

FORM OF ORDER SHEET

Court of _____

Appeal No. 2318 /2024

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

By order of the Chairman


REGISTRAR

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

C.M No _____ -P of 2024

In Ref to

Service Appeal No 2318 2024


Mashal 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 2318 /2024

Mashal Khan Son of Fazal Ur Rehman, PSHT

GPS No 1 Kot Kashmir Tehsil & District Lakki Marwat

.....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

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 set-aside.

- 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.
Masha Khan
 Deponent

Masha Khan
 Appellant

Through

Muhammad Muazzam Butt
 Advocate Supreme Court

Muhammad Adeel Butt
 Advocate High Court

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

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

C.M No _____-P of 2024

In Ref to

Service Appeal No _____ 2024

Mashal 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.

Mashal Khan
Deponent

Through

Mashal Khan
Appellant

Muhammad Muazzam Butt
Advocate Supreme Court

Adeel Butt
Muhammad Adeel Butt
Advocate High Court

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

6
Annexure A

21

Personal Information of Mr MASHAL KHAN d/w/s of FAZAL

Personnel Number: 00306251 CNIC: 1120103876227
Date of Birth: 01.05.1972 Entry into Govt. Service: 10.10.1992

NTN:
Length of Service: 31 Years 03 Months 023 Days

Employment Category: Active Temporary

Designation: PRIMARY SCHOOL HEAD TEACH 80673590-DISTRICT GOVERNMENT KHYBE

DDO Code: LK6682-Semai Naurang District Lakki Murwat

Payroll Section: 001 GPF Section: 005 Cash Center: 14

GPF A/C No: EDU-BU-11144 GPF Interest applied GPF Balance: 417,922.00 (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
2148	15% Adhoc Relief All-2013	985.00	2199	Adhoc Relief Allow @10%	659.00
2316	Teaching Allowance 2021	3,224.00	2341	Dispr. Red All 15% 2022KP	7,006.00
2347	Adhoc Rel Al 15% 22(PS17)	7,006.00	2378	Adhoc Relief All 2023 35%	25,004.00

Deductions - General

Wage type		Amount	Wage type		Amount
3015	GPF Subscription	-4,290.00	3501	Benevolent Fund	-1,200.00
3609	Income Tax	-3,299.00	4004	R. Benefits & Death Comp:	-600.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance

Deductions - Income Tax

Payable: 51,538.38 Recovered till JAN-2024: 22,163.00 Exempted: 12883.88 Recoverable: 16,491.50

Gross Pay (Rs.): 125,184.00 Deductions: (Rs.): -9,389.00 Net Pay: (Rs.): 115,795.00

Payee Name: MASHAL KHAN

Account Number: 1431-6

Bank Details: NATIONAL BANK OF PAKISTAN, 231391 SARA-I-GAMBEELA SARA-I-GAMBEELA, LAKKI MARWAT

Leaves: Opening Balance: Aailed: Earned: Balance:

Permanent Address:

City: LAKKI

Temp. Address:

City:

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Email: mashalkhanpst6@gmail.com

S. D. N. O. P. S.
LAKKI

[Handwritten signature and notes in Urdu]

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/02.02.2024/20:12:35)

DIST: EDUCATION OFFICER (MALE) PRY: BANNU.

6-A

APPOINTMENT ON MERIT BASIS

The following PTC passed candidates are hereby appointed against vacant/ N.C. Posts in Bannu. Plus usual allowances as admissible under the existing rules and policy issued by Govt. of NWFP, Education Department notification No. S.O. (P-E)-6-1/91, dated 18.1.1992 in the interest of public service with effect from 1.9.92 after summer vacation.

S.No.	No. in merit list.	Name of candidat with father's name/address.	School of posting.	Remarks.
1.	2.	3.	4.	5.

ZONE No. 58.


1.	30	Mohd Sharif Khan S/O Mohd- Usman Khan H.NO.236/C Mah: Chandni Chowk Bannu.	GPS, Kot Adil	Vice Azad Khan RTD;
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ZONE No. 59.

