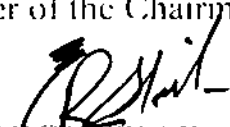


FORM OF ORDER SHEET

Court of _____

Appeal No. 2347 /2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	06/11/2024	<p>The appeal presented today by Mr. Muhammad Muazzam Butt Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 14/11.2024. 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 23472024

Allah Muhammad

VERSUS

Secretary to Government of Khyber Pakhtunkhwa, & others

INDEX

S#	DESCRIPTION OF DOCUMENTS	ANNEX	PAGES
1.	Appeal and Verification	*	1 - 6
2.	Application for suspension	*	7
3.	Copy of Monthly Salary Account	A	8 - 9
4.	Copy of notification No. SD (Policy) EV AD/1-3/2020 dated 06/08/2020	B	10 - 11
5.	Copy of impugned Letter dated June 6 th , 2023	C	12 - 14
6.	Copy of Minutes of meeting dated 06-07-2023	D	15 - 18
7.	Copy of Letter dated 23-08-2023	E	19 - 20
8.	Copy of Impugned letter dated 07.09-2023	F	21 - 22
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ADVOCATE

M. Muazzam Butt

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

In Ref to

Service Appeal No 2347 /2024

Allah Muhammad Son of Mumtaz Gul Resident of Post office abad Tehsil & District Karak

.....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

.....Respondents

SERVICE APPEAL UNDER SECTION 4 OF KPK
SERVICE TRIBUNAL ACT 1974, AGAINST THE
IMPUGNED NOTIFICATION BEARING
NO.SO(POLICY)E&AD/1-312020, DATED 06/08/2020,
COMMUNICATED TO RESPONDENT NO. 2 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

P R A Y E R:

ON ACCEPTANCE OF INSTANT SERVICE APPEAL,
THE IMPUGNED NOTIFICATION BEARING NO: SO
(POLICY) E&AD/1-312020, DATED 06/08/2020,
COMMUNICATED TO RESPONDENT NO. 2 VIDE
LETTER D06/06/2023, 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 PSHT in the year 01-12-1990
Copy of Monthly Salary account is annexed as **Annexure A**
2. That as per Khyber Pakhtunkhwa (Appointment/ Promotion/ Transfer) Rules, 1989, as well as in other sister services of the other Provinces and Federation as well, availing of promotion by the employees is always optional and the employees as a matter of right may avail or forego their promotion and the next employee in seniority list is to be promoted.
Copy of the relevant rules is annexed as **Annexure B**
3. That some employees specifically have foregone their promotion as they could not serve in the areas where there is no facility of accommodation and no houses of their elders are available to look after them in far-flung and solitary mountainous hard areas, and as per Section 25 of per KP Civil Servant Act, 1973, rules to the extent of terms and condition is framed by the Chief Minister and such promotion rules are not made applicable with retrospective effect. The rules framed are published in the Gazette notification and part and parcel of KP Civil Servant Appointment, Transfer and Promotion Rules 1989.
4. That Government of K.P without following the rules position mentioned in Para 6 above promulgated Notification No. SO (Policy) E&AD/1 3/2020, dated 06/08/2020, communicated to Respondent No.2 vide letter dated 06/06/23

wherein it has been made mandatory to the employees to avail the promotion, otherwise, disciplinary action shall be taken against the employees. The impugned Notification is reproduced as under:-

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

5. That as per notification No. SD (Policy) /EDAD/1- 3/2020 dated 06/08/2020, the right of foregoing of promotion was withdrawn and the Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing) deleted Rule 7(5) in the Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 vide notification no SOR-VI (E & AD)/1-2/2020 dated 06-08-2020. Copy of notification No. SD (Policy) EV AD/1- 3/2020 dated 06/08/2020 is attached as **Annexure C**
6. That the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar asked for guidance regarding deletion of Rule 7(5) in Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 in respect of which the respondent No. 1 vide its letter No. SO(Policy) E&AD/1- 3/2020 dated Peshawar the June 06th, 2023 directed the respondent No 3 (Directorate of Elementary & Secondary Education) that Rule 7(5) in the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 has been deleted vide notification dated 06-08-2020 and ,therefore, no provision exists to decline or forgo promotion and it is obligatory upon every civil servant to accept promotion under every condition. Copy of Impugned Letter dated June 06th, 2023 is attached as **Annexure D**
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 E**

