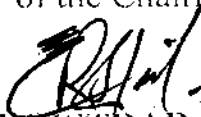


FORM OF ORDER SHEET

Court of _____

Appeal No. 1796 /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  REGISTRAR</p>

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

HAMISH V/S GUL

Government of KP & others

S.A # 1796/2024

INDEX

S#	DESCRIPTION OF THE DOCUMENTS	ANNEX	PAGES
1.	Appeal and Verification		1-4
2.	Application for suspension		5
3.	Copy of Monthly Salary account	A.	6 - 9
4.	Copy of notification No. SD (Policy) EV AD/1-3/2020 dated 06/08/2020	B.	10
5.	Copy of Impugned Letter dated June-06th, 2023	C.	12 - 14
6.	Copy of Minutes of Meeting dated 06-07-2023	D.	15 - 18
7.	Copy of Letter dated 23-08-2023	E.	19 - 20
8.	Copy of Impugned letter dated 07-09-2023	F.	21 - 22
9.	Copy of Representation against the said notification and representation made by APTA President	G & H	23 24 - 25
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ADVOCATE
M. Muazzam Butt

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

In Ref to

Service Appeal No 1796 /2024

Hamish Gul Son of Haji Saif Ullah Khan, PSHT (BPS-15)

GPS Menao, Tehsil Dargai & District Malakand

.....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. 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 SDR-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 forego 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.
- ii. 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 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.
- f. 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 Ahmad Siddiqui
 Advocate High Court
 LL.M- Human Rights

5

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

C.M No _____-P.of 2024

In Ref to

Service Appeal No _____ 2024

**HAMISH GUL
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 this Honorable Court.

Signature
Deponent

Through

Signature
Appellant

Signature
Muhammad Muazzam Butt
Advocate Supreme Court

Signature
Muhammad Adeel Butt
Advocate High Court

Service certificate

Certified that Mr. Hamish Gul PSHT GOV, T Primary School
Chamyari Shah Tehsil, Dargai District Malakand.

He is Serving in Education Department Since 22/09/1988.

SDEO Malë
Dargai Malakand

Sub-Division Officer (M)

Dargai District Malakand

Dist. Govt. KP-Provincial
District Accounts Office Malakand
Monthly Salary Statement (July-2024)



Personal Information of Mr HAMISH GUL: dw/s of HAJI SAIF ULLAH KHAN

Personnel Number: 00242377 CNIC: 1540107109547 NTN:
 Date of Birth: 01.03.1969 Entry into Govt. Service: 22.09.1988 Length of Service: 35 Years 10 Months 011 Days

Employment Category: Active Temporary

Designation: PRIMARY SCHOOL HEAD TEACH 80002421-DISTRICT GOVERNMENT KHYBE

DDO Code: MD6081-DY: D.O (M PRY) DARG

Payroll Section: 002

GPF Section: 001

Cash Center:

GPF A/C No: EDUMK003055

GPF Interest applied

GPF Balance: 393,957.00 (provisional)

Vendor Number:

Pay and Allowances: Pay scale: BPS For - 2022 Pay Scale Type: Civil BPS: 15 Pay Stage: 24

Wage type	Amount	Wage type	Amount
0001 Basic Pay	71,440.00	1001 House Rent Allowance 45%	3,524.00
1210 Convey Allowance 2005	2,858.00	1300 Medical Allowance	1,500.00
1505 Charge Allowance	40.00	1911 Compen Allow 20% (1-15)	1,000.00
2148 15% Adhoc Relief All-2013	950.00	2199 Adhoc Relief Allow @10%	637.00
2316 Teaching Allowance 2021	3,224.00	2341 Dispr. Red All 15% 2022KP	6,807.00
2347 Adhoc Rel Ai 15% 22(PS17)	6,807.00	2378 Adhoc Relief All 2023 35%	24,311.00
2393 Adhoc Relief All 2024 25%	17,880.00		0.00

Deductions - General

Wage type	Amount	Wage type	Amount
3015 CPF Subscription	-4,290.00	3501 Benevolent Fund	-1,200.00
3809 Income Tax	-6,483.00	3990 Emp.Edu. Fund KPK	-135.00
4004 R. Benefits & Death Comp:	-800.00		0.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance

Deductions - Income Tax

Payable: 103,720.65 Recovered till JUL-2024: 6,483.00 Exempted: 25929.71 Recoverable: 71,307.94

Gross Pay (Rs.): 140,058.00 Deductions: (Rs.): -12,708.00 Net Pay: (Rs.): 128,248.00

Payee Name: HAMISH GUL

Account Number: 6962-8

Bank Details: NATIONAL BANK OF PAKISTAN, 230620 NBP DARGA IMALAKAND AGENCY NBP DARGA IMALAKAND AGENCY.

