


FORM OF ORDER SHEET

Court of _____

Appeal No. 2276 /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>

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

C.M.No _____ -P of 2024

In Ref to

Service Appeal No 2276 2024

Muhammad Iftikhar

VERSUS

Secretary to Government of Khyber Pakhtunkhwa, & others

INDEX

S#	DESCRIPTION OF DOCUMENTS	ANNEX	PAGES
1.	Appeal and Verification	*	1 - 4
2.	Application for suspension	*	5
3.	Copy of Monthly Salary Account	A	6 - 6D
4.	Copy of notification No. SD (Policy) EV AD/1-3/2020 dated 06/08/2020	B	7 - 8
5.	Copy of impugned Letter dated June 6 th , 2023	C	9 - 11
6.	Copy of Minutes of meeting dated 06-07-2023	D	12 - 15
7.	Copy of Letter dated 23-08-2023	E	16 - 17
8.	Copy of Impugned letter dated 07.09-2023	F	18 - 19
9.	Copy of Representation against the said notification and representation made by APTA President	G & H	20 ; 21
10.	Wakalat Nama		22


ADVOCATE

M. Muazzam Butt

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

In Ref to

Service Appeal No 2276 /2024

Muhammad Iftikhar Son of Muhammad Shafi PSHT (BPS-15)

Shador, PO Shamdhara, maro, Tehsil Augi, District Mansehra

.....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.RAYER:

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) /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. 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 affects the interests of the employees or causes disadvantage to the employee is not tenable in the eyes of law. The notification/guidance dated 06/08/2020 06/06/2023 are liable to be set-aside.
- b. That there are no terms and conditions of service mentioned in the appointment order of the appellant wherein, availing of promotion is mandatory. It is further submitted that employees in the past, have foregone their promotion along with their posting. It is submitted that when domestic and other personal issues do not permit the employees/appellant to avail the promotion order and in that case, the employees who foregone their promotion were allowed not to avail the promotion for a period of 04 years and on second refusal the employees were permanently debarred from availing the facility of promotion during their entire service. Hence the employees himself/herself forebear agonies of foregoing their promotions. As a result, junior to the appellant according to the order of seniority cum fitness are granted promotion to next rank.
- c. That as per Civil Servant laws, promotion is a kind of appointment which is always optional to get promotion or not, hence the impugned notification is void, illegal and against the law and the same to the extent of the appellant is liable to be set-aside.
- d. That it is further submitted that on account of grant of promotion, some employees who are suffering from severe medical ailment or facing acute domestic issues cannot avail promotion with transfer in other areas, therefore, no employee can be compelled to accept the promotion compulsorily which is not beneficial to the employee but if an employee does not avail and get benefit of her promotion it must be optional for the employees as to whether to avail or forego the benefits. Any promotion without willingness of employee is illegal and liable to be setaside.

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

It is, therefore, humbly prayed that on the acceptance of the instant Service Appeal; the impugned Notification bearing No. SO (POLICY) E&D/1-3/2020 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 Ahsan 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

Muhammad Iftikhar

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.

[Signature]
Deponent

Through

[Signature]
Appellant

[Signature]
Muhammad Muazzam Butt
Advocate Supreme Court

[Signature]
Muhammad Adeel Butt
Advocate High Court

ATTENDED

PERSONAL INFORMATION

Personal Information of Mr. NURHADIYATI, S.Pd. (NIP. 196909190920001001)
 District Account Office (September 2024)
 District Account Office (September 2024)

EMPLOYMENT INFORMATION

Employment Category: Active Temporary
 Description: PRIMARY SCHOOL HEAD TEACH
 DDO Code: MA639-04/District Mansehra
 Payroll Section: 001
 GPF A/C No: EDUNA007470 Interest Applied: Yes

PERSONNEL NUMBER
 Personnel Number: [REDACTED] CNIC: 135821996871
 Date of Birth: 19 09 1969
 Empty into Govt Service: 25 03 1992
 Length of Service: 12 Year 06 Month 007
 NTN

PAY AND ALLOWANCES

Pay Scale: BPS For - 2023
 Pay Scale Type: Civil BPS: 15
 Pay Stage: 22

NET PAYABLE
 Net Payable: 105,926.00
 Deduction: 26,750.00
 Recovered till September 2024: 16,665.00 Exempted 2016 95
 Recoverable: 19,985.70

