


FORM OF ORDER SHEET

Court of _____

Appeal No. 2066 / 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: 2066/24

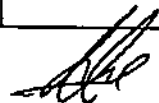
Lal Khan

V/S

Government of KP & others

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ADVOCATE

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

In Ref to

Service Appeal No 2066 /2024

Lal Khan Son of Abdul Rehman Resident of Tehsil & District Manshera

Designation: Primary School Head Teacher at MSQ Soor Male

.....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:-

GROUNDS:-

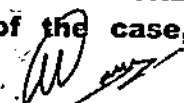
- a. That as per various judgments it is established and settled principle that executive notifications cannot be given retrospective effect. A valid Notification which confers rights is always applicable with prospective effect, however, if an amendment notification that adversely effects the interests 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/13 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.

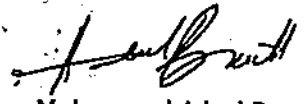

Appellant

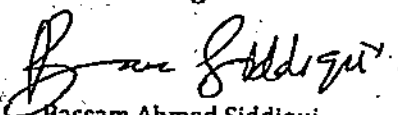
AFFIDAVIT:
I Lal Khan Son of Abdul Rehman Resident of Tehsil & District Manshera that the contents of foregoing application are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court


Deponent

Through


Muhammad Muazzam Butt
Advocate Supreme Court


Muhammad Adeel Butt
Advocate High Court


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

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

C.M No _____ -P of 2024

In Ref to

Service Appeal No _____ /2024

**LAL 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.


Appellant

Through


Muhammad Muazzam Butt
Advocate Supreme Court


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 from this Honourable Court


Deponent

Dist: Govt NWFP-Provincial
District Accounts Office Manshira
Monthly Salary Statement (February 2024)



Personal Information of Mr LAL KHAN d/o/s of ABIDUL REHMAN

Personnel Number: 00225241

CNIC: 1350422138043

NTN: 398506-7

Date of Birth: 25.07.1973

Entry into Govt. Service: 01.03.1993

Length of Service: 31 Years 00 Months 00 Days

Employment Category: Active Permanent

Designation: PRIMARY SCHOOL HEAD TEACHER

80667882-DISTRICT GOVERNMENT KHIVBER

DDO Code: MA6339-Oghi District Manshira

Payroll Section: 001

GPP Section: 001

Cash Center: V-238 P-37

GPP A/C No: SDUMA009384

Interest Applied: Yes

GPP Balance:

795,704.00

Vendor Number:

Pay and Allowances:

Pay scale: DPS For - 2022

Pay Scale Type: Civil - DPS: 15

Pay Stage: 23

Sl. No.	Wage type	Amount	Sl. No.	Wage type	Amount
0001	Basic Pay	79,460.00	1001	House Rent Allowance 45%	3,574.00
1210	Convey Allowance 2005	2,856.00	1300	Medical Allowance	1,500.00
1505	Charge Allowance	240.00	1968	Incentive Allowance 20%	1,000.00
2148	15% Adhoc Relief All-2013	2,845.00	2199	Adhoc Relief Allow @10%	591.00
2316	Teaching Allowance 2021	3,224.00	2341	Diaper Red All (5% 2022 KP)	6,607.00
2347	Adhoc Rel All (5% 22(PS17)	6,608.00	2378	Adhoc Relief AR 2023 35%	23,618.00

Deductions - General

Sl. No.	Wage type	Amount	Sl. No.	Wage type	Amount
3015	GPP Subscription	4,290.00	3501	Benevolent Fund	1,200.00
3609	Income Tax	2,801.00	3990	Emp. Edn. Fund KPK	135.00
4004	R. Benefits & Death Comp.	600.00			0.00

Deductions - Loans and Advances

Sl. No.	Description	Principal amount	Wage Deduction	CRIL Balance
6501	HBA Loan Principal Instal	24,800.00	1,040.00	24,800.00
6505	GPP Loan Principal Instal	400,000.00	15,000.00	2,50,000.00

Deductions - Income Tax

Payable: 43,572.13 Recovered till February 2024: 21,478.00 Exempted: 10892.45 Recoverable: 11,201.68

