


FORM OF ORDER SHEET

Court of _____

Appeal No. 2246/2024

| 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

A No = 2246/24

ISLAM 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. 2246 /2024

Islam Gul Son of Hamish Gul, SPST
GLMS Haji Banda , Tehsil & District Peshawar

.....Appellant

VERSUS

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

.....Respondents

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

PRAYER:

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

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

RESPECTFULLY SHEWETH:

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

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

"Furthermore, those officers/officials who do not comply with promotion order of the competent authority or try to evade promotion through different means shall be proceeded against under Khyber Pakhtunkhwa Civil Servants (Efficiency Discipline) Rules, 2011, please".
5. That as per notification No. SD (Policy) /EDAD/1-3/2020 dated 06/08/2020, the right of foregoing of promotion was withdrawn and the Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing) deleted Rule 7(5) in the Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 vide notification no. SOR-VI (E & AD)/1-2/2020 dated 06-08-2020. Copy of Impugned notification No. SD (Policy) EV AD/1-3/2020 dated 06/08/2020 is attached as Annexure B
6. That the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar asked for guidance regarding deletion of Rule 7(5) in Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 in respect of which the respondent No. 1 vide its letter No. SO(Policy) E&AD/1-3/2020 dated Peshawar the June 06th, 2023 directed the respondent No 3 (Directorate of Elementary & Secondary Education) that Rule 7(5) in the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 has been deleted vide notification dated 06-08-2020 and therefore, no provision exists to decline or forgo promotion and it is obligatory upon every civil servant to accept promotion under every condition. Copy of Impugned Letter dated June 06th, 2023 is attached as Annexure C
7. That thereafter the meeting was also held in the office of Additional Secretary Establishment on 06-07-2023 in which it was decided to examine the case properly and submit a self-contained/ consolidated case for onward submission to the Establishment Department for further necessary action. Copy of Minutes of Meeting dated 06-07-2023 is attached as Annexure D
8. That the Respondent No.3 i.e. Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa also wrote a letter to the office of Establishment & Administrative Department vide No SO(Primary-M) E&SED/2-2/Appointment Rule/2023 dated 23-08-2023 to reconsider the amendment made in Khyber

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

9. That the respondent vide its letter dated 07th of September 2023 directed the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa that necessary guidance has already been provided to the department and therefore no provision exists to decline or forgo promotion and those teachers who do not comply with the promotion order of the competent authority or try to evade promotion through different means shall be proceeded under the Khyber Pakhtunkhwa Civil Servant (Efficiency & Discipline) Rules, 2011. Copy of Impugned letter dated 07-09-2023 is attached as Annexure F
10. That the petitioner feeling aggrieved, filed Representation to the respondents in person, and also approached to respondents through APTA President but the grievances of the appellant have not so far been redressed. Copy of Representation against the said notification is annexed as Annexure G & H
11. That feeling aggrieved from the letters dated 06-06-2023 and 07-09-2023 and the deletion of Rule 7(5) in the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989; the petitioners filed this Hence; the instant service appeal is filed on the following grounds:-

GROUND:-

- a. That as per various judgments it is established and settled principle that executive notifications cannot be given retrospective effect. A valid Notification which confers rights is always applicable with prospective effect, however, if an amendment notification that adversely effects the interests of the employees or causes disadvantage to the employee is not tenable in the eyes of law. The notification/guidance dated 06/08/2020 06/06/2023 are liable to be set-aside.
- b. That there are no terms and conditions of service mentioned in the appointment order of the appellant wherein, availing of promotion is mandatory. It is further submitted that employees in the past, have foregone their promotion along with their posting. It is submitted that when domestic and other personal issues do not permit the employees/appellant to avail the promotion order and in that case, the employees who foregone their promotion were allowed not to avail the promotion for a period of 04 years and on second refusal the employees were permanently debarred from availing the facility of promotion during their entire service. Hence the employees himself/herself forebear agonies of foregoing their 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.

