


FORM OF ORDER SHEET

Court of _____

Appeal No. 2252/2024

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|-------|---------------------------|---|
| 1 | 2 | 3 |
| 1- | 30/10/2024 | <p>The appeal presented today by Mr. Muhammad Muazzam Butt Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 06.11.2024. Parcha Peshi given to counsel for the appellant.</p> <p>By order of the Chairman  REGISTRAR</p> <p>REGISTRAR</p> |

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

A No 2252/2024
SAFA GUL
V/S

Government of KP & others

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ADVOCATE
M. Muazzam Butt

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

In Ref to

Service Appeal No 2252/2024

Safa Gul son of Qadar Gul, PSHT (BPS-15)

Barra Mir, PO Batagrami, Aajmera, Tehsil and District Batagram

.....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

-3-

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

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

Copy of Impugned Letter dated 07-09-2023 is attached as Annexure F

10. That the petitioner feeling aggrieved, filed Representation to the respondents in person, and also approached to respondents through APTA President but the grievances of the appellant have not so far been redressed.

Copy of Representation against the said notification is annexed as Annexure G & H

11. That feeling aggrieved from the letters dated 06-06-2023 and 07-09-2023 and the deletion of Rule 7(5) in the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989; the petitioners filed this Hence, the instant service appeal is filed on the following grounds:-

• GROUNDS:-

a. That as per various judgments it is established and settled principle that executive notifications cannot be given retrospective effect. A valid Notification which confers rights is always applicable with prospective effect, however, if an amendment notification that adversely affects the interests of the employees or causes disadvantage to the employee is not tenable in the eyes of law. The notification/guidance dated 06/08/2020 06/06/2023 are liable to be set-aside.

b. That there are no terms and conditions of service mentioned in the appointment order of the appellant wherein, availing of promotion is mandatory. It is further submitted that employees in the past, have foregone their promotion along with their posting. It is submitted that when domestic and other personal issues do not permit the employees/appellant to avail the promotion order and in that case, the employees who foregone their promotion were allowed not to avail the promotion for a period of 04 years and on second refusal the employees were permanently debarred from availing the facility of promotion during their entire service. Hence the employees himself/herself forebear agonies of foregoing their promotions. As a result, junior to the appellant according to the order of seniority cum fitness are granted promotion to next rank.

c. That as per Civil Servant laws, promotion is a kind of appointment which is always optional to get promotion or not, hence the impugned notification is void, illegal and against the law and the same to the extent of the appellant is liable to be set-aside.

d. That it is further submitted that on account of grant of promotion, some employees who are suffering from severe medical ailment or facing acute domestic issues cannot avail promotion with transfer in other areas, therefore, no employee can be compelled to accept the promotion compulsorily which is not beneficial to the employee but if an employee does not avail and get benefit of her promotion it must be optional for the employees as to whether to avail or forego the benefits. Any promotion without willingness of employee is illegal and liable to be set-aside.

- e. That non-availing of promotion and foregoing thereof does not cause loss to the government exchequer and in consequence of foregoing promotion, pave way to the next employee in seniority, aspiring for promotion could be promoted.
- f. That the impugned promotion Notification dated 06/08/2020 communicated on 06/06/2023 is perverse, discriminatory, against the law, pungent and is a blunt blow of hammer on the rights of the appellant. It is not out of place to mention here that the appellant are teachers and have to look after their children as well as ailing dependent family members and in these circumstances in the presence of impugned Notification dated 06/08 /2023 communicated on 06/06/23 would not be able to serve in the department and which shall amount to the snatching of bread and butter of the poor employees

It is, therefore, humbly prayed that on the acceptance of the instant Service Appeal; the Impugned Notification bearing No. SO (POLICY) E&D/1-3/2020 DATED 06/08/2020, communicated to Respondent No.2 by Respondent. NO:1, vide letter dated 06/06/2023, may please be declared and ordered to be struck down being Void, Ultra vires to the Constitution of Pakistan and against the fundamental principles of natural justice.

It is further prayed that no penal action as proposed and envisaged in letter dated 06/06/2023 may be declared as unlawful, illegal and without having any legal effect.

Any other relief, which this honorable Tribunal deems fit and proper in the circumstances of the case, may also be granted to the appellant.

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

[Signature]
 Appellant

Through

[Signature]
 Muhammad Muazzam Butt
 Advocate Supreme Court

[Signature]
 Muhammad Adeel Butt
 Advocate High Court

[Signature]
 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

Safa Gul
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.

