


FORM OF ORDER SHEET

Court of _____

Appeal No. 1966/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	15/10/2024	<p>The appeal presented today by Mr. Muhammad Muazzam Butt Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 23.10.2024. Parcha Peshi given to counsel for the appellant.</p> <p>By order of the Chairman  REGISTRAR</p>

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

A No-1966/24

ZAKIR HUSSAIN
V/S

Government of KP & others

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ADVOCATE
M. Muazzam Butt

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

In Ref to

Service Appeal No 1986 /2024

Zakr Hussain son of Haji Nawab, PSHT (BPS-15)

Sher Khana, Palai, Tehsil Batkhela, 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

P R A Y E R:

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. SD (Policy) /EDAD/1-3/2020 dated 06/08/2020, the right of foregoing of promotion was withdrawn and the Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing) deleted Rule 7(5) in the Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 vide notification no SOR-VI (E & AD)/1-2/2020 dated 06-08-2020. Copy of Impugned notification No. SD (Policy) EV AD/1-3/2020 dated 06/08/2020 is attached as Annexure B
6. That the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar asked for guidance regarding deletion of Rule 7(5) in Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 in respect of which the respondent No. 1 vide its letter No. SO(Policy) E&AD/1-3/2020 dated Peshawar the June 06th, 2023 directed the respondent No 3 (Directorate of Elementary & Secondary Education) that Rule 7(5) in the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 has been deleted vide notification dated 06-08-2020 and therefore, no provision exists to decline or forgo promotion and it is obligatory upon every civil servant to accept promotion under every condition. Copy of Impugned Letter dated June 06th, 2023 is attached as Annexure C
7. That thereafter the meeting was also held in the office of Additional Secretary Establishment on 06-07-2023 in which it was decided to examine the case properly and submit a self-contained/ consolidated case for onward submission to the Establishment Department for further necessary action. Copy of Minutes of Meeting dated 06-07-2023 is attached as Annexure D
8. That the Respondent No.3 i.e. Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa also wrote a letter to the office of Establishment & Administrative Department vide No SO(Primary-M) E&SED/2-2/Appointment Rule/2023 dated 23-08-2023 to reconsider the amendment made in Khyber

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

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

- 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.

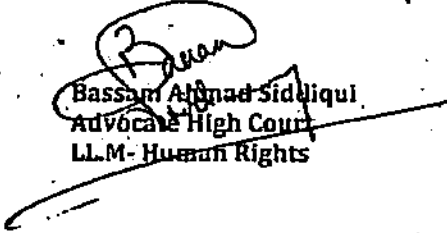
AFFIDAVIT:
 I, (the appellant) solemnly declare that the contents of foregoing application are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.
 Deponent


 Appellant

Through


 Muhammad Muazzam Butt
 Advocate Supreme Court


 Muhammad Adeel Butt
 Advocate High Court


 Bassam Atiqad 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

Zakir Hussain

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.


Deponent

Through


Appellant


Muhammad Muazzam Butt
Advocate Supreme Court


Muhammad Adeel Butt
Advocate High Court

H-7

APPOINTMENT DATE 14-12-1990

OFFICE OF THE DISTRICT EDUCATION OFFICER, (MALE) HANAKAND AGENCY

The following P.T.C. Trained conductors are hereby appointed in the BPS No. 7 (Rs. 750-1370) Plus usual allowances as admissible to them under the Rules in the school noted against their names. The following are the details of the appointments:-