Leaves: Opening Balance: Availed: Earned: Balance:

Permanent Address: MKD

City: MALAKAND

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City:

Email: hamishgulht@gmail.com

ATTENDED

8-Date 1959-88

OFFICE OF THE DISTRICT OFFICER (D) No. 8583-8619

APPOINTMENTS

The following trained candidates have been appointed as P.T.C. teachers in the BPS No. 7 (1350) plus usual allowances against the existing vacancies on the date of taking over service in the interest of public service.

The candidates will draw 1st pay of BPS 1350 till they qualify the P.T.C. examination.

No.	Name with address	School	Remarks
1.	Haji Nawaz S/O Haji Mohd. Bakht (Thana)	GPS Dhori	against 1st Post
2.	Shehriar S/O D. Mohd, Thana	M/S Khar	do
3.	Gul Ahmad Khan S/O Shah Didar, Dargal	GPS Dhori	do
4.	Mohd. Iqbal S/O Haji Khan, D/Allahd	M/S Khar	do
5.	Mrida Mohd S/O Haji Mohd, Tatalan	M/S Khar	do
6.	Abdul Salam S/O Haji Zada, Tatalan	M/S Shalwai (Tatalan)	do
7.	Imam Mohd S/O Haji Hassan, Tatalan	M/S Khar	do
8.	Amir Vamir S/O Haji Hassan, Tatalan	GPS Khar	do
9.	Mohd. Younsa S/O Haji Hassan, Thana	GPS Dhori	do
10.	Abdul Khatib S/O Abdul Wahid, Khar (M. Tatalan)	M/S Khar	do
11.	Mahdabali Khan S/O Haji Mohd, Kot	M/S Haji Sahna (Kot)	do
12.	Sulim Zada S/O Haji, Khar	GPS Khar	do
13.	Wahid S/O Haji, Khar	M/S Khar	do
14.	Mrida Mohd S/O Haji, Khar	GPS Khar	do
15.	Hamid S/O Haji, Khar	M/S Khar	do
16.	Mohd. S/O Haji, Khar	M/S Khar	do
17.	Shahid S/O Haji, Khar	M/S Khar	do
18.	Fazil S/O Haji, Khar	GPS Khar	do
19.	Mohd. S/O Haji, Khar	GPS Dhori	do
20.	Hajira Khan S/O Haji Khan, Khar	GPS Khar	do
21.	Hazir S/O Haji, Khar	M/S Khar	do
22.	Manir S/O Haji, Khar	GPS Khar	do
23.	Imam S/O Haji, Khar	M/S Khar	do

ATTESTED

ATTESTED

11/11/54

RECEIVED
OFFICE OF THE
DIRECTOR OF THE
BUREAU OF INVESTIGATION

Produced Pursuant to Court Order
Case No. 44-1574
Subpoena No. 858-5-8619

Charge report should be submitted to all concerned
No 2/2/54 to be allowed
Their appointment should be made in accordance with
and subject to the provisions of the regulations
in they wish to have copies, they will have to
submit them with the proper notice or application
in the form of a request and the proper fee to
Government.
Charge report should be submitted to all concerned
No 2/2/54 to be allowed
Their appointment should be made in accordance with
and subject to the provisions of the regulations
in they wish to have copies, they will have to
submit them with the proper notice or application
in the form of a request and the proper fee to
Government.

10/11/54
10/11/54
10/11/54
10/11/54

Annexure - B-

GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGULATION WING)

NOTIFICATION

Dated Peshawar, the 06/8/2020

In exercise of the powers conferred by section 26 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973) 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-rule (5) shall be deleted.

CHIEF SECRETARY
GOVERNMENT OF THE KHYBER PAKHTUNKHWA

EXISTING NO & 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.
- The Deputy Director (IT), E&A Department.
All Section Officers in Establishment & Administration Department.
The Section Officer (Admn), Administration Department with the request to arrange 20 gazette copies.
The Caretaker, Administration Department.

1267
04/08/2020

(WAJDAH LATIF)
DEPUTY SECRETARY (POLICY)

ATTESTED

ATTESTED

11

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~~

ADMITTED

WPA 447-2023 AZIZULHAQ VS GOVT OF PAK

(Signature)
Deputy Officer (Policy)

(Signature)
Deputy Officer (Policy)

Copy forwarded to: 1. PS to Special Secretary (Reg. Establishment Department) 2. PS to Additional Secretary (Reg. II, Establishment Department) 3. PS to Deputy Secretary (Policy), Establishment Department.