Safa Gul
Deponent

Safa Gul
Appellant

Through

Muhammad Muazzam Butt
Muhammad Muazzam Butt
Advocate Supreme Court

Muhammad Adeel Butt
Muhammad Adeel Butt
Advocate High Court

Monthly Salary Statement (August 2022)

6



Personal Information of Mr. SAFA GUL (S/o of QADAR GUL)
 Designation: PRIMARY SCHOOL HEAD TEACHER
 Date of Birth: 05/01/1970
 Entry into Govt. Service: 20/11/1985
 Length of Service: 35 Years 09 Months 01 Days

Employment Category: Vocational Permanent
 Designation: PRIMARY SCHOOL HEAD TEACHER
 District: BAHAWALPUR DISTRICT OFFICE (H-1) (C/O) (PRIMARY SCHOOLS)
 Payroll Section: 031
 HPE Section: 031
 Cash Centre: 02
 GPF A/C No.:
 GPF Interest applied:
 GPF Balance: 171,084.00 (approximate)
 Voucher Number:
 Pay and Allowances: Pay Scale: HPS 1407/2022 Pay Scale Type: Civil - HPS 15 Pay Stage: 25

| Sl. No. | WAGE TYPE | Amount | Sl. No. | WAGE TYPE | Amount |
|---------|----------------------------|-----------|---------|-----------------------------|-----------|
| 1180 | Basic Pay | 71,270.00 | 1001 | Housing Rent Allowance (5%) | 3,561.00 |
| 1210 | Convey Allowance 2005 | 2,550.00 | 1100 | Medical Allowance | 1,500.00 |
| 1305 | Change Allowance | 40.00 | 1071 | CAA-GHFR 20% (G-15) | 1,400.00 |
| 2145 | 15% Adhoc Relief All 2013 | 940.00 | 2199 | Adhoc Relief Allow. 10% | 617.00 |
| 2116 | Teaching Allowance 2021 | 1,224.00 | 2141 | Diop. Red All 15% 2022(1) | 7,000.00 |
| 2347 | Adhoc Rel All 15% 22(PS17) | 7,000.00 | 2120 | Adhoc Relief All 2021 15% | 25,000.00 |
| 2291 | Adhoc Relief All 2021 25% | 18,155.00 | | | 0.00 |

Deductions - General

| Sl. No. | WAGE TYPE | Amount | Sl. No. | WAGE TYPE | Amount |
|---------|---------------------------|-----------|---------|-------------------|-----------|
| 1015 | GPF Subscriptions | -1,200.00 | 1501 | Retirement Fund | -1,200.00 |
| 1479 | Income Tax | -6,881.00 | 1390 | Emp Edu. Fund RPK | -135.00 |
| 1531 | R. Benefits & Death Comp. | -200.00 | | | 0.00 |

Deductions - Loans and Advances

| Loan | Description | Principal amount | Deduction | Balance |
|------|-------------|------------------|-----------|---------|
| | | | | |

Deductions - Income Tax

Period: 01/07/22 to 31/07/22 Recovered till AUG-22: 13,700.00 Unpaid: 2771.00 Refund: 2771.00

Gross Pay (Rs.) 144,522.00 Deductions: (Rs.): -13,109.00 Net Pay: (Rs.): 131,413.00

Payee Name: SAFA GUL
 Account Number: 16677
 Bank Details: NATIONAL BANK OF PAKISTAN, 240/26 MAIN BRANCH HATTAGRAM KUTCHARY ROAD HATTAGRAM, HATTAGRAM

| Leaves: | Opening Balance | Availed | Earned | Balance |
|---------|-----------------|---------|--------|---------|
| | | | | |

| Permanent Address | Domestic NW - Khyber Pakhtunkhwa | Housing Status: No Official |
|-------------------|----------------------------------|-----------------------------|
| City: HATTAGRAM | | |
| Temp Address | | |
| City: | Local - 141-155 P. Hattagram | |

For and on behalf of the Government of Punjab
 Director, Payroll Section
 Bahawalpur District Office (H-1) (C/O) (Primary Schools)

ATTESTED

154
7
OFFICE OF THE DISTRICT EDUCATION OFFICER (MADE) MANSER

O.O. No. 154
Dated 20-11-1980

APPOINTMENT:-

The following PTC trainees of Battagram Tehsil are hereby appointed in vacant and newly created PTC posts mentioned against each in BPS-1 (Min. 70% in 1st) plus usual allowances admissible to them under the rule with effect from the date of their taking over charge in the interest of public service.

