


FORM OF ORDER SHEET

Court of _____

Appeal No. 1791 /2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	07/10/2024	<p>The appeal presented today by Mr. Muhammad Mauzzam Butt Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 11.10.2024. Parcha Peshi given to counsel for the appellant.</p> <p>By order of the Chairman</p> <p> REGISTRAR</p>

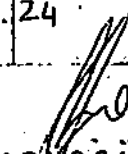
BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

MUHAMMAD TAHIR SHAH
V/S

Government of KP & others

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ADVOCATE
M. Muazzam Butt

-1-

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BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

In Ref to

Service Appeal No 1791 /2024

Muhammad Tahir Shah Son of Muhammad Iqbal Shah, PSHT (BPS-15)
GPS Lakki Marwat, Tehsil & District Lakki Marwat

.....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 Primary School Head Teacher.
Copy of Appointment letter is annexed as **Annexure A**

- 2
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. SO (Policy) /E&AD/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. SO (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 affects 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 set aside.

- 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.
- e. 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.
 Deponent

[Signature]
 Appellant

Through

[Signature]
 Muhammad Muazzam Butt
 Advocate Supreme Court

[Signature]
 Muhammad Adeel Butt
 Advocate High Court

[Signature]
 Bassam Aliqad 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

MUHAMMAD TAHIR SHAH
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 IIs. 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:

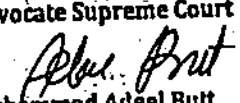
I (the appellant) do hereby solemnly stated on oath that the contents of foregoing application are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.


Deponent

Through


Appellant


Muhammad Muazzam Butt
Advocate Supreme Court


Muhammad Adeel Butt
Advocate High Court

کفل کوڈ 11504
سرگرمی سرگرمی

00295282-1-039886-1 11201-039886-1

محمد طاہر شاہ 5/0 محمد اقبال شاہ PSHT PSHT
کفل کوڈ 11504 سرگرمی سرگرمی

P Enc-001 Month January 2024
LKR682 Govt - Primary Schools(Male)
GOVT PRIMARY SCHOOLS(MALE)
HTN
GPF #
Old # 68800002702

Per # 00295282 Buckle:
Name MUHAMMAD TAHIR SHAH
PRIMARY SCHOOL HEAD TEACH
CNIC No 1120103988661
GPF Interest Applied
15 Active Temporary

AND ALLOWANCES

1-Basic Pay	70,360 00
1-House Rent Allowance 45%	3,524 00
2-Convey Allowance 2005	2,828 00
2-Medical Allowance	1,500 00
3-Charge Allowance	40 00
1-15% Adhoc Relief A11-2013	1,090 00
1-Adhoc Relief A1100 810%	727 00
1-Teaching Allowance 2021	3,224 00
-Dispr Red A11 15% 2022HP	7,605 00
Gross Pay and Allowances	114,614 00

DEDUCTIONS

TAX (3609)	4,193 00
Subrc	4,280 00
-Benevolent Fund	1,290 00
-R: Benefits & Death Comp:	609 00

P Enc-001 Month January 2024
LKR682 Govt - Primary Schools(Male)
GOVT PRIMARY SCHOOLS(MALE)
HTN
GPF #
Old # 68800002702

Per # 00295282 Buckle:
Name MUHAMMAD TAHIR SHAH
PRIMARY SCHOOL HEAD TEACH
CNIC No 1120103988661
GPF Interest Applied
15 Active Temporary

PAYS AND ALLOWANCES

2347-Adhoc Rel A1 15% 22(PS17)	
2378-Adhoc Relief A11 2023 35%	
Gross Pay and Allowances	114,614 00

DEDUCTIONS

IT Payable	20,912 20	Deducted	28,351 00
GPF Balance	327,777 00		

ATTACHED

Total Deductions 10,273 00

Net Payable 124,341 00

D.O B 27.07.1988 LFP Quota ALLIED BANK LIMITED A/C SERAI MURRAY

D.O B 27.07.1988 LFP Quota ALLIED BANK LIMITED A/C SERAI MURRAY

OFFICE OF THE DISTRICT EDUCATION OFFICER (M.A.B.) BANNU.

APPOINTMENT/ADJUSTMENT.

