## FORM OF ORDER SHEET

Annoal No	022/2024
Court of	

	Арј	peal No. 932/2024
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1.	2	3
1-	04/07/2024	The appeal of Mr. Mustajab Khan presented today by Mr. Muhammad Muazzam Butt Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 09.07.2024. Parcha Peshi given to the counsel for the appellant.
		By the order of Chairman  REGISTRAR

# BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

Mustajab Khan

V/S

Government of KP & others

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ADVOCATE

### BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

ī	n	R	ρf	to

Service Appeal No\_\_\_\_\_\_/2024

Mustajab Khan Son of Zarin Muhamamd Resident of Tehsil & District Mardan

Designation: Senior Primary School Teacher at GPS Kodinaka

...Appellant

#### VERSUS

- 1) Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar
- Secretary to Government of Khyber Pakhtunkhwa, Elementary and Secondary Education Department, Civil Secretariat, Peshawar
- 3) Director Elementary and Secondary Education Department

.....Respondents

SERVICE APPEAL UNDER SECTION 4 OF KPK SERVICE **IMPUGNED** THE TRIBUNAL ACT 1974, AGAINST NO.SO(POLICY)E&AD/1-312020, BEARING NOTIFICATION DATED 06/08/2020, COMMUNICATED TO RESPONDENT NO. 2 VIDE LETTER DATED 06/06/2023, WHEREIN IT WAS STATED THAT SUB RULE 5 OF RULE 7 OF KHYBER (APPOINTMENT, SERVANTS CIVIL PAKHTUNKHWA TRANSFER) RULES, PROMOTION AND DELETED

PRAYER:

816

ON ACCEPTANCE OF INSTANT SERVICE APPEAL, THE IMPUGNED NOTIFICATION BEARING NO: SO (POLICY) E&AD/1-312020, DATED 06/08/2020, COMMUNICATED TO RESPONDENT NO. 2 VIDE LETTER DATED 06/06/2023, MAY BE DECLARED AND ORDERED TO BE STRUCK DOWN BEING VOID AND ULTRA VIRES TO THE CONSTITUTION OF PAKISTAN AND FUNDAMENTAL PRINCIPLES OF NATURAL JUSTICE AND AGAINST THE RIGHTS OF APPELLANT.

ANY OTHER RELIEF WHICH THIS HONOURABLE TRIBUNAL DEEMS FIT AND PROPER IN THE CIRCUMSTANCES OF THE CASE MAY ALSO BE GRANTED TO THE APPELLANT.

#### RESPECTFULLY SHEWETH:

 That the Respondents Department appointed the Appellant as Senior Primary School Teacher.
 Copy of Monthly Salary account is annexed as <u>Annexure A</u>

- That as per Khyber Pakhtuńkhwa (Appointment/ Promotion/ Transfer) Rules, 1989, as well as in other sister services of the other Provinces and Federation as well, availing of promotion by the employees is always optional and the employees as a matter of right may avail or forego their promotion and the next employee in seniority list is to be promoted.
  - 3. That some employees specifically have foregone their promotion as they could not serve in the areas where there is no facility of accommodation and no houses of their elders are available to look after them in far-flung and solitary mountainous hard areas, and as per Section 25 of per KP Civil Servant Act, 1973, rules to the extent of terms and condition is framed by the Chief Minister and such promotion rules are not made applicable with retrospective effect. The rules framed are published in the Gazette notification and part and parcel of KP Civil Servant Appointment, Transfer and Promotion Rules 1989.
  - 4. That Government of K.P. without following the rules position mentioned in Para 6 above promulgated Notification No. SO (Policy) E&AD/1 3/2020, dated 06/08/2020, communicated to Respondent No.2 vide letter dated 06/06/23 wherein it has been made mandatory to the employees to avail the promotion, otherwise, disciplinary action shall be taken against the employees. The impugned Notification is reproduced as under:-

"Furthermore, those officers/officials who do not comply with promotion order of the competent authority or try to evade promotion through different means shall be proceeded against under Khyber Pakhtunkhwa Civil Servants (Efficiency Discipline) Rules, 2011, please".

- That as per notification No. SD (Policy) /EDAD/1- 3/2020 dated 06/08/2020, the right of foregoing of promotion was withdrawn and the Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing) deleted Rule 7(5) in the Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 vide notification no SOR-VI (E & AD)/1-2/2020 dated 06-08-2020.

  Copy of notification No. SD (Policy) EV AD/1- 3/2020 dated 06/08/2020 is attached as Annexure B
  - 6. That the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar asked for guidance regarding deletion of Rule 7(5) in Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 in respect of which the respondent No. 1 vide its letter No. SO(Policy) E&AD/1-3/2020 dated Peshawar the June 06th, 2023 directed the respondent No 3 (Directorate of Elementary & Secondary Education) that Rule 7(5) in the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 has been deleted vide notification dated 06-08-2020 and therefore, no provision exists to decline or forgo promotion and it is obligatory upon every civil servant to accept promotion under every condition.

    Copy of Impugned Letter dated June 06th, 2023 is attached as Annexure C
  - 7. That thereafter the meeting was also held in the office of Additional Secretary Establishment on 06-07-2023 in which it was decided to examine the case properly and submit a self-contained/ consolidated case for onward submission to the Establishment Department for further necessary action.

