified to all the concerned that inter-se-seniority of incumbents would be issued only after the regularization of promoted Assistant Engineers upto the relevant year in which the direct recruits have been appointed.

As on date, the last engineer regularized as Assistant Engineer (Civil) is Saleem-ul-Sabah figuring in Junior Engineer Seniority list at Sr. 72, issued vide Govt. Order No. 460 of PW (R&B) dated: 22.10.2019, against the post of deputation reserve for the year 2001. The proposal for regularization of Assistant Engineer (Civil) upto the year 2014, for the engineers figuring in the seniority list of Junior Engineer issued vide Govt. Order No. 460 of PW (R&B) dated: 22.10.2019 upto Sr. 619 has been submitted to the JKPSA and is under active consideration before the Departmental Promotion Committee of JKPSA.

2. The department moves proposal for regularization to the JKPSA for their promotion/regularization of their services, for their consideration and recommendation and following documents are sought from the department for consideration of the regularization of engineers by the JKPSA/DPC:-

- Eligibility list.
- Seniority list.
- Appointment orders of all previous posts held by the engineer.
- Work and conduct certificate.
- Year wise vacancy list.
- Incumbency list.
- Roster register
- Copy of Recruitment Rules.
- Vigilance Clearance issued by General Administration Department.
- Integrity Certificate.
- Annual Performance Report (as per APR Rules notified by GAD vide Govt. Order No 1311-GAD of 2001 dated: 09.11.2001, for last five years from Non-Gazetted to Gazetted and 3 years from Gazetted to Gazetted).

It is therefore clarified to all the concerned that the regularization/promotion and its date of effect, is the mandate of the JKPSA. The department adheres to the recommendations of the JKPSA in letter and spirit.

In most of the cases updated Vigilance Clearance, APRs and details of all previous posting are not made available by the aspirant engineers to the department in spite of regular follow up through notices. Now, the department has come up with a dedicated portal for HRM issues, in which complete details and APRs are to be uploaded on it. The system on JKPWDOMS has simplified the mechanism but still lackadaisical approach on part of engineers is being seen.

3. As per Jammu and Kashmir Engineering (Gazetted) Service Recruitment Rules, 1978, read with SRO 297 dated: 14.09.2006, clearly specifies that method of appointment by promotion to the post of Assistant Engineer, which is again reflected below:-

"a) 20% by Direct Recruitment from persons possessing Bachelor's degree in the relevant branch of Engineering or AMIE section (A&B) in the appropriate branch of Engineering.

b) 60% by promotion from Junior Engineer having BE Degree in Engineering or equivalent qualification with at least 3 years service as Junior Engineer.

c) 20% by promotion from Junior Engineer having diploma in Engineering or equivalent qualification from a recognized institute in the discipline in which appointment is to be made having at least 5 years service as Junior Engineer.

Provided that a Junior Engineer who has undergone condensed diploma course (as part of one time dispensation) shall also be treated as 2 years diploma holder and the ratio of promotion in a particular recruitment year between 3 years and 2 years diploma holders shall 7:3.

Provided further that if at the time of consideration of promotion of eligible officer from one source of appointment (Degree/Diploma) are not available, eligible officer from other source of appointment shall be taken on stop gap arrangement who shall not have preferential treatment for higher promotion".

And the method of appointment by promotion to the post of Assistant Executive Engineer is as under: -

"80% by promotion from Class IV Category B amongst the persons possessing B.E degree in Engineering or AMIE Section (A&B) with 2 years experience in that category.

20 % by promotion from Class IV Category B among diploma holders with 4 years experience in that category.

Provided that at the time of consideration of promotion eligible officers from one source of appointment (Degree/Diploma) are not available, eligible officers from other source of appointment shall be taken on stop gap arrangement who shall not have preferential treatment for higher promotions based on stop gap promotions."

4. As per the Jammu and Kashmir Civil Service (CCA) Rules, 1956 seniority rules are clear in this regard and promotees in a respective calendar year, which is reflected as under:-

"The seniority of a person who is subject to these rules has reference to the service, class, category or grade with reference to which the question has

arisen. Such seniority shall be determined by the date of his first appointment to such service, class, category or grade as the case may be.

Provided that the inter se seniority of two or more persons appointed to the same service, class, category or grade simultaneously will, notwithstanding the fact that they may assume the duties of their appointments on different dates by reason of being, posted to different stations, be determined

- (a) in the case of those promoted by their relative seniority in the lower service, class, category or grade;
- (b) in the case of those recruited direct except those who do not join their duties when vacancies are offered to them according to the positions attained by and assigned to them in order of merit at the time of competitive examination or on the basis of merit, ability and physical fitness etc., in case no such examination is held for the purpose of making selections;
- (c) as between those promoted and recruited direct by the order in which appointments have to be allocated for promotion and direct recruitment as prescribed by the rules".

