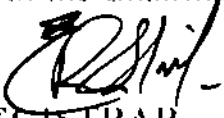


FORM OF ORDER SHEET

Court of _____

Appeal No. 2363 /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 style="text-align: right;">By order of the Chairman  REGISTRAR</p>

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

C.M No _____ -P of 2024

In Ref to

Service Appeal No 23632024

Sardar Nawaz Khan

VERSUS

Secretary to Government of Khyber Pakhtunkhwa, & others

INDEX

S#	DESCRIPTION OF DOCUMENTS	ANNEX	PAGES
1.	Appeal and Verification	*	1 - 4
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3.	Copy of Monthly Salary Account	A	6 - 6-B
4.	Copy of notification No. SD (Policy) EV AD/1-3/2020 dated 06/08/2020	B	7 - 8
5.	Copy of impugned Letter dated June 6 th , 2023	C	9 - 11
6.	Copy of Minutes of meeting dated 06-07-2023	D	12 - 15
7.	Copy of Letter dated 23-08-2023	E	16 - 17
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9.	Copy of Representation against the said notification and representation made by APTA President	G & H	20 - 21
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ADVOCATE

M. Muazzam Butt

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

In-Ref to

Service Appeal No. 2363 /2024

Sardar Nawaz Khan Son of Ali Muhammad Khan, PSHT

GPS Danda Bhagi 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:-

GROUND:-

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

[Signature]
Deponent

[Signature]
Appellant

Through

[Signature]
Muhammad Muazzam Butt
Advocate Supreme Court

[Signature]
Muhammad Adeel Butt
Advocate High Court

[Signature]
Bassam Afnan 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

Sardar Nawaz Khan

V E R S U S

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.

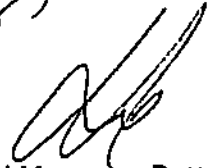
AFFIDAVIT

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.


Deponent

Through


Appellant


Muhammad Muazzam Butt
Advocate Supreme Court


Muhammad Adeel Butt
Advocate High Court

Dist. Govt. KP-Provincia: -6-
District Accounts Office Lakk:
Monthly Salary Statement (January-2024)

Annexure A



Personal Information of Mr SARDAR NAWAZ KHAN d/w/s of ALI MOHAMMAD KHAN

Personnel Number: 00294341 CNIC: 1120103559817 NTN:
Date of Birth: 20.04.1969 Entry into Govt. Service: 10.04.1993 Length of Service: 30 Years 09 Months 023 Days

Employment Category: Active Permanent

Designation: PRIMARY SCHOOL HEAD TEACH 80003025-DISTRICT GOVERNMENT KHYBE

DDO Code: LK6004-

Payroll Section: 001

GPF Section: 001

Cash Center: 01

GPF A/C No: EDULMT00139

GPF Interest applied

GPF Balance:

228,929.00 (provisional)

Vendor Number: -

Pay and Allowances:

Pay scale: BPS For - 2022

Pay Scale Type: Civil BPS: 15

Pay Stage: 23

Wage type		Amount	Wage type		Amount
0001	Basic Pay	69,460.00	1001	House Rent Allowance 45%	3,524.00
1210	Convey Allowance 2005	2,856.00	1300	Medical Allowance	1,500.00
1505	Charge Allowance	40.00	2148	15% Adhoc Relief All-2013	950.00
2199	Adhoc Relief Allow @10%	637.00	2316	Teaching Allowance 2021	3,224.00
2341	Dispr. Red All 15% 2022KP	6,608.00	2347	Adhoc Rel A1 15% 22(PS17)	6,608.00
2378	Adhoc Relief All 2023 35%	24,311.00			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	-2,786.00	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	31,200.00

Deductions - Income Tax

Payable: 44,824.38 Recovered till JAN-2024: 19,690.00 Exempted: 11205.73 Recoverable: 13,928.65

Gross Pay (Rs.): 119,718.00 Deductions: (Rs.): -9,916.00 Net Pay: (Rs.): 109,802.00