    Copy of Minutes of Meeting dated 06-07-2023 is attached as Annexure D
  - 8. That the Respondent No.3 i-e. Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa also wrote a letter to the office of Establishment & Administrative Department vide No SO(Primary-M) E&SED/2-2/Appointment Rule/2023 dated 23-08-2023 to reconsider the amendment made in Khyber

 $\eta B$ 

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Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 as it had negatively affected a large number of teachers and especially female teachers. Copy of Letter dated 23-08-2023 is attached as <u>Annexure E</u>

- That the respondent vide its letter dated 07th of September 2023 directed the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa that necessary guidance has already been provided to the department and therefore no provision exists to decline or forgo promotion and those teachers who do not comply with the promotion order of the competent authority or try to evade promotion through different means shall be proceeded under the Khyber Pakhtunkhwa Civil Servant (Efficiency & Discipline) Rules, 2011.

  Copy of Impugned letter dated 07-09-2023 is attached as Annexure F
- 10. That the petitioner feeling aggrieved, filed Representation to the respondents in person, and also approached to respondents through APTA President but the grievances of the appellant have not so far been redressed.

  Copy of Representation against the said notification is annexed as Annexure G & H
- 11. That feeling aggrieved from the letters dated 06-06-2023 and 07-09-2023 and the deletion of Rule 7(5) in the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989; the petitioners filed this Hence, the instant service appeal is filed on the following grounds:-

#### GROUNDS:-

- a. That as per various judgments it is established and settled principle that executive notifications cannot be given retrospective effect. A valid Notification which confers rights is always applicable with prospective effect, however, if an amendment notification that adversely effects the interests of the employees or causes disadvantage to the employee is not tenable in the eyes of law. The notification/guidance dated 06/08/2020 06/06/2023 are liable to be set-aside.
- b. That there are no terms and conditions of service mentioned in the appointment order of the appellant wherein, availing of promotion is mandatory. It is further submitted that employees in the past, have foregone their promotion along with their posting. It is submitted that when domestic and other personal issues do not permit the employees/appellant to avail the promotion order and in that case, the employees who foregone their promotion were allowed not to avail the promotion for a period or 04 years and on second refusal the employees were permanently debarred from availing the facility of promotion during their entire service. Hence the employees himself/herself forebear agonies of foregoing their promotions. As a result, junior to the appellant according to the order of seniority cum fitness are granted promotion to next rank.
- c. That as per Civil Servant laws, promotion is a kind of appointment which is always optional to get promotion or not, hence the impugned notification is void, illegal and against the law and the same to the extent of the appellant is liable to be set-aside.
- d. That it is further submitted that on account of grant of promotion, some employees who are suffering from severe medical ailment or facing acute domestic issues cannot avail promotion with transfer in other areas, therefore, no employee can be compelled to accept the promotion compulsorily which is not beneficial to the employee but if an employee does not avail and get benefit of her promotion it must be optional for the employees as to whether to avail or forego the benefits. Any promotion without willingness of employee is illegal and liable to be setaside.

- e. That non-availing of promotion and foregoing thereof does not cause loss to the government exchequer and in consequence of foregoing promotion, pave way to the next employee in seniority, aspiring for promotion could be promoted.
- That the impugned promotion Notification dated 06/08/2020 communicated on 06/06/2023 is perverse, discriminatory, against the law, pungent and is a blunt blow of hammer on the rights of the appellant. It is not out of place to mention here that the appellant are teachers and have to look after their children as well as ailing dependent family members and in these circumstances in the presence of impugned Notification dated 06/08 /2023 communicated on 06/06/23 would not be able to serve in the department and which shall amount to the snatching of bread and butter of the poor employees

It is, therefore, humbly prayed that on the acceptance of the instant Service Appeal; the impugned Notification bearing 1-2020 DATED E&D/1-3 (POLICY) communicated to Respondent No.2 by Respondent NO.1, vide letter dated 06/06/2023, may please be declared and ordered to be struck down being Void, Ultra vires to the Constitution of Pakistan and against the fundamental principles of natural justice.

It is further prayed that no penal action as proposed and envisaged in letter dated 06/06/2023 may be declared as unlawful, illegal and without having any legal effect.

Any other relief, which this honorable Tribunal deems fit and proper in the circumstances of the case, may also be granted to the appellant.

#### AFFIDAVIT:

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1 Mustajab Khan Son of Zarin Muhamamd Resident of Tehsil & District Mardan that the contents of foregoing application are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court . 1 207

Deponent

Through

Muhammad Muazzzam Butt Advocate Supreme Court

Adalt. Muhammad Adeel Butt Advocate High Court

Bassam Ahmad Siddiqui Advocate High Court

SARVE

LL.M- Human Rights

#### BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

C.M No	P of 2024
In Ref to	
P. Committee of the com	. v <sub>.</sub>
Service Appeal No	/2024
11 - 200 - 12 g	Mustajab Khan.
•	VERSUS

Secretary to Government of Khyber Pakhtunkhwa, & others

APPLICATION FOR SUSPENSION OF IMPUGNED NOTIFICATION BEARING NO. SO (POLICY) E&D/1-3/2020 DATED 06/08/2020, COMMUNICATED TO RESPONDENT NO.2 BY RESPONDENT NO.1, VIDE LETTER DATED 06/06/2023 TILL THE FINAL DISPOSAL OF CASE IN HAND.

Respectfully Submitted:-

- 1. That the instant application may be treated as part and parcel of service appeal of the appellant
- 2. That the appellant has brought a good prima facie case and balance of convenience also lies in favor of the appellant.
- 3. That there is likelihood success of the appellant in the lis. And if the notification bearing No. So (Policy) E&D/1-3/2020 Dated 06/08/2020, communicated to Respondent No.2 by Respondent No.1, Vide Letter Dated 06/06/2023 is not suspended the appellant would suffer irreparable loss.
- 4. That valuable rights of the appellant is involved in the case.

