


FORM OF ORDER SHEET

Court of _____

Appeal No. 2315 /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  REGISTRAR</p> |

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

Fida Hussain


V/S

S.A No: Q315/24

Government of KP & others

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ADVOCATE

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

In Ref to

Service Appeal No _____/2024

Fida Hussain Son of Sher Andaz Resident of Tehsil & District Karak

Designation: Primary School Head Teacher at GPS

.....Appellant

VERSUS

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

.....Respondents

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

PRAYER:

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

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

RESPECTFULLY SHEWETH:

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

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

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

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

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

Fida Hussain
Appellant

AFFIDAVIT:

I Fida Hussain Son of Sher Andaz Resident of Tehsil & District Karak 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

Fida Hussain
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

Fida Hussain

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.


Appellant


AFFIDAVIT:

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


Deponent

Through


Muhammad Muazzam Butt
Advocate Supreme Court


Muhammad Adeel Butt
Advocate High Court

-6-

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

Annexure A



Personal Information of Mr FIDA HUSSAIN d/w/s of SHER ANDAZ

Personnel Number: 00304994 CNIC: 1420365813213 NTN:
Date of Birth: 10.02.1971 Entry into Govt. Service: 19.11.1992 Length of Service: 31 Years 10 Months 013 Days

Employment Category: Active Permanent

Designation: PRIMARY SCHOOL HEAD TEACH 80002669-DISTRICT GOVERNMENT KHYBE
DDO Code: KK6173-DY: DO PRY (M) T/NASRATI
Payroll Section: 001 GPF Section: 001 Cash Center: 14
GPF A/C No: GPF Interest applied GPF Balance: 83,776.00 (provisional)
Vendor Number: -
Pay and Allowances: Pay scale: BPS For - 2022 Pay Scale Type: Civil BPS: 15 Pay Stage: 23

| Wage type | | Amount | Wage type | | Amount |
|-----------|---------------------------|-----------|-----------|---------------------------|-----------|
| 0001 | Basic Pay | 69,460.00 | 1001 | House Rent Allowance 45% | 3,524.00 |
| 1210 | Convey Allowance 2005 | 2,856.00 | 1300 | Medical Allowance | 1,500.00 |
| 1505 | Charge Allowance | 40.00 | 2148 | 15% Adhoc Relief All-2013 | 915.00 |
| 2199 | Adhoc Relief Allow @10% | 614.00 | 2316 | Teaching Allowance 2021 | 3,224.00 |
| 2341 | Dispr. Red All 15% 2022KP | 6,608.00 | 2347 | Adhoc Rel Al 15% 22(PS17) | 6,608.00 |
| 2378 | Adhoc Relief All 2023 35% | 23,618.00 | 2393 | Adhoc Relief All 2024 25% | 17,365.00 |
| 5011 | Adj Conveyance Allowance | 3,400.00 | | | 0.00 |

Deductions - General

| Wage type | | Amount | Wage type | | Amount |
|-----------|---------------------------|-----------|-----------|-------------------|-----------|
| 3015 | GPF Subscription | -4,290.00 | 3501 | Benevolent Fund | -1,200.00 |
| 3609 | Income Tax | -6,473.00 | 3990 | Emp.Edu. Fund KPK | -135.00 |
| 4004 | R. Benefits & Death Comp: | -600.00 | | | 0.00 |

Deductions - Loans and Advances

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

Deductions - Income Tax

Payable: 95,907.45 Recovered till SEP-2024: 18,399.00 Exempted: 23848.56 Recoverable: 53,659.89

Gross Pay (Rs.): 139,732.00 Deductions (Rs.): -12,698.00 Net Pay (Rs.): 127,034.00

Payee Name: FIDA HUSSAIN

Account Number: 0451004009463705

Bank Details: NATIONAL BANK OF PAKISTAN, 230451 KARAK KARAK CITY, KARAK

Leaves: Opening Balance: Availed: Earned: Balance:

Permanent Address:

City: KARAK

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City:

Email: fidakhatnak65@gmail.com

ATTESTED

System generated document in accordance with APM 4.6.12.9(30398429/26.09.2024/v3.0)
* All amounts are in Pak Rupees
* Errors & omissions excepted (SERVICES/01.10.2024/21:15:22)

NB

OFFICE OF THE DISTT EDUCATION OFFICER(MALE)PRIMARY KARAK

APPOINTMENT.

