


FORM OF ORDER SHEET

Court of _____

Appeal No. 2090 /2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	23/10/2024	<p>The appeal presented today by Mr. Muhammad Muazzam Butt Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 30.10.2024. Parcha Peshi given to counsel for the appellant.</p> <p>By order of the Chairman</p> <p> REGISTRAR</p>

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

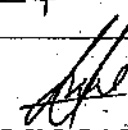
A - No. 2090/2024
Anwar Zaib Khan

V/S

Government of KP & others

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.	6-7
4.	Copy of notification No. SD (Policy) EV AD/1-3/2020 dated 06/08/2020.	B.	8-9
5.	Copy of Impugned Letter dated June 06th, 2023	C.	10 -12
6.	Copy of Minutes of Meeting dated 06-07-2023	D.	13 -16
7.	Copy of Letter dated 23-08-2023	E.	17 -18
8.	Copy of Impugned letter dated 07-09-202	F.	19 - 20
9.	Copy of Representation against the said notification and representation made by APTA President	G & H	21 22-23
10.	Wakalat Nama		24


ADVOCATE

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

In Ref to

Service Appeal No 2090/2024

Anwar Zaib Khan Son of Aziz Ur Rehman Resident of Tehsil & District Manshera

Designation: Primary School Head Teacher at Mosque School Andara

.....Appellant

V E R S U S

- 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

.....Respondents

SERVICE APPEAL UNDER SECTION 4 OF KPK SERVICE TRIBUNAL ACT 1974, AGAINST THE IMPUGNED NOTIFICATION BEARING NO.SO(POLICY)E&AD/1-312020, 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/1-312020, 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 Monthly Salary account 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 notification No. SD (Policy) EV AD/1- 3/2020 dated 06/08/2020 is attached as **Annexure B**
6. That the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar asked for guidance regarding deletion of Rule 7(5) in Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 in respect of which the respondent No. 1 vide its letter No. SO(Policy) E&AD/1-3/2020 dated Peshawar the June 06th, 2023 directed the respondent No 3 (Directorate of Elementary & Secondary Education) that Rule 7(5) in the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 has been deleted vide notification dated 06-08-2020 and ,therefore, no provision exists to decline or forgo promotion and it is obligatory upon every civil servant to accept promotion under every condition. Copy of Impugned Letter dated June 06th, 2023 is attached as **Annexure C**
7. That thereafter the meeting was also held in the office of Additional Secretary Establishment on 06-07-2023 in which it was decided to examine the case properly and submit a self-contained/ consolidated case for onward submission to the Establishment Department for further necessary action. Copy of Minutes of Meeting dated 06-07-2023 is attached as **Annexure D**
8. That the Respondent No.3 i.e. Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa also wrote a letter to the office of Establishment & Administrative Department vide No SO(Primary-M) E&SED/2-2/Appointment Rule/2023 dated 23-08-2023 to reconsider the amendment made in Khyber

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

9. That the respondent vide its letter dated 07th of September 2023 directed the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa that necessary guidance has already been provided to the department and therefore no provision exists to decline or forgo promotion and those teachers who do not comply with the promotion order of the competent authority or try to evade promotion through different means shall be proceeded under the Khyber Pakhtunkhwa Civil Servant (Efficiency & Discipline) Rules, 2011.
Copy of Impugned letter dated 07-09-2023 is attached as Annexure F
10. That the petitioner feeling aggrieved, filed Representation to the respondents in person, and also approached to respondents through APTA President but the grievances of the appellant have not so far been redressed.
Copy of Representation against the said notification is annexed as Annexure G & H
11. That feeling aggrieved from the letters dated 06-06-2023 and 07-09-2023 and the deletion of Rule 7(5) in the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989; the petitioners filed this Hence, the instant service appeal is filed on the following grounds:-

GROUND:-

- 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 1-2020 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:

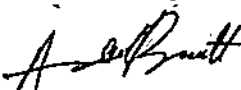
I Anwar Zaib Khan Son of Aziz Ur Rehman Resident of Tehsil & District Manshera that the contents of foregoing application are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court



Depoent


Appellant

Through


Muhammad Muazzam Butt
Advocate Supreme Court


Muhammad Adeel Butt
Advocate High Court


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

-5-

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

CM No _____ -P of 2024

In Ref to

Service Appeal No _____ /2024

ANWAR ZAIB KHAN
VERSUS

Secretary to Government of Khyber Pakhtunkhwa, & others

APPLICATION FOR SUSPENSION OF IMPUGNED NOTIFICATION
BEARING NO. SO (POLICY) E&D/1-3/2020 DATED 06/08/2020,
COMMUNICATED TO RESPONDENT NO.2 BY RESPONDENT NO.1,
VIDE LETTER DATED 06/06/2023 TILL THE FINAL DISPOSAL OF
CASE IN HAND.

