

21.04.2022

Nemo for appellant.

Notice of the instant appeal be issued to appellant/counsel for 15.06.2022 for preliminary hearing before S.B at Camp Court, Abbottabad.



(Rozina Rehman)
Member (J)
Camp Court, A/Abad

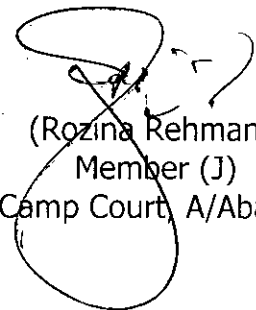
15.06.2022

Appellant present through counsel. Preliminary arguments heard. Record perused.

Points raised need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of reply/comments. To come up for reply/comments on 15.08.2022 before S.B at Camp Court, Abbottabad.

Rs-2800/-
Appellant Deposited
Security & Process Fee

[Handwritten signature]
21/6/22

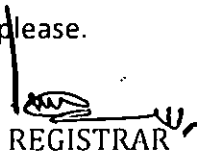
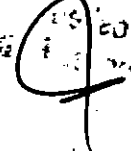

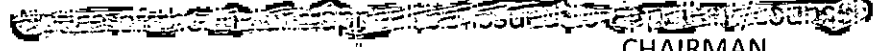



(Rozina Rehman)
Member (J)
Camp Court, A/Abad

Form-A
FORM OF ORDER SHEET

Court of _____

Case No. 491/2022

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	06/04/2022	<p>The present appellants initially went in Writ Petition before the Hon'ble Peshawar High Court A.Abad Bench and the Hon'ble High Court vide its order dated 23.03.2022 treated the Writ Petition into an appeal and sent the same to this Tribunal for decision in accordance with law. The same may be entered in the Institution Register and put up to the worthy Chairman for further order please.</p> <p style="text-align: right;">  REGISTRAR </p> <p>This case is entrusted to S. Bench at A.Abad for preliminary hearing to be put up there on 07/04/2022 Notices shall be issued to appellants and his counsel for the date fixed.</p> <p style="text-align: center;">    CHAIRMAN Panel 506/2022 for preliminary hearing before S. Bench Court, Abbottabad </p> <p style="text-align: right;">  (Member (J)) Panel 506/2022 Court, Abbottabad </p>
2-	21.04.2022	

BEFORE THE PESHAWAR HIGH COURT BENCH
ABBOTTABAD

W.P.No 374 -A/2022
Appeal No. 491/2022

1. Sobia Rasheed Raja Deputy Public Prosecutor Atd
2. Bibi Sumaira Deputy Public Prosecutor Mansehra
.....Petitioners

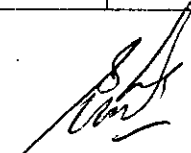
VS

Government of Khyber Pukhtunkhwa and 24others
...Respondents

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Dated: 10/03/2022


Petitioners

SYED ASIF SHAH
Advocate High Court
Mansehra
Counsel for Petitioners

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1

BEFORE THE HONOURABLE PESHAWAR HIGH COURT

BENCH DERA ISMAIL KHAN

W.P No 374 2022

Appeal No. 491/2022

1. Sobia Rasheed Raja Deputy Public Prosecutor Abbottabad.
2. Sumaira Bibi Deputy Public Prosecutor Mansehra.

(Petitioners)

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary KPK Civil Secretariat Peshawar.
2. Chief Secretary Government of Khyber Pakhtunkhwa/Chairman Provincial Selection Board Civil Secretariat Peshawar.
3. Secretary, Establishment Government of KPK/Secretary PSB Civil Secretariat Peshawar.
4. Secretary Home KPK Civil Secretariat Peshawar/Member PSB Civil Secretariat Peshawar
5. Additional Chief Secretary Government of Khyber Pakhtunkhwa Planning and Development Department/ Member PSB Civil Secretariat Peshawar.
6. Senior Member Board of Revenue Khyber Pakhtunkhwa/Member PSB Civil Secretariat Peshawar.
7. Section Officer Provincial Selection Board
8. Muhammad Changaiz District Public Prosecutor Kolia Palas
9. Mr. Qamar Zeb Senior Public Prosecutor Peshawar
10. Mr. Waqas Ashraf Senior Public Prosecutor Kolia Palas
11. Mr. Zia ul Qamar Safi Senior Public Prosecutor Peshawar Anti Corruption
12. M. Rafi Ullah District Public Prosecutor Upper Dir
13. Muhammad Muzafar Senior Public Prosecutor Lower Dir
14. Mr. Bakht Baidar Senior Public Prosecutor Anti Terrorism Camp Bunair Swat
15. Mr. Anwar Khan Senior Public Prosecutor Anti-Terrorism Court Peshawar
16. Muhammad Zaib Khan Senior Public Prosecutor Mardan
- Muhammad Ilyas Senior Public Prosecutor Torghar

