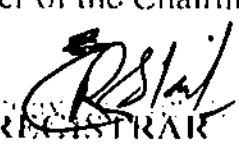


FORM OF ORDER SHEET

Court of _____

Appeal No. 2255 /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</p> <p> REGISTRAR</p>

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

C.M No _____-P of 2024

In Ref to

Service Appeal No 2255 2024

Noor Aziz Khan

VERSUS

Secretary to Government of Khyber Pakhtunkhwa, & others

INDEX

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3.	Copy of Monthly Salary Account	A	8
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5.	Copy of impugned Letter dated June 6 th , 2023	C	10-12
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ADVOCATE

M. Muazzam Butt

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

In Ref to

Service Appeal No. 2255 /2024

Noor Aziz Khan Son of Noor Muhammad PSHT (BPS-15)

Tehsil and District Karak

.....Appellant

VERSUS

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

.....Respondents

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

P R A Y E R:

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

**ULTRA VIRES TO THE CONSTITUTION OF
PAKISTAN AND FUNDAMENTAL PRINCIPLES OF
NATURAL JUSTICE AND AGAINST THE RIGHTS OF
APPELLANT.**

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

RESPECTFULLY SHEWETH:

1. That the Respondents Department appointed the Appellant as PSHT in the year 19-05-1992.
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.
Copy of the relevant rules is annexed as **Annexure B**
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 C**
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 D**
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 E**
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 F

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 G

10. That the Appellant with other employees filed Writ Petition No. 973-A/2013 and 1101-A/2023, through President APTA before the Honorable High Court Peshawar and obtained restraining order dated 14/09/2023 to cover the mandatory statutory period of time.

Copies of restraining order dated 14/09/2023 and Writ Petition No. 4442-P 2023 are annexed as Annexure "H & I"

11. 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 "J & K"

12. 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 setaside.

- 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 appellants are teachers and have to look after their children as well as ailing dependent family members and in these circumstances in the presence of impugned Notification dated 06/08/2023 communicated on 06/06/23 would not be able to serve in the department and which shall amount to the snatching of bread and butter of the poor employees

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

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

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

AFFIDAVIT:

I Noor Aziz Khan Son of Noor Muhammad Resident of District Karak do hereby solemnly affirm and declare that the contents of foregoing application are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court

Deponent



Appellant

Through

Muhammad Muazzam Butt
Advocate Supreme Court

Muhammad Adeel Butt
Advocate High Court

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

-7-

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

C.M No _____/2024

In

Service Appeal No _____/2024

Noor Aziz Khan

V/S

Government of KP & others

APPLICATION FOR SUSPENSION OF IMPUGNED NOTIFICATION SO. (POLICY)E&AD/1-3/2020 NO. DATED 06/08/2023 AND PROMOTION ORDER DATED 29/08/2023 TILL FINAL DISPOSAL OF MAIN SERVICE APPEAL.

Respectfully Sheweth:-

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 favour
3. There is likelihood of success of the appellant in the lis. The impugned notification dated 06/06/2023 is against Section 25 of KP Civil Servant Act, 1973 and promotion order dated 29/08/2023 of the appellant/applicant is also to be set-aside.
4. That valuable right of the appellant is involved.

In view of the above it is humbly prayed that notification No. SO(POLICY)E & Ad/1-3/2020, dated 06/06/2023 and promotion order dated 29/08/2023 to the extent of appellant/applicant may graciously be ordered to be suspended till final disposal of the main service appeal.

AFFIDAVIT:

I Noor Aziz Khan Son of Noor Muhammad Resident of District Karak do hereby solemnly affirm and 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

Noor Aziz Khan
Deponent

through

Noor Aziz Khan
Appellant

Muhammad Muazzam Butt
Muhammad Muazzam Butt
Advocate Supreme Court

Muhammad Adeel Butt
Muhammad Adeel Butt
Advocate High Court



ATTACHED

The image shows a large, dark, and highly textured rectangular area, likely a scan of a document or photograph. The top portion is mostly black with some faint, illegible markings. The bottom portion features a grid-like structure, possibly a table or a form, with several rows and columns of small, indistinct characters or symbols. The overall quality is very poor, with significant noise and artifacts throughout.

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

COPIES 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.
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)
DEPUTY SECRETARY (POLICY)

ATTESTED

(Signature)



ATTESTED



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
No. 50(Policy)/EAD/1-3/2020
Dated Peshawar the June 06, 2023

62

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

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

Dear Sir,
I am directed in refer to your letter No. 50(Policy-M)/EAD/3/2020-2/Appointment/2023 dated 18.04.2023 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 department notification dated 06.08.2020; thus, no provision exists to decline or forgo promotion.

2. 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 illustrative 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.