Respectfully Submitted:-

1. That the instant application may be treated as part and parcel of service appeal of the appellant.
2. That the appellant has brought a good prima facie case and balance of convenience also lies in favor of the appellant.
3. That there is likelihood success of the appellant in the lis. And if the notification bearing No. So (Policy) E&D/1-3/2020 Dated 06/08/2020, communicated to Respondent No.2 by Respondent No.1, Vide Letter Dated 06/06/2023 is not suspended the appellant would suffer irreparable loss.
4. That valuable rights of the appellant is involved in the case.

In view of the reasons, it is humbly requested that the notification bearing No. So (Policy) E&D/1-3/2020 dated 06/08/2020, communicated to Respondent No.2 by Respondent No.1, Vide Letter Dated 06/06/2023 may kindly be suspended till the final disposal of the main appeal in hand.

AFFIDAVIT:

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

Depoent

Through

Muhammad Muazzam Butt
Advocate Supreme Court

Muhammad Adeel Butt
Advocate High Court

6

Dist. Govt. NWFP-Provincial
District Accounts Office Mansehra
Monthly Salary Statement (June-2023)



Personal Information of Mr ANWAR ZEB KHAN s/w/s of AZIZ UR REHMAN
 Personnel Number: 00223800 CNIC: 1350422402807 NTN:
 Date of Birth: 02.02.1971 Entry into Govt. Service: 19.09.1980 Length of Service: 32 Years 09 Months 013 Days

Employment Category: Active Temporary
 Designation: PRIMARY SCHOOL HEAD TEACH 80667882-DISTRICT GOVERNMENT KHYBE
 DDO Code: MA6339-Oghi District Mansehra
 Payroll Section: 001 GPF Section: 001 Cash Center: 04
 GPF A/C No: EDUMA007256 Interest Applied: Yes GPF Balance: 985,523.00
 Vendor Number: -
 Pay and Allowances: Pay scale: BPS For - 2022 Pay Scale Type: Civil BPS: 15 Pay Stage: 23

Wage type	Amount	Wage type	Amount
0001 Basic Pay	69,460.00	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	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 Al 15% 22(PS17)	6,807.00

Deductions - General

Wage type	Amount	Wage type	Amount
3015 GPF Subscription	4,290.00	3501 Benevolent Fund	1,200.00
3609 Income Tax	858.00	3990 Emp. Edu. Fund KPK	135.00
4014 P. Benefits & Death Comp.	400.00	4260 Professional Tax	1,309.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance

Deductions - Income Tax

Payable: 13,493.98 Recovered till June-2023: 10,171.00 Exempted: 3372.98 Recoverable: 0.00

Gross Pay (Rs.): 95,885.00 Deductions (Rs.): -8,783.00 Net Pay: (Rs.): 87,522.00

Payee Name: ANWAR ZEB KHAN
 Account Number: PLS 6593-0
 Bank Details: NATIONAL BANK OF PAKISTAN, 230617 OGH, OGH, MANSEHRA

Leaves: Opening Balance: Aailed: Earned: Balance:

Permanent Address: MAN
 City: MANSEHRA Domicile: NW - Khyber Pakhtunkhwa Housing Status: No Official
 Temp. Address:
 City: Email:

ATTESTED

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) MANSEHRA.

O.O.No. 206
Dated 18/9 /1989.

APPOINTMENT.

As recommended by the Mr. Faiz Mohammad Khan Adviser to Chief Minister NWFP, and approved by the Mohammed Afroz Khan Chairman D.D.A.O Manshara the following candidate are hereby appointed as Primary Teacher in BPS-7 (Rs. 750/- PM fixed) plus usual allowances as admissible to them under the rules in the interest of public service with effect from the date of taking over charge.

S.No.	Name, Father's name & residence.	School where appointed.	Remarks.
1.	Mr. Mohammad R. Faiz S/O Abdul & Khaliq B/O Hussain Banda (Oghi)	Mosque School Bhuttan Manshara	Agate V/BPO post.
✓ 2.	Mr. Anwar Zaib S/O Asisaur Rahman B/O Bangla Khahhal.	Mosque School Andara hilla.	-do-

- Note:-
1. Charge report should be submitted to all concerned.
 2. No TA/DA etc is allowed to any one.
 3. Their original certificate may be checked before handing over charge.
 4. They should not be handed over charge if their age is below 18 years and above 25 years.
 5. They should produce their eye and health certificate from Medical Supdt: DHQ Hospital Manshara.
 6. The appointment is purely temporary & liable to be termination at any time without any notice.
 7. Other terms and conditions is laid down in the Service rules.