No.	Name	Residence	School where appointed	Remarks
1	Mohammad Iqbal	Thana	GPS Barohari (Thana)	Vacant Post
2	Muhammad Khan	Kot	MS Baghdara	Newly created Post
3	Muhammad Ali	Qulangi	GPS Barohari	-do-
4	Muhammad Kobim Shah	Haripur	GPS Smaosor	-do-
5	Muhammad Ali	(Dargah)	GNPS Shorkhena	V. Post
6	Muhammad Ali	Thana	GPS Dur Tlagi	-do-
7	Muhammad Akbar	Munshah	GPS Ghoshah	-do-
8	Muhammad Ali	Thana	GPS Jughrai	-do-
9	Muhammad Ali	Thana	GPS Khanori	N.C. Post
10	Muhammad Ali	Thana	GPS Badama	V. Post
11	Muhammad Ali	Thana	GPS Bugar	-do-
12	Muhammad Ali	Thana	GPS Chum (Thana)	N.C. Post
13	Muhammad Ali	Thana	GPS Jalal Kot	V. Post
14	Muhammad Ali	Thana	GPS Chirat	N.C./Post
15	Muhammad Ali	Thana	GPS Chirat	-do-
16	Muhammad Ali	Thana	GPS Shinki	V. Post
17	Muhammad Ali	Thana	GPS Janjo	-do-
18	Muhammad Ali	Thana	GPS Khanori	-do-
19	Muhammad Ali	Thana	GNPS Shabi Haina	-do-
20	Muhammad Ali	Thana	GPS Hatin Banda	N.C.P.
21	Muhammad Ali	Thana	GNPS P. Iqbal Abo	V.P.
22	Muhammad Ali	Thana	GPS Chappal	V. Post
23	Muhammad Ali	Thana	GPS Jughrai	-do-
24	Muhammad Ali	Thana	GPS Dara	-do-
25	Muhammad Ali	Thana	GPS Sholowai	-do-
26	Muhammad Ali	Thana	GNPS Sheikh	-do-
27	Muhammad Ali	Thana	GNPS Arweli	-do-
28	Muhammad Ali	Thana	MS Shona Reg	-do-
29	Muhammad Ali	Thana	(P. Iqbal)	-do-
30	Muhammad Ali	Thana	GNPS Menzo	-do-
31	Muhammad Ali	Thana	GNPS Serkeusi	-do-
32	Muhammad Ali	Thana	GPS Jalal Kot	-do-
33	Muhammad Ali	Thana	GPS Jishda	-do-
34	Muhammad Ali	Thana	GPS Nacha Dara	-do-
35	Muhammad Ali	Thana	GPS Bar Tongi	-do-
36	Muhammad Ali	Thana	GNPS Kambola	-do-
37	Muhammad Ali	Thana	GNPS Margga	-do-
38	Muhammad Ali	Thana	GNPS Zog	-do-
39	Muhammad Ali	Thana	GNPS K500	-do-
40	Muhammad Ali	Thana	GNPS Gaj	-do-
41	Muhammad Ali	Thana	(B. Jogh)	-do-

Continued on Page 2.

Order No. 1144-50/1990
 14-12-1990

Personal Information of Mr ZAKIR HUSAIN d/o/s of HAJI MOVAJ
 CNIC: 151911242565
 Date of Birth: 1991/07/20
 Length of Service: 53 Years 07 Months 00 Days

Employment Category: Active Permanent
 Designation: PRIMARY SCHOOL HEAD TEACH 17302420-DISTRICT GOVERNMENT KHYBE
 IDO Code: MD020-DY: D.O (MPRY) BATAKHELA
 Payroll Section: 002 GPF Section: 001 Cash Center: 02
 CPF A/C No: EDUMK05652 GPF Balance: 1,258,106.00
 Vendor Number: District Accounts Office Malakand
 Pay and Allowances: Monthly Salary: July-23 Scale Type: Civil BPS: 15

Wage type	Amount	Wage type	Amount
0001 Basic Pay	73,420.00	1001 House Rent Allowance 45%	3,524.00
1210 Convey Allowance 2005	2,856.00	1300 Medical Allowance	1,500.00
1505 Charge Allowance	40.00	1911 Compens Allow 20% (1-15)	1,500.00
2148 15% Adhoc Relief All-2013	985.00	2199 Adhoc Relief Allow @10%	659.00
2316 Teaching Allowance 2021	3,224.00	2341 Dispr. Red All 15% 2022KP	7,007.00
2347 Adhoc Rel-AI 15% 22(PS17)	7,007.00	2378 Adhoc Relief All 2023 35%	25,004.00
2393 Adhoc Relief All 2024 25%	18,355.00		0.00

Deductions - General

Wage type	Amount	Wage type	Amount
3015 GPF Subscription	4,290.00	3501 Benevolent Fund	1,200.00
3609 Income Tax	6,891.00	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: 110,245.65 Recovered till JUL-2024: 6,891.00 Exempted: 27,560.69 Recoverable: 75,793.96

Gross Pay (Rs.): 144,581.00 Deductions (Rs.): 43,116.00 Net Pay: (Rs.): 131,465.00

Payee Name: ZAKIR HUSAIN
 Account Number: 1215-8
 Bank Details: HABIB BANK LIMITED, 221959 PALAI DARRA, PALAI DARRA,

Leaves: Opening Balance: Availed: Earned: Balance:

Permanent Address: VILL SHERKHAN P.O PALAY
 City: MALAKAND Domicile: NW - Khyber Pakhtunkhwa Housing Status: No Official
 Temp. Address:
 City: Email: zh4511416@gmail.com

TESTED

System generated document in accordance with APPM 4.6.12.9(228590/26.07.2024A-3.0)
 All amounts are in Pak Rupees
 Errors & omissions excepted (SERVICES/01.08.2024/71-06-06)

Annexure - B

GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGULATION WING)

NOTIFICATION

Dated Peshawar, the 06/8/2020

Subject: (E&A) 11/3/2020: 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

COPIES NO & EVEN DATE

Copies 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 (Admn), Administration Department with the request to arrange 20 gazette copies.
16. The Caretaker, Administration Department.

