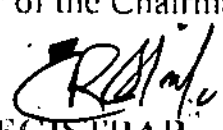


# FORM OF ORDER SHEET

Court of \_\_\_\_\_

Appeal No. 2307 /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**

C.M No \_\_\_\_\_-P of 2024

In Ref to

Service Appeal No 2307 2024


Mosam Khan

**VERSUS**

Secretary to Government of Khyber Pakhtunkhwa, & others

**INDEX**

S#	DESCRIPTION OF DOCUMENTS	ANNEX	PAGES
1.	Appeal and Verification	*	1-6
2.	Application for suspension	*	7
3.	Copy of Monthly Salary Account	A	8-9
4.	Copy of notification No. SD (Policy) EV AD/1-3/2020 dated 06/08/2020	B	10-11
5.	Copy of impugned Letter dated June 6 <sup>th</sup> , 2023	C	12-14
6.	Copy of Minutes of meeting dated 06-07-2023	D	15-18
7.	Copy of Letter dated 23-08-2023	E	19-20
8.	Copy of Impugned letter dated 07.09-2023	F	21-22
9.	Copy of Representation against the said notification and representation made by APTA President	G & H	23-24 25-26
10.	Wakalat Nama		27

  
ADVOCATE

M. Muazzam Butt

**BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA**

In Ref to

Service Appeal No 2307 /2024

Mosam Khan Son of Muhammad Aslam Khan Resident of Mohallah Imran Khel Rehmat  
Abad District Karak

.....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 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**

**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 D06/06/2023, MAY BE DECLARED AND**

**ORDERED TO BE STRUCK DOWN BEING VOID AND  
ULTRA VIRES TO THE CONSTITUTION OF  
PAKISTAN AND FUNDAMENTAL PRINCIPLES OF  
NATURAL JUSTICE AND AGAINST THE RIGHTS OF  
APPELLANT.**

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

**RESPECTFULLY SHEWETH:**

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

otherwise, disciplinary action shall be taken against the employees. The impugned Notification is reproduced as under:-

**"Furthermore, those officers/officials who do not comply with promotion order of the competent authority or try to evade promotion through different means shall be proceeded against under Khyber Pakhtunkhwa Civil Servants (Efficiency Discipline) Rules, 2011, please".**

5. That as per notification No. SD (Policy) /EDAD/1- 3/2020 dated 06/08/2020, the right of foregoing of promotion was withdrawn and the Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing) deleted Rule 7(5) in the Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 vide notification no SOR-VI (E & AD)/1-2/2020 dated 06-08-2020. Copy of notification No. SD (Policy) EV AD/1- 3/2020 dated 06/08/2020 is attached as **Annexure C**
6. That the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar asked for guidance regarding deletion of Rule 7(5) in Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 in respect of which the respondent No. 1 vide its letter No. SO(Policy) E&AD/1- 3/2020 dated Peshawar the June 06th, 2023 directed the respondent No 3 (Directorate of Elementary & Secondary Education) that Rule 7(5) in the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 has been deleted vide notification dated 06-08-2020 and ,therefore, no provision exists to decline or forgo promotion and it is obligatory upon every civil servant to accept promotion under every condition. Copy of Impugned Letter dated June 06th, 2023 is attached as **Annexure D**
7. That thereafter the meeting was also held in the office of Additional Secretary Establishment on 06-07-2023 in which it was decided to examine the case properly and submit a self-contained/ consolidated case for onward submission to the Establishment Department for further necessary action. Copy of Minutes of Meeting dated 06-07-2023 is attached as **Annexure E**
8. That the Respondent No.3 i.e. Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa also wrote a letter to the office of Establishment &

Administrative Department vide No SO(Primary-M) E&SED/2-2/Appointment Rule/2023 dated 23-08-2023 to reconsider the amendment made in Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 as it had negatively affected a large number of teachers and especially female teachers.