Net Pay (Rs.): 119,273.00 Deductions (Rs.): 35,066.00 Net Pay (Rs.): 84,207.00

Payee Name: LAL KHAN

Account Number: PLS 3006-3

Bank Details: NATIONAL BANK OF PAKISTAN, 230617, OGH, OGH, MANSHERA

Opening Balance: /Availed: /Earned: /Balance: 5 DEC 2023 OGH

Permanent Address: MANSHERA

City: MANSHERA

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City:

TESTED

OFFICE ORDER NO. 4/GB-I
DATED 27/2/1993.

APPOINTMENT.

Consequent upon their selection on merit, the following PTC Trained candidates are hereby appointed in BPS(No-7) Rs.1095/60/1995 Plus usual allowances as admissible under the rules with effect from the date of their taking over charge against the Vacant posts in the school given against their name in the interest of Public Service.

S. NO.	NAME & FATHER'S NAME	RESIDENCE	SCHOOL WHERE APPOINTED	REMARKS
1	WAJID ALI S/O M. MUHAMMAD RAFIQUE	R/O MATRA JIYA	GPS BANDA DADA (K.D)	AGA: VAC: POST
2	IFTIKHAR HUSSAIN SH: S/O MAQDOOL SH:	R/O NAROTE	GPS NAKIAN JABED	AGA: VAC: POST
3	MUHAMMAD HAROON S/O ABDUL QAYYUM	R/O JABRI B/KOTE	GPS DHANI DHANO	AGA: VAC: POST
4	MUHAMMAD RIAZ S/O DURU AMAN	R/O THAKRIAL	GPS SHATPURA	AGA: VAC: POST
5	WAHEED UR REHMAN S/O MEHDI ZAMAN	R/O HONG	MSQ: SHAKHWAL	AGA: VAC: POST
6	MUHAMMAD ARIF S/O MUHAMMAD HAMAYUN	R/O BAJNA	GMS SHAH DAG (K.D)	AGA: VAC: POST
7	MUHAMMAD MISKEEN S/O ABDUL QAYYUM	R/O NARYALA	GPS RANKOTE	AGA: VAC: POST
8	ASIF JAVED S/O ABDUL RASHID	R/O SANDASAR	GPS FAQEER ABAD	AGA: VAC: POST
9	ZUBAIR S/O BAZ MUHAMMAD	R/O BAJHORI	MSQ: KHANJAR	AGA: VAC: POST
10	ABDUL HAMEED S/O AHMAD DIN	R/O GARHALA	MSQ: BELA MANOOR	AGA: VAC: POST
11	MUHAMMAD SALEEM S/O ABDUL QADUS	R/O BAWAR KHAN (OGPS DODAM (K.D)	AGA: VAC: POST	
12	MUHAMMAD SAEED S/O GHULAN SARWAR	R/O KASHMIR PANI	MSQ: NAR KHAREEN (K.D)	AGA: VAC: POST
13	LAL KHAN S/O ABDUL REHMAN	R/O CHARLI SARAI	MSQ: SOOR MALE (K.D)	AGA: VAC: POST
14	SHABIR HUSSAIN S/O MUHAMMAD AMIN	R/O ICHRIAN	GPS SOOR ASHARAI (K.D)	AGA: VAC: POST
15	MUHAMMAD RIAZ S/O MAQDOOL UR REHMAN	R/O SERI KHARYALAGPS	GARHI MADAKHEL(KD)	AGA: VAC: POST
16	SARDAR S/O MUHAMMAD UNAR	R/O TARAKHAR	MSQ: PURANA BHOGARMONG	AGA: VAC: POST
17	MUHAMMAD AJMAL S/O JAHAL DIN	R/O NAMBAL	MSQ: BANDI BALA	AGA: VAC: POST
18	ZULFIQAR AHMAD S/O ABDUL REHMAN	R/O MANGLOOR	GPS CHANBAR	AGA: VAC: POST
