


FORM OF ORDER SHEET

Court of _____

Appeal No. 1739 /2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	02 /10/2024	<p>The appeal presented today by Mr. Muhammad Muazzam Butt Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 07.10.2024. Parcha Peshi given to counsel for the appellant.</p> <p>By order of the Chairman</p> <p> REGISTRAR</p>

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

A No 1789/24

AMINA BIBI
V/S

Government of KP & others

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ADVOCATE
M. Muazzam Butt

1-

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

In Ref to

Service Appeal No. 1789/2024

Amina Bibi Daughter of Bahadar Said, SPST
GGPS Jilar No.2, Tehsil & District Timargara

.....Appellant

VERSUS

- 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, Civil Secretariat Near MPA Hostel, Peshawar

.....Respondents

SERVICE APPEAL UNDER SECTION 4 OF KPK SERVICE TRIBUNAL ACT 1974. AGAINST THE IMPUGNED NOTIFICATION BEARING NO.SO(POLICY)E&AD/1-3/2020. 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 PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION AND TRANSFER) RULES, 1989 STANDS DELETED

PRAYER:

ON ACCEPTANCE OF INSTANT SERVICE APPEAL. THE IMPUGNED NOTIFICATION BEARING NO: SO (POLICY) E&AD/1-3/2020. 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:

1. That the Respondents Department appointed the Appellant as Senior Primary School Teacher.
Copy of Appointment letter is annexed as **Annexure A**

2. That as per Khyber Pakhtunkhwa (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".

5. 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 Impugned 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

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 Annexure E

9. 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 of 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.

- c. 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.
- d. 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 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 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:

I, (the appellant) solemnly declare 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.

[Signature]
Deponent

[Signature]
Appellant

Through

[Signature]
Muhammad Muazzam Butt
Advocate/Supreme Court

[Signature]
Muhammad Adeel Butt
Advocate High Court

[Signature]
Bassam Ahmad Siddiqui
Advocate High Court
LL.M- Human Rights

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

C.M No _____ -P of 2024

In Ref to

Service Appeal No _____ /2024

**AMINA BIBI
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:-

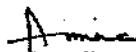
1. That the instant application may be treated as part and parcel of service appeal of the appellant.
2. That the appellant has brought a good prima facie case and balance of convenience also lies in favor of the appellant.
3. That there is likelihood success of the appellant in the lis. And if the notification 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:

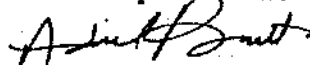
I (the appellant) do hereby solemnly stated on oath that the contents of foregoing application are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court


Deponent


Appellant

Through


Muhammad Muazzam Butt
Advocate Supreme Court


Muhammad Adeel Butt
Advocate High Court

OFFICE OF THE DISTRICT EDUCATION OFFICER (F) DIR UPPER
OFFICE ORDER

Consequent upon their selection by the Departmental Selection Committee, District Education Officer (F) Pw:Dir Upper has been pleased to appoint the following Trained PTC Fe-Male Candidate at the schools noted against each in BPS No.7 Rs.1480-81-2695) plus usual allowances as admissible under the rules subject to the following terms and conditions.

S.No.	Name	Father's Name	Address	M/S	School where posted
1.	Tawhid Begum	Rehiz Shah	Barawal	41.90	Govt. Middle Sch. Barawal
2.	Abida Begum	Malimullah	Khull	36.26	" Khull Kadow "
3.	Rukhsana	Ali Ahmad	Barora	34.44	" Kadir Bara "
4.	Guli Rana	Mohd Sher Khan	Dislawar	38.56	" Bagh Kadi Kh: "
5.	Fawzia	Sultan Ali Shah	Barora	32.12	" Landi Shah "
6.	Tahira	Dilber Khan	Barawal	39.00	" Sankar No.2 "
7.	Mikraj	Amin Khan	Qalandi	31.27	" Bagh Mani "
8.	Zaibul Haram	Taza Gul	Kandai	31.17	" Senkhor No.1 "
9.	Minhaz	Sher Zada	Dir 31.20	31.20	" Pingas "
10.	Shakila Khanum	Abdul Lotif	Dir 31.19	31.19	" Pingas "
11.	Safia	Fazal Qabar	Khull	30.96	" Luqman Banda "
12.	Hidayat Begum	Rehmat Madi	Tarpatar	29.42	" Gejgram Sh "
13.	Taj Pari Begum	Mohd Mullah	Mari	29.18	" Jotgan Gh "
14.	Kabsoom Qadar	Fazal Qadar	Dir	28.10	" M.Arif Kali "
15.	Anina Bibi	Mohd Afzal Khan	Khull	31.92	" Barari "
16.	Ania Bibi	Momin Khan	Chapar	28.76	" Jilar No.2 "
17.	Jehan Begum	Hakibul Hussan	Dir	28.25	" Guryal "
18.	Dilshad Begum	Mohd Jan	Kalkot	28.14	" Makrala "
19.	Hajira Bibi	Gul Shahzada	Karak	27.94	" Kasa Banda "
20.	Anina Bibi	Bahadar Said	Jilar	33.29	" Jilar No.2 AIGU "
21.	Shazia Alam	Mohd Alam	Dir	28.36	" Kasa Banda "
22.	Nazmina	Mohd Sherin	Nihag	25.12	" Bandi Nihag Mardan Azad Kashmir "
23.	Yasmin	Rizwani Gul	Sheringal	24.90	" Kilot "