[Signature]
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 KHAYBER PAKHTUNKHWA

CM No. _____ -P of 2024

In Ref to

Service Appeal No. _____ /2024

ISLAM 4UL

VERSUS

Secretary to Government of Khyber Pakhtunkhwa, & others

APPLICATION FOR SUSPENSION OF IMPUGNED NOTIFICATION BEARING NO. SO (POLICY) ERD/1-3/2020 DATED 06/08/2020, COMMUNICATED TO RESPONDENT NO.2 BY RESPONDENT NO.1, WIDE 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 ILS. And if the notification bearing No. So (Policy) ERD/1-3/2020 dated 06/08/2020, communicated to Respondent No.2 by Respondent No.1, Wide 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) ERD/1-3/2020 dated 06/08/2020, communicated to Respondent No.2 by Respondent No.1, Wide Letter Dated 06/06/2023 may kindly be suspended till the final disposal of the main appeal in hand.

Appellant

Through

Muhammad Nazam Butt
Advocate Supreme Court
Muhammad Azeel Butt
Advocate High Court

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

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



Personal Information of Mr ISLAM GUL d/w/s of HAMISH GUL

Personnel Number: 00026489 CNIC: 1730113446817 NTN: 0
 Date of Birth: 07.06.1971 Entry into Govt. Service: 28.09.1992 Length of Service: 31 Years 04 Months 005 Days

Employment Category: Active Temporary

Designation: SENIOR PRIMARY SCHOOL TAE 80632270-DISTRICT GOVERNMENT KHYBE
 DDO Code: PW6567-District Peshawar
 Payroll Section: 003 GPF Section: 001 Cash Center: 30
 GPF A/C No: EDU 041355 GPF Interest applied GPF Balance: 543,212.50 (provisional)
 Vendor Number: -
 Pay and Allowances: Pay scale: BPS For - 2022 Pay Scale Type: Civil BPS: 14 Pay Stage: 24

| Wage type | Amount | Wage type | Amount |
|--------------------------------|-----------|--------------------------------|-----------|
| 0001 Basic Pay | 64,290.00 | 1004 House Rent Allow 45% KP21 | 8,640.00 |
| 1210 Convey Allowance 2005 | 2,856.00 | 1300 Medical Allowance | 1,500.00 |
| 2148 15% Adhoc Relief All-2013 | 857.00 | 2199 Adhoc Relief Allow @10% | 575.00 |
| 2316 Teaching Allowance 2021 | 3,036.00 | 2341 Dispr. Red All 15% 2022KP | 6,138.00 |
| 2347 Adhoc Rel Al 15% 22(PS17) | 6,138.00 | 2343 Adhoc Relief All 2023 35% | 21,892.00 |

Deductions - General

| Wage type | Amount | Wage type | Amount |
|--------------------------------|-----------|-------------------------|-----------|
| 3014 GPF Subscription | -3,900.00 | 3501 Benevolent Fund | -1,200.00 |
| 3609 Income Tax | -2,430.00 | 3990 Emp. Edu. Fund KPK | -135.00 |
| 4004 R. Benefits & Death Comp: | -600.00 | | 0.00 |

Deductions - Loans and Advances

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

Deductions - Income Tax

Payable: 37,795.38 Recovered till JAN-2024: 16,197.00 Exempted: 9448.68 Recoverable: 12,149.70

Gross Pay (Rs.): 115,922.00 Deductions: (Rs.): -8,265.00 Net Pay: (Rs.): 107,657.00

Payee Name: ISLAM GUL

Account Number: 0010010273560011

Bank Details: ALLIED BANK LIMITED, 250321 University Town Jamrud Rd. Peshawar University Town Jamrud Rd. Pesh, Peshawar

Leaves: Opening Balance: Aailed: Eamed: Balance:

Permanent Address: SDEO (M) PESHAWAR

City: Peshawar

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City:

Email: islamgul761971@gmail.com

System generated document in accordance with APPM 4.6.12.9(87333/25.01.2024/v3.0)

All amounts are in Pak Rupees

Errors & omissions excepted (SERVICES/02.02.2024/19:09:40)