In view of the reasons, it is humbly requested that the notification bearing No. So (Policy) E&D/1-3/2020 dated 06/08/2020, communicated to Respondent No.2 by Respondent No.1, Vide Letter Dated 06/06/2023 may kindly be suspended till the

final disposal of the main appeal in hand.

AFFIDAVIT:

I (appellant) do hereby solemnly stated on oath that the contents of foregoing application are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court

Deponent

Through

Muhammad Muazzzam Butt Advocate Supreme Court

Muhammad Adeel Butt Advocate High Court

Appellant



#### Dist. Govt. KP-Provincial District Accounts Office Mardan Monthly Salary Statement (January-2024)



Personal Information of Mr MUSTAJAE KHAN d/w/s of ZARIN MOHAMMAD

Personnel Number: 00131527

CNIC: 1610112139735

NTN: 0

Date of Birsh: 01.08.1970

Entry into Covt. Service: 25,10,2004

Length of Service: 19 Years 03 Months 008 Days

Employment Category: Active Temporary

Designation: SENIOR PRIMARY SCHOOL TEA

80003432-DISTRICT GOVERNMENT KHYBE

DDC) Code. MR6156-DY.DISTRICT EDUCATION OFFICER (M) M

Paycoll Section: 003

GPF Section: 001 GPF Interest applied Cash Center: 2

567,255.00 (provisional)

GPF A/C No. 131527 Vendor Number:

Pay and Allowances:

Pay scale: BPS For - 2022

Pay Scale Type: Civil

2378 Adhoc Relief All 2023 35%

GPF Balance:

BPS: 14 Pay Stage: 15

	Wage type	Amount.		Wage type	Amount
5001	Basic Pay	48,630.00	1001	House Rent Allowance 45%	3,321.00
1210	Convey Allowance 2005	2,856,00	1300	Medical Allowance	1,500,00
721-18	15% Adhoc Relief All-2013	583.00	2199	Adhoc Relief Allow @10%	397.00
2316	Teaching Allowance 2021	3.036.00	2341	Dispr. Red All 15% 2022KP	4.558.00

4,558.00

Deductions General

Wage type	Amount:	Wage type	Amount
3014 GPF Subscription	-3,900.00	3501 Benevolent Fund	-1,200.00
3009 Income Tax	-664.00	3990 Emp.Edu. Fund KPK	-135.00
4001 R. Benefits & Death Comp.	-600.00		0.00

Deductions | Loans and Advances

2347 Adhoc Rel Al 15% 22(PS17)

	1				
Loan	Description		Principal amount	Deduction	Balance
6505	GPF Loan Principal Instal	7	300,000.00	-10,000,00	20,000.00

Deductions - Income Tax

Payadale:

10,527.28

- Recovered till JAN-2024;

4,580.00

Exempted: 2631.13

Recoverable:

3,316.15

16,411.00

Gross Pay (Rs.):

85,850.00

Deductions: (Rs.):

-16,499.00

Net Pay: (Rs.):

69,351.00

Payre Name: MUSTAJAB KHAN Account Number: 0010030416030016

Bank Details: ALLIED BANK LIMITED, 250399 TORU CHOWK TORU CHOWK.

Leaves:

Opening Balance:

Avalled:

Earned:

Balance:

Permanen: Address: MOH HANDORI HOTI

City: MARDAN

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City

Email: mustajab742@gmail.com

system generated docume<u>n</u>t in accordance with APPM 4.6.12.9(288598/24.01.2024/v3.0)

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# GOVERNMENT KHYBER PAKHTUNKHWA ESTABLISHMENT DEPARTMENT

(REGULATION-WING)

# NOTUPICATION

Dated Peshinvar the, 06 / 8-72020

The Philippillura Chyle Servants Act, 1973 (Klyber, Pakhunkhwa Act Ro.XVIII of Chief Minister of Khyber Pakhunkhwa Act Ro.XVIII of in courcies of the powers conferred by section 25 of the The Chief Minister of Khybur Pakhtuhkhwa is pleased to direct that in the Khyber Will Servenis (Applement Proposition and Prop the time Civil Servenis (Appointment, Promotion and Transfer) Rules, 1989, the substanted shall be made named. Minus further amendment shall be made, namely:

# AMENDMENT

la rule 7, sub-ruler (5) shall be deleted.

GOVERNMENT OF THE KITYBER PAKHTUNKHWA CHIEF SECRETARY

# <u>nist: no & even datr</u>

ing is forwarded to:-

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Additional Chief Secretary, Ookl. of Khyber Pakhtunkhwa. Planning &

The Senio, Member Board of Revanue, Khyber Pakhrunkhwa. All Administrative Secretaries to Govi. of Khyber Pakistunkhwa.

The Principal Secretary to Governor, Khyber Pakhtunkhwa, The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.

All Divisional Commissioners in Khyber Pakhtunkhwa

All Hearts of Attached Departments in Khyber Pakhlunkhwa. All Autonomous/Semi Autonomous Bodies in Khyber Pakhunkhwa

All Deputy Commissioners in Khyber, Pakhtunkhwa.

The Registrar Peshawar High Court, Peshawar.

The Registrar, Khyber Pekhiunkhwa Service Tribunal, Peshawar. Who Storetary, Khyber Pakhturkhwa Public Service Commission, Posbawir.

All Seation Officers in Establishment & Administration Department. The Section Officer (Admn), Administration Department with the request to The Deputy Director (IT), E&A Department.