The following appointment/adjustment of the following P.T.O. Trainee Teachers/ Candidates are hereby ordered in BPS-7 plus usual allowances in the interest of public service with effect from re-opening of school (i.e. 16.9.1956)

Sr. No.	Name of candidate/Teacher with father's name	Address	From	To	Remarks
1.	Mohd. Yaqub S/O Akbar Ali Khan. P.T.O. Trd.	Asim Killa.	GPS, Nawab-Sardri Khol (P.R. Bannu)	GPS, Chitta Khol.	V. Post
2.	Ghulam Ishaq Khan S/O Sardar Khan.	H.No. 173/D	Candidate.	"	Potma Khol.
3.	Abdur Rais Khan S/O Mir Abbas Khan.	Hinjäl Shorao Khan.	-do-	"	Nawaz Abad.
4.	Mir Aam Khan S/O Qasim Khan.	H. Dad Abad Lakki.	-do-	"	Sakhi Sarwar Mandov.
5.	Sabir Jan S/O Sarwar Jan.	Isak Khol.	Candidate.	"	Ghulam Shah.
6.	Kabil Ahmad S/O Dauran Khan.	U. Abad Lakki.	-do-	"	Azad Nuror.
7.	Mohd Noor Jan Khan S/O Sahib Jan D.M. Un-Trd.	Amandi.	GMS, Pipali Picket (P.R. Bannu. N.W.A)	"	Kotka Adil.
8.	Sher Afzal Khan S/O Sher Nawaz Khan.	Pak Ismail Khol.	Candidate.	GPS,	Kachkot Abad Khan.
9.	Khusdair Khan S/O Aman Khan.	Kot Kashmir.	-do-	"	Sadev Nuror.
10.	Khalid Mahmood Khan S/O	Kt. Azmat Killa.	-do-	GPS,	Mamosh Khol.
11.	Inanullah Khan S/O Adam Khan.	Matera.	-do-	"	Wali Zar Killa.
12.	Hukam Khan S/O Habib Khan.	Kt. Oider Killa.	-do-	MPS,	Wali Zamam Nuror.
13.	Mohd Iqbal Khan S/O Sultan Sikandar Khan.	Kot Kashmir.	-do-	GPS,	Mir Baz Burok Khol. (V.P.)
14.	Khairullah Jan S/O Rasool Ghulam.	Sahib Zada Khosht. P.O.S/Naurang.	-do-	"	Sparka Wazir.
15.	Gul Rehman Khan S/O Mohd Zaman.	H. Mishan Khol Lakki.	-do-	"	Khargol.
16.	Faridullah Khan S/O Mohd Nasim Khan.	Asim Killa.	-do-	"	Gadi Top.
17.	Abdur Rashid Khan S/O Akbar Ali Khan.	Gandi Khan Khol.	-do-	"	Lapori Killa.
18.	Mir Mohd Khan S/O Sher Ghulam.	Khan Kakki.	-do-	"	Haved Khan.
19.	Shah Qais Khan S/O Sher Zaman Khan L/Asstt. GMS, Jani Khol (P.R.) Bannu.	Mamosh Khol.	GMS, Jani Khol (P.R. Bannu)	GPS,	Mamosh Khol.
20.	Amin Shah S/O Ibrahim Khalil.	Ghulam Ali Saathi (S/Naurang).	Candidate.	GPS,	Mamboti Burek Zai.
21.	Wahidullah Khan S/O Noor Bahadar Khan.	Wazir Jani Khol.	Candidate.	GPS,	Malik Shahi Jani Khol.
22.	Mohd Ibrahim S/O	Ghorivula.	-do-	GPS,	Adhami Khol Shah.

ATTESTED

ATTESTED

ATTESTED

DEPUTY SECRETARY POLICE
(WAZIRAN LAITH)

[Handwritten signature]



- 1. Additional Chief Secretary, Govt. of Khyber Pakhtunkhwa, Planning 2
- 2. The Senior Member Board of Revenue, Khyber Pakhtunkhwa
- 3. The Principal Secretary to Govt. of Khyber Pakhtunkhwa
- 4. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa
- 5. The Principal Secretaries in Khyber Pakhtunkhwa
- 6. All Divisions of Attached Departments 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 Public Service Commission, Peshawar
- 12. The Secretary, Khyber Pakhtunkhwa E&A Department
- 13. The Deputy Director (IT), E&A Department
- 14. All Section Officers in Establishment & Administration Department with the request to
- 15. The Section Officer (Admn), Administration Department
- 16. The Section Officer (Admn), Administration Department
- 17. The Caricker, Administration Department

CHIEF SECRETARY
GOVERNMENT OF THE IGWER PAKHTUNKHWA

REGISTER NO & REVEN DATE

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

AMENDMENT

In exercise of the powers conferred by section 25 of the
 Government of Khyber Pakhtunkhwa Act No. XVIII of
 1973 (Khyber Pakhtunkhwa is pleased to direct that in the Khyber
 Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1959, the
 following further amendment shall be made, namely:

NOTIFICATION

Dated Peshawar, the 06/8/2020

GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGISTRATION-WING)

Annexure - 1 - 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

~~ATTACHED~~

REPUBLIC OF KENYA GOVT OF P.O.A.S

Handwritten notes and signatures at the top of the page.