Payee Name: SARDAR NAWAZ KHAN

Account Number: 7030-9

Bank Details: NATIONAL BANK OF PAKISTAN, 230426 LAKKI MARWAT LAKKI MARWAT, LAKKI MARWAT

Leaves: Opening Balance: Aailed: Earned: Balance:

Permanent Address: LAKKI

City: LAKKI

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City:

Email: sardarnawazkhan1@gmail.com

A Hsted
M. Ullah

TASKIN ULLAH
S.P.E.T (BPS-16)
G.H.S.S. Jaba Khul
Dist: Lakki

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

* All amounts are in Pak Rupees

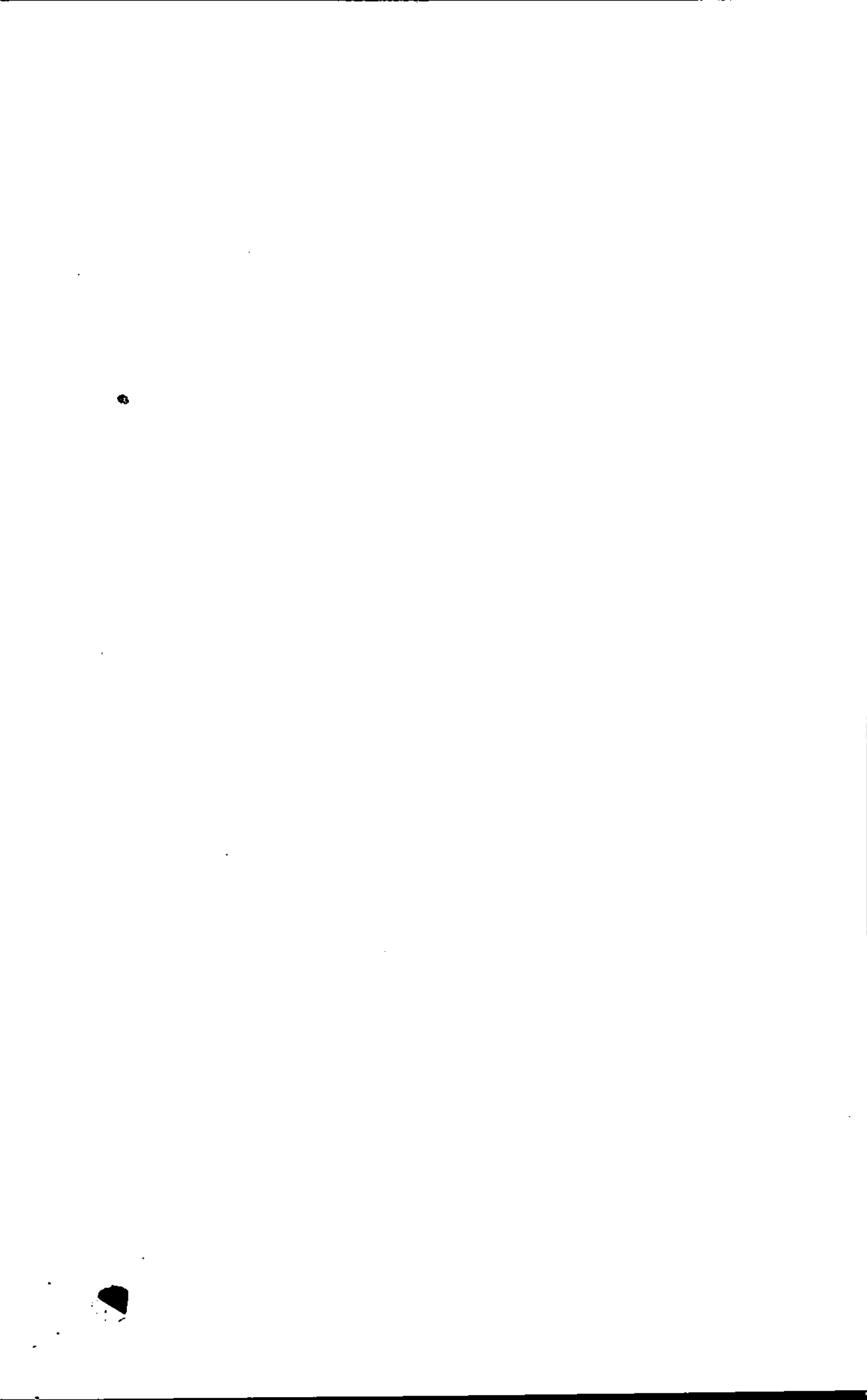
* Errors & omissions excepted (SERVICES/02.02.2024/20:08:28)

