


FORM OF ORDER SHEET

Court of _____

Appeal No. 2305 /2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	05/11/2024	<p>The appeal presented today by Mr. Muhammad Muazzam Butt Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 12.11.2024. 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

S.A No:-2305

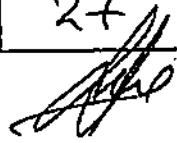
Muhammad Ayaz

V/S

Government of KP & others

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ADVOCATE

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

In Ref to

Service Appeal No 2305 /2024

Mohammad Ayaz Son of Shamshad Resident of Tehsil & District Mardan

Designation: Primary School Head Teacher at GPS Chamtar

.....Appellant

V E R S U S

- 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

.....Respondents

SERVICE APPEAL UNDER SECTION 4 OF KPK SERVICE TRIBUNAL ACT 1974, AGAINST THE IMPUGNED NOTIFICATION BEARING NO.SO(POLICY)E&AD/1-312020, 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/1-312020, 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 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.
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 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 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 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.



Appellant

AFFIDAVIT:

I Mohammad Ayaz Son of Shamshad Resident of Tehsil & District Mardan that the contents of foregoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court



Deponent


Through



Muhammad Muazzam Butt
Advocate Supreme Court



Muhammad Adeel Butt
Advocate High Court



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

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

C.M No _____ -P of 2024

In Ref to

Service Appeal No _____ 2024

Muhammad Ayaz

VERSUS

Secretary to Government of Khyber Pakhtunkhwa, & others

APPLICATION FOR SUSPENSION OF IMPUGNED NOTIFICATION BEARING NO. SO (POLICY) E&D/1-3/2020 DATED 06/08/2020, COMMUNICATED TO RESPONDENT NO.2 BY RESPONDENT NO.1, VIDE LETTER DATED 06/06/2023 TILL THE FINAL DISPOSAL OF CASE IN HAND.

Respectfully Submitted:-

1. That the instant application may be treated as part and parcel of service appeal of the appellant.
2. That the appellant has brought a good prima facie case and balance of convenience also lies in favor of the appellant.
3. That there is likelihood success of the appellant in the lis. And if the notification bearing No. So (Policy) E&D/1-3/2020 Dated 06/08/2020, communicated to Respondent No.2 by Respondent No.1, Vide Letter Dated 06/06/2023 is not suspended the appellant would suffer irreparable loss.
4. That valuable rights of the appellant is involved in the case.

In view of the reasons, it is humbly requested that the notification bearing No. So (Policy) E&D/1-3/2020 dated 06/08/2020, communicated to Respondent No.2 by Respondent No.1, Vide Letter Dated 06/06/2023 may kindly be suspended till the final disposal of the main appeal in hand.

AFFIDAVIT

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


Deponent

Through


Appellant


Muhammad Muazzam Butt
Advocate Supreme Court


Muhammad Adeel Butt
Advocate High Court

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Annexure A

26-10-2004

EX

محمد آواز -
گورنر پراپرٹیز

OF THE EXECUTIVE DISTRICT OFFICER (Schools & Literacy) MARDAN.

CONTENT ORDER:

Consequent upon the advertisement published in the Daily Masruq Peshawar dated 01-02-2004 and resulted interview held on 25-02-2004 by the District recruitment/selection Committee.

The District Coordination officer Mardan being Competent Authority is pleased to appoint/approve the following PST (Male) on contract basis for three years only in BPS-07 (Rs.2220-15-5820 P.M) plus usual allowances as admissible to them under the rules against the vacant PST Post at the school noted against each with effect from the date of their taking over charge in the interest of the service subject to the following existence terms and conditions:-