Sd/-----
(KHURSHID AHMAD)
DISTRICT EDUCATION OFFICER
(MALE) MANSEHRA.

Encl: No. 11876-80/AF-III Dated Manshara the 18/9 /1989.
Copy of the above is forwarded to the:-

1. Chairman D.D.A.O Manshara.
2. Sub Divisional Education Officer (Male) Manshara.
3. Headteacher Govt. Primary/Mosque School concerned.
4. Candidate concerned.
5. O.O. File.

[Signature]
DISTRICT EDUCATION OFFICER
(MALE) MANSEHRA.

ATTESTED

Annexure - B -

GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGULATION WING)

NOTIFICATION

Dated Peshawar, the 06/8/2020

Subject: FRADII-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

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.
- 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
06/08/2020

(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 of B) 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

RESTRICTED

MEMORANDUM FOR THE SECRETARY OF DEFENSE

DATE: 06/01/2011

Deputy Chief of Staff (Policy)

Chief of Staff (Policy)

- 1. In Special Security (Reg) Establishment Department
- 2. In Additional Security (Reg-1), Establishment Department
- 3. In Deputy Security (Policy), Establishment Department

Copy forwarded to him:
India, (Even No. & Date)

ASST
3/16

2011, please.

proceeded against under Kyrgyz Pashkynova Civil Servants (Rakhimov & Chirgintov) Rules.

of the competent authority or any to create promotion through different means shall be

Furthermore, those officers/staffs who do not comply with promotion order

to take place, responsibility in case of promotion. Therefore, it is obligatory upon every

present those who lead to force promotion to create postings/positions or their lack of capacity

shall remain from consideration for (with) with by selecting to a single descriptive position or to

The state rationale behind the action of the said rule is aimed at preventing a

provision exists to decline or force promotion.

1999 stands dated vide the departmental notification dated 04.08.2010; thus, so

(2) of Rule 7 of Kyrgyz Pashkynova Civil Servants (Appointment, Promotion and Transfer)

Appointment/2011 dated 18.04.2011 on the subject noted above and to state that Sub-Rule

I am directed to refer to your letter No. 80 (Withamery-MYKASHIRVA

Subject: **QUARTER PROMOTION, PROMOTION OR RULE 7(a) IN THE**
ESTABLISHMENT AND TRANSFER RULES, 1999

The Government of Uttar Pradesh, Lucknow.

GOVERNMENT OF UTTAR PRADESH
ESTABLISHMENT AND TRANSFER RULES, 1999
No. 80 (Policy) (MAY 11, 2011)
Dated Lucknow the date 06, 2011



Amexuke - C

11

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

No. SO (Primary-M)E&SED/2-6/2023
Lahor Peshawar Dtd. June 26th 2023.

To,

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

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

Subject: GUIDANCE REGARDING DELETION OF RULE 715 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 herewith a letter of Establishment Department letter No. SD (Policy)E&AD/1-3/2020 dated 06 June, 2023 and to state that the subject meeting is to be held on 06 July, 2023 at 11:00 AM in this department under the Chairmanship of Additional Secretary (Estab) E&SE Department in his office.

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

Encls AA

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

Copy forwarded to the:

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

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

ATTESTED

12

B/c

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

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

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

Subject: GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE KHYBER
PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION
AND TRANSFER) RULES, 1969.

I am directed to refer to the subject noted above and to enclose herewith a letter of
Establishment Department Order 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 MALI)

Copy forwarded to the:

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

SECTION OFFICER (PRIMARY MALI)

ATTESTED

MINUTES OF THE MEETING REGARDING APPLICATION SUBMITTED BY MR. AZIZ ULLAH PROVINCIAL PRESIDENT ALL PRIMARY TEACHERS ASSOCIATION KHYBER PAKHTUNKHWA REGARDING OF DESIGNATION 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
01

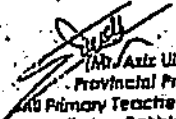
Sl	NAME	DESIGNATION
1	Mr. Fazal Wahid	Deputy Director Establishment of Directorate Elementary & Secondary Education Department
2	Mr. Aziz Ullah	Provincial President All Primary Teachers Association Khyber Pakhtunkhwa
3	Mr. Balaqal Ullah	General Secretary APTA Peshawar
4	Muhammad Ishaq	Section Officer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

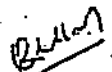
2. The meeting started with recitation from the Holy Quran, the chair welcomed the participants. The Deputy Director (Establishment) of Directorate of Elementary & Secondary Education briefed the forum regarding agenda item in detail.