Copy of Letter dated 23-08-2023 is attached as Annexure F

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

Copy of Impugned letter dated 07-09-2023 is attached as Annexure G

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

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

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

Copy of Representation against the said notification is annexed as Annexure "L & K"

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

**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 setaside.

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

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


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

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

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

**AFFIDAVIT:**

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


  
Deponent

  
Appellant

Through

  
Muhammad Muazzam Butt  
Advocate Supreme Court

  
Muhammad Adeel Butt  
Advocate High Court

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



**BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA**

C.M No \_\_\_\_\_/2024

In

Service Appeal No \_\_\_\_\_/2024

Mosam Khan

v/s

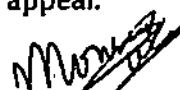
Government of KP & others

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

Respectfully Sheweth:-

1. That the instant application may be treated as part and parcel of service appeal of the appellant.
2. That the appellant has brought a good prima facie case and balance of convenience also lies in favour
3. There is likelihood of success of the appellant in the lis. The impugned notification dated 06/06/2023 is against Section 25 of KP Civil Servant Act, 1973 and promotion order dated 29/08/2023 of the appellant/applicant is also to be set-aside.
4. That valuable right of the appellant is involved.

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


  
Appellant

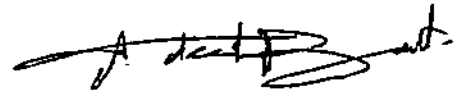
**AFFIDAVIT:**

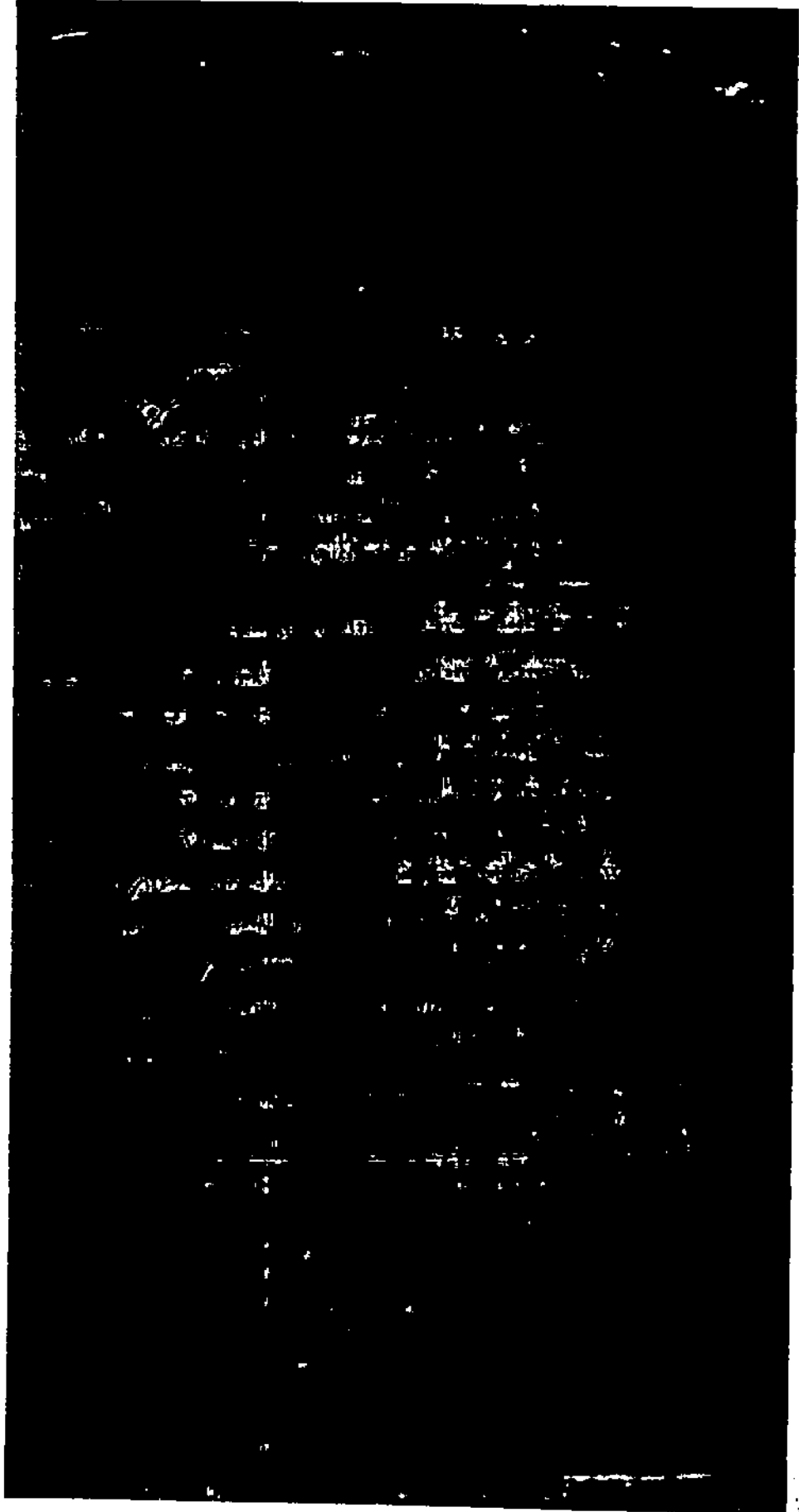
I Mosam Khan Son of Muhammad Aslam Khan Resident of Mohallah Imran Khel Rehmat Abad District Karak do hereby solemnly affirm and declare that the contents of foregoing application are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court

