FORM OF ORDER SHEET

Court of		<u> </u>	_
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Annoal No	7303	/2024	

	<u>Арр</u>	eal No. 2303 /2024
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	05/11/2024	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
e - 1 ₁₂	. #The section	given to counsel for the appellant.
		By order of the Chairman
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BEFORE THE SERVICE TRIBUNAL KHYBER-PAKHTUNKHUWA

C.M No	P of 2024
ln Ref to	
Service Appeal	No <u>2303</u> 2024

Khair Fagir

VERSUS

Secretary to Government of Khyber Pakhtunkhwa, & others

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ADVÕCATE

M. Muazzam Butt

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

in Ref to

Service Appeal No 2303 /2024

Khai	r Faqir Son of Sarfaraz PSHT (BPS-14)
Mirk	tansi shakolai, Tehsil Puran, District Shangala
	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

PRAYER:

1989 STANDS DELETED

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.

WAS STATED THAT SUB RULE 5 OF RULE 7 OF KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION AND TRANSFER) RULES.

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:

 That the Respondents Department appointed the Appellant as Senior Primary School Teacher.
 Copy of Appointment letter is annexed as <u>Annexure A</u>

- 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.
- 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:-

 $\mathbf{g}B$

"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 <u>Annexure E</u>

- 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:-

GROUNDS:-

413

- 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.
- h. 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 wiso foregone their promotion were allowed not to avail the promotion for a period or 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.

- c. 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 hutter 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:

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I, (the appellant) solemnly declare that the contents of foregoing application are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.

Deponent

Through

Muham Afd Munzzzam Butt Advocate/Supreme Court

Muhammad Adeel But Advocate High Court

\ppellant

Bassam Alamad 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

Khair Faqir

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:-

- 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.
- 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.

Through

Muhammad Muazzam Butt Adyocate Supreme Court

Muhammad Adeel Butt Advocate High Court



Dist. Govt. KP-Provincial District Accounts Office Shangta Monthly Salary Statement (September-2024)

Personal Information of Mr KHAIR FAQIR divis of SARFARAZ KHAN

Personnel Number: 00205598

CNIC: 1550502133101

Date of Birtle 30,04,1970

Entry into Govt, Service: 19.04.1999

NTN:

Length of Scivice: 25 Years 05 Months 013 Days

Employment Category: Active Temporary

Designation: SENIOR PRIMARY SCHOOL TEA

80654297-DISTRICT GOVERNMENT KHYBE

DDO Code: SH6147-District Shangla

Payroll Section: 001

GPF Section: 001

Cosh Center: 60 GPF Balance:

882,305.00 (provisional)

GPF A/C No: EDUSW016732 GPF Interest applied Vendor Number: -

Pay and Allonances:

Pay scale; BPS For - 2022

Pay Scale Type; Civil BPS: 14

Pay Stage: 18

Wage type		Amount	Wage type	Amount
(100)	Basic Pay	53,850,00	1001 House Rent Allowance 45%	3,321,00
1210	Convey Allowance 2005	2,856,00	1300 Medical Allowance	1,500.00
	Compen Allow 20% (1-15)	1,000.00	2148 15% Adhoc Relief All-2013	674,00
	Adhoc Relief Allow @10%	456,00	2316 Teaching Allowance 2021	3,036.00
	Dispr. Red All 15% 2072KP	5,085,00	2347 Adhoc Rei Al 15% 22(PS17)	5,085.00
2378	Adhoc Relief All 2023 35%	18,238,00	2393 Adhoc Relief All 2024 25%	13,467.00

Deductions - General

	Wage type	Amount	Wage type	Amoust
3014	GPF Subscription	-3,900.00	3501 Benevolent Fund	-1,200,00
3609	Income Tax	-2,839,00	3990 Emp.Edu. Fund KPK	-135,00
4004	R. Besellis & Death Comp:	-600.00	;	0.00

Deductions - Loans and Advances

Loan	Description	Principal emount	Deduction	Balance
		· · · · · · · · · · · · · · · · · · ·		

Deductions - Income Tex

Payable:

45,413.93

Recovered till SEP-2024:

8,517.00

Exempted: 11352.77

Recoverables

Gross Pay (Rs.):

108,563.00

Defuctions (Rs.);