18. Syed Asghar Asad Home Department KPK
19. Muhammad Inam Senior Public Prosecutor Dir Lower
20. Muhammad Nadeem Senior Public Prosecutor Shangla
21. Mr. Javed Ali Mohmand District Public Prosecutor Charsada
22. Mr. Javed Akhtar Wazir Senior Public Prosecutor Orakzai
23. Mr. Noor Salam Khan District Public Prosecutor Kurram
24. Mr. Yousaf Jamal Senior Public Prosecutor Karak
25. Mr. Latif Khan Senior Public Prosecutor North Waziristan Tribal District

(Respondents)

**WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF
THE ISLAMIC REPUBLIC OF PAKISTAN 1973.**

Respectfully Sheweth;

- 1- That brief facts of the case are that petitioners joined Prosecution Department on 24.05.2016 as Deputy Public Prosecutor after qualifying competitive examination of Public Service Commission KPK and now a day's petitioners are serving as Deputy PP BPS (18) in Abbottabad and Mansehra.
- 2- That when petitioners joined prosecution department as Deputy Public Prosecutor, at that time lower cadre in prosecution i.e. Assistant Public Prosecutor had been upgraded by the government. On the direction of Honourable Peshawar High Court, Peshawar but upper cadre i.e. Deputy PP was not upgraded therefore, for a short span of time, both the cadres i.e. lower cadre Assistant Public Prosecutor and upper cadre i.e. Deputy Public Prosecutor were working in the same scale i.e. in (BPS-17). This situation was termed as Anomaly by the Director General Prosecution. Worthy DG requested quarter concerned for up gradation of post of Dy.PP from (BPS-17) to (BPS - 18) in order to remove this anomaly.
- 3- That writ petition of Assistant PPs for up gradation was allowed and Honourable Peshawar High Court awarded them **Ante Dated Up gradation** w.e.f 2010. Resultantly government issued notification of upgradation of APPs on 11.11.2014 i.e the post of APP was upgraded from BPS (16) to

BPS (17) in the year 2014 but w.e.f Dec. 2010. It is crystal clear that till issuance of notification for upgradation, Assistant PPs were working in BPS 16. **Ante-Dated Upgradation** awarded to APPs was purely for financial benefits, which were given to them and not for any other purpose like seniority or for promotion to a higher scale by counting there that length of service which is result of **Ante Dated Upgradation**. Copy of the judgment & Up-gradation's notification are enclosed as **ANNEXURE "A & B"** respectfully submitted.

- 4- That as the post of Deputy Public Prosecutor is and was an upper cadre of Assistant Public Prosecutor (not only in KPK but also in sister provinces and capital territory) and Prosecution Department had also requested quarter concerned for upgradation of Dy.PPs, therefore, Dy.PPs filed writ petition in Peshawar High Court, Peshawar because their upgradation was delayed due to the fault of government and deputy Public Prosecutor had to work in the same BPS in which their lower cadre i.e. APPs were working. Writ petition of Dy.PPs was allowed vide judgment dated 07-06-2016 with immediate effect and order in COC Titled "FarasatUllah V/S Dr.KazimNiaz No08-P/2020. Copies of the judgment dated 07-06-2016 and COC are enclosed as **ANNEXURE "C & D"** respectfully.
- 5- That the petitioners have joined prosecution department as Deputy Public Prosecutor on 24-05-2016. Upgradation of Dy PP seat from BPS 17 to BPS 18 was obviously in pipe line, being a genuine and legal demand, though it was delayed but was never refused by the government. Just after 13 days of joining the Dy.PP post, the same was upgraded to BPS (18) by Honourable Peshawar High Court Peshawar therefore, petitioners had to work only for a period of 13 days in BPS-17 as Deputy Public Prosecutor. Thus chapter of petitioners' service in BPS-17 was closed after up gradation of seat to BPS-18 and since 7th June 2016 petitioners are working as Deputy PP in BPS 18. Copy of the up-gradation notification is enclosed as **ANNEXURE "E"**.
- 6- That provincial government of KPK conducted provincial Selection Board on 11-06-2020 and issued impugned notification No SO-PROS/HD/1-10/Upgr&Prom/2020 dated 30/06/2020, wherein not only Seniors of petitioners were promoted to the post of Senior Public Prosecutor BPS (19),