18/8/20
19/8/20

(WAJDAH LATIF)
DEPUTY SECRETARY (POLICY)

ATTESTED

Attested

ATTESTED

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~~

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
CIVIL SECRETARIAT PESHAWAR
(Phone No.091-8223507)

No.50 (Primary-M)/E&SED/2-8/2023
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, 1988.

I am directed to refer to the subject noted above and to enclose here with
a letter of Establishment Department, letter No. 60 (Policy)/E&AD/1-3/2020 dated
05 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&S)
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]
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~~

19
B/c

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

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

Ash Ullah Khan President
President
All Primary Teacher's Association, (P

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

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

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

Encl: AA

(MUHAMMAD ISHAQ)
SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

SECTION OFFICER (PRIMARY MALE)

ATTESTED

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


Annexure
D


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

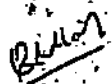
2. The meeting started with recitation from The Holy Quran. The chair welcomed the participants. The Deputy Director (Establishment) of Directorate of Elementary & Secondary Education briefed the forum regarding agenda item in detail.


3. After the said 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-I
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

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



-16-

-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 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:

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 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

Provincial President
All Primary Teachers Association
Khyber Pakhtunkhwa

(Mr. Razaqat Ullah)
General Secretary APTA
Peshawar

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

(Abdulqah)

Additional Secretary (Establishment)

ATTESTED

~~ATTESTED~~

WPK-2023 AZIZULAH VS GOVT OF PK

Richard Director
Elmberly's Secondary Education
Khyber Pakhtunkhwa

1. PH to Director Local Directorate
2. Master Copy
Copy of the above to:

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 effected 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 Education
Department at his office. This office has been asked for submission of
no provision to during/for promotion. It is obligatory upon every civil
servant to accept promotion under any condition.

That the government of KP-ED (Registration Wing) vide letter No. SO (Reg) /
EGAD/1-3/2020 dated 6-06-2023 accordingly stated that there exists
no provision to during/for 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 (Reg) /EGAD/1-2/11/2023 for necessary
guidance.

That this office sought guidance from your good office in the following
vide notification No. No. SP-1/VI(EGAD)-1-3/2020 dated 06-08-2020.
That Government of KP Establishment department (Registration Wing)
added rule 7(S) in Civil Servants (Appointment, Promotion, Transfer, Pensions, etc.) Rules 1979.

That Government of KP Establishment department (Registration Wing)
added rule 7(S) in Civil Servants (Appointment, Promotion, Transfer, Pensions, etc.) Rules 1979.
That this office sought guidance from your good office in the following
vide notification No. No. SP-1/VI(EGAD)-1-3/2020 dated 06-08-2020.
That Government of KP Establishment department (Registration Wing)
added rule 7(S) in Civil Servants (Appointment, Promotion, Transfer, Pensions, etc.) Rules 1979.

Section Officer (Primary Male),
Elmberly's Secondary Education Department,
KPK, Peshawar.

Suggested - Minutes of Meeting
Dear Sir,
I am directed to refer to letter No. (SO Reg) /EGAD/1-3/2020 dated 06-08-2020 on subject cited above and to
present brief history about background of case as under:
That Government of KP Establishment department (Registration Wing)
added rule 7(S) in Civil Servants (Appointment, Promotion, Transfer, Pensions, etc.) Rules 1979.

To:
DIRECTORATE OF ELMBERLY & SECONDARY EDUCATION, KPK
PESHAWAR
(21-7-2023)

-B/C-
-17-

~~TESTED~~

44443-2023 AZZULAH VS GOVT CP P043

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

Assistant Director (Exhibit A-1)
Ministry of Secondary Education
Khyber Pakhtunkhwa
11/1/2023

1. PA to Director
2. Master Copy

Copy of the above to:-
Supp No.

The card is submitted for perusal and necessary actions please.