-8,674.00

Net Pay: (Bs.):

99,889.00

Payee Name: KHAIR FAQIR

Account Number: 2515-7

Bank Details: MCB BANK LIMITED, 240968 MCB ALLOCH SHANGLA MCB ALLOCH SHANGLA, SHANGLA

Opening Balance:

Avoiled:

Enmed:

Permanent Address: SHIKAWLAI PURAN SHANGLA

City: SHANGLA

Domicile: NW - Klyber Pakhtuakhwa

Housing Status: No Official

Temp. Address:

City:

Email: khairfaqir@gmail.com

System generated document in accordance with APPM 4.6.12.9(5k0386/16.09.2024/v3.0)

* All amounts are to Pak Rupe es

* Estres & onissions escepted (SERVICES/01.10.2024/20.16.53)

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Ser.

CERTIFICATE.

It is certified that Mr. Knall fagir
S/O, Sarfaras Khan Village Shikawlai P.O, Shikawlai
Tehsil, param Distt: Shangla has been serving in
Education Department as Spst since 19-4. \1990
He is a skilled teacher, punctual in his duty,
industrious and honest. He bears good moral character, and we
wish him all success in his life.
Dated,\199 Signature of the start 10 /2 02 11 Specific Specific 10 /2 02 11 Specific 199 Speci
Dated, \\199 \\SDEO(\W) \\Partial \text{SDEO}(\W) \\Partial \text{SDEO}(\W) \\ \Partial \text{SDEO}(\W) \\

OFFICE OF THE DISTRICT EDUCATION OFFICER(M)PRIMARY SHAT.

Consequent upon the advertisement published in the Dailien dated 7.2.1999 Screening test administered on 6.3.4999 interviews krimal held on 8.3.1999 by the Departmental adjection committee and Merit list drawn appropriately as par the mathed communicated, the appointment of the following trained and qualtited R.M.O teachers are horsely present in BPS-7 & Rain480-81-2695 pplus usual allowances as admissible under the rules against the post wishown against his their names tengetively as per the presolved rules with effect from the date of his their taking ever charge on the following terms and conditions.

- S. No. Name/Father on the	ollowing term	end cond	trioner december of the
and home Address	Date of Birth	Merit No/ Marka	Date of School Rema Passing Where rks. PTO Eman: 'Pested
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Salih Amin B/O Sherin- Khan R/O Kuaz Paw	1.1.74	2/51.24	da- CPB -do-
3. Latif Ahmad S/O Saifur Rehman R/O Demoral.	1.3.77	3/56,69	Danakool Maira -do- GPA -do-
R/O Dherai	10,4.80	4/50.24	-do- GP8 -do-
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Te/They will not apply for seven years for the purpose of brunsten to a place of his choice and remain stationed for continuous seven Salar Contraction Co.

The Spho(M)Primery SwetzShangla are authorised and permitted to finalize all sorts of transfer of all deserving and bondfled teachers of the union councils, against the extering vacancies first, and then issue a joint adjustment order of the above mentioned pandidates as per rules under intimation to this office.

He/They wall produce physical fitness certificate from thousand the physical fitness certificate from the physical fitn

- Buperintendent/Civin Surgeon concerned profilerte from tho Medical
- his/Their age should not exceed 35 years and below 18 years.
- N-o TAYDA is allowed.
- Charge reports should be sent to all concerned in triplicate.

DISTRICT EDUCATION OFFICER (MALE) FRIMARY SWAT

1487=1559 /Apptt:/FTV/Shangla Dated -19.4.1999 Copy of the above is forwarded to the Disector Primary Bluestion North Print to those thingster continued ton Warpipeshower District Accounts Ofrior Soft Sub Divisional Paud tion Of Licer's Swit 7Shang Ecod Teachers concerned. Cândidoves donderned. Moster file local office