TERMS AND CONDITIONS

1. Charge Report Should be submitted to all concerned.
2. No.TA/DA is allowed.
3. Service will be liable to termination on one month notice from their side and case of resignation without notice one month pay will be for fitted in the lieu thereof.
4. Their original certificates should be checked and verified from the concerned University/Board.
5. In the time of verification of certificates if any certificate was found bogus her service will be terminated from date of appointment.
6. They should join the post within 15 days on the issued of this notification.
7. They are directed to produced their certificates to the District Education Officer (F) Dir Upper.

(MENPOOZ SULTAN)
District Education Officer,
(F) Dir Upper.

En:st:HO. 1691-1721

Dated Dir, the 20/12/1999

1. Copy of the above is forwarded to the:-
2. The Director Primary Education NWFP Peshawar.
3. The District Accounts Officer Dir.
4. The Head Mistresses concerned.
5. The Official Concerned.
6. The Cashier Local office.

M. J. J. J.
District Education Officer,
(F) Dir Upper

ATTESTED

Dist. Govt. NWFP-Provincial
District Accounts Office Dir at Timargar
Monthly Salary Statement (October-2018)



Personal Information of Mrs AMINA BIBI d/w/s of BAHADAR SAID

Personnel Number: 00264647 CNIC: 10979290616

NTN:

Date of Birth: 15.01.1979 Entry into Govt. Service: 22.12.1999

Length of Service: 18 Years 10 Months 011 Days

Employment Category: Active Permanent

Designation: SENIOR PRIMARY SCHOOL TEA

80697499-DISTRICT GOVERNMENT KHYBE

DDO Code: DA6325-Dir Lower

Payroll Section: 001

GPF Section: 001

Cash Center: 13

GPF A/C No: EDUDA012325

Interest Applied: Yes

GPF Balance:

256,863.00

Vendor Number: -

Pay and Allowances:

Pay scale: BPS For - 2017

Pay Scale Type: Civil BPS: 14

Pay Stage: 10

Wage type	Amount	Wage type	Amount
0001 Basic Pay	26,880.00	1000 House Rent Allowance	2,214.00
1210 Convey Allowance 2005	2,856.00	1300 Medical Allowance	1,500.00
1923 UAA-OTHER 20%(1-15)	1,000.00	2148 15% Adhoc Relief All-2013	613.00
2199 Adhoc Relief Allow @10%	417.00	2211 Adhoc Relief All 2016 10%	2,154.00
2224 Adhoc Relief All 2017 10%	2,688.00	2247 Adhoc Relief All 2018 10%	2,688.00

Deductions - General

Wage type	Amount	Wage type	Amount
3014 GPF Subscription - Rs2620	-2,620.00	3501 Benevolent Fund	-600.00
3009 Income Tax	-50.00	3990 Emp.Edu. Fund KPK	-125.00
4004 R. Benefits & Death Comp:	-1,052.00		0.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance

Deductions - Income Tax

Payable: 1,000.00 Recovered till October-2018: 200.00 Exempted: 400.00 Recoverable: 400.00

Gross Pay (Rs.): 43,010.00 Deductions: (Rs.): -4,447.00 Net Pay: (Rs.): 38,563.00

Payee Name: AMINA BIBI

Account Number: C/A 010-4237-2

Bank Details: UNITED BANK LIMITED, 210388 TIMARGARA DIR TIMARGARA DIR,

Leaves: Opening Balance: Aailed: Earned: Balance:

Permanent Address: VILL.QAZI ABAD B/BAT

City: DIR LOWER

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City:

Email: alamzaidkhan8@gmail.com

ATTESTED

ATTESTED

(WAZIRAH LATIF)
DEPUTY SECRETARY (POLICY)

