


FORM OF ORDER SHEET

Court of _____

Appeal No. 2137 /2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	24/10/2024	<p>The appeal presented today by Mr. Muhammad Muazzam Butt Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 01.11.2024. 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

C.M No _____-P of 2024

In Ref to

Service Appeal No. 2137 2024.


Shamshad Ahmad

VERSUS

Secretary to Government of Khyber Pakhtunkhwa, & others

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ADVOCATE

M. Muazzam Butt

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

In Ref to

Service Appeal No 2137 /2024

Shamshad Ahmad Son of Abdul Rauf Khan, PSHT
GPS Mian Khel, Tehsil & District Peshawar

.....Appellant

VERSUS

- 1) Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar
- 2) Secretary to Government of Khyber Pakhtunkhwa, Elementary and Secondary Education Department, Civil Secretariat, Peshawar
- 3) Director Elementary and Secondary Education Department, Civil Secretariat Near MPA Hostel, Peshawar

.....Respondents

SERVICE APPEAL UNDER SECTION 4 OF KPK SERVICE TRIBUNAL ACT 1974. AGAINST THE IMPUGNED NOTIFICATION BEARING NO.SO(POLICY)E&AD/1-3/2020. DATED 06/08/2020. COMMUNICATED TO RESPONDENT NO. 2 VIDE LETTER DATED 06/06/2023. WHEREIN IT WAS STATED THAT SUB RULE 5 OF RULE 7 OF KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION AND TRANSFER) RULES, 1989 STANDS DELETED

PRAYER:

ON ACCEPTANCE OF INSTANT SERVICE APPEAL, THE IMPUGNED NOTIFICATION BEARING NO: SO (POLICY) E&AD/1-3/2020, DATED 06/08/2020, COMMUNICATED TO RESPONDENT NO. 2 VIDE LETTER DATED 06/06/2023, MAY BE DECLARED AND ORDERED TO BE STRUCK DOWN BEING VOID AND ULTRA VIRES TO THE CONSTITUTION OF PAKISTAN AND FUNDAMENTAL PRINCIPLES OF NATURAL JUSTICE AND AGAINST THE RIGHTS OF APPELLANT.

ANY OTHER RELIEF WHICH THIS HONOURABLE TRIBUNAL DEEMS FIT AND PROPER IN THE CIRCUMSTANCES OF THE CASE MAY ALSO BE GRANTED TO THE APPELLANT.

RESPECTFULLY SHEWETH:

1. That the Respondents Department appointed the Appellant as Primary School Head Teacher.
Copy of Appointment letter is annexed as **Annexure A**

2. That as per Khyber Pakhtunkhwa (Appointment/ Promotion/ Transfer) Rules, 1989, as well as in other sister services of the other Provinces and Federation as well, availing of promotion by the employees is always optional and the employees as a matter of right may avail or forego their promotion and the next employee in seniority list is to be promoted.
3. That some employees specifically have foregone their promotion as they could not serve in the areas where there is no facility of accommodation and no houses of their elders are available to look after them in far-flung and solitary mountainous hard areas, and as per Section 25 of per KP Civil Servant Act, 1973, rules to the extent of terms and condition is framed by the Chief Minister and such promotion rules are not made applicable with retrospective effect. The rules framed are published in the Gazette notification and part and parcel of KP Civil Servant Appointment, Transfer and Promotion Rules 1989.
4. That Government of K.P without following the rules position mentioned in Para 6 above promulgated Notification No. SO (Policy) E&AD/1 3/2020, dated 06/08/2020, communicated to Respondent No.2 vide letter dated 06/06/23 wherein it has been made mandatory to the employees to avail the promotion, otherwise, disciplinary action shall be taken against the employees. The impugned Notification is reproduced as under:-

"Furthermore, those officers/officials who do not comply with promotion order of the competent authority or try to evade promotion through different means shall be proceeded against under Khyber Pakhtunkhwa Civil Servants (Efficiency Discipline) Rules, 2011, please".

5. That as per notification No. 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 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 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 promotion. 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 a not 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.

[Signature]
 Deponent

Through

[Signature]
 Appellant

[Signature]
 Muhammad Muazzam Butt
 Advocate Supreme Court

[Signature]
 Muhammad Adeel Butt
 Advocate High Court

[Signature]
 Bassam Ahmad Siddiqui
 Advocate High Court
 L.L.M- Human Rights

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

C.M No _____-P of 2024

In Ref to

Service Appeal No _____ 2024

Shamshad Ahmad

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

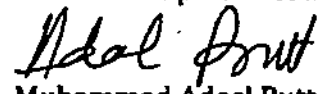
I (the appellant) do hereby solemnly stated on oath that the contents of foregoing application are true and correct to the best of my knowledge and belief and nothing has been concealed therein this Honorable Court.