OFFESTED VOLLOR SECTIONS VILLIEV The Careukee, Actininal stration Department. sering 20. 20 gazette copies. The Schion of measurement of Administration Department with the inquest to An Line on the Establishment of Principle Principles [14] Mwadzie noiszirunos szivice Eublic Service Commission, Piebnwa. The Registrary Peshewar High Court, Peshaver, Traynumunwar traynar, Prahaman Prahaman, Prahaman Indian Court, Peshaver, Traynumunwar High Court, Peshaver, Peshav 11 Awrithunlings in Kinyber Pakhlunlinwa. Heers of Annehed Department in Klyber Pakhiundhwa And Divisional Commissioners in Khyber pakhunkhwa. The principal Secretary to Chief Minister, Khyber pardirunkhwa. The Pelneipal, Acereury to Egyernor, Klyber, Pekhlunlinwa, Enthurdengind (in Jeod of safter space av universitation, Ila The Seinlor Kiember Bonid of Revunse, Khyber Pakhunkhiva. A.ldinonal Eniel Secretory, Clovi, of Khyber Pakhtunishwa. Planning ·iot habanarm) h (qu TING NEVEN DATE GOVERNMENT OF THE ILHYDER PAKEITURINA ibilalab'nd linie (2) with-clas , r afur at : Viamen solum ad Iluda fraedreami sadind surug **LNEWGNIMA** til her mer Clvil Servants (Appelniment, Preimoliga and Transfest Rules, 1989, the standard in the Kinder and Transfest Rules, 1989, the standard in the Ringer and Transfest Rules, 1989, the standard in the Ringer and Transfest Rules, 1989, the standard in the Ringer and Transfest Rules, 1989, the standard in the Ringer and Transfest Rules, 1989, the standard in the Ringer and Transfest Rules and Transfest Rules. 10 HIVS Not over Novillen in the Klyber regulankhwa Net ye. Klyber ing in the Klyber ing the paper in the pap The training CIVE Servents at the powers content by sectlerized of the powers content in enticion of the powers conferred by section 24 of the uson 8 (30 rodi neundung li holnd MOLEVENTION (икспеульимый ESTABLISHMENT DEPARTME VACHANGILHIVA HIGHANY COVERNMENT OF

GOVERNMENT OF KHYBER PAKHTUNKHWA ESTABLISHMENT DEPARTMENT (REGULATION WING)

NOTIFICATION Dated Peshawar the, 05/08/2020

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 in the conference of the Pakhtunkhwa Civil Servants (Appointment Promotion and Transfer) Rules 1989, the following further amendment shall be made, namely in the conference of the Pakhtunkhwa Civil Servants Act, 1973(Khyber Pakhtunkhwa Civil Servants Act,

AMENDMENT

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

CHIER 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)

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3. PS to Dopuly Secretary (Poley), Establishment Department.
P. PA to Adultions Secretary (Rec. 11), Establishment Department.

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FOVERNMENT OF MAYBER PARKTUNKHWA ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT CIVIL BECRETARIAT PESHAWAR

(Firomo blo,091-9223507)

1'n.80 (Pilmary-M)/E&SED/2-6/2023 Daled Peshawar Inc. June 25*,2023

Τo

The Director

Elementary & Secondary Education Department

Khyber Pakhlunkhwa, Peshawar.

Aziz Ullah Khan President-

All Primary Teacher's Association, KP

Şubject:

GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION

AND TRANSFER) RULES, 1989.

I am directed to reter 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 Chalmanship of Additional Secretary (Estab) E&SE Department in his office.

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

(MUHANMAD ISHAO SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

WP4442-?7E3 AZIZULLAH VS GOVT CF PG43

-11-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 Paichtunkhwa, Peshawar

Aziz Uliah Khan President President Ali Primary Teacher's Association, KP

Subject:

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

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

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

Encl: AA

(Muhammad Ishaq) Section Officer (Phimary Male)

Copy forwarded to the:

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

SECTION OFFICER (PRIMARY MALE)

WP4442-2623 AZIZULLAH VS GOVT CF PG43

PROVINCIAL PRESIDENT IALL PRIMARY TEACHERS ASSOCIATION KHYBER PAKHTUNKHWA REGARDING OF DELETION OF BULE 7(5) IN THE CIVIL SERVANT (APPOINTMENT, PROMOTION & TRANSFER BULES 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.