The Carelaker, Administration Department. arrange 20 gazette copies.

ATTESTED

DEPUTY, SECRETARY POLIC

Allist.

#### **GOVERNMENT OF** KHYBER PAKHTUNKHWA ESTABLISHMENT DEPARTMENT (REGULATION WING)

#### NOTIFICATION

Dated Peshawar the, 06/08/2020

In exercise of the powers conferred by section 26 of the Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No XVIII) the chief Minister of Khyber Pakhtunkhwa is pleased to direct that in the Khyber Pakhtunkhwa Civil Servants (Appointment Promotion and Transfer) Rules 1989, the following further amendment shall be made, namely:

#### **AMENDMENT**

In rule 7, sub-ruler (5) shall be deleted.

CHIEF SECRETARY GOVERNMENT OF THE KHYBER PAKHTUNKHWA

(ANDS): & EVEN DATE

Copy is forwarded to :-

- 1. Additional Chief Secretary, Govt of Khyber Pakhtunkhwa. Planning & Development Department)
- The Senior Member Board of Revenue, Khyber Pakhtunkhwa.
- 3. All Administrative Secretaries to Govt of Khyber Pakhtunkhwa.
- 4. The Principal Secretary to Governor, Khyber Pakhtunkhwa.
- 5. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
- 6. All Divisional Commissioners in Khyber Pakhtunkhwa.
- 7. All Heads of Attached Departments in Khyber Pakhtunkhwa.
- . 8. All Autonomous/Semi Autonomous Bodies in Khyber Pakhtunkhwa.
  - 9. All Deputy Commissioners in Khyber Pakhtunkhwa.
  - 10. The Registrar, Peshawar High Court, Peshawar.
  - 11. The Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar
  - 12. The Secretary, Chyber Pakhtunkhwa Public Service Commission, Peshawar.
  - 13. The Deputy Director (4T), E&A Department.
  - 14. All Section Officers in Establishment & Administration, Department.
  - 15. The Section Officer ( Admin), Administration Department with the request to arrange 20 gazette
  - 16. The Caretaker, Administration Department.

(WARDAH LATIF) DEPUTY SECRETARY (POLICY)



#### . Полкијатки, ов килики Букитомкилау Establishment Department No. RO(Policy)!! & AD/1 -3/2020

Dated Pestinwar the June 06, 2023

62

7'0

The Covernment of Klatter Pukhtinkliwa, Elementary & Secondary Policolan Dapathaent.

Subject: •

CHIDANCE REGARDING DELITION OF RULE 751 IN THE CHYPER PARTITIONOLVA GIVIL SERVANTS (APPOINTMENT, EROMOTION AND TRANSPER) RILLES, 1980.

i ant directed in teler to jour letter No. 50(frimary-M)M&SUDA-2/Appointment/2023 dated 18.04.2023 up the antiper noted above and to stole that Sub-Rule Dear Slie (5) of Rule-7 of Khyber Pakhimakhna Civil Zervants (Appointment, Frametica and Transfer) Rules. 1989 aranda delated vido this department norlleation dated 06.08.2020; thus, no provision exists to deciline or large premation,

- The basic reliance behind the dejetion of the ibid rule is aimed at preventing a civil servant from temptation for filicit gain by sticking to a single incretive post/position or to prevent those who tend to longo promoties to evade posting/transfer or show lock of capacity to tackle higher susponsibilities in case of promotion. Therefore, it is obligatory upon every civil servant to accept premotion in every candition.
- Furthermore, those officers officials who do not comply with promotion order of the competent authority or try to evide primation through different means shall be proceeded against under Khyber Pakhtinktiwn Civil Servents (Affielency & Discipline) Rules,

2011, please

Unust. Of even Na & date

Copy forwarded to their

1. PS to Special Secretary (Reg.), Establishment Department.
2. PA to Additional Secretary (Reg. 11), Establishment Department.

PS to Deputy Secretary (Polloy), Establishment Department.

Yours faithfully,

mmid Khan) Mccr (Polloy)

Meer (Polley)

The Government of Khyber Pakhtunkhwa, Elementary & Secondary Education Department.

BUBJECT: GUIDANCE REHARDING DELETION OF RIDLE 7(5)

IN THE KHYBER PARHTUNKHINA CIVIL

SERVANTS (APPOINTMENT, PROMOTION AND

TRANSFER) RULES 1989:

Dear Sir, Iam directed to refer to your letter No. 80 (Primary. M.) / EEp & ED/2-2/Appointment /2028 dated 18.04.2023 on the subject noted above and to state that 806-Rule [5] of Rule 7 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 stands deleted vide this department notification dated 06.08.2020; thus, no provision exists to decline or forgo promotion.

- The basic rationale behind the duction of the ibid scale is aimed to preventing a civil servant from temptation for illicit gain by sticking to a single ductative post/position or to prevent those who tend to forgo promotion to evade posting/transfer or show lack of capacity to tackle higher responsibilities in case of promotion. Therefore, it is obligatory upon every civil servant to accept promotion in every condition.
- Furthermore, those officers officials who do not comply with promotion order of the competent authority of try to evade promotion through different means shall be proceeded against under Khyber Pakhtunkhwa livil Servants (Efficiency & Discipline) Rules, 2011 please.

Bection Officer

Deparkment.

Argarement.

By to Deputy Lecretary (Bling), Establishment

3- PR to Additional secretary (Reg-II) Establishment

pepartanent.

