

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

C.M No _____-P of 2024

In Ref to

Service Appeal No 2314 2024

Nadar Khan

VERSUS

Secretary to Government of Khyber Pakhtunkhwa, & others

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ADVOCATE

M. Muazzam Butt

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA

In Ref to

Service Appeal No 2314 /2024

Nadar Khan son of Mir Was Khan SPST (BPS-14)

Dolat Khel, Dodher, PO Khas, Tehsil and District Swabi

.....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, Civil Secretariat Near MPA Hostel, Peshawar

.....Respondents

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

P R A Y E R:

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

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

RESPECTFULLY SHEWETH:

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

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

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

5. That as per notification No. SD (Policy) /EDAD/1- 3/2020 dated 06/08/2020, the right of foregoing of promotion was withdrawn and the Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing) deleted Rule 7(5) in the Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 vide notification no SOR-VI (E & AD)/1-2/2020 dated 06-08-2020. Copy of Impugned notification No. SD (Policy) EV AD/1- 3/2020 dated 06/08/2020 is attached as Annexure B
6. That the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar asked for guidance regarding deletion of Rule 7(5) in Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 in respect of which the respondent No. 1 vide its letter No. SO(Policy) E&AD/1-3/2020 dated Peshawar the June 06th, 2023 directed the respondent No 3 (Directorate of Elementary & Secondary Education) that Rule 7(5) in the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 has been deleted vide notification dated 06-08-2020 and therefore, no provision exists to decline or forgo promotion and it is obligatory upon every civil servant to accept promotion under every condition. Copy of Impugned letter dated June 06th, 2023 is attached as Annexure C.
7. That thereafter the meeting was also held in the office of Additional Secretary Establishment on 06-07-2023 in which it was decided to examine the case properly and submit a self-contained/ consolidated case for onward submission to the Establishment Department for further necessary action. Copy of Minutes of Meeting dated 06-07-2023 is attached as Annexure D
8. That the Respondent No.3 i.e. Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa also wrote a letter to the office of Establishment & Administrative Department vide No. SO(Primary-M). E&SED/2-2/Appointment Rule/2023 dated 23-08-2023 to reconsider the amendment made in Khyber

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

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

GROUND:-

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

- e. That non-availing of promotion and foregoing thereof does not cause loss to the government employee 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. 80 (POLICY) PAB/1-3/2020 DATED 06/08/2020, communicated to Respondent No.2 by Respondent NO.1, vide letter dated 06/06/2023, may please be declared and ordered to be struck down being Void, Ultra vires to the Constitution of Pakistan and against the fundamental principles of natural justice.

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

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

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

Nadarkhan
 Deponent

Through

Nadarkhan
 Appellant

Muhammad Muazzam Butt
 Advocate Supreme Court

Muhammad Adeel Butt
 Advocate High Court

Bassam
 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

Nadar Khan

VERSUS

Secretary to Government of Khyber Pakhtunkhwa, & others

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

Respectfully Submitted:-

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

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

AFFIDAVIT

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

Nadar Khan
Deponent

Through

Nadar Khan
Appellant

Muhammad Muazzam Butt
Advocate Supreme Court

Adeel Butt
Muhammad Adeel Butt
Advocate High Court

6

Dist. Govt. KP-Provincial
District Accounts Office Swabi
Monthly Salary Statement (May-2024)

Annexure ^A



Personal Information of Mr NADAR KHAN d/w/s of MIR WAS KHAN

Personnel Number: 00233888

CNIC: 1620208713637

NTN: 0

Date of Birth: 05.05.1965

Entry into Govt. Service: 21.06.1987

Length of Service: 36 Years 11 Months 012 Days

Employment Category: Active Permanent

Designation: SENIOR PRIMARY SCHOOL TEA

80004527-DISTRICT GOVERNMENT KHYBE

DDO Code: SU6130-Government Primary Schools (Male) Swabi

Payroll Section: 003

GPF Section: 001

Cash Center: 36

GPF A/C No: EDUSB 02038

GPF Interest applied

GPF Balance:

836,220.00 (provisional)

Vendor Number -

Pay and Allowances:

Pay scale: BPS For - 2022

Pay Scale Type: Civil BPS: 14

Pay Stage: 28

Wage type		Amount	Wage type		Amount
0001	Basic Pay	71,250.00	1001	House Rent Allowance 45%	3,321.00
1210	Convey Allowance 2005	2,856.00	1300	Medical Allowance	1,500.00
2148	15% Adhoc Relief All-2013	980.00	2199	Adhoc Relief Allow @10%	654.00
2316	Teaching Allowance 2021	3,036.00	2341	Dispr. Red All 15% 2022KP	6,840.00
2347	Adhoc Rel AI 15% 22(PS17)	6,840.00	2378	Adhoc Relief All 2023 35%	24,328.00