Regd. No. 216/2023

(Signature)
ASSE

2011, please proceed against under Khayr Publications Civil Servants (Efficiency & Discipline) Rules, of the competent authority or by to create promotion through different means shall be 2. Furthermore, those officers/employees who do not comply with promotion order will screen to accept promotion in every candidate. to take higher responsibilities in case of promotion. Therefore, it is obligatory upon every person those who tend to forge promotion to evade posting/transfer or show lack of capacity will screen from completion for with this by checking to a single executive participation or to 3. The basic rationale behind the deletion of the title also is aimed at preventing a provision exists to decline or forge promotion. 1/24/2023 dated 18.04.2023 and the subject cited above and to state that sub-rule (3) of Rule-7 of Khayr Publications Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 stands deleted vide the departmental notification dated 06.01.2020 that, no I am directed to refer to your letter No. SO/Personnel/2023/1277.

Subject: QUARTERLY PERFORMANCE EVALUATION OF JUDICIAL OFFICERS IN THE DEPARTMENT OF SECONDARY EDUCATION (Regulation)



GOVERNMENT OF PUNJAB
MR. SOHAIL AHMED
DATED PESHAWAR THE 04.04.2023

Annexure - C



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
CIVIL SECRETARIAT PESHAWAR
(Phone No. 091-9223507)

No. 50 (Primary-MYE&SED/2-6/2023)
Dated Peshawar the June 26th 2023

To

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

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

[Handwritten signature]
26/6/23

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)E8AD/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

[Handwritten initials]

[Handwritten signature]
(MUHAMMAD ISHAQ)
SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

[Handwritten initials]

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

~~ATTESTED~~

14

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, 1909.

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

(MURHAMMAD ISHAQ)
SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

SECTION OFFICER (PRIMARY MALE)

WP 4442-2023 AZIZULLAH VS GOVT CP PG43

~~ATTENDED~~

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

Annexure
D

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. Balaqal Ullah	General Secretary APTA Peshawar
4	Muhammad Ishaq	Section Officer (Primary) E&SE Department, Civil Secretariat Khyber Pakhtunkhwa Peshawar

- 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.
- After thorough 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. Balaqal Ullah)
General Secretary APTA
Peshawar

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

(Abdulrah)
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

SU	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

ATTENDED

WP448-2023 AZDILAN VS GOVT CP P043

Assistant Director (Ex-101)
Ministry of Secondary Education
Khyber Pakhtunkhwa

Assistant Director (Ex-101)
Ministry of Secondary Education
Khyber Pakhtunkhwa

17/12/23

The case is submitted for period and necessary actions please.

The case is submitted for period and necessary actions please.

Departmental Promotion Committee.

provided they submit their written report prior to conclusion of the meeting of teachers before 30-12-2023. It may be requested of implications of the committee in the rules held (75) have affected negatively a huge number of Female Teachers. There is a proposal that in view of the above, this office is of considered opinion that the decision of Rules been asked for a revision of considered case.

Chairman of the Board of Secondary Education Khyber Pakhtunkhwa at his office this office has that, in the light of the minutes of meeting dated 6-07-2023 held under the (Primary) E&SED-7/1/1/2023 dated 12-06-2023.

The same was received by this office from your good office with letter No.50 (that there will be no provision to decline or forgo promotion. It is obligatory upon every civil servant to accept promotion under every condition.

(Phd) vide letter No.50 (Policy) E&A/D/1-1/2020 dated 6-06-2023 categorically stated that the Government of Khyber Pakhtunkhwa Establishment Department (Regulation No.50 (Primary) E&SED-7/1/1/2023 for necessary guidance.

The office forwarded the same to the quarter concerned vide letter No.50 (Primary) E&SED-7/1/1/2023 dated 06-07-2023.

(ii) It is the obligation of the civil servant to either accept or turn down the offer of promotion.

(iii) There is no obligation upon the civil servant to accept promotion in every condition No.6987 dated 06-07-2023.

The office has already guided from your good office in the following words vide letter dated 05-08-2020.

wide notification No. 503-VI (E&A/D/1-1/2020 dated 05-08-2020).

The Government of Khyber Pakhtunkhwa Establishment Department (Regulation (Phd) No.50 (Primary) E&SED-7/1/1/2023 dated 06-07-2023) and the Civil Service (Appointment, Promotion & Transfer Rules 1995) dated 1995.

I am directed to refer to the letter No.50 Primary-1065EM-11 dated 10-07-2023 on the subject cited above and to present brief history about the background of the case as under:

MINUTES OF THE MEETING
Khyber Pakhtunkhwa Education
Ministry of Secondary Education Department.