1.	39.	Mohd Haroon Khan S/O Haqdar Ali Khan of Shahbaz Azmat Khel Bannu.	GPS, Palasai Wazir Bannu.	Against N.C.Post
2.	40.	Jamaluddin Khan S/O Mohd Hashim Khan of Kakki Bannu.	do	do

ZONE No. 62.

1.	27.	Rustam Khan S/O Abdul Maqsood of Chak Sukamand.	GPS, Toor Lakki Khel.	do
2.	28.	Mohd Ali Shah S/O Gul Habib Shah of Sayed Abad S/Naurang.	do	do
3.	29.	Sardar Khan S/O Mohd Azam Khan of Behram Khel.	GPS, Tajori No.1	Vice Anulam Yousuf RTD.
4.	30.	Hamidullah Khan S/O Rehmatullah Khan of Nar Bakhmal Ahmad Zai.	GPS, Hussain Abad Lakki.	Against N.C.P.
5.	31.	Rehmatullah Khan S/O Abdul-Hanan of Langer Pacca.	GPS, Bakhmal Ahmad Zai.	do
6.	32.	Bhabir Hamza S/O Amir Hamza of Tabi Mura.	do	do
7.	33.	Rehmat S/O Mohd Rafiq Sultan Mahmood.	GPS, Nar Bakhmal Ahmad Zai.	do
8.	34.	Sultan Mohd S/O Niaz Mohd of Behram Khel.	GPS, Bakhmal Ahmad Zai.	do
9.	35.	Matiullah Khan S/O Ghulam Jelani of Kot Kashmir.	GPS, Khawaja Khel.	do
10.	36.	Masahid Khan S/O Farad Rahman of Kot Kashmir.	GPS, Nar Bakhmal Ahmad Zai.	do
11.	37.	Intiaz Khan S/O Damsaz Khan of Kotka Michan Khel P.O.Kot Kashmir.	GPS, Azghar Khel Top Takhti Khel.	V/Post.

attested

 Govt Post Bannu

6-B

Page No. 2

~~1. The candidates should produce their original certificates from the District Education Office, Bannu.~~

NOTES:

- 1. Charge report should be submitted to all concerned.
- 2. NO. T/D is allowed to all.
- 3. The candidates should produce their original certificates from the District Education Office, Bannu.
- 4. The appointment is purely on temporary basis and liable to termination on any time without assigning any reason.
- 5. The Head of the Office are required to check their original certificates before handing over charge.
- 6. If the candidates did not take over charge within 15 days from the issue of their appointment order would stand automatically cancelled.
- 7. The said appointment have to be cancelled.
- 8. If the age exceeds from the prescribed limit of 25 years and below 18 years should not be handed over charge before sanction of age relaxation by the competent authority.
- 9. The candidates should produce their original certificates from the District Education Office, Bannu.

(M) D. H. (M) BANNU.

ENDST: NC 112-31 / A-2 PTC Appnt: file, dated Bannu, the 30.5.92.

Copy for information and necessary action to the:-

- 1. Director P.T. Education, W.P.F., Hayatabad Peshawar.
- 2. P.A. to Director of P.T. Edu. Hayatabad Peshawar.
- 3-4. Dy. DDO (M), Local Office/ Superintendent Local Office.
- 5-6. SDEO (M), Bannu Lakki.
- 7-18. Candidates concerned.
- 19-20. Office file/ P.F./ Zone No. 58, 59 & Zone No. 62.

(Signature)
District Education Officer
(Male) P.T. Bannu.

ATTESTED



DEPUTY SECRETARY (POLICY)
(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 Government, Khyber Pakhtunkhwa.
- 6. All Divisional Commissioners in Khyber Pakhtunkhwa.
- 7. All Heads of Attached Departments in Khyber Pakhtunkhwa.
- 8. All Autonomous/Semi Autonomous Bodies in Khyber Pakhtunkhwa.
- 9. All Deputy Commissioners in Khyber Pakhtunkhwa.
- 10. The Registrar, 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 Section Officer (Admn), Administration Department.
- 16. The Registrar, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
- 17. The Registrar, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
- 18. The Registrar, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
- 19. The Registrar, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
- 20. The Registrar, Khyber Pakhtunkhwa Public Service Commission, Peshawar.