UC ALO

S.No	IL No	Name	Father Name	Name of Unlq-Council	Grnd Total	Address	Name of school where posted
UC ALO							
	337	Inayat Ullah Shah	Sarwar Shah	Alo	55.24	Alo	Pipal Bagh Khel
	1246	Muhammad Anwar	Muhammad Haleem	Alo	54.55	Bar Cham Alo	Pipal Bagh Khel
	1173	Fazal Rehman	Fazil Maftan	Alo	54.00	Alo	Pipal
UC Bahani							
	624	Zaid Ahmad	Shahid Khan	Bahani	55.51	Khudai Noor Kili	Bahani
	627	Nisar Ahmad	Ahmad Sattar	Bahani	53.89	Charbani	Yahya Jadood
	1350	Shahid Ahmad	Rezaul Khan	Bahani	53.82	Unichan Bahani	Khudai Noor Kili
	1238	Muhammad Iqbal	Mir Muhammad Khan	Bahani	53.72	Dheri Kili Bahani	Khudai Noor Kili
	1273	Ahmad Khan	Hussain Khan	Bahani	52.00	Shagal Bahani	Shankar (Bahani)
	303	Naseer Khan	Rahim Ullah Khan	Bahani	51.96	Bahani	Bahani
	1004	Anwar Hussain Khan	Ullah Hussain	Bahani	51.92	Bahani	Naseer Kili
	991	Faraz Khan	Santanda Khan	Bahani	51.28	Habi Kili	Naseer Kili
	131	Ayaz Khan	Muham Khan	Bahani	51.00	Bahani	Naseer Kili
	455	Rashid Ahmad	Ali Raza Khan	Bahani	50.76	Dheri Korona	Naseer Kili
	1827	Roshan Ullah	Rahim Ullah Khan	Bahani	50.11	Naseer Kili	Shagan No.1
	1070	Fazal-e-Sabbah	Noor Gul	Bahani	49.87	Shankar	Shankar Korona
	2177	Fazal Ahmad	Khan Daz	Bahani	48.99	Naseer Kili	Shagan No.2
	1279	Ali Zeb	Akhtar Muhammad	Bahani	48.25	Shankar	Shenda
	622	Razi Khan	Anwar Khan	Bahani	48.19	Khudai Noor Kili	Shenda
	1225	Fazal Haq	Fazal Razi	Bahani	48.05	Khudai Noor Kili	Khudai Noor Kili
	624	Ishad Muhammad	Rohar Khan	Bahani	47.13	Khudai Noor Kili	Mir Akbar Kili
	1728	Ali Ullah	Saeed Ullah	Bahani	47.07	Shankar Kili	Mir Akbar Kili

ATTESTED

(Signature)

357	1621	Muhammad Janni	Ghulam Nabi	Shamat Pur	48.84	Sowrayan	GPS	Faiyous Abad
358	480	Milboob ur Rehman	Akiz ur Rehman	Shamat Pur	48.24	Sowrayan	GPS	Anwar Khan Kili
359	1553	Wali Muhammad	Gul Muhammad	Shamat Pur	48.07	Jabba Mani Khela	GPS	Zor Mandi
UC Shamo Zai								
360	216	Nourul Basir	Mina Zar Khan	Shamo Zai	52.77	Chappal Abad	GPS	Pilagi
361	959	Muhammiz Khan	Sher Ali Khan	Shamo Zai	52.08	Chappal Abad	GPS	Chappal Abad
362	904	Mohammad Tabir	Zameen Gul	Shamo Zai	51.45	Ghamda	GPS	Chappal Abad
363	901	Dakht Zaid	Gul Zaid	Shamo Zai	50.95	Ghamda	GPS	Chappal Abad
364	203	Sabuz Ali Shah	Shah Pur	Shamo Zai	50.75	Chappal Abad	GPS	Landi Shah
UC Sher Garh								
365	531	Tila Muhammad	Mohammad Akbar	Sher Garh	56.18	Mahsh Kaly	GPS	Haji Nadar Sher Kili
366	398	Hakeem Khan	Nomther Khan	Sher Garh	55.21	Sher Garh	GPS	Haji Nadar Sher Kili
367	1452	Asmat Ullah	Abdul Hameed	Sher Garh	54.41	Faqir Abad	GPS	Haji Nadar Sher Kili
368	1317	Muhammad Zebair	Said Zar Khan	Sher Garh	52.10	Babara Sher Garh	GPS	Ahmad Gul Kili
369	585	Hidayat Ullah	Said Azim Khan	Sher Garh	51.67	Faqir Abad	GPS	Ahmad Gul Kili
370	1453	Akiz ur Rehman	Abdul Hameed	Sher Garh	51.46	Faqir Abad	GPS	Khan Muhammad Kili
371	3126	Habib Shah	Amal Shah	Sher Garh	50.82	Sher Garh	GPS	Khan Muhammad Kili
UC Toru								
372	1614	Inulaz Ali	Muhammad Anwar	Toru	55.61	Toru	GPS	Kala Khel
373	2191	Ashtaq Ahmad	Shehnsul Qamar	Toru	55.16	Toru	GPS	Sultan Abad
374	230	Khan Zeb	Aurang Zeb	Toru	54.91	Quresh Kili	GPS	Shoukat Abad
375	1915	Abram Hussain	Muhammad Hussain	Toru	54.56	Nodoh Toru Maldan	GPS	Shamshad Abad
376	1498	Muhammad Younas	Khan Bahadar	Toru	53.64	Haji Abad Toru	GPS	Nodoh Toru
377	1652	Fozal Wajah	Abdur Raziq	Toru	53.32	Khair Abad	GPS	Shoukat Abad