19	MERAJ AHMAD S/O MUHAMMAD ILYAS	R/O BEHALI	GPS PATYAN	AGA: VAC: POST
20	MUHAMMAD SAEED S/O KALOO KHAN	R/O DOGA	MSQ: NARAN	AGA: VAC: POST
21	MUHAMMAD ASHRIF S/O SHER MUHAMMAD	R/O SEHKI BALA	MSQ: LARI BALA	AGA: VAC: POST
22	MUHAMMAD IQBAL S/O MUHAMMAD SIN	R/O SHINKIARI	MSQ: BELA PARA	AGA: VAC: POST
23	IKSAN-UL-HAQ S/O ZIA-UL-HAQ	R/O BATKARAR	GPS BAIDA	AGA: VAC: POST
24	MUHAMMAD ZABAIR S/O ABDUL JAMIL	R/O TARAKHAR	GPS DOONG	AGA: VAC: POST
25	ABDUL REHMAN S/O GHULAN YOUSAF	R/O NEHR KOTE	GPS KOHALI	AGA: VAC: POST
26	RIAZ AHMAD KHAN S/O MUHAMMAD AKRAM	R/O CHAPPAR GRAM	MSQ: KHATER	AGA: VAC: POST
27	NASEEB KHAN S/O MUHAMMAD MISKEEN	R/O KHABAL PAEEN	MSQ: LASSA	AGA: VAC: POST
28	LIAGAT ALI S/O TAJ MUHAMMAD	R/O MANGLOOR	GMS BHANGIAN	AGA: VAC: POST
29	NAZIR MUHAMMAD S/O AZIZ MUHAMMAD	R/O SINJLIALA	GPS KHARYALA	AGA: VAC: POST
30	IMTIAZ HUSSAIN SHAH S/O AZAM SHAH	R/O BAI BALA	GPS SANJ	AGA: VAC: POST
31	RASHID AHMAD S/O MUHAMMAD AYOUB	R/O TANOL BANDA	GPS NAMSHERA	AGA: VAC: POST
32	MUHAMMAD KHALID S/O ABDUL KHALIQ	R/O SHANAI BALA	GPS DHARYAL	AGA: VAC: POST
33	MUHAMMAD SALEEM S/O MUHAMMAD ILYAS	R/O BANIAN	GPS PHALKOTE	AGA: VAC: POST
34	MUHAMMAD RIAZ S/O AHMAD QUL	R/O POODNIAL	GPS POODNIAL	AGA: VAC: POST
35	MUSHTAQ AHMAD S/O ALAMGHIR	R/O ARCHASHORI	MSQ: PHAGORA	AGA: VAC: POST
36	FAREED KHAN S/O MISKEEN KHAN	R/O CHALINDRIAN	MSQ: POORTAN	AGA: VAC: POST
37	MURAD KHAN GHULAM NABI	R/O BAPPA KHURD	GPS NIKA PANI	AGA: VAC: POST
38	SAMJULLAH S/O NARAD KHAN	R/O KOSHGRAN	GPS GAMIAN SERI	AGA: VAC: POST
39	KHALID FAROOQ S/O ABDULLAH	R/O KARORI	GPS CHAMJYAL	AGA: VAC: POST
40	SHAF NAWAZ S/O FAZAL UR REHMAN	R/O PHULRAH	GPS BEER BAT	AGA: VAC: POST
41	MUHAMMAD YUNIS S/O MUHAMMAD AKBAR	R/O GALI BADRAL	GPS SHUNGLI	AGA: VAC: POST
42	S. AEDUS SALAM S/O AURANGZEB	R/O GHANPOOL	GPS BAYAN	AGA: VAC: POST
43	LIAGAT ALI S/O MUHAMMAD ANFAN	R/O SHANAI BALA	GPS BAGAN BELA	AGA: VAC: POST
44	ARWAR KAHN S/O MUHAMMAD MISKEEN	R/O BAPPA	GPS MANDA GUCHA	AGA: VAC: POST
45	SHAH NAWAZ S/O HAFEEZ ULLAH	R/O SHERGARH	GPS CHINKOT	AGA: VAC: POST

Contd. p-2

~~TESTED~~

Annexure - B -

GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGULATION WING)

NOTIFICATION

Dated Peshawar the 06/8/2020

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

AMENDMENT

In rule 7, sub-rule (3) shall be deleted.

