


FORM OF ORDER SHEET

Court of _____

Appeal No. 2326 /2024

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

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

C.M No _____ -P of 2024

In Ref to

Service Appeal No 2326 2024


Muhammad Ayub Khan

VERSUS

Secretary to Government of Khyber Pakhtunkhwa, & others

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ADVOCATE

M. Muazzam Butt

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

In Ref to

Service Appeal No. 2326 /2024

Muhammad Ayoub Khan Son of Ayaz Khan, PSHT

GPS Agri Khan Zad Khel, Tehsil & District Lakki Marwat

.....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, 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

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 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 forego 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:-

GROUNDS:-

- 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 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.

AFFIDAVIT:

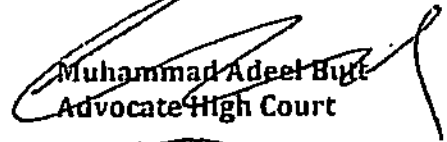
I, (the appellant) solemnly declare that the contents of foregoing application are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.



 Deponent


 Appellant

Through


 Muhammad Muazzam Butt
 Advocate Supreme Court


 Muhammad Adeel Butt
 Advocate High Court


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

-5-

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

C.M No _____-P of 2024

In Ref to

Service Appeal No _____ 2024

Muhammad Ayub 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:-

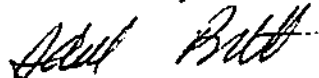
1. That the instant application may be treated as part and parcel of service appeal of the appellant.
2. That the appellant has brought a good prima facie case and balance of convenience also lies in favor of the appellant.
3. That there is likelihood success of the appellant in the lis. And if the notification 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.


Appellant

Through


Muhammad Muazzam Butt
Advocate Supreme Court


Muhammad Adeel Butt
Advocate High Court

AFFIDAVIT

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


Deponent

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

6
Annexure A



Personal Information of Mr MUHAMMAD AYOUB KHAN d/w/s of AYAZ KHAN

Personnel Number: 00312826

CNIC: 1120103499725

NTN:

Date of Birth: 01.01.1967

Entry into Govt. Service: 29.04.1992

Length of Service: 31 Years 09 Months 004 Days

Employment Category: Active Permanent

Designation: PRIMARY SCHOOL HEAD TEACH

81203358-DISTRICT GOVERNMENT KHYBE

DDO Code: LK6777-

Payroll Section: 001

GPF Section: 001

Cash Center:

GPF A/C No: EDU-LMT-591

GPF Interest applied

GPF Balance:

390,375.00 (provisional)

Vendor Number: -

Pay and Allowances:

Pay scale: BPS For - 2022

Pay Scale Type: Civil BPS: 15

Pay Stage: 25

Wage type		Amount	Wage type		Amount
0001	Basic Pay	73,420.00	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	985.00
2199	Adhoc Relief Allow @10%	660.00	2315	Special Allowance 2021	3,500.00
3341	Dispo. Red All 15% 2023 KP	7,666.00	3347	Adhoc Rel Al 15% 2023 (17)	9,886.00
2378	Adhoc Relief All 2023 35%	25,004.00			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	-3,328.00	4004	R. Benefits & Death Comp:	-600.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance
6501	HBA Loan Principal Instal.	124,800.00	-1,040.00	35,360.00
6505	GPF Loan Principal Instal	582,000.00	-24,250.00	460,750.00

Deductions - Income Tax

Payable: 52,013.88 Recovered till JAN-2024: 22,371.00 Exempted: 13003.33 Recoverable: 16,639.55

Gross Pay (Rs.): 125,501.00 Deductions: (Rs.): -34,708.00 Net Pay: (Rs.): 90,793.00

Payee Name: MUHAMMAD AYOUB KHAN

Account Number: 1983-3

Bank Details: NATIONAL BANK OF PAKISTAN, 231305 NBP TITER, KHEL LAKKI NBP TITER KHEL LAKKI MARWAT, LAKKI MARWAT

Leaves: Opening Balance:

Availed:

Earned:

Balance:

Permanent Address: LAKKI

City: LAKKI

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City:

Email: muhamodayubkhanpst888@gmail.com

محمد ايووب خان
مستحق
مبلغ 90,793.00 روپے
تاریخ 2024/01/31

System generated document in accordance with APPM 4.6.12.9(818037/26.01.2024/v3.0)

All amounts are in Pak Rupees

Errors & omissions excepted (SERVICES/02.02.2024/20:39:40)

اپوزیشن کے خلاف درخواستیں
 20.5.92

DISTRICT EDUCATION OFFICER (MALE) PRY: BANNU

6-A

APPOINTMENT ON MERIT BASIS

The following PTC (asse) candidates are being appointed against vacant PTC posts. Leave vacancy in BRS-7 plus usual allowances as admissible under the existing rules & policy issued by NWFP Education Department Notification No. S.O.-(F-2)-6-1/91, dated 18.1.1992, in the interest of public service with effect from the date of overcharge.