Appointment of the following PTC candidates, Training Class (Session-1990-91) of Govt: College of Education for Elementary Teachers (Male) Karak is hereby made in BPS-7 & BPS-9 for FA/PSc: 2nd division plus usual allowances in the interest of public service with effect from their taking over charge:-

| S.No. | Name | Father's Name. | Resident of | School where appointed. | Remarks. |
|-------|-------------------|----------------------|-------------------------------|-------------------------------------|----------------------|
| 1. | Khalid Nawaz. | Awaz Khan. | PF-32 Tappi Karak. | GPS, Charpara. (B.D. Shah) | Against vacant post. |
| 2. | Khalid Usman. | Bedshah Noor. | PF-32 Janderai. | GPS, Alwargi. (Karak). | ..do.. |
| 3. | Afeem Gul. | Nawaz Gul. | PF-32 Tehran, Koi. | GPS, Baqi Khel. (Karak). | ..do.. |
| 4. | Qadir Nawaz. | Raf Nawaz | PF-32 Tappi Karak. | GPS, Baqi Khel. (Karak). | ..do.. |
| 5. | Zamrur-Rehman. | Raham Karim. | PF-32 Janderai. | GPS, Mir Qalam Banda (B.D. Shah) | ..do.. |
| 6. | Imratullah Khan. | Sarfarsaz Khan. | PF-32 Isak Chuntra. | MPS, Waley Banda. (Karak). | ..do.. |
| 7. | Muhammad Naeem. | Sher Adam Gul. | PF-33 Khadda Banda. | GPS, Zanaka. (B.D. Shah). | ..do.. |
| 8. | Fazal-e-Rebba. | Feroz Khan. | PF-33 Dabli Lawagher. | GPS, Roshani Kamaghar. (Karak) | ..do.. |
| 9. | Muhammad Hamayun. | Azad Gul. | PF-33 Said Ali Banda. | GPS, Isak Khumari. (B.D. Shah) | ..do.. |
| 10. | Afsar Zaman. | Mir Pto Khan. | PF-33 Bogara. | GPS, Bakha Banda (B.D. Shah) | ..do.. |
| 11. | Fida Hussain. | Sher Andaz. | PF-33 Ganderi Khattak | GPS, Minga Khel (Karak). | ..do.. |
| 12. | Nasibullah Khan. | Raqim Khan. | PF-33 Warana. | GPS, Jatta Colony (B.D. Shah) | ..do.. |
| 13. | Ali Muhammad. | Amir Nawaz. | PF-33 T/Nasrati. | GPS, Aral Tor Adam (Karak). | ..do.. |
| 14. | Muhammad Daraz. | Mushki Alam. | PF-33 Yaghi Ghulam Khel | GPS, Kamali Banda (Karak). | ..do.. |
| 15. | Saeed Zaman. | Saleh Muhammad. | PF-33 Jamal Khel. | GPS, Shah Alam pal (B.D. Shah) | ..do.. |
| 16. | Muhammad Munir. | Almar Khan. | PF-33 Jarasi Banda. | GPS, Jatta Colony (B.D. Shah) | ..do.. see page-2 |
| 17. | Muhammad Roshan. | Hayat Khan. | PF-33 Warana. | GPS, Shah Alam Pal (B.D. Shah) | ..do.. |
| 18. | Jamshid Khan. | Nasir Khan. | PF-33 Tater Khel. | MPS, Umer Khan (B.D. Shah) | ..do.. |
| 19. | Tahir Muhammad. | Nek Muhammad. | PF-33 Bogara. | GPS, Sheikhan Nami Kl (BDS) | ..do.. see page-2 |