  
Deponent

through

  
Muhammad Muazzam Butt  
Advocate Supreme Court

  
Muhammad Adeel Butt  
Advocate High Court





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



Personal Information of Mr MDNAMI KHAN (son of MUHAMMAD ANSARI KHAN)  
 Personal Number: 00100150 CNIC: 1420211202015 NTN:  
 Date of Birth: 27/07/1967 Entry into Govt Service: 07/10/1981 Length of Service: 14 Years 04 Months 024 Days

Employment Category: Active (Permanent)  
 Designation: PRINCIPAL ACCOUNT OFFICER (P.A.O.)  
 District: KARAK  
 Pay Scale: BPS-18 (2022) Pay Stage: 25

Code	Wage type	Amount	Code	Wage type	Amount
1001	Basic Pay	21,450.00	1001	Gratuity Allowance 45%	1,521.00
1210	Conveyance Allowance	2,450.00	1300	Medical Allowance	1,500.00
1303	Charge Allowance	800.00	2148	12% Advs. Relief All-2013	983.00
2149	Advs. Relief All-2013	630.00	2116	Freelance Allowance 2021	1,221.00
2141	15% Ret. Ad. 15% 2022	1,002.00	2147	Advs. Rel. All-2013 15%	1,002.00
2171	Advs. Relief All-2022 15%	25,000.00			0.00

Deductions - General

Code	Wage type	Amount	Code	Wage type	Amount
4014	EPF Contribution	-1,200.00	1001	Gratuity Allowance	1,521.00
4042	Income Tax	-1,200.00	1001	Gratuity Allowance	1,521.00
4004	R. Interest & Death Cont.	0.00			0.00

Deductions - Loans and Advances

Code	Description	Principal amount	Deduction	Balance

Deductions - Income Tax

Payable: 11,811.00 (Gross) 11,811.00 (Net) 11,811.00 (Net) 11,811.00 (Net)

Gross Pay (Rs.) 122,226.00 Deductions (Rs.) 9,518.00 Net Pay (Rs.) 112,708.00

Payee Name: MDNAMI KHAN  
 Account Number: 0191201748  
 Bank Name: MUZZAN BANK (JAIFR), 479022 Karak Branch Karak Branch, KARAK

Interest: Opening Date: Availed: (None) Balance:

Permanent Address:  
 City: KARAK District: NW - Khuzdar District Housing Status: No Official  
 Temp Address:  
 City: District: Khuzdar District

Handwritten: 11/1/82

DEPUTY SECRETARY POLICY  
(W/ADH/1.8/11)

Handwritten signature

ATTESTED



- 1. Additional Chief Secretary, Govt. of Khyber Pakhtunkhwa, Planning & Development Member Board of Revenue, Khyber Pakhtunkhwa.
- 2. The Senior Secretary to Govt. of Khyber Pakhtunkhwa.
- 3. All Administrative Secretaries to Governor, Khyber Pakhtunkhwa.
- 4. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
- 5. The Principal Secretary to Government, 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, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
- 11. The Registrar, Khyber Pakhtunkhwa High Court, Peshawar.
- 12. The Secretary, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
- 13. The Deputy Director (T), E&A Department.
- 14. All Section Officers in Establishment & Administration Department with the request to the Section Officer (Admin), Administration Department.
- 15. The Section Officer (Admin), Administration Department.
- 16. The Controller, Administration Department.