ATTESTED



- The Chief Secretary, Administration Department.
- The Registrar, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
- All Deputy Commissioners in Khyber Pakhtunkhwa.
- All Autonomous/Semi Autonomous Bodies in Khyber Pakhtunkhwa.
- All Heads of Attached Departments in Khyber Pakhtunkhwa.
- All Divisional Commissioners in Khyber Pakhtunkhwa.
- The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
- All Administrative Secretaries to Governor, Khyber Pakhtunkhwa.
- The Sector Member Board of Revenue, Khyber Pakhtunkhwa.
- Additional Chief Secretary, Govt. of Khyber Pakhtunkhwa, Planning & Development Department.

DATE NO & EVEN DATE

CHIEF SECRETARY
GOVERNMENT OF THE KHYBER PAKHTUNKHWA

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

AMENDMENT

Further amendment shall be made, namely:

(1) 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:

Dated Peshawar, the 06/8/2020

NOTIFICATION

GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGULATION WING)

Annexure - B-

9-

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)
2. 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, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
13. The Deputy Director (IT), 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 copies.
16. The Caretaker, Administration Department.

(WARDAH LATIF
DEPUTY SECRETARY (POLICY)


ATTESTED

ATTESTED

[Handwritten signature]

WP442-2823 AZIZULLAH VS GOVT OF POK

Section Officer (Policy)

(Asst. Deputy Secretary (Policy))

Yours faithfully,

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

Copy forwarded to her.

Encl. - 01 even No & date

[Handwritten initials]

2011, please

proceeded against under Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules, of the competent authority or try to evade promotion through different means shall be

Further, those officers/staffs who do not comply with promotion order civil servant to accept promotion in every condition.

to lacke higher responsibilities in case of promotion. Therefore, it is obligatory upon every prevent those who tend to forge promotion to evade posting/transfer or show lack of capacity well servant from completion for their path by asking to a single lucrative position or to

2. The basic rationale behind the deletion of the rule is aimed at preventing a provided orders to decline or forego promotion.

3. The basic rationale behind the deletion of the rule is aimed at preventing a provided orders to decline or forego promotion.

2/A promotion dated 18.04.2023 in the subject noted above and to state that sub-rule 7 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 stands deleted vide this department notification dated 06.08.2023; thus, no

I am directed to refer to your letter No. SO/HRM-2745/2023.

Dear Sir,

Subject: QUANCE REGARDING DELETION OF RULE 7 IN THE CIVIL SERVICE (REG-III) AND TRANSFER RULES, 1989

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

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GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
No. SO/HRM/2745/2023
Dated Peshawar the June 06, 2023



Annexure - C

-11-

GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGULATION WING)

To
The 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/2023) dated 18.04.2023 on the subject noted above and to state that sub-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.

2. The basic rationale behind the deletion of the ibid rule is aimed to preventing a civil servant from temptation for illicit gain by sticking to a single lucrative 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.

3. Further 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

Yours faithfully,
(Issa Muhammad Khan)
Section Officer(Policy)

(Endst). of even No & date

Copy is forwarded to :-

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

Section Officer
(POLICY)


ATTESTED

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
CIVIL SECRETARIAT PESHAWAR
(Phone No.091-9223587)

Nr.SO (Primary-MVE&SED/2-6/2023
Dated Peshawar lha. June 26th, 2023

To

The Director
Elementary & Secondary Education Department
Khyber Pakhtunkhwa, Peshawar.

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

Subject: GUIDANCE REGARDING DELETION OF RULE 7(B) 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. 50 (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

[Signature]
(MUHAMMAD ISHAQ)
SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

[Signature]
SECTION OFFICER (PRIMARY MALE)
26/6/23

[Signature]
ATTESTED

-13-
B/c

No 50 (Primary-M)/E&SED/2-6/2023
Dated Peshawar the June 25th 2023

To
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. SD (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 GOVT OF PG43

ATTESTED

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

Annexure
①


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.