DEDUCTIONS - INCOME TAX
 Taxable: 88,870.65
 Recovered till September 2024: 16,665.00 Exempted 2016 95
 Recoverable: 19,985.70

WAGE TYPE

Wage Type	Amount
Basic Pay	67,480.00
House Rent Allowance 45%	3,324.00
Medical Allowance	1,500.00
Convey Allowance 2005	2,856.00
Leave Allowance	40.00
Gratuity Allowance 10%	591.00
Adhoc Relief All 15% 2021	3,224.00
Adhoc Rel All 15% 2021RP	6,408.00
Adhoc Relief All 2024 55%	21,925.00
Adhoc Rel All 2024 55%	16,870.00

WAGE TYPE

Wage Type	Amount
House Rent Allowance 45%	3,324.00
Medical Allowance	1,500.00
Convey Allowance 2005	2,856.00
Leave Allowance	40.00
Gratuity Allowance 10%	591.00
Adhoc Relief All 15% 2021	3,224.00
Adhoc Rel All 15% 2021RP	6,408.00
Adhoc Relief All 2024 55%	21,925.00
Adhoc Rel All 2024 55%	16,870.00

DEDUCTIONS - GENERAL

Description	Principal amount	Deduction	Balance
Cpf Loan Principal Interest	270,000.00	14,500.00	255,000.00
R. Benefit & Death Comp	-609.00		0.00
Income Tax	-5,555.00		-135.00
GPF Subsidion	-1,500.00		-1,500.00
Wage type			

LOAN AND ADVANCE

Description	Principal amount	Deduction	Balance
Cpf Loan Principal Interest	270,000.00	14,500.00	255,000.00

LOAN

Description	Principal amount	Deduction	Balance
Cpf Loan Principal Interest	270,000.00	14,500.00	255,000.00

6-A

CUSTOMER OF THE DEPARTMENT OF EDUCATION OF U.P. (M.I.C.) PRIME MINISTER'S OFFICE ORDER No. 9 / dated 24.5.92.

APPOINTMENT: Commensurate upon their selection on merit, the following P.T.C. qualified candidates are hereby appointed in posts of Rs. 1095-60-1995 plus usual allowances as admissible under the rules with effect from the date of their taking over charge the against the newly created posts in the schools given against their names each in the interest of public service.

S.NO	NAME OF CANDIDATE, SERVICE CLASS AND RESIDENCE.	NAME OF SCHOOL WHERE APPOINTED	REM.MKS.
1.	Fazalul Islam S/O Masud Khan S/O Kotly Pagan	GPS Biana Babar	Against Newly created post.
2.	Israrul Haq S/O Nazrat Yousaf S/O Kotly Pagan	GPS Kulharay west	vice Mohd Iyub retired from service.
3.	Mohammad Yousaf S/O Farhat Rahman S/O Kotly Pagan	GPS Trasnawa (Ogri)	Against newly created post.
4.	Anwar Khan S/O Behram Khan R/O Pagan	GPS Naran	---do---
5.	Mohammad Ijaz S/O Noor Mohammad R/O Channial (Manshara)	Msq: School Ogri	---do---
6.	Salimul Haq S/O Mohammad Arfan S/O Pagan	Msq: School Mohi Rohat Pagan	---do---
7.	Mohammad Yousaf S/O Mahmood Khan R/O Karori Bala	GPS Bujla	Against newly created vid. post.
8.	Mohammad Tariq S/O Akbar Rashid R/O Jabbi (S/ote)	GPS Hakeya	vice Mohd Iyub Retired.
9.	Majid Ahmad S/O Mohammad Iyub R/O Bakhara (S/ote)	GPS Ghat Village	Against newly created AD post.
10.	Dost Mohammad S/O Masud Khan R/O Tikri (Bali of ms)	GPS Ghat B/Ghat	Against vacant post.
11.	Muhammad R. S/O Masud Khan R/O Bakhara	GPS Pagan B/Ghat	Against vacant AD post.
12.	Muhammad Tariq S/O Masud Khan R/O Bakhara	GPS Pagan B/Ghat	Against newly created post.
13.	Muhammad Tariq S/O Masud Khan R/O Bakhara	GPS Pagan B/Ghat	Against newly created post.
14.	Muhammad Tariq S/O Masud Khan R/O Bakhara	GPS Pagan B/Ghat	Against newly created post.
15.	Muhammad Tariq S/O Masud Khan R/O Bakhara	GPS Pagan B/Ghat	Against newly created post.
16.	Muhammad Tariq S/O Masud Khan R/O Bakhara	GPS Pagan B/Ghat	Against newly created post.
17.	Muhammad Tariq S/O Masud Khan R/O Bakhara	GPS Pagan B/Ghat	Against newly created post.
18.	Muhammad Tariq S/O Masud Khan R/O Bakhara	GPS Pagan B/Ghat	Against newly created post.
19.	Muhammad Tariq S/O Masud Khan R/O Bakhara	GPS Pagan B/Ghat	Against newly created post.
20.	Muhammad Tariq S/O Masud Khan R/O Bakhara	GPS Pagan B/Ghat	Against newly created post.