1. Ps to special secretary (Reg), Establishment

Copy tomoraed to the:-

Endst. of even No & date

- B/c-Yours faithfully, (Issa Muhammad Khan) (Essa Muhammad Khan)

-21-

#### FOVERNMENT OF MAYBER PARHTUNKHWA ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT CIVIL SECRETARIAT PESHAWAR (Phono Na.091-9223507)

No.SO (Primary-M)/E8SED/2-6/2023 Daled Peshaviar Inc. June 25th, 2023

τσ

The Director

Elementary & Secondary Education Department

Khyber Pakhlunkhwa, Peshawar.

Aziz Ullah Khan President

All Primary Teacher's Association, KP

Subject:

GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE KHYBER

PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION

AND TRANSFER) RULES, 1989.

I am directed to refer to the subject noted above and to enclose here with a letter of Establishment Department letter No. SO (Policy)E&AD/1-3/2020 dated 06 June, 2023 and to state that the subject meeting is to be held on 06 July, 2023 at 11:00 AM in this department under the Chairmanship of Additional Secretary (Estab) E&SE Department in his office.

You are, therefore, requested to depute a representative of your respective Department to attend the meeting on a date, time & venue as mentioned jábova, please.

Encl: AA

(MUHAMMAD ISHAO) SECTION OFFICER (PRIMARY MALE)

Copy forwarded to tha:

1. PS to Secretary, E&SE Department Khyber Pakhlunkhwa.

VIP4442-2023 AZIZULLAH VS GOVT CF PG43

Blc

No SO (Primary-M)/E&SED/2-6/2023 Dated Peshawar the June 25th 2023

Τo

The Director Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar

Aziz Ullah Khan President President All Primary Teacher's Association, KP

Subject:

GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION AND TRANSFER) RULES, 1989.

I am directed to refer to the subject noted above and to enclose here with a letter of Establishment Department letter No. SO (Policy)E&AD/1-3/2020 dated 06 June, 2023 and to state that the subject meeting is to be held on 06 July, 2023 at 11:00 AM in this department under the Chairmanship of Additional Secretary (Estab) E&SE Department in his office.

2. You are, therefore, requested to depute a representative of your respective Department to attend the meeting on a date, time & venue as mentioned above, please.

Encl: AA

(MUHAMMAD ISHAQ) SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

1. PS to Secretary, E&SE Department Khyber Pakhtunkhwa.

SECTION OFFICER (PRIMARY MALE)

WP4442-2023 AZIZULLAH VS GÖVT OF PG43

MINUTES OF THE MEETING REGARDING APPLICATION SUBMITTED BY MR. AZIZ ULLAH PROVINCIAL PRESIDENT ALL PRIMARY TEACHERS ASSOCIATION KHYBER PAKHTUNKHWA REGARDING OF DELETION OF RULE 7(5) IN THE CIVIL SERVANT (APPOINTMENT, PROMOTION & TRANSFER RULES 1989).

A meeting regarding the subject matter was held on 06-07-2023 at 11:00 AM under the Chairmanship of Additional Secretary Establishment in his affice. The following attended the meeting.

S#	NAME	DESIGNATION
· ·	Mr. Fozal Wahld	Deputy Ofrector Establishment of Ofrectorate Elementory & Secondary Education Department
2	Mr. Axiz Ulloh	Provincial President All Primary Teachers Association Khyber Pakhlunkhwa
3	Mr. Ralaqal Ullah	General Secretary APTA Peshawar
4	Muhammad Ishaq	Section Oliteet (Primary) E458 Department Civil Secretarial Khyber Pakhtunkhwa Peshawar

- 2. The meeting started with recitation from the Haly Ouran. The chair welcomed the participants. The Deputy Director (Establishment) of Directorate of Elementary & Secondary Education briefed the forum regarding agenda item in detail.
- 3. After threadbare discussion it was decided that Directorate of Elementary & Secondary Education Department may examine the case properly and submit a self-contained/consolidated case for anward submission to Establishment Department for further necessary action.

The meeting ended with a vale of thanks from the Chair.

(Mr. Fazal Wahld)
Deputy Director-I
ELSE Department

(Mr. Ralagol Ullah) Ganeral Secretary APIA Peshowar (Mr Aziz Ullah)
Provincial President
All Primary Teachers Association
Khyber Pakhlunkhwa

(Muhammati Ishaa)
Section Officer (Primary-Male)
E&SE Department

(Abdullah)
Addillohal Secretory (Establishment)
E&SE Department

-B|C-

MINUTES OF THE MEETING REGARDING APPLICATION SUBMITTED BY MR AZIZ ULIAH PROVINCIAL PRESIDENT ALL PRIMARY TEACHERS ASSOCIATION KHYBER PAKHTUNKHWA REGARDING OF DELETION OF RULE 7(5) IN THE CIVIL SERVANT (APPOINTMENT, PROMOTION & TRANSFER RULES 1989).

A meeting regarding the subject matter was held on 06-07-2023 at 11:00 AM under the Chairmanship of Additional Secretary Establishment in his office. The following attended the meeting

5# NAME	DESIGNATION
1. Mr. Fazal Wahld	Deputy Director Establishment of Directorate Elementary & Secondary Education Department
2 Mr. Aziz Ullah	Provincial President All Primary Teachers Association: Khyber Pakhtunkhwa
3. Mr. Rafaqat Ullah 🤭 -	General Secretary APTA Peshawar
4. Muhammad Ishaq	Section Officer (Primary) E&SE Department Civil Secretarial Khyber Pakhtunkhwa Peshawar

- 2. The meeting started with recitation from The Holy Quran. The chair welcomed the participants. The Deputy Director (Establishment) of Directorate of Elementary & Secondary Education briefed the forum regarding agenda Item in detail.
- 3. After threadbare discussion it was decided that Directorate of Elementary & Secondary Education Department may examine the case properly and submit & self-contained/consolidated case for onward submission to Establishment Department for further necessary action.