ATTESTED

OFFICE OF THE DISTRICT EDUCATION OFFICER (M) PRIMARY PESHAWAR

APPOINTMENTS

Consequent upon the selection made by the Departmental Selection Committee, the following PTC candidates of Zone-3 (PP-3) are hereby appointed as untrained PTC teachers in MF3-7 at the rate of Rs. 1095/- P.M. fixed plus special allowances as admissible under the rules with effect from the date of their taking over charge in the interest of public service:-

| S.No./ Merit No. | Name of candidate / Father's name / Residence | School where appointed | Remarks |
|------------------|---|------------------------|---------------------|
| 1/12 | Abid Ali s/o Said Ali village Sufaid Dhori Peshawar. | GMS Gharib Abed | against vacant post |
| 2/18 | Zahid Shah s/o Juma Khan Village Sufaid Dhori Peshawar. | GMS Achind Daja | |
| 3/19 | Mohammad Shah o/p Nawab Khan village Sufaid Dhori Peshawar. | GMS Haji Banda | |
| 4/20 | Islam Gul s/o Hemiz Gul Vill: Sufaid Dhori Peshawar | GMS Haji Banda Pesh | |

G.P. S.N.O. 4/20 only use for court

APPOINTMENT CONDITIONS

The appointments are purely temporary and liable to be terminated without assigning any reason. In case any of the above teachers intends to leave the service, he shall have to submit one month prior notice or forfeit one months pay and allowances in lieu thereof.

In case a candidate fail to take over charge within 15 days of the issue of this order, his appointment will stand cancelled automatically.

No TA/DA/FG is allowed.

No joining time is allowed.

Charge reports should be submitted to all concerned.

They should produce Health and age certificates from the Civil Surgeon, Peshawar within 7 days of taking over charge.

They should not be handed over charge if their ages are less than 18 or exceeds 25 years.

Pay scales/services rules are subject to the revision in accordance with the orders to be passed by the Government.

KHURSHID AHMAD
DISTRICT EDUCATION OFFICER
(M) PRIMARY PESHAWAR.

Dist. No. 135-42/Appointments/92 dated Pesh the 28.7.1992

Copy for information and n/action to the

1. Director Primary Education, NWFP, Peshawar.
2. Accountant General, NWFP, Peshawar.
3. SDO (M) Peshawar.
4. Candidates concerned.

By: District Education Officer
(M) Pry: Peshawar.

ATTESTED

Annexure-1-B

GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGULATION WING)

NOTIFICATION

Dated Peshawar, the 06/8/2020

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

AMENDMENT

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

CHIEF SECRETARY
GOVERNMENT OF THE KHYBER PAKHTUNKHWA

EXIST. NO & EVEN DATE

Copy is forwarded to:-

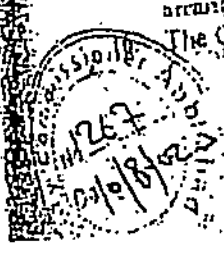
1. Additional Chief Secretary, Govt. of Khyber Pakhtunkhwa, Planning & Development Department.
2. The Senior Member Board of Revenue, Khyber Pakhtunkhwa.
3. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
4. The Principal Secretary to Governor, Khyber Pakhtunkhwa.
5. The Principal Secretary 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.

M. J. Khan
(WAJIAH LATIF)
DEPUTY SECRETARY (POLICY)

ATTESTED

M. J. Khan

ATTESTED



GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGULATION WING)

NOTIFICATION

Dated Peshawar the, 06/08/2020

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

AMENDMENT

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

CHIEF SECRETARY
GOVERNMENT OF THE KHYBER PAKHTUNKHWA

(ANDS): & EVEN DATE

Copy is forwarded to :-

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

(WARDAH LATIF
DEPUTY SECRETARY (POLICY)

~~ATTESTED~~

ATTACHED

WP4442-2023 AZIZULLAH VS GOVT OF PAK

21.6.23
2023
2023

Section Officer (Policy)

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

Copy forwarded to the:
Under Officer (N & A)

Section Officer (Policy)

Yours faithfully,

2011, please.

proceeded against under Keyher Publications Civil Servants (Efficiency & Discipline) Rules, of the competent authority or try to evade promotion through different means shall be

3. Furthermore, those officers/officials who do not comply with promotion order will accept to accept promotion in every condition.