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/AppointmentRule/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 F**
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 G**
10. That the Appellant with other employees filed Writ Petition No. 973-A/2013 and 1101-A/2023, through President APTA before the Honorable High Court Peshawar and obtained restraining order dated 14/09/2023 to cover the mandatory statutory period of time.
Copies of restraining order dated 14/09/2023 and Writ Petition No. 4442-P 2023 are annexed as **Annexure "H & I"**
11. 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 "J & K"**
12. That feeling aggrieved from the letters dated 06-06-2023 and 07-09-2023 and the deletion of Rule 7(5) in the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989; the petitioners filed this
Hence, the instant service appeal is filed on the following grounds:-

GROUND:-

- a. That as per various judgments it is established and settled principle that executive notifications cannot be given retrospective effect. A valid Notification which confers rights is always applicable with prospective effect, however, if an amendment notification that adversely effects the interests of the employees or causes disadvantage to the employee is not tenable in the eyes of law. The notification/ guidance dated 06/08/2020 06/06/2023 are liable to be setaside.
- 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 1-2020 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 60/06/2023 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 Allah Muhammad Son of Mumtaz Gul Resident of Post office abad Tehsil & District Karak do hereby solemnly affirm and declare that the contents of foregoing application are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court

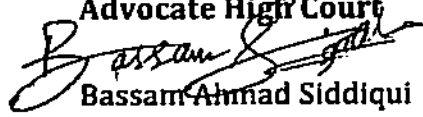

Deponent

Through


Appellant


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 _____/2024

In

Service Appeal No _____/2024

Allah Muhammad

v/s

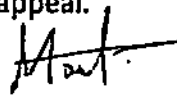
Government of KP & others

APPLICATION FOR SUSPENSION OF IMPUGNED NOTIFICATION SO. (POLICY)E&AD/1-3/2020 NO. DATED 06/08/2023 AND PROMOTION ORDER DATED 29/08/2023 TILL FINAL DISPOSAL OF MAIN SERVICE APPEAL.

Respectfully Sheweth:-

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 favour
3. There is likelihood of success of the appellant in the lis. The impugned notification dated 06/06/2023 is against Section 25 of KP Civil Servant Act, 1973 and promotion order dated 29/08/2023 of the appellant/applicant is also to be set-aside.
4. That valuable right of the appellant is involved.

In view of the above it is humbly prayed that notification No. SO(POLICY)E&Ad/1-3/2020, dated 06/06/2023 and promotion order dated 29/08/2023 to the extent of appellant/applicant may graciously be ordered to be suspended till final disposal of the main service appeal.




Appellant

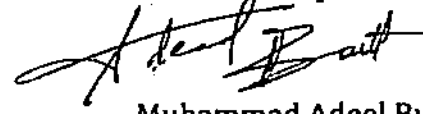
AFFIDAVIT:

I Allah Muhammad Son of Mumtaz Gul Resident of Post office abad Tehsil & District Karak do hereby solemnly affirm and declare that the contents of foregoing application are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court


Deponent

through


Muhammad Muazzam Butt
Advocate Supreme Court


Muhammad Adeel Butt
Advocate High Court

-8-

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

Annexure **A**



Personal Information of Mr ALLAH MOHAMMAD d/w/s of MUMTAZ GUL

Personnel Number: 00302161

CNIC: 1420257481331

NTN:

Date of Birth: 09.01.1971

Entry into Govt. Service: 01.12.1990

Length of Service: 33 Years 02 Months 001 Days

Employment Category: Active Permanent

Designation: PRIMARY SCHOOL HEAD TEACH

80002665-DISTRICT GOVERNMENT KHYBE

DDO Code: KK6007-Deputy District Officer(M) Primary KARAK

Payroll Section: 001

GPF Section: 001

Cash Center: 21

GPF A/C No:

GPF Interest applied

GPF Balance:

1,149,507.00 (provisional)

Vendor Number: -

Pay and Allowances:

Pay scale: BPS For - 2022

Pay Scale Type: Civil

BPS: 15

Pay Stage: 27

Wage type		Amount	Wage type		Amount
0001	Basic Pay	77,380.00	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	1,055.00
2199	Adhoc Relief Allow @10%	705.00	2316	Teaching Allowance 2021	3,224.00
2341	Dispr. Red All 15% 2022KP	7,406.00	2347	Adhoc Rel Al 15% 22(PS17)	7,406.00
2378	Adhoc Relief All 2023 35%	26,390.00			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	-3,889.00	3990	Emp.Edu. Fund KPK	-135.00
4004	R. Benefits & Death Comp:	-600.00			0.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance

Deductions - Income Tax

Payable: 60,991.38 Recovered till JAN-2024: 26,299.00 Exempted: 15247.68 Recoverable: 19,444.70

Gross Pay (Rs.): 131,486.00 Deductions: (Rs.): -10,114.00 Net Pay: (Rs.): 121,372.00

Payee Name: ALLAH MOHAMMAD

Account Number: 785-9

Bank Details: NATIONAL BANK OF PAKISTAN, 231509 SABIR ABAD SABIR ABAD KARAK, KARAK

Leaves: Opening Balance: Aailed: Earned: Ualance:

Permanent Address: KK

City: KARAK

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City:

Email: allahmuhammadktk@gmail.com

System generated document in accordance with APPM 4.6.12.9(50398429/26.01.2024/v3.0)

** All amounts are in Pak Rupees*

** Errors & omissions excepted (SERVICES/02.02.2024/20:11:10)*

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) KARAK.

APPOINTMENT:

As desired by Mr. Farid Toofan, Minister for Irrigation, Public Health & Sanitation, Mr. Engg. N. W. P., Mr. Allah Mohammed S/O Mustafa sbr Resident of Sule, 11113, is hereby appointed as P.T.C (Trained) Teacher against vacant post of P.T.C. Teacher at School, Pala Szangi (B. S. Shah) in B.S-7 (No. 750-31-1270) upon equal consideration in the interest of public service from the date of taking over charge of his post.

TERMS & CONDITIONS:

1. His appointment is purely temporary basis and his services liable to termination at any time without any reason or prior notice.
2. In case resignation he will have to give one month prior notice to the Department or forfeit one month's pay in lieu thereof.
3. He is required to produce Health and Age Certificate from the concerned Deputy Medical Superintendent.
4. He should not be hand over charge if his age is less than 18 years or above 25 years.
5. Charge report should be submitted to all concerned.
6. NO DA/DA is allowed.

CHIEF CLERK, KARAK
DISTRICT EDUCATION OFFICER
(MALE) KARAK.

Order No. 76137-39/II-AR/2001 Dated Karak, the 21/11/2001

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

1. Farid Toofan, Minister for Irrigation, Public Health & Sanitation, Mr. Engg. N. W. P. in his directives for information please.
2. Sub Divisional Education Officer (Male) B. S. Shah.
3. Candidate concerned.

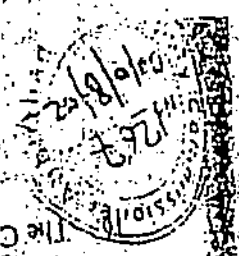
[Signature]
DISTRICT EDUCATION OFFICER
(MALE) KARAK.

Handwritten initials: V.H. 1-2

ATTESTED

DEPUTY SECRETARY POLICY

Handwritten signature: M. Ghalib



- 1. Additional Chief Secretary, Govt. of Khyber Pakhtunkhwa, Peshawar.
- 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, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
- 11. The Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
- 12. The Secretary, E&A Department.
- 13. The Deputy Director (Adm), Administration Department with the request to arrange 20 gazette copies.
- 14. The Section Officer (Adm), Administration Department.
- 15. The Caraker, Administration Department.

LIST NO. & EVEN DATE

CHIEF SECRETARY GOVERNMENT OF THE KHAYDER PAKHTUNKHWA

Article 17 sub-rule (5) shall be deleted.