Deponent


Appellant

Through


Muhammad Muazzam Butt
Advocate Supreme Court


Muhammad Adeel Butt
Advocate High Court

Dist. Govt. KP-Provincial
District Accounts Office Peshawar Dist.
Monthly Salary Statement (January-2024)

Refusal C.T Post



Personal Information of Mr SHAMSHAD AHMAD d/w/s of ABDUL RAUF KHAN

Personnel Number: 00222004 CNIC: 1750116371105 NTN: 0
 Date of Birth: 01.03.1968 Entry into Govt. Service: 29.12.1987 Length of Service: 36 Years 01 Months 004 Days

Employment Category: Active Temporary

Designation: PRIMARY SCHOOL HEAD TEACH R0632270-DISTRICT GOVERNMENT KHYBE

DDO Code: PW6567-District Peshawar

Payroll Section: 003

GPF Section: 031

Cash Center: 33

GPF A/C No: EDU035015

GPF Interest applied

GPF Balance:

308,779.00 (provisional)

Vendor Number: -

Pay and Allowances:

Pay scale: BPS For - 2022

Pay Scale Type: Civil

BPS: 15

Pay Stage: 25

Wage type		Amount	Wage type		Amount
0004	Basic Pay	73,420.00	1004	House Rent Allow 45% KP2)	8,741.00
1210	Convey Allowance 2005	2,856.00	1300	Medical Allowance	1,500.00
2148	15% Adhoc Relief All-2013	949.00	2199	Adhoc Relief Allow @ 10%	634.00
2316	Teaching Allowance 2021	3,224.00	2341	Diagr. Red All 15% 2022KP	7,006.00
2347	Adhoc Rel All 15% 22(PS 17)	7,006.00	2378	Adhoc Relief All 2023 35%	25,004.00

Deductions - General

Wage type		Amount	Wage type		Amount
3015	GPF Subscription	-4,200.00	1501	Beneficial Fund	-1,200.00
3609	Income Tax	-3,782.00	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: 59,272.38 Recovered till JAN-2024: 25,547.00 Exempted: 14817.58 Recoverable: 18,907.80

Gross Pay (Rs.): 130,340.00 Deductions: (Rs.): -10,007.00 Net Pay: (Rs.): 120,333.00

Payee Name: SHAMSHAD AHMAD

Account Number: 4063846100

Bank Details: NATIONAL BANK OF PAKISTAN, 231499 OFFICER COLONEY OFFICER COLONEY.

Leaves: Opening Balance: Aailed: Earned: Balance.

Permanent Address: 3 DIVISIONAL EDUCATIONAL OFFICE

City: Peshawar

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City:

Email: shamshadedu27@gmail.com

ATTESTED

System generated document in accordance with APPM 4.6.12 (987) 11/25 01-2024/13.0

* All amounts are in Pak Rupees

* Errors & omissions excepted (SERVICES02.02.2024/19.13.18)

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) PESHAWAR.

OFFICE ORDER:-

APPOINTMENT OF P.T.C. TEACHER.

Mr: Shamsud Din s/o. Alodun Rauf

Candidate is hereby appointed as PTC teacher on Rs: 750/-PM fixed in the N.P.S. NO:7 of Rs:750/-PM plus usual allowances as admissible under the rules with effect from the date of his taking over charge at against vacant PTC post of E.P.S. Mian Ichel under the following terms and conditions:-

CONDITIONS.

1. Charge reports should be submitted induplicate to all concerned.
2. No TA/DA is allowed being first appointment.
3. No joining time is allowed what is absolutely necessary.
4. The appointment is purely made on temporary basis and subject to the termination at any reasons or prior notice. In case he wishes to leave the Department he shall have to submit one Month's prior notice or in lieu thereof forfeited one Month's pay and allowances to the Govt; of NWFP. His educational qualification should be checked up before handing over the charge of his new post.
5. He should to produce his health and age certificate from the Civil Surgeon Peshawar within Seven days of reporting arrival duty as required under the rules (F.R-10.S.R-4).
6. In case the candidate fails to take over charge within 30 days from the date of issue of this letter his appointment will stand cancelled automatically.
7. The verification roll of character and antecedent should be submitted to this office for further verification and record.
8. The candidate should not be handed over charge if his age is not between 18-25 years.
9. He should execute necessary bond and in case he is required to handle Govt: money or property.
10. The pay scale and service rules would be subject to revision in accordance with the orders to be passed by the Govt; of NWFP from time to time.
11. He will produce photo copies of his SSC/Intermediate/BA and all other relevant documents including domicile and Identity card to SDEO(M) concerned at the time of taking over charge.
12. He will be dealt with under P&D Rules, if he violates Govt; rules and regulations.