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by enjoying benefits of upgradation, but also Twenty-Three (23) juniors were promoted to Senior Public Prosecutor BPS (19) on acting charge basis. But astonishingly petitioners were mala fide and illegally dropped despite of the fact that petitioners were quite eligible and fit for promotion to BPS (19) on acting charge basis. Copy of the notification dated 30-06-2020 is enclosed as **ANNEXURE "F"**.

- 7- That the petitioners made a departmental appeal to the quarter concerned for decision in accordance with law which was dismissed vide a non-speaking order dated 07/10/2020. Feeling aggrieved petitioners filed service appeal in Honorable KPK Service Tribunal.
- 8- That Honorable Service Tribunal KPK allowed petitioners' appeal vide consolidated judgment dated 16-09-2021, in service appeal No 13581 titled *Abdul Qadoos vs Govt of KPK and others*. Honorable Service Tribunal declared petitioners fit for promotion to the post of Senior Public Prosecutor BPS 19 on acting charge basis w.e.f 30 June 2020, declared act of respondents/ government illegal and has directed respondents to promote petitioners to the post of Sr PP BPS (19) on acting charge basis with effect from 30-06-2020. Department and government were further directed to modify/rectify notification dated 30-06-2020 so that name of petitioners may be placed at its right place. Copy of the judgment & order dated 16-09-2021 of the Service Tribunal is enclosed as **ANNEXURE "G"**.
- 9- That implementation of judgment of Honorable tribunal is pending in Honorable Service Tribunal KPK wherein notice has been issued to respondents/ government.
- 10- That again a meeting of provincial selected board (PSB) was conducted on 02-12-2021 and 18 Junior most DY:PP's have been promoted to the post of Sr.PPS.(which are in addition to that of 23 juniors already promoted on 30-06-2020 and where declared illegal in service appeal No 13581 decided 16-09-2021). Copies of Notification NO. SO(PRO)/HD/2-3/2022 dated 11-01-2022 and notification dated 31-1-2022 are enclosed as **ANNEXURE "H"** and **"H-1"** respectively. Whereas, the petitioners filed

proper departmental appeal/representation through proper channel, copy of each is enclosed as ANNEXURE "~~H-2 & H-3~~".

- 11- That the illegally promoted Dy PPs were initially inducted in prosecution department in BPS16 as Assistant Public Prosecutors in the year 2008. They practically served in BPS 16 till 11.11.2114 i.e. when notification of their **Ante Dated Upgradation** was issued and the impugned notification dated 11-01-2022 is against the law, rules and policy and the petitioners feeling aggrieved from the same approached this Honourable Court inter alia on the following grounds.

GROUND:

- 1- That section 09 of APT rules deals and regulates the process of acting charge promotion which is given below for ready reference

"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 appointments shall be made, if the prescribed length of service is short by more than three years"

Perusal of above section indicates that firstly this section has imposed an important condition that **most senior civil servant should be promoted on acting charge basis** and no circumstances have been mentioned in above section-9 of APT rules to promote junior officers before seniors.

- 2- That undue favor has been extended to the 18 Junior Most Deputy Public Prosecutors over snatching the rights of Senior Deputy Public Prosecutors by the Provincial Selection Board. Petitioners is serving in BPS 18 on regular basis since June 2016 some of these junior most prosecutors were promoted to BPS 18 in the year 2019 and even some in the year 2020. Illegal benefit of ante-dated up-gradation to junior most

Dy.PP's does not confer any right whatsoever for their promotion overnight to the post of Senior Public Prosecutor. It is pertinent to mention here that it was also clarified vide Notification No SO(Prosecution)HD/!-10-UP/2013/VOL-I dated 11-11-2014 that due to up gradation of the APPs, the seniority of the Dy;PPs shall not be affected.