Constituency No. 200: No. 62.

S.No. Merit No. in Name of candidate with father's School of posting, Constituency. Name/ Address.

1.	2.	3.
2.	24.	Sultan Mohammad s/o Gul of Saja Zai. (S.O. Saja Zai Taluk Dist.)

NOTES:-

- Charge report should be submitted to all concerned.
- NO.TA/DA is allowed to any one.
- The candidates should produce their Health & age certificates Distt: Head Q.Hospital, Bannu.
- The appointment is purely on merit basis and liable to termination any time without assigning any reasons.
- The candidates should produce their original certificates and handover them over charge.
- If the candidates do not take over charge within 15 days from the issue of this order, their appointment order will stand automatic cancelled.
- The said appointment have been made on merit basis.
- If the age exceeds from the prescribed limit i.e. 25 years or more relaxation by the competent authority should be taken into account.
- The candidates should produce their clearance certificate from the POLICE DEPARTMENT.

(ATTA HILAH JAN)
 D.E.O. (M) PRY: BANNU.

ENDST: NO. 2579-85/A-2/PCO Appoint: File/AE-1, dated Bannu, the 15/5/92
 Copy for information and necessary action to the Director Prg: Executive, NWFP, Feshawar. (Hayat Abad P.A. to Director Prg: Edu: NWFP, Hayat Abad Feshawar

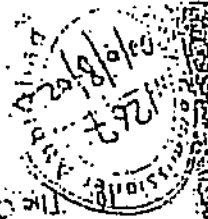
1.
 2.
 3.
 4.
 5.
 6.
 7.
 8.
 9.

P.S. to Minister for Education & Sports NWFP, Feshawar SDEO (M), Pannu.

6/11/92
 G.H. B. Khasra
 Lalkil
 39

Ali Khan (M) Prg: Edu: Bannu

ATTESTED



DEPUTY SECRETARY POLICE (W/ADDAH LATTI)

[Handwritten signature]

- 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 Chief Minister, Khyber Pakhtunkhwa.
- 5. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
- 6. The Principal Secretary to Govt. of Khyber Pakhtunkhwa.
- 7. All Divisional Commissioners in Khyber Pakhtunkhwa.
- 8. All Heads of Attached Departments in Khyber Pakhtunkhwa.
- 9. All Autonomous/Semi Autonomous Bodies in Khyber Pakhtunkhwa.
- 10. All Deputy Commissioners in Khyber Pakhtunkhwa.
- 11. The Registrar, Peshawar High Court, Peshawar.
- 12. The Registrar, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
- 13. The Registrar, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
- 14. The Secretary, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
- 15. The Director (IT), SSA Department.
- 16. All Section Officers in Establishment & Administration Department with the request to the Section Officer (Admn), Administration Department.
- 17. The Section Officer (Admn), Administration Department.
- 18. The Section Officer (Admn), Administration Department.
- 19. The Section Officer (Admn), Administration Department.
- 20. The Section Officer (Admn), Administration Department.

Copy is forwarded to:-

DATE NO & EVEN DATE

CHIEF SECRETARY GOVERNMENT OF THE KHAYDER PAKHTUNKHWA

In rule 7, sub-rule (3) shall be deleted.

AMENDMENT

Amending further amendment shall be made, namely:

(a) the Chief Minister of Khyber Pakhtunkhwa (Appointment, Promotion and Transfer) Rules, 1989, the

(b) the Chief Minister of Khyber Pakhtunkhwa is pleased to direct that in the Khyber

(c) the Chief Minister of Khyber Pakhtunkhwa is pleased to direct that in the Khyber

(d) the Chief Minister of Khyber Pakhtunkhwa is pleased to direct that in the Khyber

(e) the Chief Minister of Khyber Pakhtunkhwa is pleased to direct that in the Khyber

(f) the Chief Minister of Khyber Pakhtunkhwa is pleased to direct that in the Khyber