Sl	NAME	DESIGNATION
1	Mr. Fazal Wahid	Deputy Director Establishment of Directorate Elementary & Secondary Education Department
2	Mr. Aziz Ullah	Provincial President All Primary Teachers Association Khyber Pakhtunkhwa
3	Mr. Razaqat Ullah	General Secretary APTA Peshawar
4	Muhammad Ishaq	Section Officer (Primary) E&SE Department Civil Secretariat 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 threefold discussion it was decided that Directorate of Elementary & Secondary Education Department may examine the case properly and submit a 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 Wahid)
Deputy Director-1
E&SE Department


(Mr. Aziz Ullah)
Provincial President
All Primary Teachers Association
Khyber Pakhtunkhwa


(Mr. Razaqat Ullah)
General Secretary APTA
Peshawar


(Muhammad Ishaq)
Section Officer (Primary-Male)
E&SE Department

(Abdulah)
Additional Secretary (Establishment)
E&SE Department


ATTESTED

15
- B/C -

MINUTES OF THE MEETING REGARDING APPLICATION SUBMITTED BY MR AZIZ ULLAH PROVINCIAL PRESIDENT ALL PRIMARY TEACHERS ASSOCIATION KHYBER PAKHTUNKHWA REGARDING DELETION OF RULE 7(S) 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

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

Provincial President
All Primary Teachers Association
Khyber Pakhtunkhwa

(Mr. Razaqat Ullah)
General Secretary APTA
Peshawar

(Muhammad Ishaq)
Section Officer (Primary-Male)
E&SE Department

(Abdullah)

Additional Secretary (Establishment)

ATTESTED



ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
CIVIL SECRETARIAT PESHAWAR
(Phone No.091-9221587)

No. SO(Policy-M)E&SED/2-2/Appointment-Rule /2023
Peshawar Dated 23rd August, 2023

Annexure
E

The Secretary to Govt. of Khyber Pakhtunkhwa,
Establishment & Administration Department,
Peshawar

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

Dear Sir,

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

2. In this connection it is submitted that in some cases lady teacher of primary level who avail such promotions have to face serious inconvenience 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 need care. In such cases, there are negative effects on service delivery.

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

(MUHAMMAD ISHAQ)
SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

(Signature)
SECTION OFFICER (PRIMARY MALE)
20/8/23

Scanned with CamScanner

ATTESTED

ATTACHED

1. Division E & SE Kyba Paktunkhwa
2. PS to Secretary E & SE Department Kyba Paktunkhwa
Copy forwarded to:
(Muhammad Ishtiaq)
Section Officer (Primary)
(Male)

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

Dear Sir,
I am directed to refer to your letter No. SA/2022 (Policy)/E&AD dated 04/June/2022 and to state that after deletion of Rule 7(5) Kyba Paktunkhwa (Civil Servant (Appointment, Promotion and Transfer Rules 1989)) it has been intimated that those officers/officials who do not comply with promotion order of the competent authority or try to evade promotion through different means shall be proceed under Kyba Paktunkhwa (Civil Servant (Efficiency and Discipline) Rule 2011.

SUBJECT: Guidance regarding deletion of Rule 7(5) in the Civil Servant (Appointment, Promotion & Transfer Rules 1989)

The Secretary to Government of Kyba Paktunkhwa, Establishment and Administration Department, Peshawar.

To
No. SA (Primary-M) E&SED/8-8/ Appointment-Rule/2022
Peshawar Dated 23rd August 2022.

-8/c-

-12-

ATTESTED

WP4443-2023 AZIZILAM VS GOVT OF PK43

Assistant Director (Establish-1)
Elementary & Secondary Education
Khyber Pakhtunkhwa

Assistant Director (Establish-1)
Elementary & Secondary Education
Khyber Pakhtunkhwa
Date: 21/7/2023

1. PA to Director, Local Director,
2. Master Copy.

Copy of the above is for:
Encl: No.

The case is submitted for perusal and necessary actions please.

Departmental Promotion Committee.
provided they submit their written refusal prior to conduction of the meeting of
Teachers below 15-16 may be exempted of implications of the amendment in the rules bid
7(2) have affected negatively a huge numbers of Female Teachers. Thus it is proposed that
In view of the above, this office is of considered opinion that the deletion of Rules
has been asked for abolition of consolidated case.

Chairman of the Hunjra Educational Society Establishment at its office this office has
That in the light of the minutes of meeting held 6-07-2023 held under the
(Primary-4) E&SED/2-3/Appointment/2023 dated 12-04-2023.

The same was received by this office from your good office vide letter No. SO
civil servant to accept promotion under every condition.

That there exists no provision in decline or forgo promotion. It is obligatory upon every
Wing) vide letter No. SO (Policy) E&AD/1-1/2020 dated 6-06-2023 categorically stated
That the Government of Khyber Pakhtunkhwa Establishment Department (Regulation
No. SO (Primary-4) E&SED/2-3/Appointment/2023 for necessary guidance.

That your good office forwarded the same to the quarter concerned vide letter
promotion.