5#	NAME	DESIGNATION
1	Mr. Fazal Wahld	Deputy Director Etiabilishment of Directorale Elementary & Secondary Education Department
2	į Mr. Azir Ulioh	Provincial Fresident All Frimary Teachars Association Khyber Pokhlunkhwa
3	Mr. Ralagal Ullah	General Secrolary AFTA Peshawar
4	Muhammad Ishaq	Sacilon Officer (Primary) ELSE Department Civil Secretarial Khyber Pakhlunkhwa Peshawar

- The meeting started with recitation from the Holy Ouron, the chair welcomed the porticipants. The Deputy Director (Establishment) of Directorate of Elementary & Secondary Education bileted the forum regarding agenda from in detail.
- 3. After threadbare discussion it was decided that Directorate at Elementary & Secondary Education Department may examine the case properly and submit a self-contained/consolidated case for anward submission to Establishment Department for further necessary action.

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

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

(Mr. Relagat Ullah) General Secretary APTA Peshawar

MII

(Mr. Aziz Ullah)
Provincial President
Kil Primary Teochers Association
Khyber Pathlunkhwo

(Muhammed (Misq) Section Officer (Frimary-Male) E&SE Department

(Abdullah) Addillonai Secretory (Eslabilshmeni) E&SE Deparlmeni

WP444Z-2023 AZIZULLAH VS GOVT CF PG43

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1.

MINUTES OF THE MEETING REGARDING APPLICATION SUBMITTED BY MR AZIZ UILAH PROVINCIAL PRESIDENT ALL PRIMARY TEACHERS ASSOCIATION KHYBER PAKHTUNKHWA REGARDING OF 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

SII NAME I	DESIGNATION
1 Mr. Fazal Wahld	Deputy Director Establishment of Directorate Elementary & Secondary Education Department
2 Mr. Aziz Ullah	Provincial President All Primary Teachers Association: Khyber Pakhtunkhwa
3. Mr. Rafaqət Ullah	General Secretary APTA Peshawar
4. Muhammad Ishaq	Section Officer (Primary) E&SE Department Civil Secretarial 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 Wahld)	•
Deputy Director-1	
E&SE Department	' '
Provincial President	
All Primary Teachers Association	
Khyber Pakhtunkhwa	
(Mr. Rafaqat Ullah)	* .
General Secretary APTA	
Peshawar	
Section 2	**
(Muhammad Ishaq)	-
Section Officer (Primary-Male)	· · · · · · · · · · · · · · · · · · ·
E&SE Department	
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Plane: 03

Kliyber Pakirunktiwa, Peshawar No. 14/551/AVGaliaral Cour.

Empli: establitheighlindle (@girall.com

The Societ Officer (Pelmany-Male), Elementary Education Department Klipber Pakhtunkhwa Peshawar.,

<u>ΛΙΙΝυτία ου τιικ λικετινο</u> Subject: 3. Dear Sir.

Dear Sir,

J am ilrected to refer to the latter No.SO(Primary-NO.5&SEDIS-1/
G.Mise/Ministed of the desilog/PST/2021 dated 10-07-2021 on the subject clied above and to
present brief history about he background of the case as under:

That Gaverament of Khyber Politicakhya Establishmunt Department (Regulation Wing) deleted Rule 7(1) brills Civil Servents (Appalaiment, promotion & Transfer Rules 1989) vide notification No. SOR-VI (EdAD)/I-1/2020 dated 06-08-2020.

That this office bough guidance from your good office in the following words vide letter No. 6087 dated 16-02-2023.

(i) Now it Mah Igolory upon the civil servant to accept Promotion in every condition.
(ii) It is the preventive of the civil servant to other accept or turn down the offer of

(ii) it imperengative of the civil xervant to other accept or time nown the offer of principals.

That your golf office forwarded the tome to the quarter concerned vide letter No.50 (Primate b) EASED/2-1/Appointment/2021 for accessory guideness.

That the Government of Khyber Pakkumbhyo Establishment Department (Regulation

lying) vide letter lia. SO (Policy) E&AD/I-1/2020 dated 6-05-2023 categorically stated that there exists up providing to decline or force promotion. It is obligatory upon every civil servant teacesps promotion under every candition.

The same was received by this office from your good office wide letter Na.50

(Primary-M) E&SEO/2-2/Appainiment/2021 dated 12-06-2021.

That, in the light of the minutes of mariling thated 6-07-2021, held under the Chairmansian of Han. Additional Secretary Establishment at his office this office, has been asked for a basission of consolidated case.

in viole of the above, this office is of considered opinion that the deletion of Rilles.