(MAZROOF SALAM)
DISTRICT EDUCATION OFFICER (MALE)
PESHAWAR.

Enst: NO. 3743-51 /Arppt: PTC. UT/Dated Peshawar the 25/12/1987.

Copy for information to the:-

1. Sub-Divisional Education Officer(Male) Peshawar.
2. Sub-Divisional Education Officer(Male)Nowshera.
3. Sub-Divisional Education Officer(Male)Charsadda.
4. Candidate concerned.
5. P.A. to Director of Education(Schools) NWFP, Peshawar.
6. P.S. to _____
7. P.S. to _____

with the remarks to check up the original documents of t candidate concerned before taking over charge.

Mian Taus Khan.

ATTESTED

DISTRICT EDUCATION OFFICER
PESHAWAR.

-8-
Annexure - B-

GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGULATION WING)

NOTIFICATION

Dated Peshawar, the 06/8/2020

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

AMENDMENT

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

CHIEF SECRETARY
GOVERNMENT OF THE KHYBER PAKHTUNKHWA

LIST: NO & EVEN DATE

Copy is forwarded to:-

1. Additional Chief Secretary, Govt. of Khyber Pakhtunkhwa, Planning & Development Department.
 2. The Senior Member Board of Revenue, Khyber Pakhtunkhwa.
 3. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
 4. The Principal Secretary to Governor, Khyber Pakhtunkhwa.
 5. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
 6. All Divisional Commissioners in Khyber Pakhtunkhwa.
 7. All Heads of Attached Departments in Khyber Pakhtunkhwa.
 8. All Autonomous/Semi Autonomous Bodies in Khyber Pakhtunkhwa.
 9. All Deputy Commissioners in Khyber Pakhtunkhwa.
 10. The Registrar Peshawar High Court, Peshawar.
 11. The Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
 12. The Secretary, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
- The Deputy Director (IT), E&A Department.
All Section Officers in Establishment & Administration Department.
The Section Officer (Admn), Administration Department with the request to
arrange 20 gazette copies.
The Caretaker, Administration Department.

18/8/20
20/8/20

Wardah Lathi
WARDAH LATHI
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~~

ATTENDED

WP4442-2023 AZIZULLAH VS GOVT OF PG43

21.06.23
2023
21.06.23

Section Officer (Policy)

(Sanctioned/Approved/Classified) Officer (Policy)

Yours faithfully,

- 1. Prio Special Secretary (Legal, Establishment Department)
- 2. Prio to Additional Secretary (Legal-1), Establishment Department
- 3. Prio to Deputy Secretary (Policy), Establishment Department

Copy forwarded to the:-
Prio. Of even No & date

2011, please.

Furthermore, those officials/officers 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.

3. Furthermore, those officials/officers 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.

2. The basic rationale behind the deletion of the bid rule is aimed at preventing a civil servant from competing for the same post by seeking to a single lucrative post position or to prevent those who tend to forge promotion to evade posting/transfer or show lack of respect to the higher responsibilities in case of promotion. Therefore, it is obligatory upon every civil servant to accept promotion in every condition.

1. The Government of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 stands deleted vide the departmental notification dated 06.08.2020; thus, no provision exists to decide on or forge promotion.

2. The basic rationale behind the deletion of the bid rule is aimed at preventing a civil servant from competing for the same post by seeking to a single lucrative post position or to prevent those who tend to forge promotion to evade posting/transfer or show lack of respect to the higher responsibilities in case of promotion. Therefore, it is obligatory upon every civil servant to accept promotion in every condition.

1 am directed to refer to your letter No. SO/Policy-M/2023-1799 dated 18.04.2023 in the subject noted above and to state that Sub-Rule 2/A of Rule-7 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 stands deleted vide the departmental notification dated 06.08.2020; thus, no provision exists to decide on or forge promotion.

The Government of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 stands deleted vide the departmental notification dated 06.08.2020; thus, no provision exists to decide on or forge promotion.