- 3- That Provincial Selection Board/ the competent authority has gone beyond its mandate and has cause grave miscarriage of justice whereby the juniors have been promoted in flagrant defilement of law and rules and seniority has been put to the winds.
- 4- That time and again the illegal promotions of junior most officers are made on acting charge basis by violating relevant service laws. In the past twenty three junior most deputy public prosecutors were illegally promoted to BPS 19 on acting charge basis and then most of these illegally promoted Prosecutors, were posted as District Public Prosecutor in various district despite of the fact that question mark has been imposed upon their promotion by Honble Service Tribunal KPK in service appeal No 13581.
- 5- That prior to the implementation of judgment dated 16-09-2021, promotion of other juniors most officers is against law where there is no mention of promotion of a junior most officer before senior officer.
- 6- That seniority of petitioners is not disputed in any way, and also petitioners have been declared eligible for promotion on acting charge basis. Government has challenged eligibility of petitioners in terms of length of service and has not challenged seniority of petitioners. Thus promotion of junior most Dy.PPs is illegal and against relevant law. If it is presumed that if petitioners were not illegible due to length of service in the eyes of PSB members then promoted 18Dy.PPs were also not senior most in the cadre of Dy.PPs. So how essential condition of seniority has been ignored by PSB members.

- 7- That Promotion on acting charge basis is an extra ordinary situation if, it is presumed that , eligible civil servants were not available then how junior most civil servants have been appointed on acting charge basis.
- 8- That by promoting, unqualified servants, and burden on Govt exchequer has been imposed. There is no significant difference between job of Dy PP and Senior PP on acting charge basis. if suitable civil servants, who would fulfill necessary conditions, were not available then illegal promotion on acting charge basis was never warranted by law, there was no emergency or compulsion to promote illegally junior officers on acting charge basis by leaving senior most officers.
- 9- That time and again Ante dated regularization, Ante dated promotion and Ante dated upgradations have been made either by the government or on the direction of services tribunals, High Court and Supreme Court. There is a settled principle that Ante dated regularizations, promotion and upgradation is granted only for financial benefits i.e. pay and pension and not for any other purpose. This also happened in the case of the then APPs (illegally promoted DyPPs) and Ante-dated upgradation awarded by High Court to them was solely for the purpose of financial and pensionary benefits and was not granted for the purpose of superseding senior officers by counting that period in their promotion to higher scales.
- 10- That actual Nine (9) years' service in BPS 17 and 18 was mandatory for junior Deputy PPs for their promotion to BPS 19 on acting charge basis under promotion policy which had been bad violated by PSB by promoting junior officers who did not actually serve for a period of 9 years in BPS 17 and 18 rather their 4 years of BPS 16 have been counted in their 9 years length of service for acting charge promotion Actual service of BPS 17 and BPS 18 is the requirement of law/promotion policy 2009 Neither actual service of BPS 16 can be considered substitute of BPS 17 nor BPS 16 actual service can be added and counted, in 9 years' service of BPS 17 and BPS 18. Junior most 18 Dy.PPs actually served in BPS 16 from December 2010 to Nov 2014. But

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astonishingly, in their promotion case this period i.e from December 2010 has been counted as period in BPS 17 and it has been presumed that they actually served in BPS 17.

- 11- That when these junior most Dy.PPs were promoted to BPS 19 vide impugned notification SO(PROSP)/HD/2-3/2022 dated 11-01-2022 astonishingly their Four (4)years length of service as a result of **Ante Dated Upgradation** has been counted in the required length of service i.e. 9 year service in BPS 17 and 18 which was mandatory for those Prosecutors under promotion policy of 2009. It is so strange that civil servants who never worked in BPS 17 from December 2010 to November 2014 but their length of service has been counted as an Officers of BPS (17).
- 12- That round about 35 Prosecutors are working in the Province on regular basis in BPS 19. These senior most prosecutors may easily run all the Districts of KPK by working as District PPs and PPs Ante terrorism courts. So there was no need to made illegal promotions on acting charge basis. As junior most Dy PPs does' not fulfill criteria of promotion on acting charge basis in BPS 19 mention in relevant law i.e section 9 of APT Rules KPK. Acting Charge promotion is always a prerogative of senior most Officers.
- 13- That Honourable Service tribunal vide consolidated judgment dated 16-09-2021, in service appeal No 13581 titled AbadulQadoosvsGovt of KPK and others raised question mark on counting length of service as a result of **Ante dated Upgradation** in the following words

"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

(9)

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 11.11.201, then they also would fall short of their required length of service"

But it is so strange and painful that observation of Honourable Service tribunal KPK has never been taken into consideration by members of PSB and again benefit of Ante dated upgradation have been granted to junior most Dy; PPs in their promotion case.