(ii) It is the prerogative of the civil servant to either accept or turn down the offer of
(i) Now it is obligatory upon the civil servant to accept promotion in every condition.
No.0087 dated 16-02-2023.

That this office sought guidance from your good office in the following words vide letter
vide notification No. SOA-VI (E&AD)/1-1/2020 dated 06-08-2020.
dated Rule 7(2) in the Civil Service (Appointment, Promotion & Transfer Rules 1989)

That Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing)
present brief history about the background of the case as under:

I am directed to refer to the letter No. SO (Primary-4) E&SED/2-3-11
Classification of the meeting/PT/2023 dated 10-07-2023 on the subject cited above and in
Dear Sir,

Subject: - MINUTES OF THE MEETING

The Section Officer (Primary-4/16),
Elementary & Secondary Education Department,
Khyber Pakhtunkhwa, Peshawar.



No. 8145
Khyber Pakhtunkhwa, Peshawar
Date: 21-7-2023
Email: rishahilmenthalo@gmail.com
Phone: 091-922344

TESTED

2. Master Copy
1. PH to Director Local Directorate
Copy of the above to:
Assistant Director
Elementary & Secondary Education
Khyber Pakhtunkhwa.

The case is submitted for perusal and necessary action please.
In view of the above, this office is of considered opinion that the decision of Rules 7(S) have affected negatively a huge members of female teachers.

That in light of the minutes of the meeting dated 6-07-2023 held under the Chairmanship of Hon. Additional Secretary Education at his office. This office has been asked for submission of consolidated case.

That the government of KP-ED (Regulation Wing) vide letter No. SO (Policy) EQAD/1-2/2020 dated 6-06-2023 categorically stated that there exists no provision to decline/forfe promotion, it is obligatory upon every civil servant to accept promotion under every condition.

That your good office forwarded the case to quarters concerned vide letter No. SO (Promotion) EQAD/2-2/Appointment-2023 for necessary guidance.

That this office sought guidance from your good office in the following vide notification No. No. SO-R-VI(EQAD)-1-3/2020 dated 06-08-2020. (iii) It is obligatory upon civil servant to accept promotion.

That Government of KP Establishment department (Regulation Wing) dated rule 7(S) in Civil Servants (Appointment-Promotion) Transfer Rule 1987 present brief history, about background of our as under:

Minister of meeting/PT/2023 dated 10-7-2023 on subject cited above and its Decs Sir, I am directed to refer to letter No. SO (Promotion) EQAD/5-1/General/

Subject: Minutes of Meeting
KPK, Peshawar.
Elementary & Secondary Education Department
Section Officer (Primary-Male)
RESAUR
(21-7-2023)

To: DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION, KPK
-B/C-
19-

Annexure - F



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 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 Department.
3. PS to Deputy Secretary (Policy), Establishment Department.

ATTESTED

WP4442/2023 AZIZULLAH VS GOVT OF PK43

-30-

- 21 -
- B/C -

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 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)

Encls. 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 Officer (Policy)

WP4442-2023 AZIZULLAH VS GOVT CF PG43

ATTESTED

-22-

Annexure - G

To,

- 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

Subject: 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:-

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 and against the fundamental principles of natural justice.

Dated 16/03/2024



AMINA BIBI
D/O BAHADAR SAID
SPST.

204

07.05.2024



1. Learned counsel for the appellant present.

2. Let a pre-admission notice be issued to the respondents through TCS for submission of reply/comments. Appellant is directed to deposit TCS 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.

03. Alongwith the service appeal there is an application for suspension of Notification dated 06.06.2023 and letter dated 23.08.2023 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.

Certified to be true copy (Muhammad Akbar Khan)
Member (S)

[Handwritten signature]
Secretary
Government of Punjab
Lahore

Date of Presentation of Application 10-6-24
Number of 1
Copies 1
Urgent 1
Total 1
Name of ---
Date of 13-6-24
Date of Delivery of Copy 17-6-24

~~ADMITTED~~

-25-

VAKALAT NAMA

BEFORE THE SERVICE TRIBUNAL PESHAWAR

AMINA BIBI
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.

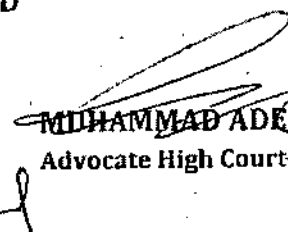


APPELLANT

ACCEPTED



MUHAMMAD MUAZZAM BUTT
Advocate Supreme Court



MUHAMMAD ADEEL BUTT
Advocate High Court



BASSAM AHMAD SIDDIQUI
Advocate High Court