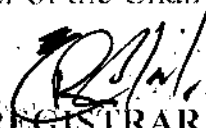


FORM OF ORDER SHEET

Court of _____

Appeal No. 1862/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	09/10/2024	<p>The appeal presented today by Mr. Muhammad Muazzam Butt Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 14.10.2024. Parcha Peshi given to counsel for the appellant.</p> <p>By order of the Chairman</p> <p> REGISTRAR</p>

S.A # 1862/2024

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

HIDAYAT ULLAH

V/S

Government of KP & others

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4.	Copy of notification No. SD (Policy) EV AD/1-3/2020 dated 06/08/2020	B.	10 - 11
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6.	Copy of Minutes of Meeting dated 06-07-2023	D.	15 - 18
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ADVOCATE
M. Muazzam Butt

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

In Ref to

Service Appeal No. _____/2024

Hidayat Ullah Son of Haji Shafa Gul, PSHI' (BPS-15)
GPS Hassan Koorana, 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 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 why 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 Honorable Court.

Hidayat
Deponent

Hidayat
Appellant

Through

Muhammad Muazzam Butt
Muhammad Muazzam Butt
Advocate Supreme Court

Muhammad Adeel Butt
Muhammad Adeel Butt
Advocate High Court

Bassam Ali
Bassam Ali
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

HIDAYAT ULLAH

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.

Hidayat

Appellant

Through

Muhammad Muazzam Butt

Muhammad Muazzam Butt
Advocate Supreme Court

Muhammad Adeel Butt
Muhammad Adeel Butt
Advocate High Court


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.

Hidayat
Deponent

SERVICE CERTIFICATE

It is to certify that Mr Hidayat Ullah S/O Haji Shifa GUI PSHT BPS 15,
GPS Koper, District Malakand has been serving in Edu; Department since
30-12-1984 to till now.


SUB-DIV. EDU. OFFICER
(M) DARGAI
S.D.F.O. (M)
(Dargai taluk)


ATTESTED

7

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



Personal Information of Mr HIDAYAT ULLAH d/w/s of HAJI SHAFI GUL

Personel Number: 10240378 CNIC: 1540106920629 NTN:
Date of Birth: 01.04.1966 Entry into Govt. Service: 30.12.1984 Length of Service: 39 Years 07 Months 003 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: EDUMD002185 GPF Interest applied GPF Balance: 1,537,405.00 (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 2015	2,856.00	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 At 15% 22(PS17)	6,807.00	2378 Adhoc Relief All 2023 35%	24,311.00
2393 Adhoc Relief All 2024 25%	17,860.00		0.00

Deductions - General

Wage type	Amount	Wage type	Amount
3015 GPF Subscription	-4,200.00	3501 Benevolent Fund	-1,200.00
3609 Income Tax	-6,483.00	3990 Emp. Edu. Fund KPK	-135.00
4004 R. Benefits & Death Comp.	-600.00		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: 71,307.91

Gross Pay (Rs.): 140,956.00 Deductions: (Rs.): -12,708.00 Net Pay: (Rs.): 128,248.00

Payee Name: HIDAYAT ULLAH

Account Number: 178-1

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

Leaves: Opening Balance: Aailed: Earned: Balance:

Permanent Address: MKD

City: MALAKAND

Domicile: NW - Khyber Pakhtunkhwa

Housing Stamp: Official

Temp. Address:

City:

Email: hidayatullah.mkd1@gmail.com

ATTESTED

ATTENDED

Continued on Page (2)

(1) The following list of posts is submitted for all concerned.