5/10/20
10/10/20
11/10/20
12/10/20
13/10/20
14/10/20
15/10/20
16/10/20
17/10/20
18/10/20
19/10/20
20/10/20

CHIEF SECRETARY
GOVERNMENT OF THE KHYBER PAKHTUNKHWA

DATE AND EVEN DATE

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

NOTIFICATION
Dated Peshawar, the 06/18/2020
In exercise of the powers conferred by section 29 of the Khyber Pakhtunkhwa Civil Servants Act No. XVIII of 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:

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.

(WARDAH LATIF
DEPUTY SECRETARY (POLICY)

[Handwritten signature]

21.6.23
2023
21.6.23

- 1. PS to Deputy Secretary (Reg) Establishment Department
 - 2. PA to Additional Secretary (Reg-III), Establishment Department
 - 3. PS to Deputy Secretary (Policy), Establishment Department
- Copy forwarded to them.

Under. Not even No & Date

[Handwritten signature]
Secretary (Policy)

[Handwritten signature]
Secretary (Policy)

[Handwritten initials]

Yours faithfully,

Further, those officers/staff who do not comply with promotion order of the competent authority or try to evade promotion through different means shall be proceeded against under Rules. For promotion Civil Service (Promotion & Discipline) Rules, 2011, please

3. Furthermore, those officers/staff who do not comply with promotion order of the competent authority or try to evade promotion through different means shall be proceeded against under Rules. For promotion Civil Service (Promotion & Discipline) Rules, 2011, please

The basic rationale behind the above rule is to prevent a promotion order from being issued to an officer who is not eligible for promotion or to prevent those who lead to evade promotion or show lack of capacity to discharge their responsibilities in case of promotion. Therefore, it is obligatory upon every civil servant to accept promotion in every condition.

2. The basic rationale behind the above rule is to prevent a promotion order from being issued to an officer who is not eligible for promotion or to prevent those who lead to evade promotion or show lack of capacity to discharge their responsibilities in case of promotion. Therefore, it is obligatory upon every civil servant to accept promotion in every condition.

1. I am directed to refer to your letter No. SO/Adm-My/24927-2023 dated 18.04.2023 on the subject noted above and to state that Sub-rule 2A of Rule-7 of Rules for Promotion Civil Service (Appointment, Promotion and Transfer) Rules, 1989 stands deleted with effect from 05.08.2020) thus, no provision exists to decline or forgo promotion.

Subject: QUARANCE REGARDING PROMOTION OF MR. AZIZULLAH IN THE ESTABLISHMENT DEPARTMENT, POK.

The Government of Khyber Pakhtunkhwa
Secretary & Secretary (Establishment)

GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
No. SO/Adm/24927-2023
Dated: Islamabad, 18th June 2023



Annexure - C

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

No. SO (Primary-MYE&SED/2-6/2023
Lalaj 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

[Handwritten Signature]
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 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

[Handwritten mark]

[Handwritten Signature]
(MUHAMMAD SHAO)
SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

[Handwritten mark]

[Handwritten Signature]
SECTION OFFICER (PRIMARY MALE)
26/6/23

[Large Handwritten Signature]

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(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)



MINUTES OF THE MEETING REGARDING APPLICATION SUBMITTED BY MR. AZIZ ULLAH PROVINCIAL PRESIDENT ALL PRIMARY TEACHERS ASSOCIATION KHYBER PAKHTUNKHWA REGARDING DELETION OF RULE 7(3) 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.


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

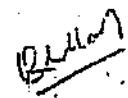
2. The meeting started with recitation from the Holy Quran. The chair welcomed the participants. The Deputy Director (Establishment) of Directorate of Elementary & Secondary Education briefed the forum regarding agenda item in detail.