CHIEF SECRETARY
GOVERNMENT OF THE KHYBER PAKHTUNKHWA

NOTE: 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.



(Signature)
WAJDAH LATIF
DEPUTY SECRETARY (POLICY)

ATTESTED

(Signature)
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

Annexure - C



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
No. SO(Polcy)/MAADH/2023
Dated Peshawar the June 06, 2023

62

To: The Government of Khyber Pakhtunkhwa,
Elementary & Secondary Education Department.

Subject: CHALLENGE REGARDING VIOLATION OF RULE 7(1) IN THE
KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT,
PROMOTION AND TRANSFER) RULES 1989.

Dear Sir,
I was directed to refer to your letter No. SO(Polcy-M)/MAADH/23-2/Appointment/2023 dated 10.04.2023 on the subject noted above and to state that Sub-Rule (3) of Rule-7 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 stands deleted vide this Departmental notification dated 04.02.2020; thus, no provision exists to decline or forgo promotion.

The basic rationale behind the deletion of the said rule is aimed at preventing a civil servant from temptation for illegal gain by sticking to a single lucrative post/position or to prevent those who tend to forgo promotion to evade posting/transfer or show lack of capacity to tackle higher responsibilities in case of promotion. Therefore, it is obligatory upon every civil servant to accept promotion in every condition.

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.

Yours faithfully,
(110 D. Akbar Khan)
Secretary (Policy)

ASE
7/6

[Handwritten signature]

- Encl. Of even No & date
Copy forwarded to:-
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.

[Handwritten signature]
Secretary (Policy)

[Handwritten signature]

06/06/23
vs 216/14

ATTESTED

71

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
CIVIL SECRETARIAT PESHAWAR
(Phone No.091-0223587)

No.RO (Primary-M)/E&SED/2-6/2023
Lahor Peshawar Dho. June 26th, 2023

To

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

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

Subject: GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE KHYBER
PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION
AND TRANSFER) RULES, 1988.

I am directed to refer to the subject noted above and to enclose here with
a letter of Establishment Department letter No. 50 (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)
26/6/23

WP442-923 AZIZULLAH VS GOVT OF PK


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(S) IN THE KHYBER
PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION
AND TRANSFER) RULES, 1909.

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

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

Encl AA

(MURAHMAD 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 DELETION OF RULE 7(S) IN THE CIVIL SERVANT (APPOINTMENT, PROMOTION & TRANSFER RULES 1989).

A meeting regarding the subject matter was held on 04-07-2023 at 11:00 AM under the Chairmanship of Additional Secretary Establishment in his office. The following attended the meeting:


Annexure
D


S#	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

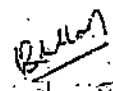
2. The meeting started with recitation from the Holy Quran. The chair welcomed the participants. The Deputy Director (Establishment) of Directorate of Elementary & Secondary Education briefed the forum regarding agenda item in detail.


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

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


ATTESTED

- B/c -

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

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

S#	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)

~~ACCEPTED~~
~~APPROVED~~

~~ATTESTED~~

WPK443-2023 AZZULHAIH VS GOVT OF PERSIA

2. Master Copy
1. Pt to Director Local Directorate
Copy of the above to:
Hajrud Director
Elementary & Secondary Education
KPK, Peshawar

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

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

That the government of KP-ED (Regulation Wing) vide letter No. SO (Policy)
E4/AD/1-2/2020 dated 6-06-2023 accordingly stated that there exists
no provision to decline / stop 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 (Promotion) E4/SED/2-2/11/2023 for necessary
guidance.

That the office sought guidance from your good office in the following
vide notification No. No. SOP-VI (E4/AD) 1-3/2020 dated 08-08-2020.
dated vide 7(S) in Civil Servant (Appointment Promotion) Rules (1999)
That Government of KP Establishment department (Regulation Wing)
present brief history, about background of case as under.