Special Officer (Policy)

- 1. To Special Secretary (Legal), Establishment Department.
- 2. To Additional Secretary (Legal), Establishment Department.
- 3. To Deputy Secretary (Policy), Establishment Department.

Copy forwarded to the: Legal, Of own file & file

(To Mr. Njiru (Legal))
Special Officer (Policy)

Yours faithfully,

proceeds against under Khyber Pakhtunkhwa Civil Services (Ethnicity & Disabling) Rules.

of the competent authority or try to evade promotion through different means shall be

Further, those officers/employees who do not comply with promotion order

shall remain from their position for which they are holding in a single instance of promotion or to

2. The basic rationale behind the definition of this rule is aimed at preventing a

1. I am directed to refer to your letter No. SO/Ministry-MPT/2023/1272

Subject: STANDARD OPERATING PROCEDURE OF KHYBER PAKHTUNKHWA CIVIL SERVICES (ETHNICITY AND TRANSFER) PROMOTION AND TRANSFER RULES, 1989

To: The Government of Khyber Pakhtunkhwa, Islamabad

GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
No. SO/Policy/2023/1272
Dated: Islamabad the 06, 2023

72

Annexure - C



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

Fi. SO (Primary-M)E&SE02-6/2023
Ludh Peshawar lhc, 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(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/1-3/2023 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 (E&SE)
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)

ATTESTED

12
B/c
No SO (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. SO (Policy)E&AD/1-3/2023 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 CF 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 715 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.

Annexure
①

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 the above 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

(Abdul Wahid)
Additional Secretary (Establishment)
E&SE Department

ATTESTED

- 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

S/No	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

-B/C-

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION, KPK.

PESHAWAR.
(21-7-2023)

To: Section Officer (Primary-Male)
- Elementary & Secondary Education Department
KPK, Peshawar.

Subject: Minutes of Meeting

Dear Sir, I am directed to refer to letter No. (SO Primary-M) E&SED/S-1/64724/ Minutes of meeting/PST/2023 dated 20-7-2023 on subject cited above and to present brief history about background of case as under:

- That Government of KP Establishment department (Regulation Wing) deleted rule 7(S) in Civil Servants (Appointment, Promotions, Transfer Rule 1987) vide notification No. No. SOP-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 06-07-2023
 - (i) Now it is obligatory upon civil servant to accept promotion.
 - (ii) It is prerogative of civil servant to either accept/turndown the offer of promotion.
- That your good office forwarded the same to quarters concerned vide letter No. SO (Primary-M) E&SED/2-2/Appointment/2023 for necessary guidance.
- That the government of KP-ED (Regulation Wing) vide letter No. SO (Policy) E&AD/1-3/2020 dated 6-06-2023 categorically stated that there exists no provision to decline /forgo promotion. It is obligatory upon every civil servant to accept promotion under every condition.
- That in light of the minutes of the meeting dated 6-07-2023 held under the Chairmanship of Hon. Additional Secretary Establishment at his office. This office has been asked for submission of consolidated case.

In view of the above, this office is of considered opinion that the deletion of Rules 7(S) have affected negatively a huge members of female teachers.

The case is submitted for perusal and necessary actions please.

- Copy of the above to;
1. PA to Director Local Directorate
 2. Master Copy

Assistant Director
Elementary & Secondary Education
Khyber Pakhtunkhwa.

ATTACHED

ATTENDED

WP 1442-2023 AZHILAH VA GOVT CP FOC

Assistant Director (Exhibit-1)
Ministry & Secondary Education
Khyber Pakhtunkhwa

1. PA to Director Local Directorate
2. Master Copy

Copy of the above is to:

Assistant Director (Exhibit-1)
Ministry & Secondary Education
Khyber Pakhtunkhwa
21/7/2023

The case is submitted for perusal and necessary actions please.