The Section Officer (Primary-Ed) Khyber Pakhtunkhwa Education

Dear Sir,

Subject -

To

Ministry of Secondary Education, Peshawar
Dated: 21-12-2023
Email: esd@khyberpakhtunkhwa.gov.pk

No. 8145



ATTACHED

W0442-2023 AZIZULAH WAH GOVT CP 0413

2. Master Copy
1. PA to Director Local Directorate
Copy of the above to:
Assistant Director
Elementary & Secondary Education
Kuala Lumpur, Kuala Lumpur

Please
The case is submitted for period and necessary action
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.

consolidated case
held under the chairmanship of a Hon. Additional Secretary
That in light of the minutes of the meeting dated 6-07-2023
no provision to delete/forge promotion, it is obligatory upon every civil
servant to accept promotion under any condition.

That the government of KP-ED (Regulation Wily) vide letter No. SD (Policy)
EQAD/1-3/2020 dated 6-06-2023 categorically stated that there exists
no provision to delete/forge promotion, it is obligatory upon every civil
servant to accept promotion under any condition.

That your good office forwarded the same to quote concerned
vide letter No. SD (Policy) EQAD/2-2/Appointment-2023 for necessary
guidance.

That the office sought guidance from your good office in the following
vide notification No. No. SOP-VI (EQAD)-1-3/2020 dated 06-08-2020.

That Government of KP Establishment department (Regulation Wily)
dated rule 7(S) in Civil Servants (Appointment, Promotion, Transfer, etc 1997)
present brief history, also background of case as under:

Minutes of meeting 1/31/2023 dated 10-7-2023 on subject cited above and to
Dear Sir, I am directed to refer to letter No. SD (Policy)-M(E)EQAD/5-1/6/2023

Subject: Minutes of Meeting
KPK, Resistor
Elementary & Secondary Education Department
Section Officer (Policy-Male)
KPK, Resistor

To:
DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION, KPK
RESISTOR
(21-7-2023)

- B/C -

10. SOR/Primary-M/ES/ED/2-1/Appointment-Rule /2023
Peshawar Dated 23rd August, 2023

Annexure
E

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

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

I am directed to refer to your letter No. SO(Policy)/EAD/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
of to evade promotion, though different means shall be proceed under Khyber
Pakhtunkhwa Civil 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 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.

Copy forwarded to the:

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

SECTION OFFICER (PRIMARY MALE)
28/8/23

SECTION OFFICER (PRIMARY MALE)

Scanned with CamScanner

WP443-2023 AZIZULAH VS GOVT OF POK

ATTACHED

~~ATTESTED~~

2. PS to Secretary, E & SE Department, Kyba Parkbunhwa
1. Director E & SE Kyba Parkbunhwa
Copy forwarded to:
(Municipal Levy)
Section Officer (Admin)
(M)

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. S/primary (Policy)/E&AD/11-3/2020 dated 6th June 2023 and to state that after deletion of Rule 7(5) Kyba Parkbunhwa Civil Servant (Appointment, Promotion and Transfer Rules 1989) it has been intimated that these 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 Parkbunhwa 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 Parkbunhwa, Establishment and Administration Department, Peshawar.
To
No. 5 (Primary-M) E&SE/D/18-2/ Appointment-Rule/2023
Peshawar Dated 23rd August, 2023.

-B/c-
-2-
20

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 rendered to your good office vide this department letter of
even No. dated 06.06.2023 (copy enclosed).

Yours faithfully,

Section Officer (Policy)

Encl. 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

06/09/2023 AZIZULHAQ VS GOVT OF PK

22

- 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)

Encl. 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)

~~ATTESTED~~

23

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

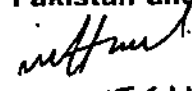
Subject: REPRESENTATION AGAINST THE IMPUGNED NOTIFICATION BEARING NO.SO(POLICY)E&AD/1-312020, DATED 06/08/2020, COMMUNICATED TO SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA, ELEMENTARY & SECONDARY EDUCATION DEPARTMENT VIDE LETTER D06/06/2023, WHEREIN IT WAS STATED THAT SUB RULE 5 OF RULE 7 OF KHYBER 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. 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&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 20/03/2024


HAMISH GUL
SON OF
HAJI SAIF ULLAH KHAN
PSHT

25

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/arguments. Appellant is directed to deposit TCS expenses within three days. To come up for reply/arguments 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 (I)

[Handwritten signature]

Date of Presentation of Application 10-5-23
 Number of 5/1
 Copies 5/1
 Urgent 1/1
 Total 1/1
 Name of 13-6-23
 Date of 17-6-23
 Date of delivery of copy 17-6-23

CS CamScanner

ATTESTED

VAKALAT NAMA

BEFORE THE SERVICE TRIBUNAL PESHAWAR

HAMISH GUL
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