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
No. SO/Policy/2023-1799
Dated Peshawar the June 06, 2023

6.2

Annexure - C



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

N.No.SO (Primary-M)/E&SED/2-6/2023
Dated Peshawar the, June 26th, 2023

To

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

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

[Handwritten Signature]
26/6/23

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

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

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

Encl: AA

[Handwritten Signature]

[Handwritten Signature]
(MUHAMMAD Ishaq)
SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

[Handwritten Signature]

[Handwritten 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 Pakhtunhwa, 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, 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(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.

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

(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

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

ATTESTED

Annexure
D

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

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

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

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

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

The meeting ended with a vote of thanks from the Chair.

(Mr. Fazal Wahid)
Deputy Director-1
E&SE Department

Provincial President
All Primary Teachers Association
Khyber Pakhtunkhwa

(Mr. Razaqat Ullah)
General Secretary APTA
Peshawar

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

(Abdullah)
Additional Secretary (Establishment)

ATTESTED

ATTESTED

WPA442-2023 AZZULLAH VS GOVT CP P043

Assistant Director (Ex-Officio)
Elementary & Secondary Education
Khyber Pakhtunkhwa

Assistant Director (Ex-Officio)
Elementary & Secondary Education
Khyber Pakhtunkhwa

- 1. PA to Director Local Directors.
- 2. Master Copy.

Copy of the above is in:

Encl: No.

The case is submitted for period and necessary actions please.

Departmental Promotion Committee.
provided they submit their written request prior to conclusion of the meeting of
Teachers held. It may be exempted of implications of the amendment in the rule. It
7(2) 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 date of issue of
been asked for submission of consolidated case.
Civil Servants (Appointment/2023) dated 12-06-2023.
That, in the light of the minutes of meeting dated 07-07-2023 held under the
Civil Servants (Appointment/2023) dated 12-06-2023.
The same was received by this office from your good office with letter No. SO
civil servant to accept promotion under every condition.
that there exists no provision to decline or forgo promotion. It is obligatory upon every
Wing) vide letter No. SO (Policy) E&AD/I-1/2020 dated 06-06-2023 accordingly stated
That the Government of Khyber Pakhtunkhwa Establishment Department (Regulation
No. SO (Primary-4) E&SE/D-2/Appointment/2023 for necessary guidance.
That your office forwarded the same to the quarter concerned vide letter
promotion.
(ii) It is the prerogative of the civil servant to either accept or turn down the offer of
(i) Now it is obligatory upon the civil servant to accept promotion in every condition.
No. 0987 dated 06-07-2023.
That this office sought guidance from your good office in the following words vide letter
vide notification No. SO-41 (E&AD)/I-1/2020 dated 06-08-2020.
dated Rule 7(2) in the Civil Servants (Appointment, promotion & Transfer Rules 1989)
That Government of Khyber Pakhtunkhwa Establishment Department (Regulation (Wing)
No. SO (Primary-4) E&SE/D-2/Appointment/2023 for necessary guidance.
I am directed to refer to the letter No. SO (Primary-4) E&SE/D-2/1-1/2023 dated 10-07-2023 on the subject cited above and to
Q. Misc/Minutes of the meeting/PST/2023 dated 10-07-2023 on the subject cited above and to
present brief history about the background of the case as under:

MINUTES OF THE MEETING

The Section Officer (Primary-Wing),
Elementary & Secondary Education Department,
Khyber Pakhtunkhwa Government.

Dear Sir,



No. 8145

Phone: 011-9723344

Khyber Pakhtunkhwa Government
Elementary & Secondary Education Department
Khyber Pakhtunkhwa

ATTESTED

WP4442-2023 AZIZULLAH VS GOVT OF POK

Ashraf Director
Elementary & Secondary Education
Plyles, Peshawar

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

Please.

The case is submitted for perusal 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 at his office. This office has been asked for submission of no provision to decline / forgo promotion, it is obligatory upon every civil servant to accept promotion under every condition.

That the government of KP-ED (Regulation Wing) vide letter No. SO (Policy) EQAD/1-3/2020 dated 6-06-2023 accordingly stated that there exists no provision to decline / forgo promotion, it is obligatory upon every civil servant to accept promotion under every condition.

That your good office forwarded the same to a/upte concerned vide letter No. SO (Promotion) EQSED/2-2/Appointment-2023 for necessary guidance.

That this office sought guidance from your good office in the following words vide letter No. 6983 dated 06-07-2023:

(i) Now it is obligatory upon civil servant to accept promotion (ii) It is prerogative of civil servant to either accept / forego the offer of promotion.