NO. 1

No.	Post	Grade	Remarks
1	Post 1011 s/o (District)	M.S. Sheriff	Vacant Post
2	Post 1012 s/o (District)	G.P.S. (District)	
3	Post 1013 s/o (District)	G.P.S. (District)	
4	Post 1014 s/o (District)	G.P.S. (District)	
5	Post 1015 s/o (District)	G.P.S. (District)	
6	Post 1016 s/o (District)	G.P.S. (District)	
7	Post 1017 s/o (District)	G.P.S. (District)	
8	Post 1018 s/o (District)	G.P.S. (District)	
9	Post 1019 s/o (District)	G.P.S. (District)	
10	Post 1020 s/o (District)	G.P.S. (District)	
11	Post 1021 s/o (District)	G.P.S. (District)	
12	Post 1022 s/o (District)	G.P.S. (District)	
13	Post 1023 s/o (District)	G.P.S. (District)	
14	Post 1024 s/o (District)	G.P.S. (District)	

S.No. 1 and 2 are vacant posts.

For all other posts, the candidates should be submitted by the concerned authorities.

APPOINTMENT OFFICER, DISTRICT OFFICE, DISTRICT OFFICE, DISTRICT OFFICE.

2

... (2) ...

- iii) The appointment is purely temporary and subject to termination at any time without assigning any reason. In case they wish to leave the service, they will have to submit one month's prior notice of resignation in the prescribed form and one month's pay and allowances to Government.
- iv) The candidates will submit Health & Age Certificate to the Civil Surgeon Bakhola (Malakand).
- v) The candidates will not be handed over to the schools, who are above 28 years, or below 18.
- vi) The candidates will not be called for interview if a candidate fails to take over charge within 15 days.
- vii) Since the schools of Swat Banzai Tehsil are closed for winter vacation hence the candidates appointed against vacancies in these schools, will have to take over immediately on the re-opening of these schools.

(Signature)
27/12/84
(H. SIDOR REIDAN KHAN)

District Education Officer,
(H) Malakand Agency, Malakand.

Enclt: No. 9755-88 / Dated Malakand, the 29-12-1984.
Copy for information & Necessary action to the :-

- 1) Chairman, Distt. Council Malakand at Bakhola with reference to his approval.
- 2) Sub-Divl. Education Officer, (H) Malakand.
- 3) Agency Accounts Officer, Malakand.
- 4) Headmasters of the schools concerned.
- 5) Candidates concerned.

(Signature)
27/12/84
District Education Officer,
(H) Malakand Agency, Malakand.

27/12/84

Masidul-Haq / ***

ATTESTED

ATTESTED

ATTESTED

DEPUTY SECRETARY (POLICY)
(VAJDAH LATIF)

[Signature]



- 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 Chief Minister, Khyber Pakhtunkhwa.
- 5. The Principal Secretary to Governor, Khyber Pakhtunkhwa.
- 6. The Principal Secretaries in Khyber Pakhtunkhwa.
- 7. All Divisional Commissioners in Khyber Pakhtunkhwa.
- 8. All Officers of Attached Departments in Khyber Pakhtunkhwa.
- 9. All Autonomous/Semi Autonomous Bodies in Khyber Pakhtunkhwa.
- 10. All Deputy Commissioners in Khyber Pakhtunkhwa.
- 11. The Registrar, Peshawar High Court, Peshawar.
- 12. The Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
- 13. The Registrar, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
- 14. The Secretary, Khyber Pakhtunkhwa E&A Department.
- 15. The Deputy Director (IT), E&A Department.
- 16. All Section Officers in Establishment & Administration Department with the request to the Section Officer (Admn), Administration Department.
- 17. The Section Officer (Admn), Administration Department.
- 18. The Director, Administration Department.
- 19. Average 20 Gazette copies.