Contd. Page 2.

S.No 25 on Page 2
M. Htikhar S/o M. Shafi

~~ATTESTED~~

6-C

Page No. 11.

- | | | | |
|------|---|----------------------------------|-----------------------------|
| 149. | Muhammad Bilal S/O Mst Bilal Kalas Bhangan | MSI Indraprastha (N/Kota) | vacant post on long leave. |
| 150. | Biraju Idin S/O Mohammad Sharif R/O Pers Majad Ali | Hq: School-Sunder Majad Ali | against newly created post. |
| 150. | Mohammad Saeed S/O Hira Mohammad R/O Ghonool G.P. Boreian (Dgh) | | --do-- |
| 151. | Lataq Ahmad S/O Mohammad Yusuf R/O Pers Majad Ali | Hq: School Wardiar | --do-- |
| 152. | Attarehman S/O Saifulah R/O R. Pore G.I. Ullah | G.I. Boreian Sh. Mazullah | Additional Post. |
| 153. | Mohammad Behman S/O Attarehman R/O Hachang 1161 | G.P. Hachang | against vacant post. |
| 154. | K. Raja Mohamad Intina S/O R. Abdur Rasid R/O Trari | G.P. Jinkora Dgh | against additional post |
| 155. | Mst. Hussain S/O Saifulah R/O Pore G.I. Ullah | G.P. Hachang | against newly created post. |
| 156. | Mohammad Arif S/O Mohammad R/O Garlat | G.P. Garlat | Additional post. |
| 157. | Fthlaq Hussain Shah S/O Shah Shah R/O Monda Jigra | G.P. Monda Jigra | vacant on study leave. |
| 158. | Said Nouah S/O Mohammad Khair R/O Pers Hado Khalil K.D | Mst. School Pers Hado Khalil K.D | against newly created post. |
| 159. | Mohammad Saleem S/O Mohammad Ibrahim R/O Jhajja G.I. Ullah | G.P. Zoonqay K.D | against newly created post. |
| 160. | Abdus Sattar R/O Faiz Mohammad R/O Shinkiar | G.P. Munda Gili | --do-- |
| 161. | Inayatullah S/O Said Ahmad R/O Pashto | G.P. Pers Hado Khalil K.D | vacant post. |

NOTE. The occupant of the post if it may should vacate the post on the date when he has been posted/adjusted against any one of the above mentioned newly created posts.

TERMS AND CONDITIONS:-

1. They should submit their charge reports to all the concerned.
2. Their appointment is purely temporary and can be terminated at any time without assigning any reason.
3. Their appointment is subject to the verification of their professional and personal documents.
4. Their pay will be drawn after the verification of their professional and personal documents from the concerned issuing agency/institution if found correct.


OFFICE PAGE 9.

ATTESTED

6-D

Page...(()...)

5. Their original professional and academic certificates should be checked thoroughly before handing over the charge and should not be handed over charge if the original certificates are not found correct.
6. Their pay will not be drawn till they produce their age and health certificates issued by the Medical Superintendent DHQ Mansehra.
7. They will be Governed under prescribed services rules of Govt of N.W.F.P.


 DISTRICT EDUCATION OFFICER(M),
 PRIMARY MANSEHRA.

1911-2074


Inst:No. _____ / GB/ Appo: _____ / P.T.O. Dated Mansehra the 24/3 / 72.

Copy of the above forwarded to the:-

1-2: Sub-Divisional Education Officer (M) District Mansehra & Battagram

3-163 All the candidates concerned.

6+. O.O. File.


 DISTRICT EDUCATION OFFICER(M),
 PRIMARY MANSEHRA.

