28.06.2022

Petitioner alongwith counsel present. Mr. Kabir Ullah Khattak for respondents present.

Learned Additional Advocate General sought time for implementation report. Request accepted. To come up for implementation report on 08.07.2022 before S.B.

(Fareeha Paul)
Member (E)

08.07.2022

On account of public holiday Eid-ul-Adha, case is adjourned to 13.09.2022 for the same as before.

Reader

13.09.2022

The worthy Chairman is on leave, therefore, the case is adjourned to 24.10.2022 for the same.

Reader

20.01.2022 Clerk of learned counsel for the petitioner present. Muhammad Adeel Butt, Addl: AG for respondents present.

Due to general strike of the bar, the case is adjourned. To come up for further proceedings on 08.03.2022 before S.B.

(Mian Muhammad)
Member(E)

08.03.2022 Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 02.06.2022 for the same as before.

Reader.

02.06.2022 All the petitioners, except petitioner namely Farasat Ullah, Deputy Public Prosecutor, are present. Mr. Naeem Ullah, Assistant Director (Litigation) alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present and stated at the bar that working paper has already been submitted to the concerned quarter and that the case of the petitioners shall be placed before the PSB in its upcoming meeting. Adjourned. To come up for implementation report on 28.06.2022 before the S.B.

(Salah-Ud-Din)
Member (J)

11.01.2022 Petitioner No. 4 alongwith learned counsel for the petitioners present. Syed Abdul Mujeeb, Assistant Director (Legal) alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

The instant Execution Petition was fixed for 31.01.2022, however an application for early hearing was filed by the petitioners on 29.12.2021 and in light of order dated 03.01.2022 passed by worthy Chairman, the Execution Petition in hand was fixed for today.

Petitioners alongwith early hearing application, had also submitted an application for restraining respondents not to issue notification in respect of promotion of Deputy Public Prosecutors (BPS-19) on the basis of PSB meeting conducted on 02.12.2021, till the disposal of the instant Execution Petition. Learned counsel for the petitioners, however produced copy of notification dated 11th January 2022, whereby concerned promotions have already been made. In these circumstance, learned counsel for the petitioners stated at the bar that he does not want to press application for restraining respondents from issuing notification in respect of promotion of Deputy Public Prosecutors (BPS-19) as a result of PSB meeting conducted on 02.12.2021. To come up for submission of implementation report positively on 20.01.2022 before the S.B.

(Salah-Ud-Din)
Member (J)

DIRECTORATE OF PROSECUTION
KHYBER PAKHTUNKHWA

No. DP/E&A/1(100)/9942
Dated Peshawar 23/6/2022
Office Phone # 91-9212559
Fax # 091-9212559
E-mail kpprosecution@yahoo.com

To

The Secretary,
Home & Tribal Affairs, Department
Khyber Pakhtunkhwa, Peshawar

Attention: Section Officer (Prosecution) Home Department.

Subject: - **WORKING PAPER FOR PROMOTION OF DEPUTY PUBLIC PROSECUTOR (BPS-18) TO THE POST OF SENIOR PUBLIC PROSECUTOR (BPS-19) ON ACTING CHARGE BASIS.**

Respected Sir,

I am directed to refer to the subject noted above and to enclose herewith draft Working Paper (along with its supporting documents) for promotion of Deputy Public Prosecutor (BS-18) to the post of Senior Public Prosecutor (BS-19) on acting charge basis and to state that 07 posts of Deputy Public Prosecutors are lying vacant and the Hon'able Khyber Pakhtunkhwa Services Tribunal is stressing hard for implementation of its order/judgment in execution proceeding filed by the judgment creditor in case titled Mr. Farasat Ullah and others Versus Government of Khyber Pakhtunkhwa. On the other hand, the Government of Khyber Pakhtunkhwa/this office has filed CPLA before the Hon'able Supreme Court of Pakistan against the order and judgment of the Services Tribunal which is pending adjudication however, no status quo is granted in favor of the Government.

I am further directed to request you to take up the case with the Provincial Selection Board (P.S.B) for promotion of the petitioner provisionally subject to final decision of the CPLA, in order to avoid any embarrassing situation before the Said Tribunal, please.

Yours faithfully,

C/C Deputy Director Administration

(Encl: as above)
Copy forwarded for information to the:

1. PA to Director General Prosecution, Khyber Pakhtunkhwa.

C/C Deputy Director Administration

23/06/2022

23-6-22

Form- A

FORM OF ORDER SHEET

Court of_____

Execution Petition No. 269 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	29.10.2021	The joint execution petition of Mr. Abdul Qudus and 3 others submitted today by Mr. Afrasiab Khan Wazir Advocate may be entered in the relevant register and put up to the Court for proper order please. REGISTRAR
2-		This execution petition be put up before S. Bench on 26/11/21. CHAIRMAN
	26.11.2021	Counsel for the petitioner present. Mr. Muhammad Adeel Butt, Addl: AG for respondents present. Notices be issued to the respondents for submission of implementation report. Adjourned. To come up for implementation report on 31.01.2022 before S.B. (MIAN MUHAMMAD) MEMBER (E)

11/01/2022

Government of Khyber Pakhtunkhwa
Home & Tribal Affairs Department

No.SO(PROS/HD/2-3/2022
Dated Peshawar the 11th January, 2022.