ATTESTED

6-4

| S.No. | Name. | Father's Name. | Resident of | School where appointed. | Remarks. |
|-------|---------------------|----------------|--------------------------|-----------------------------------|----------------------|
| 20. | Muhammad Islam. | Nizam Khan. | PF-33 Dabaki Banda. | GPS, Sarabi (Karak). | Against vacant post. |
| 21. | Azmat Ali Khan. | Mashhoor Khan. | PF-33 Namar Khan, Banda. | GPS, Sarabi (Karak). | ..do.. |
| 22. | Zainud-Din. | Subhanud-Din. | PF-33 Tater Khel. | GPS, Ghunda Shamshaki. (Karak) | ..do.. |
| 23. | Muhammad Alamgir. | Ali Sher Khan. | PF-33 Khojaki Killa. | GPS, Shawa Hindu Kash. (Karak) | ..do.. |
| 24. | Abdur-Raziq. | Abdul-Latif. | PF-33 Mianki Banda. | GPS, Pala Sangi Khel (B.D. Shah) | ..do.. |
| 25. | Sardar Ali Shah. | Taj Ali Shah. | PF-33 Alamsheri. | GPS, Makoori No.1 (B.D. Shah). | ..do.. |
| 26. | Riaz Muhammad Khan. | Hazrat Gul. | PF-33 T/Nasrati. | GPS, Gandhi Sada Gul. (B.D. Shah) | ..do.. |
| 27. | Abdul Wahab. | Shuba Jan. | PF-33 Shagi Lawaghar. | GPS, Kot Banda. (B.D. Shah). | ..do.. |

- NOTE.**
1. Charge reports should be submitted to all concerned in duplicate.
 2. Health & Age Certificate obtained from Medical Superintendent Distt: Headquarter hospital Karak should be produced.
 3. They should produce their original certificates to the SDEO's concerned.
 4. NO/TA/DA is allowed on joining the post.
 5. If a candidate fails to report his arrival for duty within 15 days of the issuance of this order, his appointment will stand as cancelled.

(HAJI YOUSAF GUL)
Distt: Education Officer (Male)
Primary Karak.

Enst: No. 6463-94 /LE-1 Dated Karak the 19.11.92

Copy of the above is forwarded for information and necessary action to the :-

1. Director Primary Education NWFP Hayat Abad, Peshawar, alongwith merit list.
2. P.I. to Director Primary Education NWFP Hayat Abad, Peshawar.
- 3-43. SDEO (M) Karak and Banda Daud Shah.
- 5-31. Candidates Concerned.
32. Office Copy.

Yousaf Gul
Distt: Education Officer (Male)
Primary Karak.

ARRESTED

6-B

ATTESTED

ATTESTED



DEPUTY SECRETARY POLICE
GVAJDAH LATIF

- Copy forwarded to:
1. Additional Chief Secretary, Govt. of Khyber Pakhtunkhwa, Planning
 2. The Chief Secretary, Govt. of Khyber Pakhtunkhwa
 3. The Principal Secretary to Government, Khyber Pakhtunkhwa
 4. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa
 5. The Principal Commissioners in Khyber Pakhtunkhwa
 6. All Divisions of Attached Departments in Khyber Pakhtunkhwa
 7. All Heads of Autonomous Bodies 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 Public Service Commission, 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 with the request to The Section Officer (Admn), Administration Department.
 15. The Director, Peshawar, Peshawar
 16. The Director, Peshawar, Peshawar

CHIEF SECRETARY
GOVERNMENT OF THE KHYBER PAKHTUNKHWA

AMENDMENT

In exercise of the powers conferred by section 26 of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Government 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:

NOTIFICATION

GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGISTRATION-WING)

Annexure - 1 - B -

B/c -8-

GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGULATION WING)

NOTIFICATION

Dated Peshawar the, 06/08/2020

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

AMENDMENT

In rule 7, sub-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
WPA443-2023 AZIZULLAH VS GOVT OF PAK

(Section Officer (Policy))

(Section Officer (Policy))

Yours faithfully,

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

Copy forwarded to the
Head, Office of the

2011, please

proceeded against under Khayser Pakyung Civil Services (Recruitment & Discharge) Rules, of the competent authority or not to evade promotion through different means shall be

2. Furthermore, those officials who do not comply with promotion order civil servant to accept promotion in every condition.

to make higher responsibilities in case of promotion. Therefore, it is obligatory upon every prevent those who tend to forge promotion to evade posting/transfer or show lack of capability to serve from resignation for which gain by seeking to a fringe lucrative post/position or to

2. The basic rationale behind the action of the bid rule is aimed at preventing a provision exists to decline or forgo promotion.

rule, 1989 stands deleted with the departmental notification dated 08.08.2020 viz, no (3) of Rule-7 of Khayser Pakyung Civil Services (Recruitment, Promotion and Transfer) 2011.

I am directed in letter no. Govt. Secy (P) 100/2023 dated 08.08.2020.