TERMS AND CONDITIONS:-

- 1- Their appointments are made purely on contract basis for three years and are liable to termination at any time without any notice or reason.
- 2- They will perform their duty at the same station during the whole three years contract service.
- 3- Their contract can be renewed after three years if their performance is found excellent as per required polity of the time.
- 4- They are required to produce health and age certificate from the concerned Medical Superintendent before taking over charge.
- 5- They are not allowed to take over charge if their age is less than 18 years and above 58 years.
- 6- They are required to sign contract agreement on judicial paper before taking over charge. Professional certificates/degrees should be verified from the concerned authorities and should not be released till verification.

ATTESTED

GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(CIRCULATION WING)

NOTIFICATION

Dated: Peshawar, the, 06 / 8 / 2020

In exercise of the powers conferred by section 25 of the
Government of Khyber Pakhtunkhwa (AcI) No. XVIII of
1973 (Khyber Pakhtunkhwa) Act, 1973 (Khyber Pakhtunkhwa) Act, 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
rule number and condition shall be amended, namely:

AMENDMENT

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

CHIEF SECRETARY
GOVERNMENT OF THE PROVINCE PAKHTUNKHWA

LIST OF DEPARTMENTS

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



ATTESTED

MAJIDULLAH
DEPUTY SECRETARY

ATTESTED

-10-

**GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGULATION WING)**

NOTIFICATION

Dated Peshawar the, 06/08/2020

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

AMENDMENT

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

**CHIEF SECRETARY
GOVERNMENT OF THE KHYBER PAKHTUNKHWA**

(ANDS): & EVEN DATE

Copy is forwarded to :-

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

(WARDAH LATIF)
DEPUTY SECRETARY (POLICY)


ATTESTED

ATTESTED

[Handwritten signature]

WP4442-2023 AZIZULLAH VS GOVT OF PG43

[Handwritten notes and signatures]

[Handwritten signature]
Special Officer (Policy)

[Handwritten signature]
Special Officer (Policy)

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

Copy forwarded to her.

[Handwritten initials]

2011, please.

proceeded against under Kyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules, of the competent authority or try to evade promotion through different means shall be furthermore, those officers/staffs who do not comply with promotion order civil servant to accept promotion in every condition.

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

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

1. I am directed to refer to your letter No. SO/Army-MY/23/2023 dated 18.04.2023 in the subject noted above and to state that sub-rule (5) of Rule-7 of Kyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 stands deleted vide this department notification dated 04.08.2020. Thus, no provision exists to decline or forge promotion.

GUIDANCE REGARDING DELETION OF RULE 7(A) IN THE KYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION AND TRANSFER) RULES, 1989.

Dear Sir,

Subject:-

The Government of Kyber Pakhtunkhwa, Elementary & Secondary Education Department.

To



GOVERNMENT OF KYBER PAKHTUNKHWA
 ESTABLISHMENT DEPARTMENT
 No. SO/Policy/REG-III/2023
 Dated Peshawar the June 06, 2023

[Handwritten notes]

B/C

-12-

To,

The 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. 80 (Primary-M) /EE&SED/2-2/Appointment (2023) dated 18.04.2023 on the subject noted above and to state that sub-Rule (5) of Rule-7 of Khyber Pakhtunkhwa Civil Servants (Appointments, 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 to preventing a civil servant from temptation for illicit gain by sticking to a single lucrative 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.

WP4442-2023 AZIZULLAH VS GOVT OF PK43

ATTESTED

ATTESTED

WP4442-2023 AZIZULLAH VS GOVT OF POK

Section Officer (Policy)

- Endst. of even nio ep 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.