7(5) have offeed degalisely a huge numbers of Female Teachers. Thus it is proposed that Teachers heldin 186-16 may be excupted of implications of the amendment in the rules ibid provided they subject their written refused prior to conduction of the meeting of Departmental framedian Committee.

ard is submitted for pertual and necessary actions please.

Austriani Direttor (Estab MI-I) Elementary & Secondary Education Khyber Pakhnukhwa .

Енди: Ко.

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Capy of the above is to:-

1. PA to Director Local Directorate.

Moster Copy.

Azəlstanı Director (Estabbi-i) Elementary & Socontiary Ethication Klyber Pakhiunkhwa

1447-2023 AZIZULLAH VS GOVT CF PG43

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-Blc-

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION, KPK

To:

PESHBUIAR (21-7-1933)

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

Subject : Minutes of Heeting

Dear Sir, I am directed to refer to letter No. (SO Himony -W) E & SED /5-1/GNAL/ Minutes of meeting /BST/2023 dated Jo-7-2023 on subject cited above and to present bolef history, about background of case as under

a That Government of KP Establishment deportment (Regulation Wing)

delated rule 7(5) In Civil Servants (Appointment, promotions, Transfer Peles 1989)

vide notification No. No. SDR-VI(ESAD)1-3/2020 clarked ob-08-2020.

· That this office sought guidance from your good inffice in the following words vide littles No. 6987 detect ob-overang

(i) Now it is obligatory upon civil scaront to accept promotion.

(ii) It is presegative of civil scaront to either accept/terndown the offer of momentum.

offer of promotion.

Their your good office forwarded the coine to grundes concerned vide letter No. So (Prinary M.) EGSED/2-2/Appointment 2023 for rucessary guidance.

- That the government of KP-ED (Regulation Whys) vide letter No. So (Policy) EGAD 1-3/2070 dated 6-06-2073 categorically stated that there exists no provision to decline forgo promotion. It is obligating upon every civil senant to accept pomotion under early condition.
- need under the Chairmonship of the meeting decled 6-07-2021 held under the Chairmonship of then. Additional Secretary Establishment at his effice. This office has been asked for submission of consolidated case.

that the deletion of Rules 7(5) have affected negatively a huge members of Female teachers.

The case is submitted for person and necessary actions

Copy of the colone to;

1. PA to Director Local Directorate

2. Master Copy

Actioned Director

Elementary & Secondary Education

Khylos Richlandhus.

WP4442-2023 AZIZULLAH VE GOVT GF PG43

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ELEMENTERY AND SECONDARY EDUCATION DEPARTMENT CIVIL SECRETARIAT PEBHAWAR (Phone No.091-9223587)

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

PUVEXMIS

The Georgiary to Govi, of Khyber Pakhlunkhwa, Establishment & Administration Department. Pashavar

SUBJECT: - GUIDANCE REGARDING DELETION OF RULE 7/5) IN THE CIVIL SERVANT (APPOINTMENT, PRPMOTION & TRANSFER RULES <u>1989).</u>

Carr Str.

I am directed to refer to your letter Ho. SO(Policy)/ EBAD/ 1-3/2020 dated 1967 June 2023 and to state that after deletion of rule 7(5) Khyber Pakhtunkhwa Civil Servara (Applionbment, Promotion & Transfer Rules 1989) it has been intimated that those officers/ officers viria do not comply with promotion order of the competent authority or by to evade promotion through different means shall be proceed under Khyber Pakripunkirwa Civil Servant (Efficiency & Discipline) Rules, 2011.

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

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

MUHAMMAU ISEM SECTION OFFICER (PRIMARY MALE)

Copy Converded to the:

1. Director EBSE Khyber Pakhbinkhwa.

2. PS to Secretary, ERSE Department Knyber Pakhtunyhwa.

SECTION OFFICER JERN

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No.50 (Primary -M) ESSED /2-21/ Appointment - Rule/2023 Perhauser Dated 23rd August, 2023.

To

The Secretary to Government of Khylon Pakhlundhum. Establishment and Administration Deportment, Pestrouver.