Departmental Committee.
provided they would their written refusal after to conduction of the meeting of
Teachers before the-16 may be exercised of implications of the amendments in the rules laid
12) have affected negatively a huge numbers of Female Teachers. That it is proposed that
in view of the above, this office is of considered opinion that the decision of Rules
has to be taken for submission of considered case.
Chairman of the Khyber Pakhtunkhwa Secondary Education Establishment at his office this office has
That in the light of the minutes of meeting dated 6-07-2023 held under the
(Priority-4) E&S&D-2/1/prop/2023 dated 12-05-2023
The same was received by this office from your good office with letter No.50
civil service in accept promotion under every condition.
that there shall be no provision in decision or forgo promotion. It is obligatory upon every
That the Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing)
No.50 (Priority-4) E&S&D-2/1/prop/2023 for necessary guidance.
That your good office forwarded the same to the quarter concerned with letter
provision.
(ii) If it is not recognized of the civil service in either accept or turn down the offer of
No.487 dated 16-02-2023.
That this office sought guidance from your good office in the following words with letter
vide intimation No. SOA-VI (SA/DYI-1/2020 dated 05-08-2020.
dated Rule 7(c) in the Civil Service (Appointment, Promotion & Transfer) Rules 1989)
The Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing)

1 am directed to refer to the letter No.50 (Priority-4) E&S&D-2/1/prop/2023 dated 10-07-2023 on the subject cited above and to
present brief history about the background of the case as under:

Subject:-
MINUTES OF THE MEETING
Khyber Pakhtunkhwa Establishment
Department of Secondary Education
The Section Officer (Priority-4/4)



No. 8145

Phone No. 911114
Email: chief@kpk.gov.pk

Khyber Pakhtunkhwa, Peshawar
Date: 11/1/2023



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

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


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

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


(MUHAMMAD SHAD)
SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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


SECTION OFFICER (PRIMARY MALE)
20/8/23

Scanned with CamScanner

~~ATTESTED~~

~~ATTESTED~~

(Municipal School)
Section Officer (Admin)
(Male)

2. PS to Secretary, E & SE Department, Khyber Pakhtunkhwa
4. Director E & SE Khyber Pakhtunkhwa
Copy forwarded to:

In this connection it is submitted that in some cases lady teachers 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.

9 am directed to refer to your letter No. S/primary (Pozzy) /ETAD dated 07/June/2023 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 don't 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.

Dear Sir,
SUBJECT: Guidance regarding deletion of Rule 7(S) 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/18-8/ Appointment-Rule/2023
Peshawar Dated 23rd August, 2023.

-8/-
90

Annexure - F



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
No. SO(Policy)E&AD/I-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, 1982.

Dear Sir,
I am directed to refer to your letter No. SO(Primary-M)/E&SED/2-
2/Appointmegt-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.

ATTACHED
SEP-12-2023 12:22:11 PM 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,
Primary & 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-I), Establishment Department
3. PS to Deputy Secretary (Policy), Establishment Department

Section Officer (Policy)

~~ATTESTED~~

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&SGD/2-2/Appointment Rule/2023 dated 23-08-2023 to reconsider the amendment made in Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 as it had negatively affected a large number of teachers and especially female teachers. In the meanwhile, the department vide its letter dated 07th of September 2023 directed the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa that necessary guidance has already been provided to the department and therefore no provision exists to decline or forgo promotion and those teachers who do not comply with the promotion order of the competent authority or try to evade promotion through different means shall be proceeded under the Khyber Pakhtunkhwa Civil Servant (Efficiency & Discipline) Rules, 2011.

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

Dated 16/10/2024



ZAHIR HUSSAIN
SIO HAJE NAWAB
PS HT

~~ATTESTED~~

WFO443-2023 AZZULAH VA GOVT CP POL1

Handwritten signature and date: 08/11/23

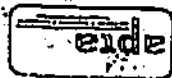
Handwritten text in Arabic script, appearing to be a formal statement or report.

Handwritten signature and date: 08/11/23

Annexure - H

Handwritten text in Arabic script.

APTA House
Govt. Primary School No. 4
Gundlupet, Ponnur Taluk, Chikmagalur Dist.



Köyber: Palkurumbura

President
Q. No. 1584
0211191073@gmail.com
11/04/2023

ATTENDED

CamScanner

Date of Presentation of Application: 12-1-23
 Number of Copies: 12
 Region: 12
 Name of Applicant: 12-1-23

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

[Signature]
 [Stamp]

1. Assigned counsel for the appellant present.
 2. Let a pre-admission notice be issued to the respondents through TCS for submission of repayments. Appellant is directed to deposit TCS expenses within three days. To come up for repayments as well as preliminary hearing on 11.06.2024 before S.J. P. given in limited 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.



VAKALAT NAMA

BEFORE THE SERVICE TRIBUNAL PESHAWAR

ZAKIR HUSSEAIN

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.

APPELLANT

ACCEPTED

MUHAMMAD MUAZZAM BUTT
Advocate Supreme Court

MUHAMMAD ADEEL BUTT
Advocate High Court

BASSAM AHMAD SIDDIQUI
Advocate High Court