3. 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,

Iqbal Khan (Policy)

ASE
7/6

Recd. Of even No & Date

Copy forwarded to:-

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

21/6/23

Section Officer (Policy)

NOTED



71-

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

No.50 (Primary-MYE&SED/2-6/2023
 -Dated Peshawar lha. June 26th, 2023

To

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

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

[Signature]
 26/6/23

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

I am directed to refer to the subject noted above and to enclose here with a letter of Establishment Department letter No. 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 (E&SE) Department in his office.

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

Encl: AA

[Handwritten initials]

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

Copy forwarded to the:

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

[Handwritten initials]

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

[Handwritten notes]

12-

B/c

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

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

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

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

I am directed to refer to the subject noted above and to enclose 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)

RECEIVED

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.

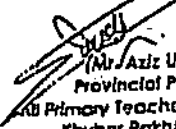
Sl#	NAME	DESIGNATION
1	Mr. Fazal Wahid	Deputy Director Establishment of Directorate Elementary & Secondary Education Department
2	Mr. Aziz Ullah	Provincial President All Primary Teachers Association Khyber Pakhtunkhwa
3	Mr. Razaqat Ullah	General Secretary APTA Peshawar
4	Muhammad Ishaq	Section Officer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

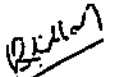
2. The meeting started with recitation from the Holy Quran. The chair welcomed the participants. The Deputy Director (Establishment) of Directorate of Elementary & Secondary Education briefed the forum regarding agenda item in detail.

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

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


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


(Mr. Aziz Ullah)
Provincial President
All Primary Teachers Association
Khyber Pakhtunkhwa


(Mr. Razaqat Ullah)
General Secretary APTA
Peshawar


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

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

ATTACHED

- B/C - - 14 -

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

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

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

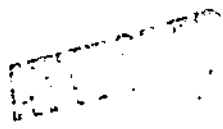
Provincial President
All Primary Teachers Association
Khyber Pakhtunkhwa

(Mr. Razaqat Ullah)
General Secretary APTA
Peshawar

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

(Abdullah)

Additional Secretary (Establishment)



8145 / P. No. 345ST/General Cases
 Dated 2-1-7-2023
 Khyber Pakhtunkhwa, Peshawar
 Phone: 091-9232344
 Email: estab@khyberpakhtunkhwa.gov.pk



The Section Officer (Primary-4/16),
 Elementary & Secondary Education Department,
 Khyber Pakhtunkhwa Feshawar.

Subject: - MINUTES OF THE MEETING

I am directed to refer to the letter No.50/Primary-4/16/ESSED/1-11/G. Muzkhatmas of the Meeting/MS/2023 dated 10-07-2023 on the subject cited above and to present brief history about the background of the case as under:

- That Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing) dated Rule 7(5), in the Civil Servants (Appointment, Promotion & Transfer Rules 1989) vide notification No. SOR-VI (E&AD)/1-1/2020 dated 06-08-2020.
- That the office sought guidance from your good office in the following words vide letter No. 6987 dated 04-02-2023.
- (i) How it is obligatory upon the civil servant to accept promotion in every condition.
- (ii) It is the prerogative of the civil servant to either accept or turn down the offer of promotion.

- That you had office forwarded the same to the quarter concerned vide letter No.50 (Primary-4/16) ESSED/2-2/Appointment/2023 for necessary guidance.
- That the Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing) vide letter No.50 (Policy) E&AD/1-1/2020 dated 6-06-2023 categorically stated that there exists no provision in decline or forgo promotion. It is obligatory upon every civil servant to accept promotion under every condition.
- The same was received by this office from your good office vide letter No.50 (Primary-4/16) ESSED/2-2/Appointment/2023 dated 12-06-2023.
- That, in the light of the minutes of meeting dated 6-07-2023 held under the Chairmanship of Joint Additional Secretary Establishment at his office this office has been asked for submission of consolidated case.

In view of the above, the office is of considered opinion that the decision of Rules 7(5) have effected negatively a huge number of Female Teachers. Thus it is proposed that Teachers below DTS-16 may be exempted of implications of the amendment in the rules bid provided they submit their written refusal prior to conclusion of the meeting of Departmental Promotion Committee.

The case is submitted for personal and necessary actions please.

Assistant Director (Grade A-1)
 Elementary & Secondary Education
 Khyber Pakhtunkhwa
 21/7/2023

Evid: No. _____
 Copy of the above is to:

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

Assistant Director (Grade A-1)
 Elementary & Secondary Education
 Khyber Pakhtunkhwa

To: DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION, KPK
 Section Officer (Primary Role)
 Elementary & Secondary Education Department
 KPK, Peshawar

Subject: Minutes of Meeting

Dear Sir, I am directed to refer to letter No. (SO. Finmg-1) E&S/D/5-1/6/2023/ dated 10-7-2023 on subject cited above and to present brief history, also background of case as under:

- * That Government of KP Establishment department (Regulation VIII) dated rule 7(5) in Civil Servants (Appointment, Promotion, Transfer & etc 1987) vide notification No. (No. SOPR-VI(E&AD)-1-3/2020 dated 08-08-2020. That this office sought guidance from your good office in the following words vide letter No. 983 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/reject the offer of promotion.