SUBJECT: - Quidance regarding deletion of Rule 7(5) in the Cirl Servant (Appointment, Paration & Transfer Rules: 1989)

Dear Sir,

I app directed to refer to your letter No. Softmany

11-3/2020 dated 6th June 2023 and to state that after

deletton of Rule 7(S) Khyber Pathtunkhwa Ciril Servent (Appaintment,

Promotion and Transfer Rules 1989) It has been Intimated that

those ifficers officials who do not comply with promotion order

of the competent authority or try to evade promotion though

different means shall be proceed under ktyber Pakhtunkhwa

Ciril Servant (Efficiency and Discipline) Rule 2011.

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

Copy forwarded to;

(Muhammad Ishow) Section officer (Annoy)

1. Dructor EG SE Ktylo Bekhorkhura

2. PS to Secretary, E & SE Depostment Chicken Attaboutstage

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GOVERNMENT OF KHYBER PAKHTUNKHWA

ESTABLISHMENT DEPARTMENT

No. SO(Policy)E&AD/1-3/2020 Dated Peshawar the September 07, 2023

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

Subject: 4

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 landered to your good office vide this department letter of even No. dated 06.06.2023 (copy enclosed).

Yours faithfully.

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



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

То

The Secretary to Government of Knyber Pakhtunidwa, Elementary & Secondary Education Department

Subject: -

GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE KHYBER PAIGHTUNKHWA 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 23.00.2023 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 nicer (Policy

VIP4442-2023 AZIZULLAH VS GOVT CF PE43

Annexure - G

Τo,

1) Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar

Secretary to Government of Khyber Pakhtunkhwa, Elementary and Secondary Education Department, Civil Secretariat, Peshawar

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 a 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.

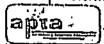
Dated 28 /0 1/2024

ر در موجود در موجود

KHAIR FAQIR SID SARFARAZ PSHT Kliyber Pakhtunkhwa

. Note I, Mich Khari Propigani O 0331-94 (4648 O 0331-94 (1673) O 1010 (1673)

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APTA Housei Govi Princery Salcol NaAl Quibalor Postawar Cita

آل پرائمری هیچرزایسوی ایش (اپٹا) جبیر پختونخوا

Annexure - L

بهاب: میکر ل ایکمٹول ی میکندول ایم کیٹن فیر پیٹیٹوا مجاہب اکل پرائرک کی واقعوں ایٹن فیر پیٹوٹوا عصب طال

گلائل ہے کہ برامونز پر فلاست عمل حد ہیں آدکہ مرتائیک انام کی خواش حال ہے پردمونز کا ایک تافق اڈا کر تاقیاک پر طائم ایک اکر کی مجداسیکے قمت ایک دامہ برامونوز نہ کمل تو وہ ہم آسمد باز سائل بحد برامونوز نمی ہے تیج ہے مطلب باز سائل تک بحر اس کی پردمونوز نمیں ادرکا تھی مجم اس تعلق عمل قولاک دعلصہ دلکاکل باز سائل بات مسئل کے اگر ایک کاک کر اگر ایک سائل پردموش نے لیس تر در درمرے سائل سے سکتا ہے۔ میکن اس تعلق عمل قولاک دعلیے دلکا کی میکن اس ایک بات سے ایک اند وقیلیجین ہوائے۔

الديما مثل د لين كا مورت على إكاده إلم ليا باع الين يه ايرو كان كا ماع

کونک فیلینی فالحک اور کی کا کا بات کا برائم کا امالا، کر اینل طویر بود کسیا تا سلسلا شرارا یوبکا ب لبلایم به فرقن مشکنة بیل کر کتب سامیان فوی ایکش لیکر مسب بر سے برائم بل امالا، تسوسالمپیل پرائم کا امالاً، کر اس ایش ایست نیات دالایل ک

غررالله خان سربانی سدد گرونالله خان سربانی سدد گرونالله خان سربانی سدد گرونالله خان سربانی سدد گرونالله خان ال

WF4442-2023 AZIZULLAH VE GOVT CF PG43

JAKALAT NAMA

BEFORE THE SERVICE TRIBUNAL PESHAWAR

KHAIR FAQIR 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 SIDDIOUI 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

WITHAMMAD ADEEL BUTT

Advocate High Court

BASSAM AHMAD SIDBIQUI

Advocate High Court