(g) the Chief Minister of Khyber Pakhtunkhwa is pleased to direct that in the Khyber

(h) the Chief Minister of Khyber Pakhtunkhwa is pleased to direct that in the Khyber

(i) the Chief Minister of Khyber Pakhtunkhwa is pleased to direct that in the Khyber

(j) the Chief Minister of Khyber Pakhtunkhwa is pleased to direct that in the Khyber

(k) the Chief Minister of Khyber Pakhtunkhwa is pleased to direct that in the Khyber

(l) the Chief Minister of Khyber Pakhtunkhwa is pleased to direct that in the Khyber

(m) the Chief Minister of Khyber Pakhtunkhwa is pleased to direct that in the Khyber

(n) the Chief Minister of Khyber Pakhtunkhwa is pleased to direct that in the Khyber

(o) the Chief Minister of Khyber Pakhtunkhwa is pleased to direct that in the Khyber

(p) the Chief Minister of Khyber Pakhtunkhwa is pleased to direct that in the Khyber

(q) the Chief Minister of Khyber Pakhtunkhwa is pleased to direct that in the Khyber

(r) the Chief Minister of Khyber Pakhtunkhwa is pleased to direct that in the Khyber

(s) the Chief Minister of Khyber Pakhtunkhwa is pleased to direct that in the Khyber

(t) the Chief Minister of Khyber Pakhtunkhwa is pleased to direct that in the Khyber

(u) the Chief Minister of Khyber Pakhtunkhwa is pleased to direct that in the Khyber

(v) the Chief Minister of Khyber Pakhtunkhwa is pleased to direct that in the Khyber

(w) the Chief Minister of Khyber Pakhtunkhwa is pleased to direct that in the Khyber

(x) the Chief Minister of Khyber Pakhtunkhwa is pleased to direct that in the Khyber

(y) the Chief Minister of Khyber Pakhtunkhwa is pleased to direct that in the Khyber

(z) the Chief Minister of Khyber Pakhtunkhwa is pleased to direct that in the Khyber

Dated Peshawar, the 06/18/2020

NOTIFICATION

GOVERNMENT OF KHYBER PAKHTUNKHWA
 ESTABLISHMENT DEPARTMENT
 (REGULATION-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.

(WAJDAH LATIF
DEPUTY SECRETARY (POLICY)

[Handwritten signature]

[Handwritten notes and dates]

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

Copy forwarded to him:
Rtdl. Of even No of this

[Handwritten initials]

Section Officer (Policy)

[Handwritten signature]

Section Officer (Policy)

[Handwritten signature]

2011, please.

Further, those officers/staffs 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.

3. Furthermore, those officers/staffs who do not comply with promotion order shall be liable to accept promotion in every condition.

The basic rationale behind the debarment rule is aimed at preventing a prevalent from temptation for illicit gain by seeking to a single lucrative position or to prevent those who tend to forge promotion to evade post-employment or show lack of capacity to tackle higher responsibilities in case of promotion. Therefore, it is obligatory upon every civil servant to accept promotion in every condition.

1. The basic rationale behind the debarment rule is aimed at preventing a prevalent from temptation for illicit gain by seeking to a single lucrative position or to prevent those who tend to forge promotion to evade post-employment or show lack of capacity to tackle higher responsibilities in case of promotion. Therefore, it is obligatory upon every civil servant to accept promotion in every condition.

2. Furthermore, those officers/staffs who do not comply with promotion order shall be liable to accept promotion in every condition.

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

Dear Sir,

I am directed to refer to your letter No. HQ/HRM-Myk/2023-24 dated 18.01.2023 in the subject noted above and to state that sub-rule 23 of Rule-7 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 stands deleted vide this departmental notification dated 05.08.2020. Thus, no provision exists to debar or forge promotion.

The Government of Khyber Pakhtunkhwa
Ministry of Human Resource Development

GOVERNMENT OF KHYBER PAKHTUNKHWA
HUMAN RESOURCE DEVELOPMENT DEPARTMENT
Islamabad
Dated: Islamabad the June 06, 2023



6.2

Annexure - C

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

Fr. SO (Primary-M)E&SED/2-6/2023
Lahad Peshawar the. June 25th. 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: MEMORANDUM REGARDING DELETION OF RULE 7(5) IN THE KHYBER
PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION
AND TRANSFER) RULES, 1989.