The meeting ended with a vote of thanks from the Chair.

· • ·	
(Mr. Fazal Wahld)	
Deputy Director-1	
E&SE Department	. •
Provincial President	
All Primary Teachers Association	
Khyber Pakhtunkhwa	
(Mr. Rafaqat Ullah)	
General Secretary APTA	i
Peshawar	
(Muhammad Ishaq)	; · · · .
Section Officer (Primary-Male)	
E&SE Department	-
	(Åbdullah)
상탁하다.	longi Sastrerov (Establisheuss



Kliyber Pakhtunkhwa, Peshawar /F.No. 34/SST/M/General Cares Dated 2-1-

Plane: 091-9225344

Email: establithmentmale/@gniall.com

Tc

The Section Officer (Primary-Mule), Elementary & Secondary Education Department. Khyber Pakhiunkhwa Řezhawar..

Subject: -Dear Sir.

#### MINUTES OF THE MEETING

i am directed to refer to the letter No.SO(Primary-M)E&SEDIS-1/ G.Misc/Minutes of the Meeting/PST/2023 dated 10-07-2023 on the subject cited above and to present brief history about the background of the case as under:

That Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing) deleted Rule 7(5) in the Civil Servents (Appointment, promotion & Transfer Rules 1989) vide notification No. No. SOR-VI (E&AD)/1-3/2020 dated 06-08-2020.

That this office sought guidance from your good office in the following words vide letter No.6987 dated 06-02-2023.,

 (i) Now it is obligatory upon the civil servant to occept Fromation in every condition.
 (ii) It is the prerogative of the civil servant to either accept or turn down the affer of promotion.

That your goof office forwarded the same to the quarter concerned vide letter No.SO (Primary-M) E&SED/2-2/Appointment/2023 for necessary guidance,

That the Gavernment of Klyber Pokhtunkhwa Establishment Department (Regulation Wing) vide letter No.SO (Policy) E&AD/1-3/2020 doted 6-06-2023 categorically stated that there exists no provision to decline or forgo promotion, it is obligatory upon every civil servant to occept promotion under every condition.

The same was received by this office from your good office vide letter No.50 (Primary-M) E&SED/2-2/Appalniment/2023 dated 12-06-2023.

That, in the light of the minutes of meeting dated 6-07-2023 held under the Chairmanship of Hun, Additional Secretary Establishment at his office this office has heen asked for submission of consolidated case.

In view of the above, this office is of considered opinion that the deletion of Rules 7(5) have affected negatively a huge numbers of Female Teachers. Thus it is proposed that Teachers helder BPS-16 may be exempted of implications of the amondment in the rules ibid provided they subjust their written refusal prior to conduction of the meeting of Departmental Promotion Committee.

The case is submitted for perusal and necessary actions picase.

Assistant Director (Estab M-1) Elementary & Secondary Education Khyber Pakhunkhwa

Endst: Na.

Copy of the above is to:-

1. PA la Director Local Directorale.

2. Master Copy.

Assistant Director (Establi-1) Elementary & Secondary Education Klyber Pakhtunkhwa

- DB-

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION, KPK

PESHALIAR (ELOS)

14 Poshawar Elementosy & Secondary Education Department Section Office (Princey- Male)

Subject : Minute of Meeting

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present bilet history, about background of come as unchais. Minister of meeting [27/2017 dated to F. of - F. of bath Eras/729] British of better to Doch Sir; g am directed to refer to hiller No. (50. Aimany-177) E & SED /5-1/6, Nich

delated reterrity for Civil Services (Appending territoring Timber of (2) February (Brilly outhough of the Establishment depositions (Rogulation Wing)

wards vide letter No. 6983 alated ob-oversal grimmed after softe boy your good office in the following vide refishabin No. No. 50R-VI(EEAD)1-3/2020 dated ob:08-2020.

ant construct/ Hasso rather of thouses this to evitogerary EI-PECII) instantong toposon at the scenario state greatest it well it

offer of promotion.

That you good office forwarded the coine to quarter concerned while will of No. 50 (Princyty) E & SED/2-2 / Appointment (2023 for necessary)

. That the government of KP-ED (Regulation Wing) wide letter No. 50 (Policy)

serving to accept possibles under energy condition. I'm's brows may the graphing of the abblishment of mishary on chies suit tark butate ymasimpino crar-20-8 botab ocas/=1/04,23

for risissimmales soft bulls office has been asked for estormission of held under the Chairmanship of then. Additions Secretary Establish. Cros-Fo-2 betab griterin off to esturien off to inpid hi tout o

meinbers of Fernale Jeachers. entition bandizones to it soifte with south at to war the entitles aft trouth a pour to be south to be

The case is Elbritted for period and necessary

Bernerslong & Secondary Educates Actional Director

Khyles Rehlunkhus.

2. Master Capy 2. PA to Director Local Directorate Copy of the cibare to;

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WPANAS-2023 AZIŽULLAH VS GOVT CF PGA3



#### ELEIGENTARY AND SECONDARY EDUCATION DEPARTMENT CIVIL SECRETARIAT PEBHAWAR (Phone No.091-9223587)

No. 50(Primary-M)E&SED/2-2/Appointment-Rule /2023 Peshaviar Dated 23rd August, 2023

The Georgian to Govi, of Khyber Pakhlunkhwa, Establishment & Administration Department. Peshaviai

GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE CIVIL SUBDECT: -SERVANT (APPOINTMENT, PRPMOTION & TRANSFER RULES 1989).