Subject: **RECRUITMENT AND PROMOTION OF CIVIL SERVANTS IN THE GOVERNMENT OF KHYBER PAKHTUNKHWA**

The Government of Khyber Pakhtunkhwa
Secretary & Secretary (Recruitment)

62
 GOVERNMENT OF KHYBER PAKHTUNKHWA
 ESTABLISHMENT DEPARTMENT
 No. SO (Policy) 100/2023
 Dated Islamabad the 06, 2023



Amekure - C

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
CIVIL SECRETARIAT PESHAWAR
(Phone No.001-9223507)

No. SO (Primary-M)/E&SED/2-6/2023
Dated Peshawar the June 26th, 2023

To

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

Aziz Ullah Khan
President
All Primary Teacher's Association, KP

26/6/23

Subject: GUIDANCE REGARDING DELETION OF RULE 7(B) 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 herewith a letter of Establishment Department letter No. 50 (Policy)E&AD/1-3/2020 dated 06 June, 2023 and to state that the subject meeting is to be held on 06 July, 2023 at 11:00 AM in this department under the Chairmanship of Additional Secretary (E&SE) 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

ac

(MUHAMMAD ISHAQ)
SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

ac

SECTION OFFICER (PRIMARY MALE)
26/6/23

ATTESTED

B/c -11-

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

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

Aziz Ullah Khan President
President
All Primary Teacher's Association, KP

Subject: GUIDANCE REGARDING DELETION OF RULE 7(S) 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 MAJID)

Copy forwarded to the:

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

SECTION OFFICER (PRIMARY MAJID)

WP4442-2023 AZRULLAH VS GOVT CP PGS

ATTESTED

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

Annexure
①


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.


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

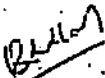
2. The meeting started with recitation from the Holy Quran. The chair welcomed the participants. The Deputy Director (Establishment) of Directorate of Elementary & Secondary Education briefed the forum regarding agenda item in detail.

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

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


(Mr. Fazal Wahid)
Deputy Director-1
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

~~ATTACHED~~

-13-
-B/C-

MINUTES OF THE MEETING REGARDING APPLICATION SUBMITTED BY MR AZIZ ULLAH PROVINCIAL PRESIDENT ALL PRIMARY TEACHERS ASSOCIATION KHYBER PAKHTUNKHWA REGARDING DELETION OF RULE 7(S) 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 a self-contained/consolidated case for onward submission to Establishment Department for further necessary action.

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

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

Provincial President
All Primary Teachers Association
Khyber Pakhtunkhwa

(Mr. Razaqat Ullah)
General Secretary APTA
Peshawar

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

(Abdullah)
Additional Secretary (Establishment)

ATTESTED

ATTESTED

WP4442-2023 AZIZULHAN VS GOVT OF PAK

Assistant Director (Establishment)
Elementary & Secondary Education
Khyber Pakhtunkhwa

Assistant Director (Establishment)
Elementary & Secondary Education
Khyber Pakhtunkhwa
21/7/2023

1. To Director Local Directorate,
2. Master Copy.

Copy of the above is as:-
Encl. No.

The case is submitted for perusal and necessary actions please.

Departmental Promotion Committee.
provided they submit their written refusal prior to conclusion of the meeting of
Teachers body. It may be requested of implications of the amendment in the rules that
75) have affected negatively a huge numbers of Female Teachers. Thus it is proposed that
In view of the above, this office is of considered opinion that the action of HES
has been asked for submission of consolidated case.
Chairman, Union, Additional Secretary, Establishment at his office this office has
T.M. in the light of the minutes of meeting dated 6-07-2023 held under the
(Primary) E&SED/2-3/APP/2023 dated 12-06-2023.
The same was received by this office from your good office vide letter No. SO
civil servant to accept promotion under every condition.
that there exists no provision to decline or forgo promotion. It is obligatory upon every
M.A.S.O (Primary) E&SED/2-3/APP/2023 for necessary guidance.
That your office forwarded the name to the quarter concerned vide letter
promotion.
(ii) It is the prerogative of the civil servant to either accept or turn down the offer of
(i) Now it is obligatory upon the civil servant to accept promotion in every condition.
No. 6987 dated 06-02-2023.
That this office would guide from your good office in the following words vide letter
vide notification No. SOR-VI (E&AD)/1-17020 dated 06-08-2020.
That Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing)
dated Rule 75) in the Civil Servant (Appointment, Promotion & Transfer Rules 1980)
I am directed to refer to the letter No. SO (Primary-K) E&SED/2-3/APP/2023 dated 10-07-2023 on the subject cited above and in
present brief history about the background of the case as under:

MINUTES OF THE MEETING

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

Subject:-
Dear Sir,



Khyber Pakhtunkhwa, Peshawar
F.No. 2185/ST/CD/1000
Phone: 091-9223141
Email: establishment@pmail.com

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/5-1/GMBL/ Minutes of meeting/PST/2023 dated 30-7-2023 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 Rule 1987) 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. 6987 dated 06-08-2023.
 - (i) Now it is obligatory upon civil servant to accept promotion.
 - (ii) It is prerogative of civil servant to either accept/turndown 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 every 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

Atishad Director
Elementary & Secondary Education,
Khyber Paktunkhwa.