- * That your good office forwarded the same to quarters concerned vide letter No. SO (Finmg-1) E&S/D/1-2/Appointment-2023 for necessary guidance.

- * That the government of KP-ED (Regulation VIII) vide letter No. SO (Policy) E&AD/1-3/2020 dated 06-06-2023 categorically stated that there exists no provision to decline /forfe promotion. It is obligatory upon every civil servant to accept promotion under every condition.

- * That in light of the minutes of the meeting dated 06-07-2023 held under the Chairmanship of Hon. Additional Secretary Establishment 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(5) have affected negatively a huge members of Female teachers.

The case is submitted for perusal and necessary action please.

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



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

Annexure E

No. SO(Primary-M)EBSED/2-2/Appointment-Rule /2023
Peshawar Dated 23rd August, 2023

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)/ E&AD/ 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 of mother-in-law who need care. In such
cases, there are negative effects on service delivery.

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


(MUHAMMAD USMAN)
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)
26/8/23

Scanned with CamScanner

No. 50 (Primary-M) E.S.S.D / 8-8 /
Appointment - Rule / 2023
Peshawar Dated 23rd August 2023.

-B/C-

The Secretary to Government of Khyber Pakhtunkhwa.

Establishment and 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. 50 (Primary

1-3/2023 dated 4th June 2023 and to state that after

deletion of Rule 7(5) (Khyber 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 Khyber Pakhtunkhwa

Civil Servant (Efficiency and Discipline) Rule 2013.

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. District E.S.S.D Khyber Pakhtunkhwa.

2. PS to Secretary, E.S.S.D Department of Khyber Pakhtunkhwa

(Muhammad Ishaq)
Section Officer (Primary
Matter)



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

-19-
Annexure F

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)

Endst. Of even No & date

Copy-forwarded to the:-

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

- 20 -
1 - 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)

Endst. 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.

Section Officer (Policy)

-21-
Annexure 9

- 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 and against the fundamental principles of natural justice.

Best Regards



Noor Aziz Khan
Son of Noor Muhammad
Resident of District Karak

Handwritten text in Urdu, possibly a signature or date.

Handwritten signature and date: 08/11/23

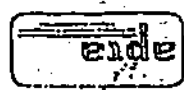
Main body of handwritten text in Urdu, appearing to be a letter or report.

Handwritten text at the bottom of the main body.

Annexure H

Handwritten text: انگریزی میں لکھی گئی ہے (ایچ)

APTA House
Govt Primary School No. 4
Dullehwar Peshawar City



Khyber Pakhtunkhwa

APTA (Punjab)
President
Aftab Ullah Khan
0333-041648
0333-041648
0333-041648

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 (E)

[Handwritten signature]

Date of Presentation of Application 10-5-24
 Number of 1
 Copies 1
 By S/
 Total 1
 Name of S/
 Date of 10-5-24
 Date of 12-6-24

[Faint stamp]

VAKALAT NAMA

BEFORE THE SERVICE TRIBUNAL PESHAWAR

NOOR AZIZ KHAN
Versus

Appellant

Government of KP & others

Respondents

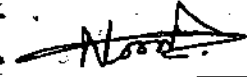
I (the Appellant)

do hereby appoint and retain

MUHAMMAD MUAZZAM BUTT ASC. MUHAMMAD ADEEL BUTT AHC
BASSAM AHMAD SIDDIQUI AHC
&
ASSOCIATES OF MUAZZAM LAW FIRM

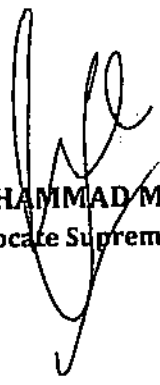
to act and appear for me in the above Suit and on my behalf to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of any petition connected with the same or any decree or order passed therein and Applications for review to file and obtain return of documents, 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.

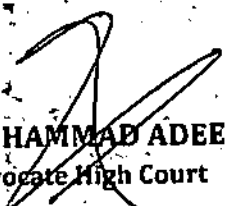


APPELLANT

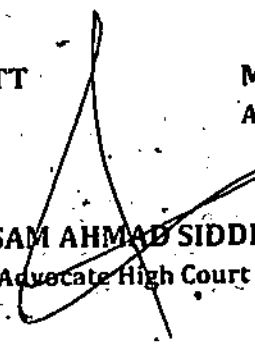
ACCEPTED



MUHAMMAD MUAZZAM BUTT
Advocate Supreme Court



MUHAMMAD ADEEL BUTT
Advocate High Court



BASSAM AHMAD SIDDIQUI
Advocate High Court