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


(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

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

~~ATTESTED~~

14

- B/C -

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

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

S/1	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

ATTESTED

WP1442-2023 AZIZULLAH VS GOVT OF PAK

Assistant Director (Establishment)
Elementary & Secondary Education
Khyber Pakhtunkhwa

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

Copy of the above is:-

Assistant Director (Establishment)
Elementary & Secondary Education
Khyber Pakhtunkhwa
21/11/2023

The case is submitted for perusal and necessary actions please.

Departmental Promotion Committee.
Teachers being, their written refusal prior to conclusion of the meeting of
7(5) have affected negatively a huge number of Female Teachers. Thus it is proposed that
in view of the above, this office is of considered opinion that the violation of Rules
been asked for exhibition of consolidated case.
Chairman/Secretary of the Government of Khyber Pakhtunkhwa 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&SED/24/Pro/2023 dated 12-06-2023.
The same was received by this office from your good office vide letter No.50
civil servant to accept promotion under every condition.
that there exists no provision to decline or refuse promotion. It is obligatory upon every
thing vide letter No.50 (Policy) E&AD/1-1/2020 dated 6-06-2023 categorically stated
That the Government of Khyber Pakhtunkhwa Establishment Department (Registration
No.50 (Priority-4) E&SED/24/Pro/2023 for necessary guidance.
That your good office forwarded the same to the quarter concerned vide letter
promotion.
(ii) If it is the prerogative of the civil servant to either accept or turn down the offer of
No.6987 dated 04-02-2023.
That this office should guide from your good office in the following words vide letter
wide notification No. No. SOR-WI (E&AD)/1-1/2020 dated 06-08-2020.
dated Rule 7(5) in the Civil Service (Appointment, Promotion & Transfer Rules 1980)
That Government of Khyber Pakhtunkhwa Establishment Department (Registration (Wing)
present brief history about the background of the case as under:

MINUTES OF THE MEETING
The Section Officer (Priority-Wing),
Elementary & Secondary Education Department,
Khyber Pakhtunkhwa Province.

1 am directed to refer to the letter No.SOR/WI/40E&SED/5-11
G.M/S/Min/10 of the meeting/18/7/2023 dated 10-07-2023 on the subject cited above and to
present brief history about the background of the case as under:



No. 8145

Khyber Pakhtunkhwa, Peshawar
Date: 21/11/2023
Phone: 091-9222344
Email: estab@kpk.gov.pk

APPROVED

WPM443-2023 AZIZULAH VA GOVT CP PGO

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

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

no provision to accept promotion under any condition.
no provision to clarify for promotion. It is desired upon every civil
E&SD/1-2/2023 dated 6-06-2023 accordingly stated that there exists
that the government of KP-ED (Registered Wing) vide letter No. SO (Policy)

guidance.
That your good office forwarded the same to quarters concerned
vide letter No. SO (Policy) E&SD/1-2/2023 for necessary
offer of promotion.
(U) BR-2 preventive of civil servant to other accept/transfer in the

(U) Now it is obligatory upon civil servant to accept promotion.
words vide letter No. 6983 dated 06-07-2023
That the office sought guidance from your good office in the following
vide notification No. SO SR-VI (E&SD) 1-3/2020 dated 06-08-2020
dated rule 7(S) in Civil Servant (Appointment, Promotion, Transfer etc 1997)

That Government of KP, Establishment department (Registered Wing)
present brief history about background of case as under:
Minutes of meeting 13/7/2023 dated 10-7-2023 on subject cited above and to
I am directed to refer to letter No. (SO Policy) E&SD/1-2/2023/6983/

Dear Sir,
Subject: Minutes of Meeting
KPR, Khyber Pakhtunkhwa
Elementary & Secondary Education Department
Section Officer (Policy-Male)
FESHUWAP
(21-7-2023)



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

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

Annexure
 E

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

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

Sir,

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

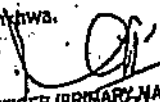
2. In this connection it is submitted that in some cases lady teacher of primary level who avail such promotions have to face serious inconvenience while they have to perform duties in the remotest station with no residential or transport facility. Most of them are married with kids and elder father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

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


 (MUHAMMAD USAIID)
 SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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


 SECTION OFFICER (PRIMARY MALE)
 26/8/23

Scanned with CamScanner

WP443-2023 AZIZULLAH VS GOVT OF PK43

ATTESTED

ATTESTED

1. Director E & SE Kyba Paktunbhuwa
2. PS to Secretary, E & SE Department, Kyba Paktunbhuwa
Copy forwarded to:
(Muzammad Ismail)
Sector Officer (Muzammad Ismail)

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 fathers 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. SO (Primary) (Pak) (E&AD) 14-3/2020 dated 8th June 2023 and to state that after deletion of Rule 7(5) Kyber 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 Kyber Pakhtunkhwa 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 Kyber Pakhtunkhwa, Establishment and Administration Department, Peshawar.