Notification

No.SO(PROS/HD/2-3/2022 (BS-18 to BS-19): The Competent Authority, on the recommendations of the Provincial Selection Board is pleased to appoint the following Deputy Public Prosecutors (BS-18) to the post of Senior Public Prosecutors (BS-19), with immediate effect on acting charge basis:-

S.#	NAME OF OFFICERS	PRESENT POSTING
1.	Usman Zaman BA, LLB	Deputy Secretary Administration Establishment Department on deputation.
2.	Muhammad Changaiz BA.LLB	Deputy Public Prosecutor (BS-18) DPP Office Haripur.
3.	Qamar Zeb BA.LLB	Deputy Public Prosecutor (BS-18) DPP Office Charsadda.
4.	Waqas Ashraf MA.LLB	Deputy Public Prosecutor (BS-18) DPP Office Mansehra
5.	Zia ul Qamar Safi BA.LLB	Deputy Director Administration Directorate of Prosecution
6.	Rafiullah BA.LLB	Deputy Public Prosecutor (BS-18) DPP Office Swat
7.	Muhammad Muzafar BA.LLB	Deputy Public Prosecutor (BS-18) DPP Office Nowshera
8.	Bakht Baidar BA.LLB	Senior Public Prosecutor (DPS-19) OPS at ATC Court V Swat at camp Court Buner
9.	Anwar Khan MA.LLB	Deputy Public Prosecutor (BS-18) DPP Office Peshawar
10.	Muhammad Zaib Khan BA, LLB	Deputy Public Prosecutor (BS-18) DPP Office Charsadda
11.	Muhammad Ilyas MA.LLB	Deputy Public Prosecutor (BS-18) DPP Office Haripur
12.	Syed Asghar Azad MA.LLM	On Deputation as SO Police Home Department
13.	Muhammad Imam MA.LLB	Deputy Public Prosecutor (BS-18) DPP Office Mardan
14.	Muhammad Naeem BA LLB	District Public Prosecutor (BS-18) DPP Office Hangu
15.	Javed Ali Mohmand BA.LLB	Deputy Public Prosecutor (BS-18) DPP Office Peshawar
16.	Javed Akhtar Wazir BA.LLB	Deputy Public Prosecutor (BS-18) DPP Office Lakki Marwat
17.	Noor Salam Khan BA.LLB	Deputy Public Prosecutor (BS-18) DPP Office Kurram
18.	Yousaf Jamal BA.LLB	Deputy Public Prosecutor (BS-18) DPP Office Karak
19.	Latif Khan BA.LLB	Deputy Public Prosecutor (BS-18) DPP Office Bannu

02. Posting/Transfer orders of the above mentioned officers will be issued separately.

Secretary
Home Department

Endst: No and date even:

Copy forwarded to:

1. The Secretary to Government of Khyber Pakhtunkhwa, Establishment Department w/r to letter No.SO(PSB)ED/1-9/2021/P-67 dt: 05.01.2022.
2. The Secretary to Government of Khyber Pakhtunkhwa, Finance Department.
3. The Accountant General Khyber Pakhtunkhwa

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRTIBUNAL PESHAWAR

Execution Petition No's 269 **/2021**

Appeal No's. {13581/2020}
{13582/2020}
{13583/2020}
{16020/2020}

ABDUL QUDUS & (3) OTHERS VS GOVT: OF KPK.

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PETITIONERS

THROUGH:
AFRASIAB KHAN WAZIR
ADVOCATE HIGH COURT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution petitions No. 269 **/2021**

In appeal No's. {13581/2020}
{13582/2020}
{13583/2020}
{16020/2020}

1- Mr. Abdul Qudus, Deputy Public Prosecutor (BPS-18), Anti-Corruption Court Bannu.
2- Mr. Farasat Ullah, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor Tank.
3- Miss. Sobia Rasheed Raja, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor, District Abbottabad.
4- Miss. Bibi Sumaira, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor, District Torghar.

.....Petitioners

VERSUS

1- The Government of Khyber Pakhtunkhwa, Through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2- The Secretary Establishment, Khyber Pakhtunkhwa, Peshawar.
3- The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
4- The Director General Prosecution, Khyber Pakhtunkhwa, Peshawar.

.....RESPONDENTS

EXECUTION PETITIONS FOR DIRECTING THE RESPONDENTS TO IMPLEMENT THE JUDGMENT DATED 16.09.2021 IN THE ABOVE TITLED APPEALS IN LETTER AND SPIRIT.

R/SHEWETH:

1- That the above mentioned appeals have been decided by this august Service Tribunal vides judgment dated 16-09-2021 in favor of the Petitioners. Copy of the judgment is attached as annexure.....**A.**

2- That the Petitioners filed the above mentioned appeal against the impugned order dated 30.06.2020 whereby the petitioners have not been granted promotion to the post of Senior Public Prosecutor (BPS-19) on acting charge basis w.e.f 30.06.2020.

3-That after final arguments this August Service Tribunal decided the appeal in favor of the Petitioners vides dated 16.09.2021 with the directions that:-

> ***"In view of the Foregoing discussion, the instant appeal as well as connected appeals are accepted and the impugned notification dated 30.06.2020 is modified to the extent that the appellants as well as other similarly placed employees are held entitled for promotion on acting basis from 30.06.2020 with all consequential benefits".***

4- That Petitioners after obtaining attested copy of the judgment submitted before the respondents but the respondents are not willing to execute the judgment passed by this August Service Tribunal.

It is therefore, most humbly prayed that on acceptance of this execution petitions the respondents may be directed to execute/implement the above mentioned consolidated judgment passed by this august Service Tribunal in letter and spirit.

Dated: 29.10.2021.

PETITIONER's

ABDUL QUDUS & 3 OTHERS

THROUGH:

AFRASIAB KHAN WAZIR
ADVOCATE HIGH COURT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Execution Petitions No's_____2021

APPEAL NO's. {13581/2020}
{13582/2020}
{13583/2020}
{16020/2020}

ABDUL QUDUS & (3) OTHERS V/S GOVT: OF KPK.

AFFIDAVIT

I **Afrasiab Khan Wazir, Advocate High Court,** on the instructions and on behalf of my clients, do hereby solemnly and affirmed that the contents of this **Execution Petitions** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.

AFRSAIAB KHAN WAZIR
ADVOCATE

Certificate:

It is certified that no earlier execution petitions has been filed between the parties.