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
E&SE Department


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


(Mr. Razaqul Ullah)
General Secretary APTA
Peshawar


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

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



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-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/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 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

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/SS7/M/General Cases. Dated 21/7/2023
Phone: 091-9223344 Email: estab@mentina1@gmail.com

To

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

Subject: MINUTES OF THE MEETING
Dear Sir,

I am directed to refer to the letter No.SO(Primary-M)E&SED/3-1/
G.Misc/Minutes of the Meeting/PS7/2023 dated 10-07-2023 on the subject cited above and in
present brief history about the background of the case as under:

- That Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing) deleted Rule 7(5) in the Civil Servants (Appointment, promotion & Transfer Rules 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 06-07-2023.
 - (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-M) E&SED/3-2/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 exists no provision to decline or forgo promotion. It is obligatory upon every civil servant to accept promotion under every condition.
- The same was received by this office from your good office vide letter No.SO (Primary-M) E&SED/3-2/Appointment/2023 dated 12-06-2023.
- That, in the light of the minutes of meeting dated 6-07-2023 held under the Chairmanship of Hon. Additional Secretary Establishment at his office this office, has been asked for submission of consolidated case.

In view of the above, this office is of considered opinion that the deletion of Rules 7(5) have affected negatively a huge numbers of Female Teachers. Thus it is proposed that Teachers having DPS-16 may be exempted of implications of the amendment in the rules if provided they submit their written refusal prior to conduction of the meeting of Departmental Promotion Committee.

The case is submitted for perusal and necessary actions please.

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

Encls: No. Copy of the above is to:-

1. PA to Director Local Directorate.
2. Master Copy.

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

[Handwritten signature]

Asst. Director
Elementary & Secondary Education
Hydrabad

Copy of the above to:
1. PD to Director Local Directorate
2. Master Copy

In view of the above, this office is of considered opinion that the deletion of Rules 7(5) have affected negatively a huge members of female teachers.

The case is submitted for perusal and necessary action please.

That in light of the minutes of the meeting dated 6-7-2023 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. SD (Policy) EQAD/1-2/2020 dated 6-06-2023 accordingly stated that there exists no provision to declare / force promotion. It is obligatory upon every civil servant to accept promotion under every condition.

That your good office forwarded the memo to quanta concerned vide letter No. SD (Promotion) EQSD/2-2/Appointment-2023 for necessary guidance.

That this office sought guidance from your good office in the following words vide letter No. 6983 dated 06-07-2023.

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

(ii) If a civil servant to other accept/humdown the offer of promotion.

That Government of KP Establishment department (Regulation wing) added rule 7(5) in Civil Servants (Appointment, Promotion, Transfer Rule 1997) vide notification No. No. SDR-VI (EQAD) 1-3/2020 dated 06-08-2020.

That brief history, along background of case as under.

Minister of meeting PST/2023 dated 30-7-2023 on subject cited above and to

Dear Sir, I am directed to refer to letter No. (SD. Promog-M) EQSD/5-1/6/2023/

Subject: Minutes of meeting
(KP), Peshawar
Elementary & Secondary Education Department
Section Officer (Primary-Male)
Peshawar
(21-7-2023)

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION, KPK



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

No. SO(Primary-M)E&SED/2-2/Appointment-Rule /2023
Peshawar Dated 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)/ E&AD/ 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 ISMAIL)
SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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


SECTION OFFICER (PRIMARY MALE)
26/8/23

Scanned with CamScanner

[Handwritten signature]

1. Director E&SE Khyber Pakhtunkhwa
2. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa
Copy forwarded to:
(Muhammad Ishaq)
Section Officer (Primary)
(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.

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.

1-3/2020 dated 01 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 2011.

I am directed to refer to your letter No. S.O. (Primary) (P&T) /E&AD

Dear Sir,

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. S. (Primary-M) E&SE/D-8-2/1
Appointment - Rule/2023
Peshawar Dated 22nd 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 23.06.2023 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 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.

WP4402-2023 AZIZULAH VS GOVT OF PK

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-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)

Endst. Of even No & date

Copy forwarded to the:-

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

Section Officer (Policy)

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 28/10/2024

Mashal Khan



MASHAL KHAN
SIO FAZAL UR REHMAN
PSHT

VAKALAT NAMA

BEFORE THE SERVICE TRIBUNAL PESHAWAR

MASHAL KHAN
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.

Mashal Khan

APPELLANT

ACCEPTED

[Signature]
MUHAMMAD MUAZZAM BUTT
Advocate Supreme Court

[Signature]
MUHAMMAD ADEEL BUTT
Advocate High Court

[Signature]
BASSAM AHMAD SIDDIQUI
Advocate High Court