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Copy forwarded to: GOVERNMENT NO & GIVEN DATE

CHIEF SECRETARY  
GOVERNMENT OF THE KHYBER PAKHTUNKHWA

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

AMENDMENT

in exercise of the powers conferred by section 26 of the Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XXVIII 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 amendment shall be made, namely:

Dated Peshawar the, 06/18/2020

NOTIFICATION

GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT  
(REGULATION-WING)

Annexure B

5-11-

**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)**



- 10 - 72 -

Annexure C



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

62

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. SO(P/primary-MYR&SUD/2-  
2/Appointments/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 (Appointment, Promotion and Transfer)  
Rules, 1989 stands deleted vide this department notification dated 06.08.2020; thus, no  
provision exists to decline or forgo promotion.

2. The basic rationale behind the deletion of the said rule is aimed at preventing a  
civil servant from temptation for 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.

Yours faithfully,

(Issa Nizamuddin Khan)  
Section Officer (Policy)

AS/E  
7/6

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.

SE/...

7/6  
2023  
21/6/23

Section Officer (Policy)

13

GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT  
CIVIL SECRETARIAT PESHAWAR  
(Phone No.091-9227507)

No.SO (Primary-M)/E&SED/2-6/2023  
Dated Peshawar lhc, June 25<sup>th</sup>, 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(S) IN THE KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION AND TRANSFER) RULES, 1988.**

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

(MUHAMMAD ISHAQ)  
SECTION OFFICER (PRIMARY MALE)

B/c

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



- 15

Annexure

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. Razaqal Ullah	General Secretary APTA Peshawar
4	Muhammad Ishaq	Section Officer (Primary) E&SE Department Civil Secretariat Khyber Pakhtunkhwa Peshawar

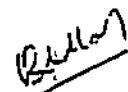
2. The meeting started with recitation from The Holy Quran. The chair welcomed the participants. The Deputy Director (Establishment) of Directorate of Elementary & Secondary Education briefed the forum regarding agenda item in detail.

3. After (hreadbare) 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. Razaqal Ullah)  
General Secretary APTA  
Peshawar

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

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

- 17/10  
- 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 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 threadbare discussion it was decided that Directorate of Elementary & Secondary Education Department may examine the case properly and submit & self-contained/consolidated case for onward submission to Establishment Department for further necessary action.

The meeting ended with a vote of thanks from the Chair

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

\_\_\_\_\_

Provincial President  
All Primary Teachers Association  
Khyber Pakhtunkhwa

\_\_\_\_\_

(Mr. Razaqat Ullah)  
General Secretary APTA  
Peshawar

\_\_\_\_\_

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

\_\_\_\_\_

(Abdullah)

Additional Secretary (Establishment)



No. 8145 Khyber Pakhtunkhwa, Peshawar  
IF.No. 34/SST/M/General Cases Dated 21-7-2023  
Phone: 091-9223344 Email: establishmentmolo@gmail.com

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(PPrimary-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(5) in the Civil Servants (Appointment, promotion & Transfer Rules 1982) 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 conf. 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 Establishments Department (Regulation Wing) vide letter No.SO (Policy) E&AD/1-3/2020 dated 6-06-2023 categorically stated that there exists no provision in decline or forgo promotion. It is obligatory upon every civil servant to accept promotion under every condition.
- The same was received by this office from your good office vide letter No.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(5) 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

Encls: 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

- 18 -

- B/C -

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION, KPK

PESHAWAR.  
(21-7-2023)

To:

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

Subject: Minutes of Meeting

Dear Sir;

I am directed to refer to letter No. (SO Primary-M) E&SED/S-1/G/M/24/  
Minutes of meeting/PST/2023 dated 10-7-2023 on subject cited above and to  
present brief history, about background of case as under:-

- That Government of KP Establishment department (Regulation Wing) deleted rule 7(S) in Civil Servants (Appointment, promotion & Transfer Rules 1997) vide notification No. No. SDR-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. 5987 dated 06-07-2023
  - (i) Now it is obligatory upon civil servant to accept promotion.
  - (ii) It is prerogative of civil servant to either accept/turn down the offer of promotion.
- That your good office forwarded the same to quarters concerned vide letter No. SO (Primary-M) E&SED/2-2/Appointment/2023 for necessary guidance.
- That the government of KP-ED (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/forgo promotion. It is obligatory upon every civil servant to accept promotion under <sup>every</sup> condition.
- That in light of the minutes of the 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(S) have affected negatively a huge members of Female teachers.

The case is submitted for perusal and necessary actions please.