| S. No. | Name | Father's name & address | School where appointed |
|--------|--|-------------------------|---------------------------------|
| 1. | Akhtar Munir S/O Said Zaim R/O Ghulam Rangai (B/Gram) | | S. S. Ajmera, Battagram |
| 2. | Saifullah Mohd S/O Mohd Usman R/O Fakri. | | Muzq School, Lakhpur, Battagram |
| 3. | Anayatullah Haq S/O Sultan Akhtar R/O Dattagori. | | Muzq School, Dattagori |
| 4. | S. Haq Nabi Shah S/O Anwar Shah R/O Ajmera. | | Muzq School, Ajmera |
| 5. | Abdul Hakim S/O Abdul Matin R/O Daddal (K/Dona). | | Muzq School, Dattagori |
| 6. | Muhamm Younas S/O Ghulam Mohd R/O Jinnal. | | Muzq School, Kohatar |
| 7. | S. Akhtar Shah S/O Mohd. Aslam R/O Jinnal. | | Muzq School, Dhari K. |
| 8. | Saif Mohd S/O Jinnal Gul R/O Jinnal Seri (B/Gram). | | Muzq School, Jinnal |
| 9. | Abdul Rohim S/O Akbar Wazir R/O Ajmera. | | Muzq School, Koroor |
| 10. | Shakirullah S/O M. Mohd. Afzal R/O Jinnal. | | Muzq School, Kasal |
| 11. | Saif Gul S/O Saif Gul R/O Ajmera. | | Muzq School, Kandar |
| 12. | Shakirullah S/O Saifur Khan R/O Jinnal. | | Muzq School, Lado Sultan |
| 13. | Mohd. Nuzam S/O Anwar Khan R/O Ajmera. | | Muzq School, Dandi |
| 14. | Muhamm Haq S/O Saiful Haq R/O Shingal, Poon. | | Muzq School, Kundoo |
| 15. | Muhamm Raza S/O Shahzada R/O Saharwan. | | Muzq School, Kaka |
| 16. | Muhamm Khan S/O Najib Khan R/O Dattagori. | | Muzq School, Pori |

Asst. D. O. (M)
ASST. D. O. (M)
BATTAGRAM
23/11

[Signature]
ATTESTED

ATTESTED

DISTRICT EDUCATION OFFICER (STATE) (MADRAS)

20/11/58
M.C.

- 5. O.O. File.
- 4. Candidate's concerned.
- 3. Head teacher / Govt. Primary/Madras School concerned.
- 2. A.S.D. B.O. concerned office.
- 1. District Education Officer (Madras) concerned & his office.

Copy of the above is forwarded for information & necessary action to the:-
District Education Officer (Madras) dated 20/11/58

DISTRICT EDUCATION OFFICER (STATE) (MADRAS)

M.C.
20/11/58

- 7. The appointment is made according to the rules and conditions laid down under the rules.
- 6. They appointment is purely temporary and liable to termination at any time without any reason.
- 5. They appointment is made below 25/28 years and below 10 years and above 25/28 years.
- 4. They should produce their own and hospital receipts from Medical Superintendent Hospital concerned.
- 3. Their resignation should be accepted before handing over charge.
- 2. No. DA/DA etc are allowed to any one.
- 1. Charge report should be submitted to all concerned.

2/58
8

ATTESTED

ATTESTED

CHIEF SECRETARY
GOVERNMENT OF THE KHAYBER PAKHTUNKHWA

[Signature]

1. Additional Chief Secretary, Govt. of Khyber Pakhtunkhwa, Planning & Development Department.
2. The Senior Member Board of Revenue, Khyber Pakhtunkhwa.
3. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
4. The Principal Secretary to Governor, Khyber Pakhtunkhwa.
5. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
6. The 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, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
11. The Secretary, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
12. The Deputy Director (IT), E&A Department.
13. The Deputy Director in Establishment & Administration Department with the request to the Section Officer (Admn), Administration Department.
14. The Section Officer (Admn), Administration Department.
15. The Director, Khyber Pakhtunkhwa Administration Department.
16. The Director, Khyber Pakhtunkhwa Administration Department.
17. The Director, Khyber Pakhtunkhwa Administration Department.
18. The Director, Khyber Pakhtunkhwa Administration Department.
19. The Director, Khyber Pakhtunkhwa Administration Department.
20. The Director, Khyber Pakhtunkhwa Administration Department.