Geer Sir,

) am directed to refer to your letter No. SO(Policy)/ EBAD/ 1-3/2020 dated 06" June 2023 and to state that after deletion of rule 7(5) Khyber Pakhtunkhwa Civil Servers (Applicatment, Promotion & Transfer Rules 1989) It has been intimated that those officers/ officials who do not comply with promotion order of the competent authority or by to evade promotion through different means shall be proceed under Khyber Pakrounkinwa Gvill Servant (Efficiency & Discipline) Rules, 2011.

In this connection it is submitted that in some cases lady teacher of primary level who avail such promotions have to face serious inconvience while they have to perform duties in the remotest station with no residential or transport facility. Most of them are married with kids and elder father of mother-in-law who heed care. In such races, there are negative effects on service delivery.

In view of the above, the said amendment may be reconsidered to the where of lady teacher in primary schools.

> IMUHAMRAU ISHAC SECTION OFFICER (PRIMARY MALE)

SECTION OFFICER

Copy forwarded to the:

1. Director ERSE Khyber Pakhtunkhwa.

2. PS to Secretary, EBSE Department Knyber Pakhtunkhwa.

Scanned with CamScanner

WP4442-2023 A2IZULLAH V5 GOVT CF PG43

-B/c-

-22-

No.50 (Animary -M) ESSED 12-21 Appointment -Rule 2023 Pestraumar Dated 23rd August 2023.

To

The Secretary to Government of Khyboo Pakhbunbhusa. Establishment and Administration Depostment, Peshausar.

SUBJECT: Guidance regarding deletion of Rule 7(S) in the

Civil Servant (Appointment, Annotion & Transfer Rules:

1989)

Dear Sir,

9 am directed to refer to your letter No. Softmany

11-3/2020 dated 6th June 2023 and to state that after

deletion of Rule 7(5) Khyber Pakhtunkhwo Ciril Servant (Appointment,

Promotion and Transfer Rules 1989) 9th has been intimated that

those officers officials who do not comply with promotion order

of the competent authority or try to evade promotion though

different means shall be proceed under khyber Pakhtunkhwa

Ciril Servant (Efficiency and Discipline) Role 2011.

In this connection it is submitted that in some cases lady teacher of primary level who civail such promotion have to face serious incoverience while they have to perform duties in the remotest stations with no residential / trompost facilities. Most of them are married with kids and elder father of Mostrer-in-law who need case in such cases there are negative effects on service delivery. In such cases there are negative in view of above, the said ammendment may be reconsidered to the extent of lady teacher in primary schools.

Copy forwarded to;

(Muhammad Ishary) Section officer (Primary)

1. Director E& SE Klybo Pakintorkhua.

2. PS to Secretary, E & SE Percotronal Chilles At bountings



# GOVERNMENT OF KHYBER PAKHTUNKHWA ESTABLISHMENT DEPARTMENT

No. SO(Policy)E&AD/I-3/2020 Dated Peshawar the September 07, 2023

The Secretary to Government of Khyber Pakhtunkhwa,

Elementary & Secondary Education Department.

Subject: -

GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT,

PROMOTION AND TRANSFER) RULES, 1989.

Dear Sir.

I am directed to refer to your letter No. SO(Primary-M)/E&SED/2-2/Appointment-Rule/2023 dated 23.08.2023 on the subject noted above and to state that. necessary guidance has already been tendered to your good office vide this department letter of even No. dated 06.06.2023 (copy enclosed).

Yours faithfully,

Section Officer (Policy)

### Endst. Of even No & date

Copy forwarded to the:-

- 1. PS to Special Secretary (Reg), Establishment Department.
- 2. PA to Additional Secretary (Reg-II), Establishment Depuriment.
- 3. PS to Deputy Secretary (Policy), Establishment Department.



# GOVERNMENT OF KHYBER PAKHTUNKHWA ESTABLISHMENT DEPARTMENT No. SO(Policy)E&AD/1-3/2020 Dated Peshawar the September 07, 2023

To

The Secretary to Government of Khyber Pakhtunkhwa, Elementary & Secondary Education Department

Subject: -

GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE KHYBER PAICHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION AND TRANSFER) RULES, 1989.

Dear Sir.

I am directed to refer to your letter No. SO(Primary-M)/E&SED/2- 2/Appointment-Rule/2023 dated 23.08.2023 on the subject noted above and to state that necessary guidance has already been tendered to your good office vide this department letter of even No. dated 06.06.2023 (copy enclosed).

Yours faithfully,

Section Officer (Policy)

#### Endst, Of even No & date

Copy forwarded to the:-

- 1. PS to Special Secretary (Reg), Establishment Department.
- 2. PA to Additional Secretary (Reg-II), Establishment Department.
- 3. PS to Deputy Secretary (Policy), Establishment Department

Section nicer (Policy)

WP4442-2023 AZIZULLAH VS GOVT OF PG43

Dated: 22-01-2024

1) Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar

2) Secretary to Government of Khyber Pakhtunkhwa, Elementary and Secondary Education Department, Civil Secretariat, Peshawar

3) Director Elementary and Secondary Education Department

REPRESENTATION AGAINST THE IMPUGNED NOTIFICATION BEARING NO.SO(POLICY)E&AD/1-312020. DATED 06/08/2020. COMMUNICATED TO SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA. ELEMENTARY & SECONDARY EDUCATION DEPARTMENT VIDE LETTER D06/06/2023, WHEREIN IT WAS STATED THAT SUB RULE 5 OF RULE 7 OF KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION AND TRANSFER) RULES, 1989 STANDS DELETED