14. That time and again illegal promotion of junior most officers has not only badly effected rights of petitioners, but also caused mantel agony to petitioners.
15. That the KPK service Tribunal is not Functional due to retirement of the chairman KP service Tribunal, therefore, the petitioner approached this Honourable Court.

INTERIM RELIEF

It is therefore also requested that the impugned notification as mentioned in the prayers of writ petition till decision of the above mentioned writ petition be suspended and official respondents may kindly be restrained from taking any adverse action against the petitioners.

It is, therefore, humbly prayed that on acceptance of this writ petition, promotion Notification No. SO (PROS)/HD/2-32022(BS-18to BS-19)dated 11/01/2022 and posting and transfer notification no SO (PROS)/HD/2-3/post & trans/2022 dated 31/01/2022 may kindly be set aside being void ab initio, against the law and policy to the extent of private respondents till the completion of their length of service not before promotion of their seniors as provided in the rules concerned and official respondents may kindly be directed to act as per rules and policy on the subject strictly accordance to law.

Dated: 10/03/2022

Petitioners

Through

SYED ASIF SHAH
Advocate High Court
Mansehra

9-A

BEFORE THE PESHAWAR HIGH COURT BENCH
ABBOTTABAD

W.P No 374-A/2022

- 1. Sobia Rasheed Raja Deputy Public Prosecutor Atd
 - 2. Bibi Sumaira Deputy Public Prosecutor Mansehra
-Petitioners

VS


Government of Khyber Pukhtunkhwa and 24others
...Respondents

WRIT PETITION

AFFIDAVIT

I Bibi Sumaira Deputy Public Prosecutor, Mansehra do hereby solemnly affirm and declare that the contents of foregoing Writ Petition are true and correct to best of my knowledge and belief and nothing has been concealed from this Honourable Court.

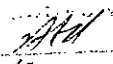
Dated: 10/03/2022


DEPONENT

13503 - 9198538 - 0

948/290

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 10 day of mar 24
 Bibi Sumaira D. P. P.
 Mansehra
 Who is aware of my identity
 h. ill. S.


10/3/22

(10)

BEFORE THE PESHAWAR HIGH COURT BENCH
ABBOTTABAD

W.P No 374-A/2022

1. Sobia Rasheed Raja Deputy Public Prosecutor Atd.
 2. Bibi Sumaira Deputy Public Prosecutor Mansehra
-Petitioners

VS

Government of Khyber Pukhtunkhwa and 24others

...Respondents

Writ Petition

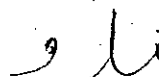
List of Books

Respectfully Sheweth,

The list of books are as under:-

1. Constitution of Islamic Republic of Pakistan 1973
2. Civil Servant Act (Appointment, Promotion and Transfer) Rules 1989 as amended .

Dated: 10/03/2022


SYED ASIF SHAH
Advocate High Court
Mansehra
Counsel for Petitioner

(11)

BEFORE THE PESHAWAR HIGH COURT BENCH
ABBOTTABAD

W.P No 374-A/2022

1. Sobia Rasheed Raja Deputy Public Prosecutor Atd
 2. Bibi Sumaira Deputy Public Prosecutor Mansehra
-Petitioners

VS

Government of Khyber Pukhtunkhwa and 24others


...Respondents

Writ Petition

Certificate

Certified that no writ petition on the subject has earlier been file
by the petitioner in any other Court.

Dated: 10/03/2022


SYED ASIF SHAH
Advocate High Court
Mansehra
Counsel for Petitioner

(12)

URGENT FORM

BEFORE HON'BLE PESHAWAR HIGH COURT BENCH
ABBOTTABAD

WPNO. 324 /2022

ABDUL QADUS ETC.

VERSUS

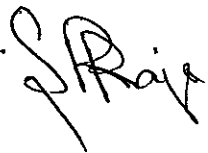
GOVT. OF KPK AND OTHERS

WILL YOUR KINDLY TREAT ACCOMPANYING PETITION AN URGENT
AND
IN ACCORDANCE WITH THE PROVISION OF RULES 9 CHAPTER 3-A
RULES,
ORDERS OF THE HIGH COURT LAHORE VOLUME V.