Copy of the above to;

1. PA to Director Local Directorate
2. Master Copy

Assistant Director  
Elementary & Secondary Education  
Khyber Pakhtunkhwa.



- 19 -

Annexure E

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

No. SO(Primary-M)E&SED/2-2/Appointment-Rule /2023  
Peshawar Dated 23<sup>rd</sup> 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 05<sup>th</sup> 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

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

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

Dear Sir,  
I am directed to refer to your letter No. Sd/Prm/2023  
13-3/2023 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 2012.

In this connection it is submitted that in some cases lady  
teacher of primary level who avail such promotion have to  
face serious inconvenience while they have to perform duties  
in the remotest stations with no residential/transport facilities.  
Most of them are married with kids and elder father of  
Mother-in-law who need care. In such cases there are negative  
effects on service delivery. In view of above, the said amendment may be reconsidered to  
the extent of lady teacher in primary schools.

Copy forwarded to:  
1. Director E & SE Khyber Pakhtunkhwa.  
2. PS to Secretary, E & SE Department of Khyber Pakhtunkhwa.

(Muhammad Ishaq)  
Section Officer (Primary  
Prm) (Male)

WP4442-2023  
21/06/2023  
21/06/2023

No. 50 (Prm) - M) E&SE/2023  
Appointment - Rule/2023  
Peshawar Dated 23rd August 2023.

- B/c -

- 20 -



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

Annexure F

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

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

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

Yours faithfully,  
  
Section Officer (Policy)

Encls. 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.

- 27

- B/C -

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

To

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

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

Dear Sir,

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

Yours faithfully,

Section Officer (Policy)

Endst. Of even No & date

Copy forwarded to the:-

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

Section Officer (Policy)



- 29 Annexure 4

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

**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

- 24

Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 as it had negatively affected a large number of teachers and especially female teachers. In the meanwhile, the department vide its letter dated 07th of September 2023 directed the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa that necessary guidance has already been provided to the department and therefore no provision exists to decline or forgo promotion and those teachers who do not comply with the promotion order of the competent authority or try to evade promotion through different means shall be proceeded under the Khyber Pakhtunkhwa Civil Servant (Efficiency & Discipline) Rules, 2011.

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

Best Regards



Mosam Khan

Son of Muhammad Aslam Khan

Resident of Mohallah Imran Khel

Rehmat Abad District Karak

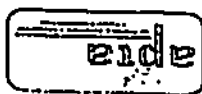
Handwritten signature and date: 08/11/23

Main body of handwritten text, likely a legal notice or affidavit, written in Urdu.

Handwritten text at the bottom of the main body, possibly a signature or name.

Handwritten text below the main body, possibly a title or reference.

APTA House  
Govt. Printing Division No. 4  
Quibber Peshawar City.



Khyber Pakhtunkhwa

President  
0333-0414648  
0333-0417330 (ggnm@kpk.com)

Annexure #

-26

07.05.2024



1. Learned counsel for the appellant present.
2. Let a pre-admission notice be issued to the respondents through TCS for submission of reply/comments. Appellant is directed to deposit TCS expenses within three days. To come up for reply/comments as well as preliminary hearing on 10.06.2024 before S.B. P.P given to learned counsel for the appellant.
03. Alongwith the service appeal there is an application for suspension of Notification dated 06.06.2023 and letter dated 23.08.2023 till the final disposal of main service appeal. In the meanwhile, no adverse action shall be taken against the appellant till next date of hearing.

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

*[Handwritten signature]*  
13/5/24

Date of Presentation of Application 10-5-24  
 Roll No. 131  
 Copy No. 1  
 Dept. No. 131  
 Total No. 131  
 Name of 131  
 Date of 13 1 24  
 Date of delivery of copy 12-5-24

# VAKALAT NAMA

## BEFORE THE SERVICE TRIBUNAL PESHAWAR

MOSAM KHAN

Appellant

Versus

Government of KP & others

Respondents

*I (the Appellant)*

do hereby appoint and retain

MUHAMMAD MUAZZAM BUTT ASC. MUHAMMAD ADEEL BUTT AHC

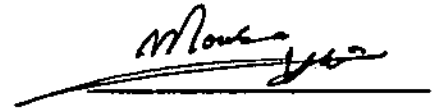
BASSAM AHMAD SIDDIQUI AHC

&

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