5. However, for the information of all the concerned, it is again reiterated that while recommending the proposal to the JKPS and allotting a year to any candidate the guidelines of GAD issued vide Govt. Order No. 743-GAD of 2007 dated: 28.06.2007, are adhered in letter and spirit wherein, the relevant part of the Govt. Order is as:

"Promotion of a Government employee shall take effect from the date, he has been formally put in charge of the higher post subject to his eligibility in accordance with the recruitment rules and availability of the vacancy. His clearance/ regularization shall take effect from the date of his placement against the higher post or availability of vacancy or the date of his eligibility, whichever is later. In all other cases, the promotion of a Government employee to the next higher post shall take effect from the date of issuance of the order"

6. So far inter-se-seniority of engineers at Junior Engineer and Assistant Engineer level is concerned this is governed by Rules/Judgment of Hon'ble Supreme Court applicable to the UT of J&K and OM. No 22011/7/86-Estt(D) dated: 03.07.1986, 20011/1/2012-Estt.(D) dated: 04-03-2014 issued by the Department of Personnel & Training, Government of India and the judgment of Hon'ble Supreme Court in a case titled **"Suraj Parkash Gupta and others vs State of J&K and Others"**.

7. GAD vide Govt. Order 743-GAD of 2007, dated: 28.06.2007 has clarified the stance as given below:-

"In compliance with the directions of the Hon,ble Supreme Court ,of India passed in the above titled case, guidelines were notified by the Government vide Government order No. 107-GAD of 2002 dated 16.01.2002, in order to streamline the cadre management of the Gazetted as well as Non-Gazetted services in the state. Para '7' of these guidelines provide as under:-

"In cases, where promotees have not been regularized for years, the departments should ensure that DPC is convened immediately for their

clearance. They should also ensure that conditions responsible for such delays do not occur in future. . In such cases, the promotion should be made with retrospective effect from the date of occurrence of vacancy or date of acquiring eligibility whichever is later"

Doubts have been expressed regarding the date, from which a Government employee should be promoted/regularized against the post held try him. The matter has been examined and as per rules, a Government employee is entitled to claim consideration for promotion subject to his eligibility in accordance with the relevant recruitment rules and availability of the post. He can claim regularization/clearance of the DPC from the date, he has been assigned the charge of the said post and subject to his eligibility and existence of vacancy.

In order to clarify the position, para 7 of the guidelines is recast as under:-

Promotion of a Government employee shall take effect from the date, he has been formally put in charge of the higher post subject to his eligibility in accordance with the recruitment rules and availability of the vacancy. His clearance/ regularization shall take effect from the date of his placement against the higher post or availability of vacancy or the date of his eligibility, whichever is later. In all other, cases, the promotion of a Government employee to the next higher post shall take effect from the date of issuance of the order".

8. The department of PWD maintains seniority of Engineers at all levels starting from Junior Engineer upto Chief Engineer. There are only two levels where there is provision of Direct Recruitment viz Junior Engineer and Assistant Engineer. The quota under Direct Recruitment for Junior Engineer is 90% and for Assistant Engineer is 20%.

Accordingly, the Department has been maintaining the Seniority of the engineers at all levels carefully year wise to ensure that various instruction conveyed through various judgments of Hon'ble court and O.Ms of Department of Personnel and Training in this regard are adhered in letter and spirit.


9. At the level of Assistant Engineer 20% come from JKPS (Recruiting Agency) by Direct Recruitment, 60% by promotion from Junior Engineer having B.E Degree or equivalent qualification with at least 3 years service as Junior Engineer and 20% by promotion from Junior Engineer having diploma in engineering or equivalent qualification with at least 5 years of service as Junior engineer as reflected in the preceding paras. Accordingly, while finalizing the seniority of Assistant Engineer in a respective calendar year in which both the category of engineers exist viz Direct Recruit Assistant Engineer and Assistant Engineer (elevated from Junior Engineer degree holder) the following order of seniority of Assistant Engineer is to be maintained in that relevant year:-

- 1) Direct Recruit as per their merit in the select list.
- 2) Promoted Assistant Engineer having B.E degree or equivalent qualification as per the date of effect of regularization approved by JKPS/DPC.

In case of a Direct recruit and promotee having separate year of entry into seniority list, promotee promoted before the appointment of direct recruit is to figure above to the direct recruit of subsequent year.

Therefore, there is separate seniority list for Diploma holder Assistant Engineer, Assistant Executive Engineer and Executive Engineer as well. Similarly, degree holder Assistant Engineers whether direct recruit or promote have their common seniority list. There cannot be any diversion of quota of diploma Assistant Engineers and degree holder Assistant Engineers during the process of regularization by the JKPSC/DPC as per the Recruitment Rules of the Department.

10. Detailed pictorial sketch of method of recruitment of engineers in different cadres is shown as "Annexure A".


(Shahid Mahmood) KAS
Additional Secretary to Government

No.

Dated: 10.12.2021

Copy to the:-

1. Managing Director/CEO _____.
2. All Chief Engineers, Public Works (R&B) Department.
3. Private Secretary to Principal Secretary to the Government, PW(R&B) Department.
4. I/c Website, Public Works (R&B) Department.

Annexure "A"

By Promotion

By Direct Recruitment