AFRASIAB KHAN WAZIR
ADVOCATE

ATTESTED
Syed Muhammad Raza Shah Advocate
Oath Commissioner
High Court Peshawar

29 OCT 2021

A-(4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Khyber Pakhtukhwa Service Tribunal
Diary No. 13888
Dated 03/11/2020

Appeal No. 13582 /2020

Mr. Farasat Ullah, Deputy Public Prosecutor (BPS-18),
Office of the District Public Prosecutor Tank.....**APPELLANT**

VERSUS

1- The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa Peshawar.
2- The Secretary Establishment, Khyber Pakhtunkhwa Peshawar.
3- The Secretary Home & Tribal Affairs, Govt. of K.P.K, Peshawar.
4- The Director General Prosecution, Khyber Pakhtunkhwa, Peshawar
5- Mr. Altaf Hussain, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor, District Bannu.
6- Mr. Fazale Hadi, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor, District Nowshera.
7- Mr. Altaf Hussain Akhtar, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor, District Mansehra.
8- Mr. Muhammad Afzal Khan, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor, District Kohistan, Chitral.
9- Mr. Javid Iqbal Anwar, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor, District Kohistan Haripur.
10- Mr. Muhammad Shakeel Ahmad, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor, District D.I. Khan.
11- Mr. Attaullah, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor, District Bannu.
12- Mr. Muhammad Nadeem, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor, District Lakki Marwat.
13- Mr. Hayat Ullah, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor, District Lakki Marwat.
14- Mr. Sher Bahadar Khan, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor, District South Waziristan.
15- Mr. Ziaullah Wazir, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor, District Mansehra.
16- Mr. Khalid Khan, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor, District Swabi.

Filed to-day
03/11/2020

ATTESTED

(5)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 13583/2020

Mst; Sobia Rasheed Raja, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor Abbottabad.....**APPELLANT**

VERSUS

1- The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa Peshawar.
2- The Secretary Establishment, Khyber Pakhtunkhwa Peshawar.
3- The Secretary Home & Tribal Affairs, Govt. of K.P.K, Peshawar.
4- The Director General Prosecution, Khyber Pakhtunkhwa, Peshawar
5- Mr. Altaf Hussain, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor, District Bannu.
6- Mr. Fazale Hadi, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor, District Nowshera.
7- Mr. Altaf Hussain Akhtar, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor, District Mansehra.
8- Mr. Muhammad Afzal Khan, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor, District Kohistan, Chitral.
9- Mr. Javid Iqbal Anwar, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor, District Kohistan Haripur.
10- Mr. Muhammad Shakeel Ahmad, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor, District D.I. Khan.
11- Mr. Attaullah, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor, District Bannu.
12- Mr. Muhammad Nadeem, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor, District Lakki Marwat.
13- Mr. Hayat Ullah, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor, District Lakki Marwat.
14- Mr. Sher Bahadar Khan, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor, District South Waziristan.
15- Mr. Ziaullah Wazir, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor, District Mansehra.
16- Mr. Khalid Khan, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor, District Swabi.

Filed to-day
03/11/2020

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

17- Mr. Tasawar Hussain, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor, District D.I Khan.
18- Mr. Aman Ullah, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor, District North Waziristan.
19- Mr. Muzafar Ahmad, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor, District Mardan.
20- Mr. Javed Ur Rehman, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor, District Mardan.
21- Mr. Syed Falak Sair, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor, District Peshawar.
22- Mr. Manzoor Alam Khan, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor, District Peshawar.
23- Mr. Umar Niaz, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor, District Orakzai.
24- Mr. Rafi Ullah, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor, District Peshawar.
25- Mr. Muhammad Tufail, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor, District Malakand.
26- Mr. Ibad Ur Rehman, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor, District Charsadda.
27- Mr. Asim Mehmood, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor, District Abbottabad.

.....RESPONDENTS

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION DATED 30.06.2020 WHEREBY JUNIORS TO THE APPELLANT HAVE BEEN PROMOTED TO THE POST OF SPP (BPS-19) ON ACTING CHRGE BASIS WHILE THE APPELLANT HAS BEEN IGNORED AND AGAINST THE APPELLATE ORDER DATED 07.10.2020 WHEREBY DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED ON NO GOOD GROUNDS.

PRAYER:

That on acceptance of the instant service appeal the Impugned Notification dated 30/06/2020 may very kindly be modified/rectified to the extent of 23 juniors of the appellant being Illegal, unjustified without lawful authority and against the settled Rules and Regulations and Rules made under KPK Prosecution Act. Furthermore, the appellant may kindly be considered for promotion to the post of Senior Public Prosecutor BPS (19) on Acting charge basis w.e.f 30/06/2020 i.e from the date when the same was granted to the other

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

P(1) (7)

Before the Khyber Pakhtunkhwa Service Tribunal, Peshawar.

Khyber Pakhtunkhwa Service Tribunal
Diary No. 13813
Dated 02/11/2020

Appeal No. 1602 /2020.

Bibi Sumaira daughter of Mohammad Qavi, serving as Deputy Public Prosecutor at Model Criminal Trial Court, Abbottabad.

..... **Appellant**

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. Secretary Establishment, Khyber Pakhtunkhwa, Peshawar.
3. Secretary Home and Tribal Affairs, Govt. of K.P.K., Peshawar.
4. Director General Prosecution, Khyber Pakhtunkhwa, Peshawar.
5. Mr.Altaf Hussain, Deputy Public Prosecutor (BPS-18), Office of District Public Prosecutor, Distt. Bannu.
6. Mr. Fazale Hadi, Deputy Public Prosecutor (BPS-18), Office of District Public Prosecutor, Distt. Nowshehra.
7. Mr.Altaf Hussain Akhtar, Deputy Public Prosecutor (BPS-18), Office of District Public Prosecutor, Distt. Mansehra.
8. Mr. Muhammad Afzal Khan, Deputy Public Prosecutor (BPS-18), Office of District Public Prosecutor, Distt. Kohistan,
9. Mr. Javid Iqbal Anwar, Deputy Public Prosecutor (BPS-18), Office of District Public Prosecutor, Distt. Kohistan,
10. Mr. Muhammad Shakeel Ahmad, Deputy Public Prosecutor (BPS-18), Office of District Public Prosecutor, Distt. D.I.Khan.
11. Mr. Attaullah, Deputy Public Prosecutor (BPS-18), Office of District Public Prosecutor, Distt. Bannu.
12. Mr. Muhammad Nadeem, Deputy Public Prosecutor (BPS-18), Office of District Public Prosecutor, Distt. Lakki Marwat.
13. Mr. Hayat Ullah, Deputy Public Prosecutor (BPS-18), Office of District Public Prosecutor, Distt. Lakki Marwat.
14. Mr. Sher Bahadar Khan, Deputy Public Prosecutor (BPS-18), Office of District Public Prosecutor, Distt. South Waziristan.
15. Mr. Ziaullah Wazir, Deputy Public Prosecutor (BPS-18), Office of District Public Prosecutor, Distt. Mansehra.