~~ATTESTED~~
 ATTESTED

B/C -8-

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-rule (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~~

ATTESTED

WE-4447-2023 AZIZULHAH VS GOVT OF PC-43

09.08.2023
09.08.2023

Deputy Secretary (Policy)

1. To Special Secretary (High Establishment Department)
2. To Additional Secretary (Legal, Establishment Department)
3. To Deputy Secretary (Policy, Establishment Department)

Deputy Secretary (Policy)

Your faithfully,

Copy forwarded to:-
Rtd. Lt. Gen. M. S. Dada

ASSE
2/6

2011, please.
Further, those officers/Staff 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 Service (Discipline & Discharge) Rules, 2011, please.
1. Furthermore, those officers/Staff who do not comply with promotion order shall be liable to accept promotion in every condition.
2. The basic rationale behind the delay in the date of promotion or to all terms from completion for this is by seeking to a single decrease promotion or to prevent those who lead to force promotion to evade post-employment or above lack of capacity to tackle higher responsibilities in case of promotion. Therefore, it is obligatory upon every officer to accept promotion in every condition.
3. The basic rationale behind the delay in the date of promotion or to all terms from completion for this is by seeking to a single decrease promotion or to prevent those who lead to force promotion to evade post-employment or above lack of capacity to tackle higher responsibilities in case of promotion. Therefore, it is obligatory upon every officer to accept promotion in every condition.
4. Appointment/2023 dated 18.01.2023 in the subject noted above and to state that Sub-Title (5) of Rule-7 of Khyber Pakhtunkhwa Civil Service (Appointment, Promotion and Transfer) Rules, 1989 stands deleted with effect from 01.08.2020. Therefore, no provision exists to decline or force promotion.
5. I am directed to refer to joint letter No. SDC(Admin-M)/M-2307-2023 dated 18.01.2023 in the subject noted above and to state that Sub-Title (5) of Rule-7 of Khyber Pakhtunkhwa Civil Service (Appointment, Promotion and Transfer) Rules, 1989 stands deleted with effect from 01.08.2020. Therefore, no provision exists to decline or force promotion.

For Sd/-
The Government of Khyber Pakhtunkhwa
Secretary & Secretary (Establishment)

67
ESTABLISHMENT DEPARTMENT
No. SDC(Admin-M)/M-2307-2023
Dated: 06.08.2023



Annexure - C

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

No. 50 (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

26/6/23

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. 50 (Policy) E&AD/1-3/2020 dated 06 June, 2023 and to state that the subject meeting is to be held on 06 July, 2023 at 11:00 AM in this department under the Chairmanship of Additional Secretary (Estab) E&SE Department in his office.

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

Encl: AA

o/c


(MUHAMMAD SHAH)
SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

o/c


SECTION OFFICER (PRIMARY MALE)
26/6/23

ATTESTED

B/c -11-

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 MALE)

Copy forwarded to the:

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

SECTION OFFICER (PRIMARY MALE)

~~APPEALED~~

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 11:30 AM under the Chairmanship of Additional Secretary Establishment in his office, the following attended the meeting.


Annexure
D


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

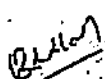
2. The meeting started with recitation from The Holy Quran. The chair welcomed the participants. The Deputy Director (Establishment) of Directorate of Elementary & Secondary Education briefed the forum regarding agenda item in detail.


3. After the broader 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
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

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


ATTESTED

-13-
-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 1909).

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

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

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

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

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

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

Provincial President
All Primary Teachers Association
Khyber Pakhtunkhwa _____

(Mr. Razaqat Ullah)
General Secretary APTA
Peshawar _____

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

(Abdullah)
Additional Secretary (Establishment) _____

ATTESTED

ATTESTED

W-4442-2023 AZZURLAH VS GOVT CF P643

Assistant Director (Ex-161-1)
Elementary & Secondary Education
Khyber Pakhtunkhwa

Assistant Director (Ex-161-1)
Elementary & Secondary Education
Khyber Pakhtunkhwa

21/7/2023

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

Copy of the above is for:

The case is submitted for perusal 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 rules held (75) have affected negatively a huge number of Female Teachers. Thus it is proposed that in view of the above, the office is of considered opinion that the deletion of rules been asked for abolition of consolidated case.

Chief Minister of Khyber Pakhtunkhwa, Peshawar, dated 06-07-2023. This, in the light of the minutes of meeting held 06-07-2023, held under the (Primary-4) E&SED/2-1/appointment/2023 dated 12-06-2023.