Deductions - General

Wage type		Amount	Wage type		Amount
3014	GF Subscriptions	-3,900.00	3501	Benevolent Fund	-1,200.00
3543	Professional Tax	-1,200.00	3609	Income Tax	-2,963.00
3600	Land E.D.K	-155.00	4004	R. Benefits & Death Comp	-600.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance

Deductions - Income Tax

Payable: 46,319.88 Recovered till MAY-2024: 31,778.00 Exempted: 11579.44 Recoverable: 2,962.44

Gross Pay (Rs.): 121,605.00 Deductions: (Rs.): -9,998.00 Net Pay: (Rs.): 111,607.00

Payee Name: NADAR KHAN

Account Number: 68-6

Bank Details: NATIONAL BANK OF PAKISTAN, 231972 ZAIDA BRANCH ZAIDA BRANCH, SWABI

Leaves: Opening Balance: Availed: Earned: Balance:

Permanent Address: SWABI

City: SWABI

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City:

Email: nadarkhan1965@gmail.com

① 6-A

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) MARDAN.

APPOINTMENT:-

Appointment of the following person,s is/are hereby ordered against the Post of _____ on temporary and adhoc basis @ Rs. _____ P.M. Fixed plus usual allowances as admissible under the rules in the SPS No. _____ Rupees. _____ on or his/their own pay and grade, which is beneficial to him/them at the school noted against each names:-

<u>S.No.</u>	<u>Name Qualification & Address</u>	<u>Posted at</u>	<u>Remarks.</u>
1-	Mrdar Khan S/O Mir Was Khan B.A. (203) VPO, Lodhar Tehsil Swabi District Mardan.	GMPS, Wali- Mohi Banda (Swabi).	A.N.C. Post.

CONDITION OF APPOINTMENT:-

1. His/Their Services is/are liable to termination/reversion at any time without any reason being assigned.
2. Incase of resignation He/They will have to submit one month prior notice to the Deptt: of forefiet one month,s pay in lieu thereof to Government.
3. He/They should not be allowed to take over charge if has/their age is/are less than 18 years and above 25 years.
4. He/They is/are required to produced Health and Age certificate from Medical Supdt: D.H.Q. Hospital Mardan before taking over charge.
- 5.- Charge reports should be submitted to all concerned.
- 6.- If/He/They fails to take over charge of the post within 14 days after the issue of these orders the ocer of appointment shall stand cancelled.
- 7.- Certificates should checked before handing over charge.

(GUL ZAMAN KHAN)
District Education Officer
(Male) Mardan.

Endst:No. 13099/10- Dated Mardan the 27/6 1987.

- Copy forwarded for information and n/action to the:-
- 1:- Sub-Divisional Education Officer(Male) _____ N Swabi.
 - 2:- Head Master/H. Teacher concerned. _____
 - 3:- Candidate concerned. _____

[Signature]
DISTRICT EDUCATION OFFICER
(MALE) MARDAN.

Qadim/+++
1457987.

ATTESTED



DEPUTY SECRETARY POLICY
QWADAH LATIP

[Handwritten signature]

- Additional Chief Secretary, Govt. of Khyber Pakhtunkhwa, Planning & Development Department, Khyber Pakhtunkhwa.
1. Additional Chief Secretary, Govt. of Khyber Pakhtunkhwa, Planning & Development Department, Khyber Pakhtunkhwa.
 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. The Principal Commissioners in Khyber Pakhtunkhwa.
 7. All Divisions of Attached Departments in Khyber Pakhtunkhwa.
 8. All Heads of Autonomous Bodies in Khyber Pakhtunkhwa.
 9. All Autonomous/Semi Autonomous Bodies in Khyber Pakhtunkhwa.
 10. All Deputy Commissioners in High Court, Peshawar.
 11. The Registrar, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
 12. The Deputy Director (IT), E&A Department, Khyber Pakhtunkhwa.
 13. The Deputy Director in Establishment & Administration Department, Khyber Pakhtunkhwa.
 14. The Section Officer (Admn), Administration Department, Khyber Pakhtunkhwa.
 15. The Section Officer (Admn), Administration Department, Khyber Pakhtunkhwa.
 16. The Section Officer (Admn), Administration Department, Khyber Pakhtunkhwa.
 17. The Section Officer (Admn), Administration Department, Khyber Pakhtunkhwa.
 18. The Section Officer (Admn), Administration Department, Khyber Pakhtunkhwa.
 19. The Section Officer (Admn), Administration Department, Khyber Pakhtunkhwa.
 20. The Section Officer (Admn), Administration Department, Khyber Pakhtunkhwa.