APPOINTMENT ON MERIT BASIS
50 % FIRST OPEN COUNT

The following P.T.O. Passed candidates regular Session 1990-91 are hereby appointed against newly created P.T.O. posts in RPS-7 plus usual allowances as admissible under the existing rules in the interest of public service with effect from their taking over charge.

S.No.	Name of candidate with father's name/ addressed.	Name of school where posted.	Remarks.
1.	Abdul Halim S/O Mir Ahmad Khan of Dada Isak Khel. 668/1200.	GPS, Dada Isak Khel, KT; Abdullah Khan Jan	Against NO. Post.
2.	Abdul Wahid S/O Mir Ahmad Khan of Dada Isak Khel. 668/1200.	GPS, Dada Isak Khel, KT; Abdullah Khan Jan	Against NO. Post.
4.	Abdullah Khan S/O Hamidullah Khan of Masha Mansoor. 556/1200.	do Masha Mansoor.	do
5.	Shah Alam Khan S/O Mir Alam of Abbasa. 544/1200.	GPS, Kotka Sardar Ali Bach.	do
6.	Barwar Jan S/O Jan Mehd of Pezu. 574/1200.	GPS, Shah Alam Khel Begi Khel	do
7.	Abdul Samad S/O Khawaja Mehd of Abba Khel. 542/1200.	do	do
8.	Abdur Rashid S/O Karim Khan of Mama Khel Marwat. 738/1200.	do	do
9.	Rafiullah Khan S/O Abdul Latif Nar Samand Adam Zal. 710/1200.	GPS, Tajiari.	do
10.	Barkatullah S/O Mehdullah of Kheru Khel Paocha. 706/1200.	GPS, Zaf Bhayani.	do
11.	Mohd Yusuf Shah S/O Sayed Bahar of Masha Mansoor. 667/1200.	do	do
12.	Dest Mehd S/O Amanullah of Adam Zal. 689/1200.	GPS, Mir Shah Bhattani.	do
13.	Samiullah S/O Hamidullah of Ghazni Khel. 676/1200.	Mir Shah Bhattani.	do
14.	Samar Gul Taj Mehd of Khataa Khel. 672/1200.	GPS, Alam Shah Khel Begi Khel.	do
15.	Mohd Jalaluddin S/O Adam Jan of Samandar Titter Khel. 666/1200.	GPS, Titter Khel.	do
16.	Zafarullah Khan S/O Muntasir Khan of Landiwah. 665/1200.	GPS, Khan Barwar Tave	do
17.	Abdul Aziz S/O Barfaraz Khan of Matara. 663/1200.	GPS, Titter Khel.	do
18.	Mahboob Khan S/O Mehd Rashid of Mama Khel Marwat. 655/1200.	GPS, Kotka Majid Masha Khel.	do
19.	Abdullah Khan S/O Mehd Jan of Abba Khel. 654/1200.	do	do