I am directed to refer to letter No. (SO-Promotion) E4/SED/5-1/6/2021/
Minutes of meeting 11/5/2021 dated 30-7-2023 on subject cited above and to

Subject: Minutes of Meeting

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

Section Officer (Primary Male),
Elementary & Secondary Education Department,
KPK, Peshawar.
(21-7-2023)

-B/C-



ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
 CIVIL SECRETARIAT PESHAWAR
 (Phone No.091-8221587)

No. SO(Policy-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).

1. 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 or mother-in-law who need care. In such cases, there are negative effects on service delivery.

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


 MUHAMMAD ISMAIL
 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)
 28/8/23

Scanned with ComScanner

WP443-2023 AZIZULLAH VS GOVT OF PKG

ATTACHED

ATTACHED

1. Director E & SE Kyber Pakhtunkhwa
2. PS to Secretary, E & SE Department, Peshawar
Copy forwarded to:
(Muhammad Ishaq)
Sector officer (Primary)
(Male)

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.

Dear Sir,
I am directed to refer to your letter No. S.O. (Primary) / E & SE / 1-3/2023 dated 4th 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. S. (Primary-M) E & SE / 1-3/2023
Appointment - Rule / 2023
Reference Dated 23rd August, 2023.
-2-
-B/c-

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(S) IN THE
KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT,
PROMOTION AND TRANSFER) RULES, 1989.**

Dear Sir,
I am directed to refer to your letter No. SO(Primary-M/E&SED/2-
2/Appointment-Rule/2023 dated 23.08.2023 on the subject noted above and to state that
necessary guidance has already been rendered to your good office vide this department letter of
even No. dated 06.06.2023 (copy enclosed).

Yours faithfully,

Section Officer (Policy)

Encls. Of even No & Date

Copy forwarded to the:-

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

ATTESTED

1004-12-2023 AZIZULLAH US GOVT CP NO.3

- B/C -

GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
No. SO(Policy)E&AD/1-3/2020
Dated Peshawar the September 07, 2023

To

The Secretary to Government of (Khyber Pakhtunkhwa,
Elementary & Secondary Education Department

Subject -

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

Dear Sir,

I am directed to refer to your letter No. SO(Primary-M)/E&SED/2-2/Appointment-
Rule/2023 dated 23.08.2023 on the subject noted above and to state that necessary
guidance has already been tendered to your good office vide this department letter of even
No. dated 06.06.2023 (copy enclosed).

Yours faithfully,

Section Officer (Policy)

Encls. Of even No & date

Copy forwarded to the:-

- 1. PS to Special Secretary (Reg), Establishment Department
- 2. PA to Additional Secretary (Reg-ID), 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/1-312020, 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. 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.

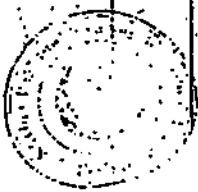
It is, therefore, humbly prayed that on the acceptance of the instant representation; the Notification bearing No. SO (POLICY) E&D/1-3 1-2020 DATED 06/08/2020, communicated to vide letter dated 06/06/2023, may please be declared and ordered to be struck down being Void, Ultra vires to the Constitution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

Best Regards



Lal Khan Son of Abdul Rehman
Resident of Tehsil & District
Manshera

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.B. 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 Khan)
Member (I)

[Handwritten signature]

Date of Presentation of Application 12-5-24
 Number of 1
 Copy/ies 1
 Fees 5/-
 Total 5/-
 Name of 18-6-23
 Date of 12-5-24
 Date of receipt of copy 12-5-24



ATTESTED

24

VAKALAT NAMA

BEFORE THE SERVICE TRIBUNAL PESHAWAR

LAL KHAN
Versus

Appellant

Government of KP & others

Respondents

I (the Appellant)

do hereby appoint and retain

MUHAMMAD MUAZZAM BUTT ASC. MUHAMMAD ADEEL BUTT AHC

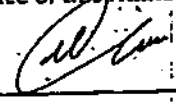
BASSAM AHMAD SIDDIQUI AHC

&

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