LIST NO & EVEN DATE

Copy is forwarded to:

CHIEF SECRETARY
GOVERNMENT OF THE KHAYBER PAKHTUNKHWA

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

AMENDMENT

Further amendment shall be made, namely:
(a) the Chief Minister of Khyber Pakhtunkhwa is pleased to direct that in the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the provisions of the said Rules shall be amended in the following manner:
In exercise of the powers conferred by section 26 of the Khyber Pakhtunkhwa Civil Servants Act No. XVIII of 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973) the Government of Khyber Pakhtunkhwa hereby amends the said Rules in the following manner:
Dated Peshawar, 02/18/2020

NOTIFICATION

GOVERNMENT OF
KHAYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGISTRATION-WING)

Annexure - 1 - B

10

GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGULATION WING)

NOTIFICATION

Dated Peshawar the, 06/08/2020

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

AMENDMENT

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

CHIEF SECRETARY
GOVERNMENT OF THE KHYBER PAKHTUNKHWA

(ANDS): & EVEN DATE

Copy is forwarded to :-

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

(WARDAH LATIF
DEPUTY SECRETARY (POLICY)

ATTESTED

12

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
CIVIL SECRETARIAT PESHAWAR
(Phone No.091-9223587)

No.RO (Primary-M)/E&SED/2-5/2023
Dated Peshawar the, June 28th, 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(S) 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. 60 (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 (E&SED) 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 mark]

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

Copy forwarded to the:

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

[Handwritten mark]

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

ATTESTED

13

B/c

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

To
The Director,
Elementary & Secondary Education Department
Khyber Pakhtunkhwa, Peshawar
Aziz Ullah Khan President
President
All Primary Teacher's Association, KP

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

Copy forwarded to the:

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

SECTION OFFICER (PRIMARY MALD)

WP4443-2023 AZIZULLAH VS GOVT CP PG43

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(3) 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
①

| 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

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

ATTESTED

15

-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(B) 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

| SN | 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 & 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

ATTENDED

WPK443-2723 AZIZULHAQ VS GOVT OF POK

2. Master Copy
1. PA to Director Local Directorate
Huzaid Director
Elementary & Secondary Education
Khyber Pakhtunkhwa

Copy of the above for
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 this office. This office has been asked for submission of

no provision to accept promotion under any condition.
That the government of KP-ED (Regulation Wing) vide letter No. SO (Policy)
EQAD/1-3/2020 dated 6-06-2023 categorically stated that there exists

That your good office forwarded the same to quarters concerned
with letter No. SO (Policy) EQAD/2-2/Appointment/2023 for necessary
guidance.

That this office sought guidance from your good office in the following
vide notification No. No. SO-R-VI (EQAD) 1-3/2020 dated 06-08-2020.
dated rule 9(s) in Civil Service (Appointment, Promotion, Transfer & Retiree)

That Government of KP Establishment department (Regulation Wing)
present brief history, about background of case as under:
Minutes of meeting 15/7/2023 on subject cited above and to
I am directed to refer to letter No. (SO) Policy-M) EQAD/5-1/G/2023

Suggested Minutes of Meeting
KPK, Peshawar
Elementary & Secondary Education Department
Section Officer (Policy Male)
FESHAWAR
(21-7-2023)

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION, KPK

-B/C-

APPROVED

WP 1442-2023 AZIZULLAH VS GOVT OF POK

Assistant Director (Ex-11)
Elementary & Secondary Education
Khyber Pakhtunkhwa

17/11/2023
Assistant Director (Ex-11)
Elementary & Secondary Education
Khyber Pakhtunkhwa

1. PA to Director
2. Master Copy

Copy of the above is as:-

The case is submitted for perusal and necessary actions please.
Departmental Committee.
provided they will their written refusal after to conduction of the meeting of
Teachers below. 17-16 may be excepted of implications of the conditions in the rules that
7(5) have affected a large numbers of Female Teachers. Thus it is proposed that
In view of the above, this office is of considered opinion that the decision of Rules
being asked for a revision of concerned case.
Chief Executive Officer (Elementary & Secondary Education) at his office this office has
That in the light of the minutes of meeting dated 6-07-2023 held under the
(Primary) No. 455207-2/17020 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 exist no provision to decline or reject promotion. It is obligatory upon every
Wing) vide letter No. 50 (Policy) E&A/D/1-17020 dated 6-06-2023 categorically stated
That the Government of Khyber Pakhtunkhwa Establishment Department (Registration
No. 50 (Primary) E&A/D/2-17020 dated 12-06-2023 for necessary guidelines.
That your good office forwarded the same to the quarter concerned vide letter
promotion.
(ii) If the civil servant to other accept or turn down the offer of
(i) Now it is obligatory upon the civil servant to accept promotion in every condition
No. 6987 dated 16-02-2023.
That this office would be guided by your good office in the following words vide letter
wide notification No. 50-R-VI (E&A/D/1-17020 dated 06-08-2023.
That Government of Khyber Pakhtunkhwa Establishment Department (Registration Wing)
dated Rule 7(5) in the Civil Servants (Appointment, Promotion & Transfer Rules 1985)
I am directed to refer to the letter No. 50 (Primary) E&A/D/1-17020 dated 10-07-2023 on the subject cited above and in
present brief history about the background of the case as under:

MINUTES OF THE MEETING

The Section Officer (Primary-11) &
Elementary & Secondary Education Department
Khyber Pakhtunkhwa Province

Subject:-
Dear Sir,



No. 8145
Khyber Pakhtunkhwa, Peshawar
Date: 17/11/2023
Email: esd@kpk.gov.pk



ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
 CIVIL SECRETARIAT PESHAWAR
 (Phone No.091-9223587)

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).