Filed to-day
Registrar
2/11/2020

Re-submitted to -day and filed.
Registrar
17/11/2020

TESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(8)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 13581/2020

Date of Institution ... 03.11.2020

Date of Decision ... 16.09.2021

Mr. Abdul Qudus, Deputy Public Prosecutor (BPS-18), Office of the District Public Prosecutor D.I.Khan.

... (Appellant)

VERSUS

The Government of KPK through Chief Secretary, Khyber Pakhtunkwha Peshawar and twenty eight others.

... (Respondents)

NOOR MUHAMMAD KHATTAK & SABITULLAH KHAN KHALIL
Advocates ... For Appellants

MUHAMMAD ADEEL BUTT,
Additional Advocate General ... For official Respondents No. 1 to 4

JAVED IQBAL GULBELA,
Advocate ... For private respondents No. 11 to 13, 15, 16, 18 to 25

YASIR KHATTAK
Advocate ... For private respondents No.28 and 29

SALAH-UD-DIN ... **MEMBER (JUDICIAL)**
ATIQ-UR-REHMAN WAZIR ... **MEMBER (EXECUTIVE)**

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- This judgment shall dispose of the instant service appeal as well as the connected service appeals bearing No. 13582/2020 "titled Farasat Ullah Vs The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar and twenty eight others", service appeal bearing No. 13583/2020 "titled Sobia Rasheed Raja Vs The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa,

ATTESTED

(9)

Peshawar and twenty six others" as well as service appeal bearing No. 16020/2020 "titled Bibi Sumaira Vs The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar and twenty six others", as common question of law and facts are involved therein.

02. Brief facts of the case are that the appellants joined prosecution department on 24-05-2016 as Deputy Public Prosecutor (Dy.PP) BPS-17. During the period, the post of Assistant Public Prosecutor (APP) (BPS-16) was up-graded to BPS-17 by the respondents on the direction of honorable Peshawar High Court, but the post of Dy.PP was not up-graded, hence both the cadres started working in BPS-17. Feeling aggrieved, the Dy.PPs filed writ petition No. 110-P/2015 for up-gradation of the post of Dy.PP to BPS-18, which was allowed vide judgment dated 07-06-2016 and to this effect, up-gradation order was issued vide order dated 02-02-2017 with immediate effect, which was challenged in COC No. 08-P/2020 and it was clearly directed by the Honorable Peshawar High Court that post of Dy.PP shall be considered as up-graded from the date of judgment i.e. 07-06-2016, which was notified accordingly by the respondents from the date of judgment, hence the total service of the appellants comes to 13 days only in PBS-17 and the chapter of BPS-17 was closed after its up-gradation to BPS-18. The provincial government vide notification dated 30-06-2020 made certain promotions to the posts of Senior Public Prosecutors (BS-19) on acting charge basis, which was impugned by the appellants on the grounds that the private respondents No. 5 to 27 so promoted, were junior to them, hence they preferred departmental appeal dated 06-07-2020, which was dismissed vide order dated 07-10-2020. The appellants filed the instant service appeal with prayer that the impugned notification dated 30-06-2020 may be modified/rectified to the extent of 23 juniors of the appellants being illegal and unjustified and the appellants may be considered for promotion to the post of (SPP) (BPS-19) on acting charge basis with effect from 30-06-2020 i.e. from the date when

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(10)

the same was granted to the other colleagues and junior colleagues of the appellant with all back benefits.

03. Notices were issued to the respondents, who submitted their comments.

04. Mr. Noor Muhammad Khattak, Advocate representing the appellants in the instant appeal as well as connected service appeals bearing No. 13582/2020 and service appeal bearing No. 13583/2020 has contended that the impugned notification dated 30-06-2020 and appellate order dated 07-10-2020 are against law, facts, norms of natural justice and material on record, hence not tenable in the eye of law and liable to be modified/rectified to the extent of promotion of the appellants to the post of SPP(BPS-19) on acting charge basis; that the appellant has not been treated in accordance with law and rules on the subject and as such the respondents violated Article-4 and 25 of the Constitution; that there are some prosecutors in the impugned seniority list, who were recruited in BPS-16 as APPs and have been promoted by the respondents by extending them benefits of up-gradation twice i.e firstly when they were working as APPs in BPS-16 and their post was up-graded to BPS-17 and again the said post was up-graded to BPS-18, but it seems that the benefit of up-gradation are not being given to the appellants which is discriminatory; that at the time of up-gradation of APP to BPS-17, there was no concept of APP in BPS-17 in the relevant rules, but without considering prosecution rules or any other technicality, said APPs enjoyed BPS-17, just after two years service in BPS-16 because of up-gradation and subsequent promotion to BPS-18 paved their way to BPS-19 vide impugned notification, but quite astonishingly, the services of appellants in BPS-18 as Dy.PP was not being considered for promotion; that the post of Dy.PP was up-graded by the orders of honorable High Court and the benefit of same was also extended to the Prosecutors, who are senior to appellant in their promotion case because the period after the up-gradation of post of Dy.PP was considered in their promotion to BPS-19, though they were neither selected directly in BPS-18 nor they have been promoted to BPS-18; that the appellants were initially appointed in BPS-17 and the post was up-

ATTESTED

Khyber Pakhtunkhwa Service Tribunal Peshawar

(11)

graded to BPS-18 alongwith incumbents, hence the appellants come under the category of initial recruitment in BPS-18, for which seven years service is required for regular promotion and for acting charge promotion, the deficiency shall not be more than three years, whereas the same is less than three years in case of the appellants, hence they are equally entitled for such promotion, but which has been denied to the appellants inspite of the fact that the appellants had completed four years service before the meeting of BSB held on 30-06-2020.