CHIEF SECRETARY
GOVERNMENT OF THE KHYBER PAKHTUNKHWA

AMENDMENT

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

in order of the powers conferred by section 26 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973) the Government of Khyber Pakhtunkhwa is pleased to direct that in the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the following amendments shall be made, namely:

NOTIFICATION

Dated Peshawar, the 06/8/2020

GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGULATION-WING)

Annexure - B

//

**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

12

Annexure - C



GOVERNMENT OF KARNATAKA
HASTHAKASHIHAART DEPARTMENT
No. SPP/Policy/HR/AD/1-17/2020
(Mailed by letter on June 06, 2023)

62

To
The Government of the Sri Lanka Police,
Hennery & Secondary Police Stations Department,
Subject: GUIDANCE REGARDING THE ACTION OF RULE 213 IN THE
KARNATAKA CIVIL SERVICE REGULATIONS
PROVISION AND TRANSFER RULES, 1987

Dear Sir,
I am directed in letter by your letter No. SO/Primary-MY/MA/HR/2023-24/No.100/2023 dated (15.04.2023) on the subject noted above and to state that Sub-Rule (3) of Rule-7 of Karnataka Civil Service (Appointments, Promotions and Transfer) Rules, 1987 stands amended vide this departmental notification dated 06.06.2020; thus, no provision exists to decide or forge promotion.

2. The basic rationale behind the deletion of the 15th rule is aimed at preventing a civil servant from temptation for kick back by sticking to a single lucrative post/position as to prevent those who lead to large promotion to evade postings/transfer or show lack of expertise to tackle higher responsibilities in case of promotion. Therefore, it is obligatory upon every civil servant to accept promotion in every condition.

3. Furthermore, those officers/staffs who do not comply with promotion order of the competent authority or try to evade promotion through different means shall be proceeded against under Karnataka Civil Service (Efficiency & Discipline) Rules, 2011, please.

(Handwritten initials)
7/6

Director, HR & S.O.

Copy forwarded to:-

1. PS to Special Secretary (Legal), Establishment Department.
2. PA to Additional Secretary (Legal), Establishment Department.
3. PS to Deputy Secretary (Legal), Establishment Department.

(Handwritten notes)
... 21.6.23

Your faithfully,
(Signature)
Director (Legal) (Karn)

(Signature)
Special Officer (Policy)

ATTENDED

HR/MA/2023 AS/HR/LEGAL/VS GOVT OF KARN

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

Pl. SO (Primary-MYE&SED)-6/2023
Lahor Peshawar the June 25th. 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(8) IN THE KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION AND TRANSFER) RULES, 1989.

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

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

Encl: AA

[Handwritten initials]

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

Copy forwarded to the:

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

[Handwritten initials]

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

ATTESTED

13

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.

End: 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~~

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).

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.

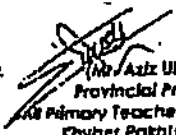
SR	NAME	DESIGNATION
1	Mr. Fazal Wahid	Deputy Director Establishment of Directorate Elementary & Secondary Education Department
2	Mr. Aziz Ullah	Provincial President All Primary Teachers Association Khyber Pakhtunkhwa
3	Mr. Razaqat Ullah	General Secretary APTA Peshawar
4	Muhammad Ishaq	Section Officer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

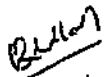
2. The meeting started with recitation from the Holy Quran. The chair welcomed the participants. The Deputy Director (Establishment) of Directorate of Elementary & Secondary Education briefed the forum regarding agenda item in detail.

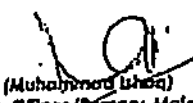
3. After the above discussion it was decided that Directorate of Elementary & Secondary Education Department may examine the case properly and submit a self-contained/consolidated case for onward submission to Establishment Department for further necessary action.

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

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

TESTED

- 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(5) IN THE CIVIL SERVANT (APPOINTMENT, PROMOTION & TRANSFER RULES 1989).

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

S/N	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



No. 8145

Mr. Mustafa Kemal Çelik

Kıyber Pakhtunkhwa, Peshdwar
Dated 2-1-7-2023
Phone: 01-9233111
Email: eshabibkhan@peshk.com

The Section Officer (Primary-Sub)

Ministry of National Education Department,
Khyber Pakhtunkhwa Faislavar.

MINUTES OF THE MEETING

Subject:
Dear Sir,

I am pleased to refer to the letter No. SO/Primary-40&5&6/23-11 dated 10-07-2023 on the subject cited above and in

present brief history about the background of the case as under:

The Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing) dated Rule 7(1) and Civil Servants (Appointment, Promotion & Transfer Rules 1989) No. SO-41 (E&AD)/1-1/2020 dated 05-08-2020.