Dear Sir,
 I am directed to refer to your letter No. SO(Policy)/ EBAD/ 1-3/2020 dated 05th 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 CamScanner

ATTESTED



[Handwritten signature]

ATTESTED

(Muzimilal Singh)
Section Officer (General)

1. Director, E & SE Education, Khyber Pakhtunkhwa
2. PS to Secretary, E & SE Education, Khyber Pakhtunkhwa

Copy forwarded to:
the staff of local teacher in primary schools.
In view of above, the said amendment may be reconsidered to
effects on service delivery. Rather in-law who need care in such cases there are negative
Most of them are married with kids and older fathers of
In the remotest stations with no residential/transport facilities
face serious inconvenience while they have to perform duties
teacher of primary level who avail such promotion have to
In this connection it is submitted that in some cases, body
Civil servant (Efficiency and Discipline) Rules, 1989
of the competent authority or try to evade promotion through
different means should be proceed under Khyber Pakhtunkhwa
those officers/officials who do not comply with promotion order
Promotion and Transfer Rules, 1989) - It has been intimated that
deletion of Rule 7(5) Khyber Pakhtunkhwa Civil Servant (Appointment,
1/3/2020 dated 6th June 2023 and to state that after
I am directed to refer to your letter No. SO (General)
(Policy) (E&AD)

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

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

To
The Secretary to Government of Khyber Pakhtunkhwa
Establishment and Administration Department,
Peshawar. Dated: 23rd August, 2023.
No. SO (General) - (M) E&SED / 8-2 /
Appointment - Rule / 2023

- 8/c -

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Annexure - F



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

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

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

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

Encl. Of even No & date

Copy forwarded to the:-

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

ATTACHED

102442-2023 AZIZULLAH VS GOVT OF PK 03

21

- 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)

Ends 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)

WP4447-2023 AZIZULLAH VS GOVT OF PK

ATTESTED

22

Annexure - G

To,

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

Subject: REPRESENTATION AGAINST THE IMPUGNED NOTIFICATION BEARING NO.SO(POLICY)E&AD/1-3/2020, DATED 06/08/2020, COMMUNICATED TO SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA, ELEMENTARY & SECONDARY EDUCATION DEPARTMENT VIDE LETTER D06/06/2023, WHEREIN IT WAS STATED THAT SUB RULE 5 OF RULE 7 OF KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION AND TRANSFER) RULES, 1989 STANDS DELETED

Sir/Madam:-

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

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

Dated 26/03/2024

TESTED

Safa Gul
S/O QADAR GUL
PSHT

24

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 12-5-23
 Number of 5
 Copying 5
 Hqs. 5
 Total 5
 Name of 12-5-23
 Date of 12-5-23
 Date of Delivery of copy 12-5-23

CS CamScanner

ATTESTED

25

VAKALAT NAMA

BEFORE THE SERVICE TRIBUNAL PESHAWAR

Safa Gul

Appellant

Versus

Government of KP & others

Respondents

I (the Appellant)

do hereby appoint and retain

MUHAMMAD MUAZZAM BUTT ASC. MUHAMMAD ADEEL BUTT AHC

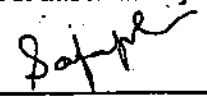
BASSAM AHMAD SIDDIQUI AHC

&

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.

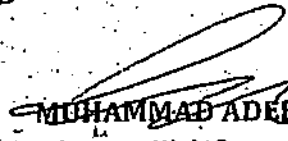
I agree to ratify all acts done by the aforesaid Advocate in pursuance of this Authority.

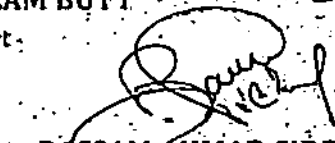


APPELLANT

ACCEPTED


MUHAMMAD MUAZZAM BUTT
Advocate Supreme Court


MUHAMMAD ADEEL BUTT
Advocate High Court


BASSAM AHMAD SIDDIQUI
Advocate High Court