to tackle higher responsibilities in case of promotion. Therefore, it is obligatory upon every prevent those who tend to forgo promotion by evade posting/transfer or show lack of capacity will accept from temptation for better job, by seeking to a single favorable post/position or to

3. The basic rationale behind the deletion of the said rule is aimed at preventing a provision exists to decline or forgo promotion.

rules, 1989 made deleted vide the dependent notification dated 06.08.2020; thus, no (5) of Rule-7 of Keyher Publications Civil Servants (Appointment, Promotion and Transfer) 2/Appointment/2023 dated 18.04.2023 in the subject noted above and to state that sub-rule

I am directed to refer to your letter No. SO(Policy-M)2499/22.

Dear Sir,

Subject: **STANDARDIZATION OF RANKS IN THE CIVIL SERVICE (REG-1) AND TRANSFER**

The Government of Keyher Publications
Ministry & Secondary Education Department

GOVERNMENT OF KEYHER PAKISTAN
ESTABLISHMENT DEPARTMENT
No. SO(Policy)2499/2023
Dated: Islamabad the June 06, 2023



Annexure - C

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

No.50 (Primary-MYE&SED/2-6/2023
Dated Peshawar ths, June 26, 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(5) IN THE KHYBER
PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION
AND TRANSFER) RULES, 1988.

I am directed to refer to the subject noted above and to enclose here with
a letter of Establishment Department letter No. 50 (Policy)E&AD/1-3/2020 dated
06 June, 2023 and to state that the subject meeting is to be held on 06 July, 2023 at
11:00 AM in this department under the Chairmanship of Additional Secretary (Estab)
E&SE Department in his office.

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

Encl: AA

[Handwritten Signature]

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

Copy forwarded to the:

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

[Handwritten Signature]

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

~~ATTESTED~~

-10-
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, 1909.

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

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

Encl: AA

(MUHAMMAD ISHAQ)
SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

SECTION OFFICER (PRIMARY MALE)

~~ATTESTED~~

MINUTES OF THE MEETING REGARDING APPLICATION SUBMITTED BY MR. AZIZ ULLAH PROVINCIAL PRESIDENT ALL PRIMARY TEACHERS ASSOCIATION KHYBER PAKHTUNKHWA REGARDING DELETION OF RULE 7(5) IN THE CIVIL SERVANT (APPOINTMENT, PROMOTION & TRANSFER RULES 1989).

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


Annexure
①

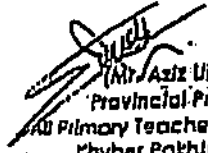
| Sl# | NAME | DESIGNATION |
|-----|-------------------|--|
| 1 | Mr. Fazal Wahid | Deputy Director Establishment of Directorate Elementary & Secondary Education Department |
| 2 | Mr. Aziz Ullah | Provincial President All Primary Teachers Association Khyber Pakhtunkhwa |
| 3 | Mr. Razaqat Ullah | General 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,
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~~

MINUTES OF THE MEETING REGARDING APPLICATION SUBMITTED BY MR AZIZ ULLAH PROVINCIAL PRESIDENT ALL PRIMARY TEACHERS ASSOCIATION KHYBER PAKHTUNKHWA REGARDING DELETION OF RULE 7(5) IN THE CIVIL SERVANT (APPOINTMENT, PROMOTION & TRANSFER RULES 1989).

A meeting regarding the subject matter was held on 06-07-2023 at 11:00 AM in 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

WP447-2023 AZIZULLAH VS GOVT OF POK

Asst. Director
Elementary & Secondary Education
Khyber Pakhtunkhwa

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

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

consolidated case.
In view of the above, this office has been asked for submission of
-ment at his office. This office has been asked for submission of
held under the Chairmanship of Hon. Additional Secretary, Establish-
That in light of the minutes of the meeting dated 6-07-2023
sewant to accept promotion under every condition.
no provision to decline / forgo promotion. It is obligatory upon every civil
Eg AD/1-3/2020 dated 6-06-2023 categorically stated that there exists
That the government of KP-ED (Regulation with wide letter No. SO (Policy)