That this office sought guidance from your good office in the following words vide letter No. 0987 dated 04-03-2023.

(i) How is obligatory upon the civil servant to accept promotion in every condition. (ii) If the acceptance of the civil servant to either accept or turn down the offer of promotion.

That your good office forwarded the same to the quarter concerned vide letter No. 517 (Primary-4) E&5&6/23-1/1/2023 for necessary guidance.

That the Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing) vide letter No. SO (Policy) E&AD/1-1/2020 dated 06-06-2023 categorically stated that there shall be provision to decline or forgo promotion. It is obligatory upon every civil servant to accept promotion under every condition.

The same was received by this office from your good office vide letter No. SO (Primary-4) E&5&6/23-1/1/2023 dated 12-04-2023.

That, in the light of the minutes of meeting dated 07-07-2023 held under the Chairmanship of Hon. Assistant Secretary Establishment at his office, this office has been asked for submission of considered case.

In view of the above, this office is of considered opinion that the decision of Rules 7(1) have affected a large number of female teachers. Thus it is proposed that teachers below DRS-16 may be exempted of implications of the amendments in the rules field provided they submit their written refusal prior to conclusion of the meeting of Departmental Promotion Committee.

The case is submitted for perusal and necessary orders please.

Assistant Director (Exam Ad-1)
Ministry of National Education
Khyber Pakhtunkhwa

Assistant Director (Exam Ad-1)
Ministry of National Education
Khyber Pakhtunkhwa

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

Copy of the above is to:

ATTESTED

WP 1442-2023 AZIZULHAQ VS GOVT CP P043

ATTACHED

WP 443-2013 AZIZULAH YH GOVT CF P04

Copy of the above to:
1. PA to Director Local Directorate
2. Master Copy
Rahmad Director
Elementary & Secondary Education
Kylas Pahlantaka

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

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 servant to accept promotion under any condition. EQAD/1-3/2020 dated 6-06-2023 correspondingly stated that there exists no provision to decline foreign promotion. It is obligatory upon every civil servant to accept promotion under any condition. That the government of KP-ED (Regulation Wing) vide letter No. SO (Policy) EQAD/1-3/2020 dated 6-06-2023 correspondingly stated that there exists no provision to decline foreign promotion. It is obligatory upon every civil servant to accept promotion under any condition. That your good office forwarded the same to quarters concerned vide letter No. SO (Policy) EQAD/2-2/1/1/1/2023 for necessary guidance. That your good office forwarded the same to quarters concerned vide letter No. SO (Policy) EQAD/2-2/1/1/2023 for necessary guidance. (i) BTR is prerogative of civil servant to either accept/handle the offer of promotion. (ii) Now it is obligatory upon civil servant to accept promotion. That the office sought guidance from your good office in the following vide notification No. SO SR-VI (EQAD) 1-3/2020 dated 06-08-2020. That Government of KP Establishment department (Regulation Wing) dated rule 7(S) in Civil Servants (Appointment, Promotion, Transfer, etc 1999) present brief history about background of case as under. Minutes of meeting 18/1/2023 dated 10-7-2023 on subject cited above and to Dear Sir, I am directed to refer to letter No. (SO. Policy - M) EQAD/1-3/2020/ dated 15-1-2020/

Subject: Minutes of Meeting
KPK, Pahlantaka.
Section Officer (Revenue Male),
Elementary & Secondary Education Department
To:
DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION, KPK
PESHAWAR
(21-7-2023)

-B/C-
18

ATTACHED

WP447-2023 AZIZULAH VS GOVT OF PCA3

Scanned with CamScanner

SECTION OFFICER (PRIMARY MALE)
28/8/23

1. Director EASE Khyber Pakhtunkhwa,
PS to Secretary, EASE Department Khyber Pakhtunkhwa.

Copy forwarded to the:

SECTION OFFICER (PRIMARY MALE)
(AUHAKHAWA (HEAD))

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

2. In this connection it is submitted that in some cases lady teacher of primary level who avoid 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.