ATTESTED

Annexure E

The Secretary to Govt. of Khyber Pakhtunkhwa,
Establishment & Administration Department,
Peshawar.

SUBJECT: GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE CIVIL
SERVANT (APPOINTMENT, PROMOTION & TRANSFER RULES
1989).

Dear Sir,
I am directed to refer to your letter No. SO(policy)/EAD/1-3/2020 dated
06th June 2023 and to state that after deletion of rule 7(5) Khyber Pakhtunkhwa Civil
Servant (Appointment, Promotion & Transfer Rules 1989) it has been intimated that those
officers/officials who do not comply with promotion order of the competent authority or
do not grade promotion through different means shall be proceed under Khyber
Pakhtunkhwa Civil Servant (Efficiency & Discipline) Rules, 2011.

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

Copy forwarded to the:

- 1. Director ERSE Khyber Pakhtunkhwa,
- 2. PS to Secretary, ERSE Department Khyber Pakhtunkhwa,

SECTION OFFICER (PRIMARY MALE)
DAUNHAKHAW (EAD)

SECTION OFFICER (PRIMARY MALE)
20/10/23

Scanned with CamScanner

~~ATTESTED~~

~~ATTEST~~

1. Director E & SE Kyba Panchayath.
2. PS to Secretary, E & SE Department of Kyba Panchayath.
Copy forwarded to,
(Municipal Islay)
Section Officer (Army)
(Male)

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.

9 am directed to refer to your letter No. S/1000/2022 dated 1-3/2020 dated 31 June 2023 and to state that after deletion of Rule 7(5) (Kyba Panchayath) 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 Kyba Panchayath Civil Servant (Efficiency and Discipline) Rule 2011.

Dear Sir,
Civil Servant (Appointment, Promotion & Transfer Rules 1989)

SUBJECT: - Guidance regarding deletion of Rule 7(5) in the Civil Servant (Appointment, Promotion & Transfer Rules 1989).
The Secretary to Government of Kyba Panchayath.
Establishment and Administration Department,
Peshawar.

To
No. SA (Primary-M) E&SE D/1000/2022
Appointment - Rule/2022
Peshawar Dated 23rd August, 2023.

- b/c -
- 17 -

Annexure - F



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

To

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

Subject:

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

Dear Sir,

I am directed to refer to your letter No. SO(Primary-M/E&SED/2-
2/Appointment-Rule/2023 dated 23.05.2023 on the subject noted above and to state that
necessary guidance has already been rendered to your good office vide this department letter of
even No. dated 06.06.2023 (copy enclosed).

Yours faithfully,


Section Officer (Policy)

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.

ATTENDED

WP-42-2023 AZIZULAH VS GOVT OF PKO

-18-

-19-

- B/C -

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

To

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

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

Dear Sir,

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

Yours faithfully,

Section Officer (Policy)

Encls. Of even No & date

Copy forwarded to the:-

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

Section Officer (Policy)

ATTESTED

To,

Dated: 26-02-2024

- 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/1-3/2020 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



Fida Hussain Son of Sher Andaz
Resident of Tehsil & District Karak

ATTESTED

ATTACHED

WP443-2023 AZIZULHAQ VS GOVT OF PAK

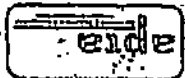
Handwritten signature and date: 28/11/23

Main body of handwritten text in Urdu, appearing to be a legal submission or affidavit.

Annexure - H

اپنی شہادت کے تحت (پاک) کے لئے تحریر کی گئی ہے

APTA House
Govt. Primary School Near
Gadbandh Pothohar City.



Principals Pothohar

APTA House
Govt. Primary School Near
Gadbandh Pothohar City.

VAKALAT NAMA

BEFORE THE SERVICE TRIBUNAL PESHAWAR

FIDA HUSSAIN
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