05. Mr. Sabitullah Khan, Advocate representing the appellant in service appeal bearing No. 16020/2020 adopted the arguments advanced by the learned counsel, representing the appellant in the instant appeal as well as connected service appeal bearing No. 13582/2020 and service appeal bearing No. 13583/2020.

06. Mr. Muhammad Adeel Butt, Additional Advocate General representing the official respondents No. 1 to 4 has contended that as per promotion policy, 2009, those who were initially appointed in BPS-17 are required to fulfill 12 years service in BPS-17 and 18 for promotion to BPS-19, while for those who were directly recruited in BPS-18 are required to complete seven years service in BPS-18; that since the appellants were initially recruited in BPS-17 and not in BPS-18, hence at least nine years service is required for their further promotion to BPS-19; that as per Rule-9(1) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, which provides that the most senior civil servant belonging to the cadre or service concerned, who is otherwise eligible for promotion, but does not possess the specified length of service, the authority may appoint him to that post on acting charge basis, provided that no such appointment shall be made, if the prescribed length of service is short by more than three years; that the length of service of the appellants is 4 years and 7 months, whereas they require at least 9 years service for appointment on acting charge basis, as such the appellants are not entitled to be appointed as SSP(BPS-19) on acting charge basis; that the PSB in its meeting held on 11-06-2020 recommended eligible candidates, whose required length of service was

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more than 9 years for appointment on acting charge basis, as such they were appointed as SSP(BPS-19) on acting charge basis vide order dated 30-06-2020; that no illegality has been committed by the respondents rather the appellants has been treated in accordance with law and rule.

07. Mr. Yasir Khattak, Advocate representing the private respondents No. 28 and 29 has contended that the appellants are otherwise senior to private respondents, but does not hold the required length of service, hence those juniors, who qualify their length of service were promoted on acting charge basis and acting charge promotion does not confer any right of actual promotion, so it will not affect seniority of the appellants; that the appellants on completion of their required length of service would be promoted in due course and their seniority will not be affected; that consideration for promotion is a right but promotion itself cannot be claimed as of right and reliance in this respect is placed on PLD 2008 Supreme Court 769; that the appellants failed to prove that the promoted civil servants were ineligible for promotion; that it is the service rule committee which has to determine the eligibility criteria of promotion and it is essentially an administrative matter falling within the exclusive domain and policy decision making of the government and interference with such matters by the courts is not warranted and that no vested right of a government employee is involved in the matter of promotion or the rules determining their eligibility or fitness. Reliance was placed on 2016 SCMR 1021 and Service Appeal No. 794/2017.

08. Mr. Javed Iqbal Gulbela, Advocate, representing the private respondents No. 11 to 13, 15, 16, 18 to 25 in all the appeals had also relied on the arguments advanced by the learned counsel for private respondents No. 28 & 29.

09. Arguments heard and record perused.

10. We have heard learned counsel for the parties and have perused the record. Service Rules pertaining to the Prosecution Wing of Home Department prior

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to 2010 suggests that the post of APP in the Prosecution Wing of Home Department were in BPS-16, whereas the post of Dy.PP was in BPS-17 and was to be filled in through promotion of APPs to the post of Dy.PP as well as through initial recruitment with certain percentage. It was in the year 2011, when the APPs filed writ petition No 241/2011 in Peshawar High Court, Peshawar for up-gradation of the post of APP to BPS-17 on the analogy that such post was up-graded in other provinces. The writ petition was allowed vide judgment dated 21-11-2013, and such up-gradation was given retrospective effect from 01-12-2010. Notification to this effect was issued on 11-11-2014 with the assertion that seniority of the Dy.PPs, who were already in BPS-17, appointed through Public Service Commission, shall not be affected due to the subject up-gradation. Such up-gradation created an anomaly, as the APPs were up-graded to BPS-17, whereas the Dy.PPs were already in BPS-17. In order to remove such anomaly, the Dy.PPs also filed writ petition No. 110-P/2015 in Peshawar High Court, which was decided in their favor vide judgment dated 07-06-2016 and the post of Dy.PP was up-graded to BPS-18 vide order 02-02-2017, subsequently such up-gradation was given effect from 07-06-2016 in light of order passed in COC No 08-P/2020 in WP 110-P/2015(D) announced on 18-06-2020.

11. In the service rules issued by the respondents vide order dated 16-02-2018, the post of SPP (BPS-19) is required to be filled in on the basis of seniority cum fitness, from amongst the Dy.PP (BPS-18) with at least 12 years service in BPS-17 and above. Coupled with this is provision in Promotion policy, where age was reduced to 7 years in case of Dy.PPs initially appointed in BPS-18 with a concession that shortage in the required length of service shall not be more than three years. Since no one was eligible amongst the available lot to be promoted to the post of SPP (BPS-19) on regular basis, therefore, the respondents invoked Rule 9(1) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 together with Promotion Policy, 2009, relevant portion of which is reproduced as under:

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Service Tribunal
Peshawar

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"Where the competent authority considered it to be in the public interest to fill a post reserved under the rules for departmental promotion and the most senior civil servant belonging to the cadre or service concerned, who is otherwise eligible for promotion, does not possess the specified length of service, the authority may appoint him to that post on acting charge basis, provided that no such appointment shall be made, if the prescribed length of service is short by more than three years"

Section 1(b) (ii) of the promotion policy 2009 is reproduced as under:

"(b) Service in lower pay scales for promotion to BPS-18 shall be counted as follows:

(i).....

(ii) Where initial recruitment takes place in BPS-18, the length of service prescribed for promotion to higher basic scale shall be reduced as 7 years in BPS-18."