I am directed to refer to your letter No. SD(Policy)/EAD/1-3/2020 dated 07 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.

SUBJECT: - SUPPLANCE REGARDING DELETION OF RULE 7(5) IN THE CIVIL SERVAANT (APPOINTMENT, PROMOTION & TRANSFER RULES 1989)

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

Annexure E

110, SO(Policy-M)/EASED/2-1/Appointment-Rule /2023
Peshawar Dated 23rd August, 2023

ELDERLY AND SECRETARY EDUCATION DEPARTMENT
CIVIL SECRETARIAT PESHAWAR
(Phone No.091-8221587)



SECRET

1. Director E & SE Khyber Pakhtunkhwa.
2. PS to Secretary, E & SE Department, Khyber Pakhtunkhwa.
(Muhammad Ishaq)
Section Officer (Primary)
(Note)

Copy forwarded to:
In view of above, the said amendment may be reconsidered to the extent of lady teacher in primary schools.
Effects on service delivery. Mother-in-law who need care. In such cases, there are negative effects on service delivery. Most of them are married with kids and elder father of In the remotest stations with no residential/transport facilities. face serious inconvenience while they have to perform duties. teachers of primary level who avail such promotion have to 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/1-3/2020 dated 6th June 2023 and to state that after deletion of Rule 7(5) 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 2013.

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

The Secretary to Government of Khyber Pakhtunkhwa, Establishment and Administration Department, Peshawar.
To
No. S/Primary-M/E&SE/18-1/ Appointment - Rule/2023
Peshawar Dated 22nd August, 2023.

-8/c-

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-
3/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)

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.

~~REQUESTED~~

WP-442-2023 AZIZULHAQ VS GOVT OF PK

21

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 rendered to your good office vide this department letter of over
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 near (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/1-3/2020, 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&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



HIDAYAT ULLAH
SIO HAJI SHAFI GUL
PSHT

ATTESTED

WPMW-2023 AZIZULAH VS GOVT OF PC-13

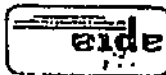
Handwritten signature and date: 08/11/23

Handwritten text in Urdu script, likely a witness statement or affidavit.

Handwritten signature and date: 08/11/23

Handwritten text: **Annexure - H**

APTA Muzrai
Govt. Primary School No. 4
Dabhoi, Palanpur City.



Khyber Pakhtunkhwa

APTA Muzrai
Govt. Primary School No. 4
Dabhoi, Palanpur City.
0112-041244
0333-1111173@omni.com

ATTESTED

CS CamScanner

Date of Presentation of Appeal: 10-23-23
 Name of Member: [Handwritten Name]
 Program: [Handwritten Program]
 Region: [Handwritten Region]
 Title: [Handwritten Title]
 Name of [Handwritten Name]
 Date of [Handwritten Date]

[Handwritten Signature]
 [Handwritten Title]

Member (s):
 Member (s): [Handwritten Name]

Learned counsel for the appellant present.
 Let a preliminary notice be issued to the respondents through TCS for submission of reply comment. Appellant is directed to deposit TCS expenses within three days to come up for repayments as well as preliminary hearing on 10/06/2023 before SA. If given in learned counsel for the appellant.
 Alongwith the service appeal there is an application for suspension of Northstar 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.



07 05 2024

[Handwritten initials]

VAKALAT NAMA

BEFORE THE SERVICE TRIBUNAL PESHAWAR

HIDAYAT ULLAH

Appellant

Versus

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.

Hidayat

APPELLANT

ACCEPTED

MUHAMMAD MUAZZAM BUTT
Advocate Supreme Court

MUHAMMAD ADEEL BUTT
Advocate High Court

BASSAM AHMAD SIDDIQUI
Advocate High Court