That Government of KP Establishment department (Regulation Wing) added rule 7(S) in Civil Servants (Appointment, Promotions, Transfer Rule 1987) vide notification No. No. SOP-VI (EQAD) 1-3/2020 dated 06-08-2020. That this office sought guidance from your good office in the following words vide letter No. 6983 dated 06-07-2023:

(i) Now it is obligatory upon civil servant to accept promotion (ii) It is prerogative of civil servant to either accept / forego the offer of promotion.

That your good office forwarded the same to a/upte concerned vide letter No. SO (Promotion) EQSED/2-2/Appointment-2023 for necessary guidance.

That the government of KP-ED (Regulation Wing) vide letter No. SO (Policy) EQAD/1-3/2020 dated 6-06-2023 accordingly stated that there exists no provision to decline / forgo promotion, it is obligatory upon every civil servant to accept promotion under every condition.

That in light of the minutes 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.

In view of the above, this office is of considered opinion that the deletion of rules 7(S) have effected negatively a huge members of female teachers.

The case is submitted for perusal and necessary action.

To:
 Directorate of Elementary & Secondary Education, KPK
 Section Officer (Primary Rule)
 Elementary & Secondary Education Department
 KPR, Peshawar

RSAMW/2
(21-7-2023)

-B/C-
-16-

Amirul
E

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

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

Dear Sir,

I am directed to refer to your letter No. SO(Policy)/E&AD/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.

(MUNHAMAD ISHAQ)
SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

SECTION OFFICER (PRIMARY MALE)
20/8/23

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WP4442-7023 AZIZULLAH VS GOVT OF PK43

ATTESTED

-B/c-

No. 50 (Primary-M) E&SED /A/18/1
Appointment - Rule 1/2023
Peshawar Dated 23rd August 2023.

To
The Secretary to Government of Khyber Pakhtunkhwa,
Establishment and Administration Department,
Peshawar.

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

Dear Sir,
I am directed to refer to your letter No. SO/Primary
14-3/2023 dated 6th June 2023 and to state that after
deletion of Rule 7(S) Khyber Pakhtunkhwa Civil Servant (Appointment,
Promotion and Transfer Rules 1989) G- has been intimated that
those officers/officials who do not comply with promotion order
of the competent authority or try to evade promotion through
different means shall be proceed under Khyber Pakhtunkhwa
Civil Servant (Efficiency and Discipline) Rule 2019.

In this connection it is submitted that in some cases lady
teacher of primary level who avail such promotion have to
face serious inconvenience while they have to perform duties
in the remotest stations with no residential/transport facilities.
Most of them are married with kids and elder father of
Mother-in-law who need care. In such cases there are negative
effects on service delivery.
In view of above, the said amendment may be reconsidered to
the extent of lady teacher in primary schools.

- Copy forwarded to;
1. Division E&SE Khyber Pakhtunkhwa
(Muhammad Ishtaq)
Section Officer (Primary
Male)
 2. PS to Secretary, E&SE Department
Khyber Pakhtunkhwa
www.kpk.gov.pk

~~ATTESTED~~

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 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-II), Establishment Department.
3. PS to Deputy Secretary (Policy), Establishment Department.

ATTESTED

WP4442-2023 AZEELAH VS GOVT OF PK

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-20-

- 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-II), 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/1-3/2020, DATED 06/08/2020, COMMUNICATED TO SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA, ELEMENTARY & SECONDARY EDUCATION DEPARTMENT VIDE LETTER D06/06/2023, WHEREIN IT WAS STATED THAT SUB RULE 5 OF RULE 7 OF KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION AND TRANSFER) RULES, 1989 STANDS DELETED

Sir/ Madam:-

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

It is, therefore, humbly prayed that on the acceptance of the instant representation; the Notification bearing No. SO (POLICY) E&AD/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 16/03/2024

SHAMSHAD AHMAD
SID ABDUL RAUF KHAN
PSHT.

~~ATTACHED~~

WP4442-2023 AZIZULLAH VS GOVT OF POKS

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2023/11/28
[Signature]

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APTA House
Govt. Primary School Naka
Gushaher Peshawar City




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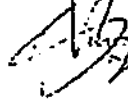
President
0333-011233
0333-011233
0333-011233

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 (F)


 13-8-23

Date of Presentation of Application 10-8-23
 Number of 5
 Copies 5
 Urgent 5
 Total 5
 Name of 13-8-23
 Date of 13-8-23
 Date of delivery of copy 13-8-23

CS CamScanner

~~ATTESTED~~

VAKALAT NAMA

BEFORE THE SERVICE TRIBUNAL PESHAWAR

SHAMSHAD AHMAD

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