12. In light of the above-mentioned rules as well as policy, a seniority list was drawn in the year 2019 and the Dy.PPs initially appointed in BPS-17 through Public Service Commission and subsequent up-gradation of their post to BPS-18, were placed from serial No. 1 to 32, while the appellants namely Sobia Rasheed Raja, Mr. Farasatullah, Miss Sumaira and Mr. Abdul Qudus were at serial No. 27, 28, 29 and 31, whereas the APPs, who initially joined as PSI (BPS-11) and were promoted to BSP-16 as APPs, with subsequent up-gradation of their post to BPS-17 w.e.f 01-12-2010 and who were later on promoted to BPS-18 vide order dated 20-05-2018, were placed at serial No. 33 to 55 of the seniority list. Based on such seniority list, promotions were made on acting charge basis vide notification dated 30-06-2020 and the Dy.PPs at serial No. 1 to 26 as well as Dy.PPs at serial No 33 to 55 were promoted, while the appellants at serial No. 27, 28, 29 and 31 as well as other similarly placed Dy.PPs at serial No. 30 & 32 were ignored. The appellants is having no objection on promotion of Dy.PPs at serial No 1 to 26 of the impugned notification being their seniors, but with a slight reservation that since they were granted

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benefits of up-gradation, hence were promoted, but the appellants were refused such benefit. The appellant had made impugned the Dy.PPs at serial No 33 to 55, who are junior to them in the seniority list. It would be appropriate to mention herein that the appellants joined as Dy.PPs in BPS-17 through initial recruitment on 24-05-2016, whereas the post of Dy.PP was up-graded with effect from 07-06-2016 just after 13 days of their appointment, hence their total service in BPS-17 was 13 days while rest of their service is in (BPS-18).

13. We have closely examined as to what yardstick was used for such promotions, where the seniors were ignored and their juniors were promoted on acting charge basis. Placed on record are the minutes of the PSB dated 12-06-2020, which clearly shows that the promoted private respondents No.5 to 27 are shown as in BPS-17 from the date of up-gradation of the post of APP i.e. 01-12-2010, but the fact remains that they were serving in BPS-16 until 11-11-2014 and it was due to up-gradation that they were rendered eligible to be considered as in BPS-17 as their initial recruitment with effect from 01-12-2010, which however was not the case, as they actually served in BPS-16 up-to 11-11-2014 and if their service in BPS-17 is counted from 11-11-2014, then they also would fall short of their required length of service. As per contention of the respondents, 9 years service in BPS-17 and above was required for promotion to BPS-19 on acting charge basis and the private respondents were considered in BPS-17 from the date of up-gradation i.e. 01-12-10, which comes to more than 09 years, hence were promoted and the appellants were ignored on the ground that they were not having 09 year service as required for promotion on acting charge basis.

14. Contention of the appellants is very simple and clear. They also want the same yardstick, which was used for private respondents, but which was refused to the appellants, which is an act of discrimination on part of the respondents. Contention of the appellants is that no doubt, their length of service is four years, but they may be considered as initially appointed in BPS-18 from the date of up-

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gradation in a manner, in which the APPs were considered as appointed in BPS-17 from the date of up-gradation of the post of APP, which will make them eligible for promotion on acting charge basis, as 7 years service is required for those, who are initially appointed in BPS-18 on regular basis and 4 years for their promotion on acting charge basis. We have observed that on one hand the respondents have granted the benefit of up-gradation to promoted private respondents No. 5 to 27, but on the other hand they have refused the same to the appellants. It would be irrelevant to discuss as to whether the benefit arising out of up-gradation being granted to promoted private respondents No.5 to 27 was lawful or otherwise, rather it would be beneficial to pinpoint as to why such benefit on similar analogy was refused to the appellants. Stance of the appellants was genuine and based on ground of consistency, by virtue of which, the appellants deserved the same treatment, which was meted out to the promoted private respondents No. 5 to 27. The respondents also violated section-9(1) of the rules ibid, where it is clearly provided that the senior most civil servant, who is otherwise eligible for promotion will be considered for promotion on acting charge basis with condition that shortage in prescribed length of service shall not be more than three years. In case of the appellants the prescribed length of service is 7 years for regular promotion, whereas it is reduced to 4 years in case of appointment on acting charge basis and the appellants were already having 4 years service before meeting of the PSB held on 11-06-2020. The departmental appeals filed by the appellants were mainly based on this ground, but the respondents without proper examination of their cases, rejected such appeals, which was not warranted. Perusal of the whole case would clearly depict that the respondents were in a state of confusion due to an anomalous situation created after up-gradation of the posts of APPs and Dy.PPs. The seniority list was correctly drawn but the subsequent developments created a mess, which made the appellants subordinate to the promoted private respondent's No. 5 to 27

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who are still junior to the appellants and were earlier serving under supervision of the appellants.

15. Even otherwise too, in view of Rule-9(1) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rule, 1989, the appellants being senior to private respondents No 5 to 27 were entitled to be appointed on acting charge basis as the appellants were having more than four years service in BPS-18 and they were thus having the prescribed length of service as required for promotion on acting charge basis. It is undisputed that the appellants are senior to the promoted private respondents No. 5 to 27 and making them juniors to the said private respondents would amount to negation of Rule-9(1) of the rules ibid. We are of the considered opinion that justice has not been done to the appellants and instead of going into legality of the action taken by the respondents, it would be in the fitness of things to deliver justice to the appellants and the best way to do so would be to treat the appellants in the same manner, the way the private respondents were treated.

16. In view of the foregoing discussion, the instant appeal as well as connected appeals are accepted and the impugned notification dated 30-06-2020 is modified to the extent that the appellants as well as other similarly placed employees are held entitled for promotion on acting charge basis from 30.06.2020 with all consequential benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
16.09.2021

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)

Certified to be ture copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

_____ OF 2021

Abdul Qudus & (3) others (APPELLANT) (PLAINTIFF) (PETITIONER)

VERSUS

Govt. of KPK (RESPONDENT) (DEFENDANT)

I/We Abdul Qudus & (3) others

Do hereby appoint and constitute, **AFRASIAB KHAN WAZIR, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated._____/_____/2021

CLIENT(S)

ACCEPTED
AFRASIAB KHAN WAZIR
ADVOCATE HIGH COURT

Mobile No.**0312-9888752**

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

JUDICIAL COMPLEX (OLD), KHYBER ROAD
PESHAWAR.

No. E.P.

Appeal No. 269 *of 20* 21

Abdul Qudus & (3) others *Appellant/Petitioner*

Versus

The Govt. of Kpk Chief Secy: *Respondent*

Respondent No. 1

Notice to: — The Govt. of Kpk through Chief Secretary Peshawar.