AMENDMENT

Further amendment shall be made, namely:

(1) The Chief Minister of Khyber Pakhtunkhwa (Appointment, Promotion and Transfer) Rules, 1989, in the exercise of the powers conferred by section 107 of the Constitution of Khyber Pakhtunkhwa Act, No. X of 1973 (Khyber Pakhtunkhwa Act, No. X of 1973) shall be amended to read as follows:

NOTIFICATION

GOVERNMENT OF KHAYDER PAKHTUNKHWA ESTABLISHMENT DEPARTMENT

Annexure B

11

B/c

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)

Section Officer (Policy)

[Handwritten signature]

Section Officer (Policy)

[Handwritten signature]

Yours faithfully,

Further, those 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.

The basic rationale behind the deletion of the bid rule is aimed at preventing a civil servant from being eligible for a single lucrative position or to prevent those who tend to forge promotion to evade participating or show lack of capacity to take higher responsibilities in case of promotion. Therefore, it is obligatory upon every civil servant to accept promotion in every condition.

2/ Appointment dated 18.04.2023 in the subject noted above and to state that Sub-Rule (5) of Rule-7 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 stands deleted vide this department notification dated 08.08.2020; thus, no provision exists to decline or forge promotion.

I am directed to refer to your letter No. SO/Primary-M/2582/2023 dated 18.04.2023 in the subject noted above and to state that Sub-Rule (5) of Rule-7 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 stands deleted vide this department notification dated 08.08.2020; thus, no provision exists to decline or forge promotion.

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

Subject: GRABING DIRECTION OF RULE 7(S) IN THE CIVIL SERVICE REGULATIONS, 1989

Dear Sir,

GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
No. SO/Policy/KAD/1-2020
Dated: Islamabad the June 06, 2023



62

Annexure

[Handwritten mark]

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

Index, Of and No. & Date

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21.6.23

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13
GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
CIVIL SECRETARIAT PESHAWAR
(Phone No.091-9223507)

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

To

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

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

26/6/23

Subject: GUIDANCE REGARDING DELETION OF RULE 7(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

ac
(MUHAMMAD ISHAQ)
SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

ac
SECTION OFFICER (PRIMARY MALE)
26/6/23

- 14 -

B/c

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

To

The Director
Elementary & Secondary Education Department
Khyber Pakhtunhwa, 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 Pakhtunhwa.

SECTION OFFICER (PRIMARY MALE)

- 15 -

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


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

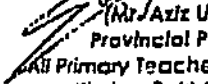
Sl	NAME	DESIGNATION
1	Mr. Fazal Wahid	Deputy Director Establishment of Directorate Elementary & Secondary Education Department
2	Mr. Aziz Ullah	Provincial President All Primary Teachers Association Khyber Pakhtunkhwa
3	Mr. Razaq Ullah	General Secretary APTA Peshawar
4	Muhammad Ishaq	Section Officer (Primary)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

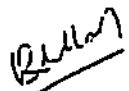
2. The meeting started with recitation from The Holy Quran. The chair welcomed the participants. The Deputy Director (Establishment) of Directorate of Elementary & Secondary Education briefed the forum regarding agenda item in detail.


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


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


(Mr. Razaq Ullah)
General Secretary APTA
Peshawar


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

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

16.
- B/C -

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

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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

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

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

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

Provincial President
All Primary Teachers Association
Khyber Pakhtunkhwa

(Mr. Razaqat Ullah)
General Secretary APTA
Peshawar

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

(Abdullah)

Additional Secretary (Establishment)



No. 8145

Khyber Pakhtunkhwa, Peshawar

/F.No. 34/SST/UGeneral Cases

Dated 21-7-2023

Phone: 091-9225344

Email: establishmentmale1@gmail.com

To

✓
The Section Officer (Primary-Mule),
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.M/Minutes of the Meeting/PST/2023 dated 10-07-2023 on the subject cited above and to present brief history about the background of the case as under:

- That Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing) deleted Rule 7(S) in the Civil Servants (Appointment, promotion & Transfer Rules 1989) vide notification No. Na. SOR-VI (E&AD)/1-3/2020 dated 06-08-2020.
- That this office sought guidance from your good office in the following words vide letter No.6987 dated 06-02-2023.
 - (i) Now it is obligatory upon the civil servant to accept Promotion in every condition.
 - (ii) It is the prerogative of the civil servant to either accept or turn down the offer of promotion.
- That your good office forwarded the same to the quarter concerned vide letter No.SO (Primary-M) E&SED/2-2/Appointment/2023 for necessary guidance.
- That the Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing) vide letter No.SO (Palley) 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/2-2/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(S) have affected negatively a huge numbers of Female Teachers. Thus it is proposed that Teachers below 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

Encl: 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

Asst. Director
Elementary & Secondary Education
Khyber Pakhtunkhwa

1. PA to Director Local Directorate
2. Master Copy

Copy of the above to:

Please.

The case is submitted for perusal and necessary action
In view of the above, this office is of considered opinion
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
consolidated case.
This office has been asked for submission of
that the decision of Rules 7(S) have affected negatively a huge
members of female teachers.

That the government of KP-ED (Regulation Wing) vide letter No. SD (Policy)
EQ/PO/1-2/2020 dated 5-06-2023 categorically stated that there exists
no provision to declare / forgo promotion. It is obligatory upon every civil
servant to accept promotion under every condition.
That in light of the minutes of the meeting dated 6-07-2023
held under the chairmanship of Hon. Additional Secretary Education
consolidated case.
This office has been asked for submission of
that the decision of Rules 7(S) have affected negatively a huge
members of female teachers.

I am directed to refer to letter No. (SO) Pkmy-1/5-1/6/MBL/
Minutes of meeting P/ST/2023 dated 30-7-2023 on subject cited above and to
present brief history, about background of case as under:
That Government of KP Establishment department (Regulation Wing)
dated rule 7(S) in Civil Servants (Appointment, Promotions, Transfer & etc) 1997
vide notification No. No. SOR-VI (EQAD)-1-3/2020 dated 06-08-2020.
That this office sought guidance from your good office in the following
words vide letter No. 6983 dated 06-08-2023
(i) Now it is obligatory upon civil servant to accept promotion.
(ii) It is prerogative of civil servant to either accept/reject the
offer of promotion.
That your good office forwarded the same to quarters concerned
vide letter No. SD (P/My-1) EQ/ED/1-2/Appointment/2023 for necessary
guidance.

Section Officer (Primary Male)
Elementary & Secondary Education Department
KPK, Peshawar
To: DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION, KPK
Peshawar
(21-7-2023)

- B/C -
- 18 -



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

Annexure E

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

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 05th 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 ISHAQ)
SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

(MUHAMMAD ISHAQ)
SECTION OFFICER (PRIMARY MALE)
20/8/23

Scanned with CamScanner

No. 5 (Primary-M) ESES / 8-8 /
Appointment - Rule / 2023
Peshawar Dated 23rd August 2023.

- 22 -

- B/c -

90

To
The Secretary to Government of Khyber Pakhtunkhwa,
Establishment and Administration Department,
Peshawar.
SUBJECT: Guidance regarding deletion of Rule 7(S) in the
Civil Servant (Appointment, Promotion & Transfer Rules
1989)

Dear Sir,
I am directed to refer to your letter No. 5 (Primary
Policy) / E / AD
1-3/2020 dated 04 June 2023 and to state that after
deletion of Rule 7(S) 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 2013.

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. Said amendment may be reconsidered to
the extent of lady teacher in primary schools.