ATTESTED



- Sher Ali Khan S/O Bahadar Khan of GPS, Wanda Gul Karim. Against
Lakki Khaidad Khel. 652/1200. N.O. Post.
21. Wali Ullah Khan S/O Lutfullah Jan of ----- do ----- do
Sh: Khuda Bakhsh. 652/1200.
22. Mashal Khan S/O Mohd Amin of GPS, Shadi Khan Gandhi Khan
Gandhi Khan Khel. 650/1200. Khel. do
23. Khan Tasil S/O Falak Sher Khan of ----- do ----- do
Lanaiwah. 640/1200.
24. Azizullah Khan S/O ----- do ----- do
Mohd Hanif Khan S/O of Titi Lbad. GPS, Langer Khel. do
625/1200.
25. Mohd Bashir S/O Nawaz Khan of Tari Khel GPS, Jabo (Karim Khan) do
611/1200.
26. Amanullah Khan S/O Baitullah Jan of GPS, Karip Khan Jabo Khel. do
Kheru Khel Psoa. 5609/1200.
27. Mohd Shafiq S/O Mehar Khan of Khura. MPS, KT: Saif Abad. do
735/1200.

28. NOTES:-

1. Charge report should be submitted to all concerned.
2. No TA/DA is allowed to any one.
3. They should produce their age & Health certificate from M.S.D.H. Hospital Bann/Lakki.
4. They should not approach / apply for transfer within one year.
5. The appointment is made purely term basis and liable to termination any time without any reason OR notice.
6. If their age exceed 25 year OR below than 18 years may not be handed over charge.
7. Their original certificates should be checked before handing over charge.
8. If they will not take over charge within 15 days from the issue of this order, other-wise the appointment order will be considered as cancelled.
9. They will not claim pay till the receipt of pay till the sanction of posts from the Govt. of NWFP, Edu. Dept. Peshawar.

(ATTA ULLAH JAN)
DISTT: EDU: OFFICER(M) PRY: BANNU.

ENDST: No. 2036-65/A- /A-2/ Apptt: dated 10.4.1993

- Copy for information and necessary action to that:-
1. by: DEO(M), Prry: Local Office pl:.
 2. BDE(M), Bannu Lakki Marwat.
 - 3-29. Candidates concerned.

Atta Ullah Jan
Distt. Edu: Officer(M) Prry: 19/4
Bannu. 93

ATTESTED

Annexure - B

GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGULATION WING)

NOTIFICATION

Dated Peshawar, the 06/18/2020

Sl. No. P/EA/AD/1-3/2020 In exercise of the powers conferred by section 26 of the
Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of
1973) the Chief Minister of Khyber Pakhtunkhwa is pleased to direct that in the Khyber
Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the
following further amendment shall be made, namely:

AMENDMENT

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

CHIEF SECRETARY
GOVERNMENT OF THE KHYBER PAKHTUNKHWA

NOTE NO & EVEN DATE

Copies 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 (Admn), Administration Department with the request to arrange 20 gazette copies.
16. The Caretaker, Administration Department.

1267
06/18/2020

(Signature)
WAJDAH LATIF
DEPUTY SECRETARY (POLICY)

ATTESTED

(Signature)

ATTESTED

B/C -8-

GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGULATION WING)

NOTIFICATION

Dated Peshawar the, 06/08/2020

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

AMENDMENT

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

CHIEF SECRETARY
GOVERNMENT OF THE KHYBER PAKHTUNKHWA

(ANDS): & EVEN DATE

Copy is forwarded to :-

1. Additional Chief Secretary, Govt of Khyber Pakhtunkhwa. Planning & Development Department)
2. The Senior Member Board of Revenue, Khyber Pakhtunkhwa.
3. All Administrative Secretaries to Govt of Khyber Pakhtunkhwa.
4. The Principal Secretary to Governor, Khyber Pakhtunkhwa.
5. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
6. All Divisional Commissioners in Khyber Pakhtunkhwa.
7. All Heads of Attached Departments in Khyber Pakhtunkhwa.
8. All Autonomous/Semi Autonomous Bodies in Khyber Pakhtunkhwa.
9. All Deputy Commissioners in Khyber Pakhtunkhwa.
10. The Registrar, Peshawar High Court, Peshawar.
11. The Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar
12. The Secretary, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
13. The Deputy Director (IT), E&A Department.
14. All Section Officers in Establishment & Administration, Department.
15. The Section Officer (Admin), Administration Department with the request to arrange 20 gazette copies.
16. The Caretaker, Administration Department.