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 31.12.21 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

E.P.

Copy of appeal is attached. ~~Copy of appeal has already been sent to you vide~~ this office Notice No.....dated.....

Given under my hand and the seal of this Court, at Peshawar this 6.12 **Day of** Dec **20**21

(for Implementation Report)

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

JUDICIAL COMPLEX (OLD), KHYBER ROAD, S.B
PESHAWAR.

No.

Appeal No. E.P. No. 269 *of 20* 21

Abdul Qudus & (3) others ..... *Appellant/Petitioner*

Versus

The Govt: of K/K Chief Secy: ..... *Respondent* 2

Respondent No......

Notice to: — The Secretary Establishment K/K Peshawar.

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 31/1/22 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

E.P.

Copy of ~~appeal~~ is attached. ~~Copy of appeal has already been sent to you vide~~ this office Notice No.....dated.....

Given under my hand and the seal of this Court, at Peshawar this 6th

Day of Dec **20** 21

for Implementation Report

10-12-21

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

PS/Secy E&AD KP

Note: 1. The hours of attendance in the Court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

GS&PD-444/1-RST-12,000 Forms-22.09.21/PHC Jobs/Form A&B Ser. Tribunal/P2

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

JUDICIAL COMPLEX (OLD), KHYBER ROAD
PESHAWAR.

S.B

No.

Appeal No. E.P. No. 269 *of 20* 21

Abdul Qudus & (3) others *Appellant/Petitioner*

Versus

The Govt. of KPK Chief Secy: *Respondent*

Respondent No. 3

Notice to: — The Secretary Home & Tribal Affairs Deptt: Peshawar.

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration; in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 31/1/22 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of E.P **appeal is attached. ~~Copy of appeal has already been sent to you vide this~~**

office Notice No.....dated.....

Given under my hand and the seal of this Court, at Peshawar this 6th

Day of Dec **20** 21

for Implementation Report

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

JUDICIAL COMPLEX (OLD), KHYBER ROAD, PESHAWAR.

No.

~~Appeal No~~ E.P.No. 241 of 20 21

Abdul Qudus & (3 Others) ...Appellant/Petitioner

Versus

The Govt: of KPK Chief Secy ...Respondent

10/12/12-21

Respondent No. 4

Notice to: — The Director General Prosecution KPK Peshawar.

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 31.1.22 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has ~~already been sent to you vide this~~ office Notice No.....dated.....

Given under my hand and the seal of this Court, at Peshawar this 6th

Day of Dec **20** 21

(for implementation report)

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution petitions No. _____/2021

In appeal No's. {13581/2020}
{13582/2020}
{13583/2020}
{16020/2020}

put up on 03.01.2022 in Peshawar.

SUMAIRA BIBI **VS** **GOVT OF KPK:** 29/12/2021

APPLICATION FOR EARLY HEARING IN THE ABOVE TITLED EXECUTION PETITION

R/SHEWETH:
ON FACTS:

1. That the above-titled execution petition of petitioners is pending before this August Tribunal which has been noticed and fixed for hearing on dated _____.

2. That recently respondents issued notification dated 01.12.2021 whereby PSB meeting was conducted vide dated 01.12.2021 for promotion of Deputy Public Prosecutor (BS-18) to the post of Senior Public Prosecutor (BPS-19) to override established right of the petitioners once again.

3. That the petitioners filed stay application along with this application which needs to be decided earlier, before issuance of the promotions notification.

It is, therefore, most humbly prayed that on acceptance of this early hearing application the execution petition of the petitioners may be fixed earlier to meet the ends of justice.

Be fixed in next week. 03/1/2021

1/1/01

Dated 28.12.2021

APPELANT

SUMAIRA BIBI

THROUGH:

ADVOCATE HIGH COURT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution petitions No. _____/2021

In appeal No's. {13581/2020}
{13582/2020}
{13583/2020}
{16020/2020}

SUMAIRA BIBI **VS** **GOVT OF KPK:**

APPLICATION FOR RESTRAINING RESPONDENTS NOT TO ISSUE NOTIFICATION IN RESPECT OF PROMOTION OF DEPUTY PUBLIC PROSECUTORS (BPS-19) AS A RESULT OF PSB MEETING CONDUCTED ON 02.12.2021 TILL DISPOSAL OF THE ABOVE MENTIONED EXECUTION PETITION.

R/SHEWETH:

1. That the execution petition of the petitioners is pending before this Honorable tribunal and fixed for 31-01-2022 wherein notice has been issued to respondents.

2. That this Honorable Tribunal vide consolidated judgement dated 16.09.2021 in service appeal No 13581 titled Abdul QudusvsGovt of KPK and others, has clearly directed respondents to promote petitioners from the post of Deputy Public Prosecutors (BPS-18) to the post of Senior Public Prosecutors (BPS-19) on acting charge basis with effect from 30-06-2020 directed respondents to modify/rectify notification dated 30-06-2020 and to place the names of petitioners above their 23 juniors at their proper place in notification No. PROS/HD/1-10/UPGR PROM/2020.

3. That on 01.12.2021 a notification No. SO (PSB) ED was issued by respondent No. 2 i.e. Secretary Establishment vide which meeting of provincial selected board (PSB) was fixed on 02-12-2021. At Serial No. 15 of agenda of the PSB meeting, promotion of twenty five (25) Deputy Public Prosecutors from (BPS-18) to the Post of Senior Public Prosecutor (BPS-19) was mentioned and thus PSB was conducted on 02.12.2021 by respondents No 1,2 and 3 along with others. **Copy of Notification is attached as annexure .....B.**

4. That the act of respondents by promoting another junior most Deputy Public Prosecutors to the post of Senior Public Prosecutor (BPS-19) which are in addition to that of 23 juniors already promoted on 30-06-2020 and were challenged in service appeal No. 13581 decided 16-09-2021 is not only gross violation of judgment of this Honorable Tribunal but has also created a hurdle in the implementation of judgment of this Honorable Tribunal, because this Honorable Tribunal has directed respondents to place petitioners at their proper place by modifying notification dated 30.06.2020. Now by promoting other junior most prosecutors (Whatever there number is) to the post of Senior Public Prosecutor (BPS-19) respondents are trying to disturb the status of petitioners recognized and granted by this Honorable Tribunal but also creating a hurdle in the implementation of judgment of this Honorable Tribunal as notification

dated 30.06.2021 has not been issued which has been modified by this Honorable Tribunal. And still promotion of petitioners has not been made in the light of judgment of this Honorable Tribunal wherein respondents have been directed to promote petitioners prior to their 23 juniors. Now chapter of promotion of other junior most Deputy Public Prosecutors (BPS-18) has been opened by the respondents to create hurdles in the implementation of judgment of this Honorable Tribunal.