Copy forwarded to;
1. Director ESES Khyber Pakhtunkhwa.
2. PS to Secretary, ESES Department of Education
(Muhammad Ishaq)
Section Officer (Primary
Mater)

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(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)

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.
- 

- 22

- 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)

23
Annexure 9

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

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

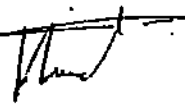
Sir/ Madam:-

Your Honorable authority promulgated Notification No. SO (Policy) E&AD/1 3/2020, dated 06/08/2020, communicated to Elementary & Secondary Education vide letter dated 06/06/23 wherein it has been made mandatory to the employees to avail the promotion, otherwise, disciplinary action shall be taken against the employees. That, as per notification No. SD (Policy) /EDAD/1- 3/2020 dated 06/08/2020, the right of foregoing of promotion was withdrawn and the Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing) deleted Rule 7(5) in the Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 vide notification no SOR-VI (E & AD)/1-2/2020 dated 06-08-2020. That the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar asked for guidance regarding deletion of Rule 7(5) in Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 in respect of which the Establishment Department vide its letter No. SO.(Policy) E&AD/1- 3/2020 dated Peshawar the June 06th, 2023 directed the Directorate of Elementary & Secondary Education that Rule 7(5) in the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 has been deleted vide notification dated 06-08-2020 and, therefore, no provision exists to decline or forgo promotion and it is obligatory upon every civil servant to accept promotion under every condition. That Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa also wrote a letter to the office of Establishment & Administrative Department vide No SO(Primary-M) E&SED/2-2/Appointment Rule/2023 dated 23-08-2023 to reconsider the amendment made in Khyber

Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 as it had negatively affected a large number of teachers and especially female teachers. In the meanwhile, the department vide its letter dated 07th of September 2023 directed the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa that necessary guidance has already been provided to the department and therefore no provision exists to decline or forgo promotion and those teachers who do not comply with the promotion order of the competent authority or try to evade promotion through different means shall be proceeded under the Khyber Pakhtunkhwa Civil Servant (Efficiency & Discipline) Rules, 2011.

It is, therefore, humbly prayed that on the acceptance of the instant representation; the Notification bearing No. SO (POLICY) E&D/1-3 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.

Best Regards


Allah Muhammad
Son of Mumtaz Gul
Resident of Post office abad Tehsil &
District Karak

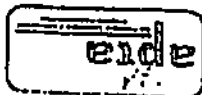
Handwritten signature and date 08/11/2023. Below the signature is the name 'میرزا محمد علی احمد' and 'میرزا محمد علی احمد'.

Main body of handwritten text in Urdu, consisting of several lines of script.

Handwritten signature and name 'میرزا محمد علی احمد'.

Handwritten text: 'میرزا محمد علی احمد'.

APTA House
Govt Primary School No. 4
Qutbshah Peshawar City



Production
0333-011668
03220011873@ptanet.com
Peshawar

APTA House

Khyber Pakhtunkhwa

Annexure #

07.05.2024



1. Learned counsel for the appellant present.
2. Let a pre-admission notice be issued to the respondents through TCS for submission of reply/comments. Appellant is directed to deposit TCS expenses within three days. To come up for reply/comments as well as preliminary hearing on 10.06.2024 before S.B. P.P given to learned counsel for the appellant.
03. Alongwith the service appeal there is an application for suspension of Notification dated 06.06.2023 and letter dated 23.08.2023 till the final disposal of main service appeal. In the meanwhile, no adverse action shall be taken against the appellant till next date of hearing.

Certified to be true copy (Muhammad Akbar Khan)
Member (I)

[Handwritten signature]
13/5/24

Date of Presentation of Application 10-6-24
 Number of 1
 Copies of 1
 Urgent 5/
 Total 5/
 Name of 13-6-24
 Date of 12-6-24
 Date of delivery of copy 12-6-24

VAKALAT NAMA

BEFORE THE SERVICE TRIBUNAL PESHAWAR

ALLAH MUHAMMAD
Versus

Appellant

Government of KP & others

Respondents

I (the Appellant)

do hereby appoint and retain

MUHAMMAD MUAZZAM BUTT ASC. MUHAMMAD ADEEL BUTT AHC

BASSAM AHMAD SIDDIQUI AHC

&

ASSOCIATES OF MUAZZAM LAW FIRM

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

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



APPELLANT

ACCEPTED

MUHAMMAD MUAZZAM BUTT
Advocate Supreme Court

MUHAMMAD ADEEL BUTT
Advocate High Court

BASSAM AHMAD SIDDIQUI
Advocate High Court