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

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

Encl: AA

(MUHAMMAD ISHAQ)
SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

SECTION OFFICER (PRIMARY MALE)

B/c -11-
No 50 (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(5) IN THE KHYBER
PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION
AND TRANSFER) RULES, 1989.

I am directed to refer to the subject noted above and to enclose here with a letter of Establishment Department letter No. 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 (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.

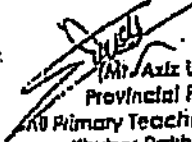
SR	NAME	DESIGNATION
1	Mr. Fazal Wahid	Deputy Director Establishment of Directorate Elementary & Secondary Education Department
2	Mr. Aziz Ullah	Provincial President All Primary Teachers Association Khyber Pakhtunkhwa
3	Mr. Razaqat Ullah	General Secretary APTA Peshawar
4	Muhammad Ishaq	Section Officer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

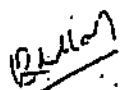
2. The meeting started with recitation from The Holy Quran. The chair welcomed the participants. The Deputy Director (Establishment) of Directorate of Elementary & Secondary Education briefed the forum regarding agenda item in detail.

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

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


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


(Mr. Aziz Ullah)
Provincial President
All Primary Teachers Association
Khyber Pakhtunkhwa


(Mr. Razaqat Ullah)
General Secretary APTA
Peshawar


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

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



-13-
-B/C-

MINUTES OF THE MEETING REGARDING APPLICATION SUBMITTED BY MR AZIZ ULLAH
PROVINCIAL PRESIDENT ALL PRIMARY TEACHERS ASSOCIATION KHYBER PAKHTUNKHWA
REGARDING OF DELETION OF RULE 7(5) IN THE CIVIL SERVANT (APPOINTMENT, PROMOTION
& TRANSFER RULES 1999).

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

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

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

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

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

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

Provincial President
All Primary Teachers Association
Khyber Pakhtunkhwa

(Mr. Razaqat Ullah)
General Secretary APTA
Peshawar

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

(Abdullah)

Additional Secretary (Establishment)



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WP 4442-2023 AZIZULLAH VS GOVT OF POK

Asstt. Director (Establish-1)
Elementary & Secondary Education
Khyber Pakhtunkhwa

[Handwritten signature]
Asstt. Director (Establish-1)
Elementary & Secondary Education
Khyber Pakhtunkhwa
21/7/2023

Copy of the above is as:
1. PA to Director, Local Directorate.
2. Master Copy.

The case is submitted for perusal and necessary actions please.
Departmental Committee.
Teachers hold NO-16 may be exempted of implications of the amendment in the rules and
75) have affected negatively a huge number of female teachers. That it is proposed that
in view of the above, this office is of considered opinion that the deletion of Rules
has been asked for submission of consolidated case.
Chairman of the Provincial Council of Education, Peshawar, Khyber Pakhtunkhwa, has
that in the list of the members of meeting held on 08-08-2023, that under the
(Primary) 5550/2-1/1/2023 dated 13-06-2023.
The same was received by this office from your good office vide letter No.50
civil servants to accept promotion under every condition.
that there shall be provision to decline or forgo promotion. It is obligatory upon every
Wing) vide letter No.50 (Policy) 5550/1-1/2023 dated 06-06-2023 categorically stated
that the Government of Khyber Pakhtunkhwa Establishment Department (Regulation
No.50 (Primary) 5550/2-1/1/2023 for necessary guidelines.
That you have forwarded the same to the quarter concerned vide letter
promotional.
(ii) It is the responsibility of the civil servants to either accept or turn down the offer of
No.6987 dated 06-07-2023.
That this office has been guided by your good office in the following words vide letter
wide notification No. 50R-VI (E&AD)/1-1/2020 dated 06-08-2020.
That Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing)
dated Rule 75) in the Civil Servants (Appointment, Promotion & Transfer Rules 1980)
G. Mervin of the Ministry of the Government of the Province of the Punjab dated 10-07-2023 on the subject cited above and to
person try to history about the background of the case as under

Subject: MINUTES OF THE MEETING
The Section Officer (Primary-Head),
Elementary & Secondary Education Department,
Khyber Pakhtunkhwa Peshawar.

No. 8145
Khyber Pakhtunkhwa, Peshawar
Phone: 091-922311
Email: estab@kpk.gov.pk



[Handwritten signature]

2. Master Copy
1. PA to Director Local Directorate
Copy of the above to:
Richard 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 effected negatively a huge members of female teachers.