CHIEF SECRETARY
GOVERNMENT OF THE KHAYBER PAKHTUNKHWA

AMENDMENT

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

Amendment

in exercise of the powers conferred by section 29 of the Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973) the Chief Minister of Khyber Pakhtunkhwa is pleased to direct that in the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the following further amendment shall be made, namely:

NOTIFICATION

GOVERNMENT OF
KHAYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
CIRCULATION/AVINCI

Annexure - 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)

Annexure - C



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
No. SO(Polcy)/I&A(3)/2020
Dated: Dushwar the June 06, 2023

62

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

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

Dear Sir,
I am directed to refer to your letter No. SO(Polcy-M)/ASUPD/2/2023 dated 18.04.2023 on the subject noted above and to state that Sub-Rule (3) of Rule-7 of Khyber Pakhtunkhwa Civil Services (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 *dehli saafaji* from temptation for *dehli saafaji* by seeking to a single iterative post/position or to prevent those who tend to forgo promotion to evade *dehli saafaji* or their 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 Services (Efficiency & Discipline) Rules, 2011, please.

Yours faithfully,

(Issa Dildar Khan)
Section Officer (Policy)

ASE
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.

88/11/19

21.6.23

Section Officer (Policy)

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
CIVIL SECRETARIAT PESHAWAR
(Phone No. 091-9223507)

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

To

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

Aziz Ullah Khan
President
All Primary Teachers' Association, KP

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. 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)

B/c -11-

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
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, 1989.

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

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

Encl: AA

(MUHAMMAD ISHAQ)
SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

SECTION OFFICER (PRIMARY MALE)



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.

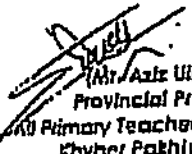
SN	NAME	DESIGNATION
1	Mr. Fazal Wahid	Deputy Director Establishment of Directorate Elementary & Secondary Education Department
2	Mr. Aziz Ullah	PROVINCIAL PRESIDENT ALL PRIMARY TEACHERS ASSOCIATION Khyber Pakhtunkhwa
3	Mr. Razaqat Ullah	General Secretary APTA Peshawar
4	Muhammad Ishaq	Section Officer (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



-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(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/No	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)





No. 8145 / P.No. 3/SST/UG/General/Casr. Date: 22-07-2023
Phone: 091-9221144 Email: estab@wintelnet.com

Khyber Pakhtunkhwa, Peshawar

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

Subject: **MINUTES OF THE MEETING**
Dear Sir,

I am directed to refer to the letter No.SO(Primary-AQE&SED/S-1/
G.Mac/Min/ps 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(S) in the Civil Servants (Appointment, promotion & Transfer Rules 1989) vide notification No. No. SOR-VI (E&AD)/1-3/2020 dated 06-08-2020.
- That this office sought guidance from your good office in the following words vide letter No.6987 dated 06-02-2023.
 - (i) Now it is obligatory upon the civil servant to accept Promotion in every condition.
 - (ii) It is the prerogative of the civil servant to either accept or turn down the offer of promotion.
- That your good office forwarded the same to the quarter concerned vide letter No.SO (Primary-K) E&SED/2-3/Appointment/2023 for necessary guidance.
- That the Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing) vide letter No.SO (Policy) E&AD/1-3/2020 dated 6-06-2023 categorically stated that there is no provision in dealing 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-K) E&SED/2-3/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(S) have affected negatively a huge numbers of Female Teachers. Thus it is proposed that Teachers below 15-16 may be exempted of implications of the amendment in the rules ibid provided they submit their written refusal prior to conducton of the meeting of Departmental Promotion Committee.

The case is submitted for perusal and necessary actions please.


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

2. Master Copy
1. PD to Director Local Directorate
Copy of the above to:
Husaid Director
Elementary & Secondary Education
Khyber Pakhtunkhwa

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

consolidated case.
-ment of his office. This office has been asked for submission of
held under the Chairmanship of Hon. Additional Secretary Education
That in light of the minutes of the meeting dated 6-07-2023
sent to accept pariter under every condition.
no provision to delete / forge provision. It is obligatory upon every civil
EQAD/1-2/2020 dated 6-06-2023 accordingly stated that there exists
That the government of KP-ED (Regulation Wing) vide letter No. SO (Policy)
wide letter No. SO (Promotion) EQSED/2-2/Appointment/2023 for necessary
That your good office forwarded the same to quarters concerned
offer of promotion.
(iii) ST-12 prerogative of civil servant to effect accept/turn down the
(ii) Now it is obligatory upon civil servant to accept promotion.
That this office sought guidance from your good office in the following
wide notification No. No. SDR-VI(EQAD)-1-3/2020 dated 06-08-2020.
dated rule 7(S) in Civil Servants (Appointment Promotion Transfer Rule 1997)
That Government of KP Establishment department (Regulation Wing)
present brief history, and background of case as under.
Minutes of meeting PST/2023 dated 10-7-2023 on subject cited above and to
I am directed to refer to letter No. (SO. Promog-M) EQSED/1-1/GWA/
Dear Sir,

Subject: Minutes of Meeting
KPK, Peshawar.
Elementary & Secondary Education Department
Section Officer (Promog-Male)
KPK, Peshawar.