Departmental Promotion Committee provided they might their written refusal to conduct of the meeting of Teachers Union. It may be extended of implications of the committee in the rules held (2) have affected directly a huge number of female Teachers. Thus it is proposed that in view of the above, this office is of considered opinion that the deletion of Rules been asked for re-issuance of considered case. Chairmanship of Hon. Additional Secretary Establishment of his office this office has that in the light of the minutes of meeting dated 6-07-2023 held under the (1) (2) (3) (4) (5) (6) (7) (8) (9) (10) (11) (12) (13) (14) (15) (16) (17) (18) (19) (20) (21) (22) (23) (24) (25) (26) (27) (28) (29) (30) (31) (32) (33) (34) (35) (36) (37) (38) (39) (40) (41) (42) (43) (44) (45) (46) (47) (48) (49) (50) (51) (52) (53) (54) (55) (56) (57) (58) (59) (60) (61) (62) (63) (64) (65) (66) (67) (68) (69) (70) (71) (72) (73) (74) (75) (76) (77) (78) (79) (80) (81) (82) (83) (84) (85) (86) (87) (88) (89) (90) (91) (92) (93) (94) (95) (96) (97) (98) (99) (100) (101) (102) (103) (104) (105) (106) (107) (108) (109) (110) (111) (112) (113) (114) (115) (116) (117) (118) (119) (120) (121) (122) (123) (124) (125) (126) (127) (128) (129) (130) (131) (132) (133) (134) (135) (136) (137) (138) (139) (140) (141) (142) (143) (144) (145) (146) (147) (148) (149) (150) (151) (152) (153) (154) (155) (156) (157) (158) (159) (160) (161) 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Subject - **MINUTES OF THE MEETING**
Khyber Pakhtunkhwa
Ministry & Secondary Education Department
The Section Officer (Payroll-File)



No. 8145
Khyber Pakhtunkhwa, Peshawar
Date: 21-7-2023
Phone: 091-722344
Email: enrollment@kpk.gov.pk



ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
CIVIL SECRETARIAT PESHAWAR
(Phone No.091-8223587)

No. SO(Primary-M)EB/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 05th 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 or 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.

(Signature)
(MUNAWAR KHAN)
SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

1. Director EBSE Khyber Pakhtunkhwa.
2. PS to Secretary, EBSE Department Khyber Pakhtunkhwa.

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

Scanned with CamScanner

ATTESTED

-B/c- - 2 -

No. 50 (Primary - M) E&SE/PA-2/
Amendment - Rule/2023
Peshawar Dated 23rd August, 2023.

To
The Secretary to Government of Khyber Pakhtunkhwa,
Establishment and Administration Department,
Peshawar.

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

Dear Sir,
I am directed to refer to your letter No. 50 (Policy) / E&AD
/1-3/2020 dated 31st June 2022 and to state that after
deletion of Rule 7(S) Khyber Pakhtunkhwa 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 Khyber Pakhtunkhwa
Civil Servant (Efficiency and Discipline) Rule 2011.

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.

- Copy forwarded to;
1. Director, E & SE Khyber Pakhtunkhwa.
 2. PS to Secretary, E & SE Department Khyber Pakhtunkhwa

(Muhammad Ishaq)
Section Officer (Primary
Male)

ATTESTED

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-
3/Appointment-Rule/2023 dated 23.06.2023 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.

ATTESTED

UP4442-2023 AZIZULAH VS GOVT OF PKD

20

- 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 rendered 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)

~~TESTED~~

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/1-3/2020, 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

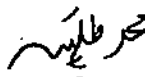
Sir/ Madam:-

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. SO (Policy) /E&AD/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&AD/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 28/01/2024




 MUHAMMAD TAHIR SHAH
 SON OF
 MUHAMMAD IQBAL
 SHAH
 PSHT

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.D. JP 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 (B)

[Handwritten signature]

Date of Presentation of Application 10.7.23
 Number of 57
 Copies 57
 Original 57
 Total 57
 Name of 13-6-23
 Date of 17-6-23
 Date of delivery of copy 17-6-23

~~ATTESTED~~

VAKALAT NAMA

BEFORE THE SERVICE TRIBUNAL PESHAWAR

MUHAMMAD TAHIR SHAH
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

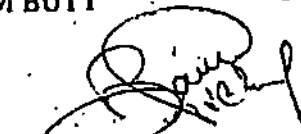
ACCEPTED



MUHAMMAD MUAZZAM BUTT
Advocate Supreme Court



MUHAMMAD ADEEL BUTT
Advocate High Court



BASSAM AHMAD SIDDIQUI
Advocate High Court