guidance.
That your good office forwarded the same to quarters concerned
wide letter No. SO (Implementation) Eg SED/2-2/Appointment/2023 for necessary
offer of promotion.
(iii) It is pre-emptive of civil servant to either accept/decline the
is obligatory upon civil servant to accept promotion.
That this office sought guidance from your good office in the following
wide letter No. 6983 dated 06-07-2023
That this office sought guidance from your good office in the following
wide notification No. No. SDR-VI (Eg AD) 1-3/2020 dated 06-08-2020
dated rule 7(S) in Civil Servants (Appointment, Promotion, Transfer, etc) 1997
That Government of KP Establishment department (Regulation with
present brief history, also background of case as under:
Minutes of meeting 13/7/2023 dated 10-7-2023 on subject cited above and to
I am directed to refer to letter No. (SO) Rmngy-M/1/Eg SED/5-1/6/2023
Dear Sir,

Subject: Minutes of Meeting

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

RESURNA
(21-7-2023)

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION, KPK

- B/C -

- 18 -



ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
CIVIL SECRETARIAT PESHAWAR
(Phone No.091-9221587)

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)/E&AD/1-3/2020 dated
06th June 2023 and to state that after deletion of rule 7(5) Khyber Pakhtunkhwa
Civil Servant (Appointment, Promotion & Transfer Rules 1989) it has been intimated that those
officers/officials who do not comply with promotion order of the competent authority or
try to evade promotion through different means shall be proceed under Khyber
Pakhtunkhwa Civil Servant (Efficiency & Discipline) Rules, 2011.

2. In this connection it is submitted that in some cases lady teacher of primary
level who avail such promotions have to face serious inconvenience while they have to
perform duties in the remotest station with no residential or transport facility. Most of
them are married with kids and elder father or mother-in-law who need care. In such
cases, there are negative effects on service delivery.

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

(MUHAMMAD ISHAQ)
SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

SECTION OFFICER (PRIMARY MALE)
23/8/23

Scanned with CamScanner

ATTESTED

ACCEPTED

(Muhammad Ishaq)
Section Officer (Primary
Male)

Department of Education, Government of Punjab
Punjab, Pakistan

2. PS to Secretary, E & SE

Copy forwarded to;

1. Director E & SE

Department of Education, Government of Punjab

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.

Dear Sir,
I am directed to refer to your letter No. SO (Primary) (Punjab) (E&AD) 11-3/2022 dated 3rd June 2022 and to state that after deletion of Rule 7(S) (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 2012.

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

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

No: SO (Primary-M) E&SE/18-9/
Appointment-Rule/2022
Peshawar Dated: 23rd August 2022

-B/C-

Annexure - F



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

ATTESTED

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

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

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

Yours faithfully,

Section Officer (Policy)

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-

-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 No.
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

Section Officer (Policy)

~~ATTACHED~~

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/1-312020, 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.

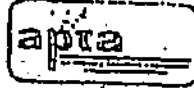
It is, therefore, humbly prayed that on the acceptance of the instant representation; the Notification bearing No. SO (POLICY) E&D/1-3 1-2020 DATED 06/08/2020, communicated to vide letter dated 06/06/2023, may please be declared and ordered to be struck down being Void, Ultra vires to the Constitution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

Dated 26/01/2024



Islamgul
S/O Hashim Gul
SPST

Aziz Ullah Khan
Proprietor
0333-0214648
azizullah1973@gmail.com
nptakph



APTA House
Govt. Primary School No.1
Gulshar Peshawar City.