Sir/ Madam:-

613

Your Honorable authority promulgated Notification No. SO (Policy) E&AD/1 3/2020, dated 06/08/2020, communicated to Elementary & Secondary Education vide letter dated 06/06/23 wherein it has been made mandatory to the employees to avail the promotion, otherwise, disciplinary action shall be taken against the employees. That, as per notification No. SD (Policy) /EDAD/1- 3/2020 dated 06/08/2020, the right of foregoing of promotion was withdrawn and the Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing) deleted Rule 7(5) in the Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 vide notification no SOR-VI (E & AD)/1-2/2020 dated 06-08-2020. That the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar asked for guidance regarding deletion of Rule 7(5) in Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 in respect of which the Establishment Department vide its letter No. SO.(Policy) E&AD/1- 3/2020 dated Peshawar the June 06th, 2023 directed the Directorate of Elementary & Secondary Education that Rule 7(5) in the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 has been deleted vide notification dated 06-08-2020 and ,therefore, no provision exists to decline or forgo promotion and it is obligatory upon every civil servant to accept promotion under every condition. That Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa also wrote a letter to the office of Establishment & Administrative Department vide No SO(Primary-M) E&SED/2-2/Appointment Rule/2023 dated 23-08-2023 to reconsider the amendment made in Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 as it had negatively affected a large number of teachers and especially female teachers. In the meanwhile, the department vide its letter dated 07th of September 2023 directed the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa that necessary guidance has already been provided to the department and therefore no provision exists to decline or forgo promotion and those teachers who do not comply with the promotion order of the competent authority or try to evade promotion through different means shall be proceeded under the Khyber Pakhtunkhwa Civil Servant (Efficiency & Discipline) Rules, 2011.

It is, therefore, humbly prayed that on the acceptance of the instant representation; the Notification bearing No. SO (POLICY) E&D/1-3 1-2020 DATED 06/08/2020, communicated to vide letter dated 06/06/2023, may please be declared and ordered to be struck down being Void, Ultra vires to the Constitution of Pakistan.

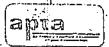
Best Regards

Mustajab Khan Son of Zarin Muhamamd Resident of Tehsil & District Mardan

#### 

Khyber Pakhtunkhwa

Acie Pullah Kharr Prontient O 0000-0444648 C coleusott970(jigme8.com G nototok



APTA House: Govt. Primary School No.4 Culbahar Posiniwar City.

آل براتمری لیچیرزایسوی ایشن (اپٹا) تیبر پختونخوا

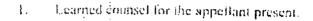
بهاب: میکولری اولمنٹری ماہ سیکٹوری انجرمیش نیبر پینو لڑا مناب اکل پراتمری لیجرز الحدی ایش نیبر پینو لڑا جنب مائل

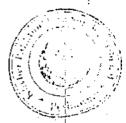
جمن کے مطابق آب ہر ملام پروموش مرور لیں کے اگر فیل لیں کے 9 اس کے طاقب ال سے فل دولا کے مطابق کا والی کرنے کا کہا کیا ہے دواصل ہے آفوی فویلیش خیاوی انسانی متوق کی محل طالب وول ہے صوب کی فوور دواز اور پہاڑی ملاقوں میں خاص کو فواقین اما تھا کہ انہائی مشکلات کا سامان کرنا ہوئے کا

ادد پرومشن شد لينے كى صورت ندر باتانده بالأليا فاع الكين بروكي شدك بات

ال سلط نن آب جلد اذ جلد قام (DEOs) ال ال الداكر الك فعوس مراسله بادك كيا جائة اكر امثان عن ب كل العيل براترك اماند، كر ذات

 07.05 2024





2. Let a pre-admission notice he issued to me respondents through TCS for submission of reply/comments Appellant is directed to deposit FCS expenses within three days. To come up for reply/comments as well as preliminary hearing on 10.06.2024 before S.B. P.P given to learned counsel for the appellant.

application for suspension of Notification dated 06.06.2023 and letter dated 25.08.2023 till the final disposal of main service appeal. In the meanwhile, no adverse action shall be taken against the appellant till next date of hearing.

Gertified to be true supy(Muhammad Akbar Khan)

Member (E)

The transfer of the state of th

Date of Proconductor of Aurilianion 10-1-1-6

Number 9

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Date of the state of the state

# JAKALAT NAMA

# BEFORE THE SERVICE TRIBUNAL PESHAWAR

Versus

Appellant

Government of KP & others

Respondents

I (the Appellant)

do hereby appoint and retain

# MUHAMMAD MUAZZAM BUTT ASC, MUHAMMAD ADEEL BUTT AHC BASSAM AHMAD SIDDIQUI AHC

# ASSOCIATES OF MUAZZAM LAW FIRM

to act and appear for me in the above Suit and on my behalf to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of any petition connected with the same or any decree or order passed therein and Applications for review to file and obtain return of documents, and to represent me/us and to take all necessary steps on my/our behalf in the above matter.

I agree to ratify all acts done by the aforesaid Advocate in pursuance of this Authority.

APPELLANT

ACCEPTED

MUHAMMAD MUAZZAM BÚTT

Advocate Supreme Court

MUHAMMAD ADEEL BUTT

Lad Bruth

Advocate High Court

BASSAM AHMAD SIDDIQUI

Bassan 1

Advocate High Court