To:
DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION, KPK
PESHAWAR.
(21-7-2023)



ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
CIVIL SECRETARIAT PESHAWAR
(Phone No.091-8221587)

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

Annexure
E

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

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

Dear Sir,

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


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

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


(MUHAMMAD SHAHID)
SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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


SECTION OFFICER (PRIMARY MALE)
28/8/23

Scanned with CamScanner



[Handwritten signature]

Department of Education
Khyber Pakhtunkhwa

(Muzammil Ishaq)
Section Officer (Primary
Schools)

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

Copy forwarded to:
In view of above, the said amendment may be reconsidered to the extent of lady teacher in primary schools.
Effects on service delivery. Mother-in-law who need care. In such cases there are negative effects on service delivery. Most of them are married with kids and elder father of In the remotest stations with no residential/transport facilities. face serious inconvenience while they have to perform duties. teacher of primary level who avail such promotion have to In this connection it is submitted that in some cases lady teacher of primary level who avail such promotion have to of the competent authority or try to evade promotion through those officers/officials who do not comply with promotion order different means shall be proceed under Khyber Pakhtunkhwa Civil Servant (Efficiency and Discipline) Rule 2011.
deletion of Rule 7(5) (Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion and Transfer Rules 1989) it has been intimated that those officers/officials who do not comply with promotion order of the competent authority or try to evade promotion through different means shall be proceed under Khyber Pakhtunkhwa Civil Servant (Efficiency and Discipline) Rule 2011.
I am directed to refer to your letter No. SA/primary (Policy)/E&AD/1-3/2020 dated 27 June 2020 and to state that after deletion of Rule 7(5) (Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion and Transfer Rules 1989) it has been intimated that those officers/officials who do not comply with promotion order of the competent authority or try to evade promotion through different means shall be proceed under Khyber Pakhtunkhwa Civil Servant (Efficiency and Discipline) Rule 2011.

Dear Sir,

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

Peshawar.

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

No. SA/Primary-M/E&SE/18-2/ Appointment-Rule/2023
Peshawar Dated 23rd August, 2023.

To

-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 23.08.2023 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:-

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.

-19-

- B/C -

GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
No. SO(Policy)E&AD/2-2/2023
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 29.08.2023 on the subject noted above and to state that necessary
guidance has already been tendered to your good office vide this department letter of even
No. dated 06.06.2023 (copy enclosed).

Yours faithfully,

Section Officer (Policy)

Encl. Of even No & date

Copy forwarded to:-

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)

Annexure - G

To,

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

Subject: REPRESENTATION AGAINST THE IMPUGNED NOTIFICATION BEARING NO.SO(POLICY)E&AD/1-312020, DATED 06/08/2020, COMMUNICATED TO SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA, ELEMENTARY & SECONDARY EDUCATION DEPARTMENT VIDE LETTER D06/06/2023, WHEREIN IT WAS STATED THAT SUB RULE 5 OF RULE 7 OF KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION AND TRANSFER) RULES, 1989 STANDS DELETED

Sir/ Madam:-

Your Honorable authority promulgated Notification No. SO (Policy) E&AD/1-3/2020, dated 06/08/2020, communicated to Elementary & Secondary Education vide letter dated 06/06/23 wherein it has been made mandatory to the employees to avail the promotion, otherwise, disciplinary action shall be taken against the employees. That, as per notification No. SO (Policy) /E&AD/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&AD/1-3 1-2020 DATED 06/08/2020, communicated to vide letter dated 06/06/2023, may please be declared and ordered to be struck down being Void, Ultra vires to the Constitution of Pakistan and against the fundamental principles of natural justice.

Dated 26/01/2024

Nadar Khan

NADAR KHAN
S/O MIR WAS KHAN
SPST

WAKALAT NAMA

BEFORE THE SERVICE TRIBUNAL PESHAWAR

NADAR 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.

Nadar Khan

APPELLANT

ACCEPTED

Muhammad Muazzam Butt
MUHAMMAD MUAZZAM BUTT
Advocate Supreme Court


Muhammad Adeel Butt
MUHAMMAD ADEEL BUTT
Advocate High Court

Bassam Ahmad Siddiqui
BASSAM AHMAD SIDDIQUI
Advocate High Court

FORM OF ORDER SHEET

Court of _____

Appeal No. 2314 /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>