5. That if promotions and posting of these other junior most Deputy Public Prosecutors is made whose names have been finalized in PSB meeting conducted on 02-12-2021, it will cause irreparable loss to petitioners who have already faced agony of expensive and troublesome litigation.

6. That balance of convenience tilts in favor of petitioners as their right of promotion has been recognized by this Honorable Tribunal and promotion of 23 junior Deputy Public Prosecutors (BPS-18) to the post of Senior Public Prosecutors (BPS-19) prior to petitioners, has been declared illegal by this Honorable Tribunal in judgment dated 16.09.2021.

7. That prima facie case exist in favor of petitioners because petitioners have been badly discriminated once on 30.06.2020 and again, despite of clear directions of this Honorable Tribunal, on 12.12.2021 by the respondents by promoting their junior most Deputy Public Prosecutor.

It is, therefore, most humbly requested that on acceptance of this stay application, respondents may kindly be restrained/stopped to issue notification in respectof promotion of Deputy Public Prosecutors (BPS-18) to the post of Senior Public Prosecutors (BPS-19) as a result of PSB meeting conducted on 02.12.2021 till the implementation of judgment of this Honorable Tribunal and promotion of petitioners to the post of Senior Public Prosecutors (BPS-19) on acting charge basis w.e.f. 30.06.2020.

Dated 28.12.2021

APPELANT

SUMAIRA BIBI

THROUGH:

ADVOCATE HIGH COURT

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

PROFORMA FOR EARLY HEARING

Khyber Pakhtunkhwa Service Tribunal
Diary No. 806
Dated 26/07/2022

FORM 'A'

To be filled by the Counsel/Applicant

Case Number	Execution petition No. 269/2021					
Case Title	Abdul Qadar & 3 Others vs Prosecution Deptt					
Date of Institution	29/10/2021					
Bench	SB	✓	DB			
Case Status	Fresh		Pending			
Stage	Notice		Reply		Argument	
Urgency to clearly stated.	Department is playing delaying tactics by not implementing the judgment and promotion on acting charge basis his fundamental rights as whole petitioners are still waiting.					
Nature of the relief sought.	Early fixation of date.					
Next date of hearing	13/9/2022					
Alleged Target Date	27/7/2022 To 6/8/2022					
Counsel for	Petitioner	✓	Respondent		In person	

Signature of counsel/party

Afsar Khan Khattak

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

PROFORMA FOR EARLY HEARING

FORM 'B'

Inst#

Early Hearing_____-p/20____

In case No. 269 -p/2021

Abdul Qados & 3 others Vs prosecution Deptt.

Presented by M/s Ranis Khan Advocate on behalf of petitioners. Entered in the relevant register.

Put up alongwith main case ✓

Last date fixed	8/7/2021
Reason(S) for last adjournment, if any by the Branch Incharge.	Due to vacation of Eid-ul-Azha.
Date(s) fixed in the similar matter by the Branch Incharge	—
Availabie dates Readers/Assistant Registrar branch	5/8/2022

26/7/22

Assistant Registrar

REGISTRAR

Registered.
18/8/2021.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

C.M No_____/2022
In Execution Petition No.269/2021

ABDUL QADOS & 3 OTHERS VS PROSECUTION DEPTT:

APPLICATION FOR EARLY FIXATION OF ABOVEMENTIONED EXECUTION PETITION

Respectfully Sheweth,

1- Appellants/petitioners filed Service Appeals which were decided vide consolidated judgment dated 15.09.2021, Honorable Service Tribunal modified notification dated 30.6.2020 and respondents were directed to promote petitioners from 30th June 2020 i.e from the date when there 23 juniors were promoted. Instead of obeying the order of Honorable Service Tribunal, respondents again promoted 17 junior most officers. Respondents not only badly violated directions of this Honorable Tribunal, but also made contempt of the directions of this Honorable Tribunal by mentioning in minutes of Provincial Selection Board conducted on 02.12.2021 that petitioners are not entitled for promotion.

2- An execution petition in this Honorable Tribunal is pending for the last couple of months, wherein respondents have been directed to submit compliance report but on each date respondents made excuses. On dated 07.04.2022 PSB meeting was conducted but again even the names of petitioners were not placed before PSB meeting.

3- On dated 02 06.2022 our case was fixed for execution and respondents were asked for compliance of judgment. This time respondents deceived this Honorable Tribunal by giving statement at the bar that the case of petitioners had been sent to quarter concerned and they shall be promoted in upcoming meeting of PSB. But this statement before Honorable Tribunal was false and was made just to deceive Honorable Tribunal because on 06.07.2022 PSB meeting was conducted and the names of respondents were again not even sent to PSB.

4- That the abovementioned Execution petition was fixed on dated 08.07.22 but due to holiday of Eid ul Zuha, petitioners case has been fixed for 13.09.2022 by Reader Note which is very prolong date.

5- That due to repeated disobedience of directions of Honorable Tribunal, Petitioners are suffering a lot and their valuable rights are at stake including to work under junior most officers.

It is, therefore, humbly requested that on acceptance of this application the date in our abovementioned execution petition may very kindly be shortened to meet the end of justice.

DATED: 26.07.2022

APPLICANT

ABDUL QADOS & 3 OTHERS

THROUGH:

AFRASIAB KHAN WAZIR
ADVOCATE, HIGH COURT,
PESHAWAR