(WARDAH LATIF)
DEPUTY SECRETARY (POLICY)

~~ATTESTED~~

ATTESTED

WFO449-2023 AZ21NLAH VS GOVT CT PG43

Chief Officer (Policy)

Chief Officer (Policy)

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

Copy forwarded to the...

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

The basic rationale behind the decision of this rule is aimed at preventing a promotion which is desirable or forgo promotion.

Appointments dated 18.04.2022 in the subject noted above and to state that Sub-Rule (3) of Rule-7 of Khyber Pakhtunkhwa Civil Services (Appointment, Promotion and Transfer) Rules, 1989 stands deleted with its consequential modification dated 06.08.2020; thus, no provision exists to decline or forgo promotion.

I am directed in this regard to issue No. SO/Adm-3/2023 dated 06.08.2023 in the subject noted above and to state that Sub-Rule (3) of Rule-7 of Khyber Pakhtunkhwa Civil Services (Appointment, Promotion and Transfer) Rules, 1989 stands deleted with its consequential modification dated 06.08.2020; thus, no provision exists to decline or forgo promotion.

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



GOVERNMENT OF KHYBER PAKHTUNKHWA
 ESTABLISHMENT DEPARTMENT
 No. SO/Adm-3/2023 dated 06.08.2023

67

Annexure - C



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 (No. June 25th, 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 herewith a letter of Establishment Department letter No. SO (Policy)E&AD/1-3/2020 dated 06 June, 2023 and to state that the subject meeting is to be held on 06 July, 2023 at 11:00 AM in this department under the Chairmanship of Additional Secretary (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 Signature]

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

Copy forwarded to the:

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

[Handwritten Signature]

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

ATTESTED

B/c -11-

No 50 (Primary-M)/E&SED/2-6/2023
Dated Peshawar the June 26th 2023

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

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

Subject: GUIDANCE REGARDING DELETION OF RULE 7(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)EBAD/1-3/2020 dated 06 June, 2023 and to state that the subject meeting is to be held on 08 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)

ATTESTED

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

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.

Annexure


0


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

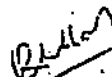
2. The meeting started with recitation from the Holy Quran. The chair welcomed the participants. The Deputy Director (Establishment) of Directorate of Elementary & Secondary Education briefed the forum regarding agenda item in detail.

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

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


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


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


(Mr. Razaqat Ullah)
General Secretary APTA
Peshawar


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

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

ATTESTED

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

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

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

Provincial President
All Primary Teachers Association
Khyber Pakhtunkhwa

(Mr. Razaqat Ullah)
General Secretary APTA
Peshawar

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

(Abdullah)

Additional Secretary (Establishment)

ATTESTED



No. 8145

Khyber Pakhtunkhwa, Peshawar

P.O. No. 34557/NG General Cases

Dated 21/7/2023

Phone: 099-9221344

Email: estab@kpk.gov.pk

To

The Assistant Director (Primary-Adult),
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/PST/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) dated Rule 7(3) 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 26-02-2023.
 - Now it is obligatory upon the civil servant to accept promotion in every condition.
 - 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 (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/2-2/Appointment/2023 dated 13-06-2023.
- 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(3) have affected negatively a huge numbers of Female Teachers. Thus it is proposed that Teachers having DPE-16 may be exempted of implications of the amendment in the rules (old) 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 A-1)
Elementary & Secondary Education
Khyber Pakhtunkhwa

Encl: No.

Copy of the above is to:-

- PA to Director Local Directorate.
- Master Copy.

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

ATTESTED

-15-
-B/c-

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION, KPK

To:

Section Officer (Primary-Male)
Elementary & Secondary Education Department
KPK, Peshawar.