آل پرائمری ٹیچرز ایسوسی ایشن (اپٹا) خیبر پختونخوا

Annexure - A

بہاب: ٹیکر لری بلڈنگز ۵۵ سیٹل روڈ ایف کیو کیشن خیبر پختونخوا
بہاب: آل پرائمری ٹیچرز ایسوسی ایشن خیبر پختونخوا
بہاب: مال

گزارش ہے کہ پروسچورر ایسوسی ایشن نے کہا ہے کہ سرکاری ملازم کی خواہش ہوگی ہے پروسچورر ایک قانونی ادارہ ہے کہ جو ملازم ایک اگر کسی
پروسیجر کے تحت ایک رول پروسچورر نہیں تو وہ پھر آگے پور سال تک پروسچورر نہیں لے سکتے تھے۔ مطلب پور سال تک ہر اس کی پروسچورر نہیں اور اس کی
بہر اس قانون میں کوئی رعایت لگا کر پور سال دیا جائے۔ نیز کہ وہ اس کی کہ اگر ایک ملازم ایک سال پروسچورر نہ لیں تو وہ دوسرے سال لے سکتا ہے
لیکن اب ایک رول پہلے ایک اور ٹریڈیون ہوا ہے

اس کے مطابق اب ہر ملازم پروسچورر ضرور لیں گے اگر نہیں لیں گے تو اس کے خلاف ایف اے لگا کر اس کے مطابق کارروائی کر لے گا کیا ہے
موصول ہے آئی ٹی ٹریڈیون ایسوسی ایشن کے مکمل خلاف ورزی ہے جس کے خلاف ایف اے لگا کر اس کے مطابق کارروائی کر لے گا کیا ہے

مقامی حالات میں کیا ضرورت ہے پروسچورر اور اس کے مطابق ایسوسی ایشن کے خلاف ورزی ہے کہ وہ ٹریڈیون ایسوسی ایشن کے مطابق کارروائی کر لے گا کیا ہے
کیا اس کے لیے حالات میں یہ یا ٹریڈیون جی ڈی ایس کی کامیابی کی وجہ سے کیا گیا ہے جو ہینڈ اور ایسوسی ایشن کے خلاف ہے

اس میں اس کے خلاف ورزی ہونے کا حق نہیں رکھتا ہے
لہذا ہم آپ سے مدد بھی کرتے ہیں کہ ٹریڈیون کے دائرے میں لایا جائے یا اس میں ترمیم کر کے پرائمری ایسوسی ایشن (Relaxation) دیا جائے اور ان کے
ضرورت پروسچورر لے کر ہینڈ لائن کے مطابق کارروائی کر لے گا کیا ہے

ان پرائمری ٹیچرز کی ضرورت نہیں ہوتی بلکہ ایسوسی ایشن کے مطابق کارروائی کر لے گا کیا ہے
اس لیے ہم آپ سے مدد بھی کرتے ہیں کہ ایسوسی ایشن کے مطابق کارروائی کر لے گا کیا ہے تاکہ ایسوسی ایشن کے مطابق کارروائی کر لے گا کیا ہے
البتہ اور ہر جگہ سے ہینڈ لائن

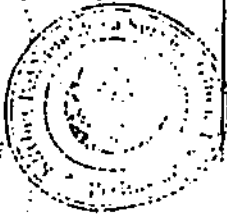
یہ کہ ٹریڈیون ہینڈ لائن ہے ہی پرائمری ایسوسی ایشن کے مطابق کارروائی کر لے گا کیا ہے تاکہ ایسوسی ایشن کے مطابق کارروائی کر لے گا کیا ہے
ملازمین یہ حق دیکھتے ہیں کہ آپ صاحبان کوئی ایسوسی ایشن کے مطابق کارروائی کر لے گا کیا ہے تاکہ ایسوسی ایشن کے مطابق کارروائی کر لے گا کیا ہے

شکریہ

محمد اظہار خان سربراہی صدر
آل پرائمری ٹیچرز ایسوسی ایشن خیبر پختونخوا
08/11/23

ATTESTED

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.D. 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]
13/5/24

Date of Presentation of Application 10-6-23 vs
 Number of 1
 Copies 1
 Hrgmt 57
 Total 57
 Name of ---
 Date of 13-6-23
 Date of delivery of copy 12-6-23

~~ATTESTED~~

VAKALAT NAMA

BEFORE THE SERVICE TRIBUNAL PESHAWAR

ISLAM 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.

Islam

APPELLANT

ACCEPTED


MUHAMMAD MUAZZAM BUTT
Advocate Supreme Court


MUHAMMAD ADFEL BUTT
Advocate High Court


BASSAM AHMAD SIDDIQUI
Advocate High Court