That in light of the minutes of the meeting dated 6-07-2023 held under the Chairmanship of Hon. Additional Secretary Education at his office. This office has been asked for submission of consolidated case.
That the government of KP-ED (Regulation Wing) vide letter No. SO (Policy) EQ/1-2/2020 dated 6-06-2023 comparatively stated that there exists no provision to decline / forgo promotion, it is obligatory upon every civil servant to accept promotion under every condition.

That your good office forwarded the same to quarters concerned vide letter No. SO (Promotion) EQ/ED/2-2/Appointment/2023 for necessary guidance.
That this office sought guidance from your good office in the following words vide letter No. 683 dated 06-07-2023:
(i) Now it is obligatory upon civil servant to accept promotion.
(ii) It is prerogative of civil servant to either accept/demand the offer of promotion.
That Government of KP Establishment department (Regulation Wing) dated rule 7(S) in Civil Servant (Appointment, Promotion, Transfer etc 1997) with notification No. N. 3300/1-8/2020 dated 06-08-2020, present brief history, about background of case as under:

Minister of meeting/PT/2023 dated 30-7-2023 on subject cited above and to
Dear Sir, I am directed to refer to letter No. (SO. Promog-M) EQ/ED/5-1/6/2023/ dated 15-1-2023 on subject cited above and to
Subject: Minutes of meeting
KPR, Peshawar.

Section Officer (Female Male)
Elementary & Secondary Education Department
KPR, Peshawar.
To:
DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION, KPR
PESHAWAR
(21-7-2023)

Scanned with CamScanner

SECTION OFFICER (PRIMARY MALE)

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

Copy forwarded to the:

SECTION OFFICER (PRIMARY MALE)

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

2. In this connection it is submitted that in some cases lady teachers of primary schools 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.

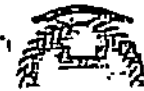
1 am directed to refer to your letter No. SO(Policy)/ERAD/1-3/2020 dated 06 June 2023 and to state that after deletion of rule 7(5) Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion & Transfer Rules 1989) it has been intimated that those officers/officials who do not comply with promotion order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

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

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

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

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



Annexure E

[Handwritten signature]

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

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

In this connection it is submitted that in some cases locally 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 local teacher in primary schools.

Dear Sir,
I am directed to refer to your letter No. SO (Primary) /E&AD /1-3/2020 dated 8th June 2023 and to state that after deletion of Rule 7(5) Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion and Transfer Rules 1989) it has been intimated that those officers/officials who do not comply with promotion order of the competent authority or try to evade promotion through different means shall be proceed under Khyber Pakhtunkhwa Civil Servant (Efficiency and Discipline) Rule 2019.

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

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

No. SO (Primary-M) E&SE/D /8-8/ Appointment - Rule /2023
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-11), Establishment Department.
3. PS to Deputy Secretary (Policy), Establishment Department.

WP442-2023 AZIZULAH VS GOVT OF PK43

-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(5) IN THE
KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT,
PROMOTION AND TRANSFER) RULES, 1989.

Dear Sir,

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

Yours faithfully,

Section Officer (Policy)

Enclst. Of even No & date

Copy forwarded to the:-

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

Section Officer (Policy)

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/1-3/2020, 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 28/01/2024

محمد ایوب خان



MUHAMMAD AYUB KHAN
S/O AYAZ KHAN,
PS HT

VAKALAT NAMA

BEFORE THE SERVICE TRIBUNAL PESHAWAR

MUHAMMAD AYUB KHAN

Appellant

Versus

Government of KP & others

Respondents

I (the Appellant)

do hereby appoint and retain

MUHAMMAD MUAZZAM BUTT ASC, MUHAMMAD ADEEL BUTT AHC

BASSAM AHMAD SIDDIQUI AHC

&

ASSOCIATES OF MUAZZAM LAW FIRM

to act and appear for me in the above Suit and on my behalf to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of any petition connected with the same or any decree or order passed therein and Applications for review to file and obtain return of documents, and to represent me/us and to take all necessary steps on my/our behalf in the above matter.

I agree to ratify all acts done by the aforesaid Advocate in pursuance of this Authority.



APPELLANT

ACCEPTED

MUHAMMAD MUAZZAM BUTT
Advocate Supreme Court

MUHAMMAD ADEEL BUTT
Advocate High Court

BASSAM AHMAD SIDDIQUI
Advocate High Court