(Issa Muhammad Khan)
Section Officer (Policy)

Yours faithfully

- B/c -

GOVERNMENT OF KHYBER PAKHTUNKHWA - 14-
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
CIVIL SECRETARIAT PESHAWAR
(Phone No. 091-9223587)

No. SO (Primary-M)/E&SE/D-6/2023
Dated Peshawar, Ito. June 25th, 2023

To

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

Aziz Ullah Khan
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))
25/6/23

ATTESTED

Annuance D²¹
-16-

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


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


S#	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-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


ATTESTED

- B/C -

-17-

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

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

S/1	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



No. 8145

Khyber Pakhtunkhwa, Peshawar

IF.No. J/SST/UGeneral Cases

Dated 21/7/2023

Phone: 091-9225344

Email: establishmentmale1@gmail.com

-18-

To

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

Subject: - MINUTES OF THE MEETING
Dear Sir,

I am directed to refer to the letter No.SO(Primary-M)E&SED/3-1/G.Misc/Minutes of the Meeting/PST/2023 dated 10-07-2023 on the subject cited above and to present brief history about the background of the case as under:

- That Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing) deleted Rule 7(3) in the Civil Servants (Appointment, promotion & Transfer Rules 1980) vide notification No. No. SOR-VI (E&AD)/1-3/2020 dated 06-08-2020.
- That this office sought guidance from your good office in the following words vide letter No. 6987 dated 06-02-2023.
 - (i) Now 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 your good office forwarded the same to the quarter concerned vide letter No.SO (Primary-M) E&SED/2-2/Appointment/2023 for necessary guidance.
- That the Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing) vide letter No.SO (Policy) E&AD/1-3/2020 dated 6-06-2023 categorically stated that there exists no provision to 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.SO (Primary-M) E&SED/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 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(3) have affected negatively a huge numbers of Female Teachers. Thus it is proposed that Teachers below DPS-16 may be exempted of implications of the amendment in the rules ibid provided they submit their written refusal prior to conduction of the meeting of Departmental Promotion Committee.

The case is submitted for perusal and necessary actions please.

Assistant Director (Estab M-1)
Elementary & Secondary Education
Khyber Pakhtunkhwa

Encl: No.

Copy of the above is to:-

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

Assistant Director (Estab M-1)
Elementary & Secondary Education
Khyber Pakhtunkhwa

ATTESTED



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

20-
Inve. No. E

No. SO(Policy-M)E&SED/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 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.

(MUHAMMAD ISHAQ)
SECTION OFFICER (PRIMARY MALE)
20/8/23

Scanned with CamScanner

ATTESTED

ATTESTED

[Signature]

(Muhammad Ishaq)
Section Officer (Primary
Schools)

1. Division E & SE Khyber Pakhtunkhwa
2. PS to Secretary, E & SE Department (Khyber Pakhtunkhwa)

Copy forwarded to:
In this connection it is submitted that in some cases lady teachers 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) (Peshawar) / E&SD / 1-3/2020 dated 8th 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 2011.

SUBJECT: Guidance regarding deletion of Rule 7(5) in the Civil Servant (Appointment, Promotion & Transfer Rules 1989)
The Secretary to Government of Khyber Pakhtunkhwa
Establishment and Administration Department,
Peshawar.
To
No. SO (Primary-M) E&SD / 1-3/2023
Appointment - Rule / 2023
Peshawar Dated 23rd August, 2023

- B/c -

21



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

Answer to F
-22-

ATTESTED

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.

WP4442-2023 AZIZULLAH VS GOVT OF PG43

- B/C -

-23-

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

Section Officer (Policy)

ATTESTED

Answer 9² -24-

To,

Dated: /02/2024

- 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.

Best Regards



Mohammad Ayaz Son of Shamshad
Resident of Tehsil & District
Mardan

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.B. P.P given to learned counsel for the appellant.
03. Alongwith the service appeal there is an application for suspension of Notification dated 06.06.2023 and letter dated 23.08.2023 till the final disposal of main service appeal. In the meanwhile, no adverse action shall be taken against the appellant till next date of hearing.

Certified to be true copy (Muhammad Akbar Khan)
Member (F)

[Handwritten signature]
13/5/24

Date of Presentation of Application 10-7-24
 Number of 1
 Copying 5
 Urgent 5
 Total 5
 Name of ---
 Date of Copying 13-5-24
 Date of Delivery of Copy 17-5-24

[Handwritten signature]
ATTESTED

-27-

VAKALAT NAMA

BEFORE THE SERVICE TRIBUNAL PESHAWAR

MUHAMMAD AYAZ
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