PESHAWAR,
(21-7-2023)

Subject: Minutes of Meeting

Dear Sir,

I am directed to refer to letter No. SO (Primary-M) E&SED/5-1/G/M/14/
Minutes of meeting/PST/2023 dated 10-7-2023 on subject cited above and to
present brief history, about background of case as under:

- That Government of KP Establishment department (Regulation Wing) deleted rule 7(S) in Civil Servants (Appointment, promotion, Transfer Rule 1997) vide notification No. No. SDR-VI (E&AD) 1-3/2020 dated 06-08-2020.
- That this office sought guidance from your good office in the following words vide letter No. 6987 dated 06-05-2023
 - (i) Now it is obligatory upon civil servant to accept promotion.
 - (ii) It is prerogative of civil servant to either accept/turndown the offer of promotion.
- That your good office forwarded the same to quonies concerned vide letter No. SO (Primary-M) E&SED/2-2/Appointment/2023 for necessary guidance.
- That the government of KP-ED (Regulation Wing) vide letter No. SO (Policy) E&AD/1-3/2020 dated 6-06-2023 categorically stated that there exists no provision to decline /forgo promotion. It is obligatory upon every civil servant to accept promotion under every condition.
- That in light of the minutes of the meeting dated 6-07-2023 held under the Chairmanship of Hon. Additional Secretary Establishment at his office. This office has been asked for submission of consolidated case.

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

The case is submitted for perusal and necessary action please.

Copy of the above to;

1. PA to Director Local Directorate
2. Master Copy

Assistant Director
Elementary & Secondary Education
Khyber Pakhtunkhwa.

ATTESTED

ATTESTED

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

In this connection it is submitted that in some cases lady teacher of primary level who avail such promotion have to face serious inconvenience while they have to perform duties in the remotest stations with no residential/transport facilities. Most of them are married with kids and elder father of Mother-in-law who need care. In such cases there are negative effects on service delivery. In view of above, the said commandment may be reconsidered to the extent of lady teacher in primary schools.

Dear Sir,
I am directed to refer to your letter No. S.O. (Army) /E&AD /1-3/2020 dated 8th 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.

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

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

To
Peshawar Dated 23rd August, 2023.
No. S.O. (Army - M) E&SEAD /A-1/ Appointment - Rule /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 23.08.2023 on the subject noted above and to state that
necessary guidance has already been tendered to your good office vide this department letter of
even No. dated 06.06.2023 (copy enclosed).

Yours faithfully,

Section Officer (Policy)

Encls. Of even No & date

Copy forwarded to the:-

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

ATTESTED

WP422-2023 AZIZULLAH VS GOVT OF PK

-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)

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

Section Officer (Policy)

ATTESTED

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 27/10/2024

ATTESTED

Sardar Nawaaz Khan
SARDAR NAWAZ KHAN
S/O ALI MUHAMMAD KHAN
PSHT.

VAKALAT NAMA

BEFORE THE SERVICE TRIBUNAL PESHAWAR

SARDAR NAWAZ KHAN
Versus

Appellant

Government of KP & others

Respondents

I (the Appellant)

do hereby appoint and retain

MUHAMMAD MUAZZAM BUTT ASC. MUHAMMAD ADEEL BUTT AHC

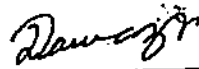
BASSAM AHMAD SIDDIQUI AHC

&

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.



APPELLANT

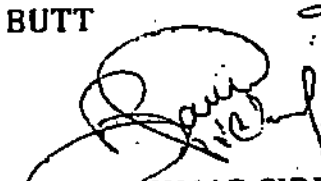
ACCEPTED



MUHAMMAD MUAZZAM BUTT
Advocate Supreme Court



MUHAMMAD ADEEL BUTT
Advocate High Court



BASSAM AHMAD SIDDIQUI
Advocate High Court