The same was received by this office from your good office vide letter No.50 (Primary-4) E&SED/2-1/appointment/2023 dated 12-06-2023. It is obligatory upon every civil servant to accept promotion under every condition that there exists no provision in decline or forgo promotion. It is obligatory upon every (Wing) vide letter No.50 (Policy) E&AD/1-1/2020 dated 06-06-2023 categorically stated that the Government of Khyber Pakhtunkhwa Establishment Department (Regulation No.50 (Primary-4) E&SED/2-1/appointment/2023 for necessary guidance.

That your office forwarded the same to the quarter concerned vide letter (ii) It is the prerogative of the civil servant to either accept or turn down the offer of promotion.

(i) Now it is obligatory upon the civil servant to accept promotion in every condition. No.6987 dated 06-07-2023.

That this office sought guidance from your good office in the following words vide letter vide notification No. No. SOR-11 (E&AD)/1-1/2020 dated 06-08-2020.

The Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing) dated Rule 7(3) in the Civil Service (Appointment, Promotion & Transfer Rules 1980) present brief history about the background of the case as under:

Dear Sir,
Subject: MINUTES OF THE MEETING
Khyber Pakhtunkhwa Peshawar
Elementary & Secondary Education Department
The Section Officer (Primary-4/16)

Khyber Pakhtunkhwa Peshawar
No. 1/ASST/1/General/2023
Date: 21/7/2023
Email: esd@khyber.gov.pk
Phone: 07-9232341



ATTESTED

WP 643-2023 AZZULAH VS GOVT OF PEGU

Richard Director
Elementary & Secondary Education
Myittha Hinthabin

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

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

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. No provision to decline/jump provision. It is obligatory upon every civil servant to accept position under any condition.

That the government of KP-ED (Regulation) vide letter No. SD (Reg) E&ED/1-2/2020 dated 6-06-2023 consequently state that there exists no provision to decline/jump provision. It is obligatory upon every civil servant to accept position under any condition. (ii) It is prerogative of civil servant to either accept/reject the offer of promotion. That your good office forwarded the same to a/units concerned vide letter No. SD (Hinthabin) E&ED/2-2/11/2023 for necessary guidance.

That the office sought guidance from your good office in the following vide notification No. SD (Reg) E&ED/1-3/1020 dated 08-08-2020. That government of KP Establishment department (Regulation) vide letter No. SD (Reg) E&ED/1-3/1020 dated 08-08-2020. That government of KP Establishment department of care as under. Present brief history about background of case as under.

Minister of meeting/15/1020 dated 10-7-2023 on subject cited above and to Dean Sir, I am directed to refer to letter No. SD (Hinthabin) E&ED/5-1/6/2020. Subject: Minutes of meeting (KP), Reshauer. Section Officer (Primary Male) Elementary & Secondary Education Department (21-7-2023) RESHUAER

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION, KPK



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

No. SO(P/Primary-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 ISHAQ)
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)
20/8/23

Scanned with CamScanner

ATTESTED

ATTESTED

(Muhammad Ishaq)
Section Officer (Army)
(Male)

1. Director EG SE Khyber Pakhtunkhwa
2. PS to Secretary, EG SE Department of Khyber Pakhtunkhwa

Copy forwarded to:
In view of above, the said amendment may be reconsidered to the extent of lady teacher in primary schools.
Effects on service delivery Mother-in-law who need care in such cases there are negative
Most of them are married with kids and elder father 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 lady

different means shall be proceed under Khyber Pakhtunkhwa
of the competent authority or try to evade promotion through
those officers/officials who don't comply with promotion order
Promotion and Transfer Rules 1989) or has been intimated that
deletion of Rule 7(5) Khyber Pakhtunkhwa Civil Servant (Appointment,
1-3/2020 dated 8th June 2023 and to state that after

9 am directed to refer to your letter No. SO/Army
(Army) /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.

No. S (Army-M) E/SED 18-1/
Appointment-Rule/2023
Reference Dated 13th August, 2023.

-8/c-
-17-

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, 1982.

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)

Enclst. 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

WP/44/2-2023 AZIZ UL LAH VS GOVT OF PK

-18-

-19-

-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)

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.

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&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

~~ATTESTED~~

Muhammad Iftikhar
MUHAMMAD IFTIKHAR
SID MUHAMMAD SHAFI
PSHT

VAKALAT NAMA

BEFORE THE SERVICE TRIBUNAL PESHAWAR

MUHAMMAD IFTIKHAR

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