To
No. SO (Primary-M) E&SE D/8-2/1
Appointment - Rule/2023
Peshawar Dated 22nd August, 2023.

Annexure - F



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
No. SO(Policy)E&AD/I-3/2020
Dated Peshawar the September 07, 2023

19

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/Appoinmegt-Rule/2023 dated 23.08.2023 on the subject noted above and to state that
necessary guidance has already been tendered to your good office vide this department letter of
even No. dated 06.06.2023 (copy enclosed).

Yours faithfully,

Section Officer (Policy)

Endst. Of even No & date

Copy forwarded to the:-

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

DELETED

WP/443/2023 AZIZULLAH VS GOVT OF PK

- 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 23.09.2023 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)

End 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

To,

Dated: 28-01-2024

- 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

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. SD (Policy) /EDAD/1- 3/2020 dated 06/08/2020, the right of foregoing of promotion was withdrawn and the Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing) deleted Rule 7(5) in the Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 vide notification no SOR-VI (E & AD)/1-2/2020 dated 06-08-2020. That the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar asked for guidance regarding deletion of Rule 7(5) in Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 in respect of which the Establishment Department vide its letter No. SO.(Policy) E&AD/1- 3/2020 dated Peshawar the June 06th, 2023 directed the Directorate of Elementary & Secondary Education that Rule 7(5) in the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 has been deleted vide notification dated 06-08-2020 and therefore, no provision exists to decline or forgo promotion and it is obligatory upon every civil servant to accept promotion under every condition. That Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa also wrote a letter to the office of Establishment & Administrative Department vide No SO(Primary-M) E&SED/2-2/Appointment Rule/2023 dated 23-08-2023 to reconsider the amendment made in Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 as it had negatively affected a large number of teachers and especially female teachers. In the meanwhile, the department vide its letter dated 07th of September 2023 directed the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa that necessary guidance has already been provided to the department and therefore no provision exists to decline or forgo promotion and those teachers who do not comply with the promotion order of the competent authority or try to evade promotion through different means shall be proceeded under the Khyber Pakhtunkhwa Civil Servant (Efficiency & Discipline) Rules, 2011.

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

Best Regards



Anwar Zaib Khan Son of Aziz Ur Rehman
Resident of Tehsil & District Manshera

ATTESTED

WFO4412-2023 AZZULIYAH VA GOVT CR PC04

8/17/23
[Signature]
WFO4412-2023 AZZULIYAH VA GOVT CR PC04

7. The undersigned hereby certifies that the foregoing is a true and correct copy of the original as shown to the undersigned by the person who presented the same for filing. The undersigned further certifies that the same has been filed in the office of the Clerk of the Court in accordance with the provisions of the Rules of the Court.

[Signature]
WFO4412-2023 AZZULIYAH VA GOVT CR PC04

Annexure - H

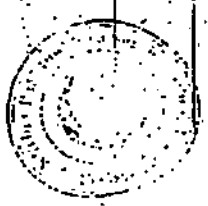
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President
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07.05.2024



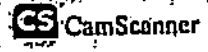
1. Learned counsel for the appellant present.
2. Let a pre-admission notice be issued to the respondents through TCS for submission of reply/comments. Appellant is directed to deposit TCS expenses within three days. To come up for reply/comments as well as preliminary hearing on 10.06.2024 before S.O. P.P given to learned counsel for the appellant.

03. Alongwith the service appeal there is an application for suspension of Notification dated 06.06.2023 and letter dated 23.08.2023 till the final disposal of main service appeal. In the meanwhile, no adverse action shall be taken against the appellant till next date of hearing.

Certified to be true copy (Muhammad Akbar Khin)
Member (I)

[Handwritten signature]
13/5/24

Date of Presentation of Application	12-5-24
Number of Copies	57
Urgent	57
Total	
Name of	
Date of	13-5-24
Date of Delivery of Copy	12-5-24



[Handwritten signature]
ATTESTED

VAKALAT NAMA

BEFORE THE SERVICE TRIBUNAL PESHAWAR

ANWAR ZAIB KHAN
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