The Grounds Of Urgency Are:

The Petitioner is in need for the early fixation of the above titled Writ Petition, because on one hand valuable rights of petitioners are badly violated by illegally promoting Junior most officers who even did not possess the required length of service and on the other hand by promoting un-eligible civil servants burden on Government Exchequer has been increased. Moreover Petitioners have to work under the sub ordination of their junior most officers which is against the law, Rules and Policy. Hence the Writ Petition may kindly be Fixedbeing a petition of urgent nature.

Your Humble Petitioner
Sobia Rasheed etc.



Affidavit

I, Ms Sobia Rasheed Deputy Public Prosecutor Abbottabad (petitioner no 1), do hereby solemnly affirm and declare on OATH that the contents of the urgent form are true and correct to the best of my knowledge and belief and that nothing has been concealed from this honourable court.

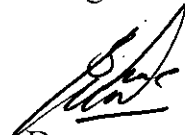


Deponent

13

Affidavit

I, **Ms Bibi Sumaira Deputy Public Prosecutor Mansehra (petitioner no 2)**, do hereby solemnly affirm and declare on OATH that the contents of the urgent form are true and correct to the best of my knowledge and belief and that nothing has been concealed from this honourable court.


Deponent

14

1

Annexure
"B"

BEFORE THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH



In Re:

1. Mr. Waqas Ashraf Assistant Public Prosecutor Abbottabad.
2. Mr. Asim Mehmood Assistant Public Prosecutor Mansehra.
3. Mr. Muhammad Khalid Assistant Public Prosecutor Battagram.
4. Mr. Saeed Gul Assistant Public Prosecutor Mansehra.
5. Mr. Abdul Shakoor Assistant Public Prosecutor Mansehra.
6. Mr. Abdul Hamid Assistant Public Prosecutor Abbottabad.
7. Mr. Qazi Aftab Ahmad Assistant Public Prosecutor Haripur.
8. Mr. Anis Ahmad Jan Assistant Public Prosecutor Mansehra.
9. Mr. Iltaf Hussain Akthar Assistant Public Prosecutor Abbottabad.
10. Mr. Murtaza Shah Assistant Public Prosecutor Haripur.
11. Mr. Sheikh Zahoor Assistant Public Prosecutor Abbottabad.
12. Mr. Changaiz Khan Assistant Public Prosecutor Haripur.
13. Mr. Zaheer ud Din Assistant Public Prosecutor Haripur.
14. Mr. Javaid Iqbal Anwar Assistant Public Prosecutor Haripur.
15. Mr. Ziaullah Wazir Assistant Public Prosecutor Abbottabad.
16. Mr. Muhammad Ilyas Khan Assistant Public Prosecutor Abbottabad.
17. Mr. Khani Zaman Assistant Public Prosecutor Mansehra.
18. Mr. Kashif Delawar Assistant Public Prosecutor Haripur.

..... PETITIONERS

VERSUS

No 1291
18.4.11

1. Government of Khyber Pakhtunkhwa through its Chief Secretary, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa, Home and Tribal Affairs Department, Peshawar.
3. Secretary to Government of Khyber Pakhtunkhwa Finance Department, Peshawar.

Certified to be True Copy
EXAMINER
DEC 2011

15

~~15~~

4. Secretary to Government of Khyber Pakhtunkhwa,
E & A Department, Peshawar.

..... RESPONDENTS

Constitutional Petition:

under article 199 of the Constitution of Islamic Republic of Pakistan, 1973, for declaration to the effect that the Letter No. KC/SO(FR)FD/7-8/APP dated: 09-08-2010 declining to allow BPS-17 on initial employment to the petitioners as Assistant Public Prosecutors is illegal, unlawful, without lawful authority, without jurisdiction, arbitrary, unilateral, perverse and of no legal consequence, AND, praying that the impugned Letter No. KC/SO(FR)FD/7-8/APP dated: 09-08-2010 be set-aside being unreasonable, authoritative, unconstitutional, biased, malafide, discriminatory and respondents be directed to allow basic pay scale 17 to the petitioners and all others appointed as Assistant Public Prosecutors with effect from 29/05/2004.

FIFTH DAY
Additional Registrar
Peshawar High Court
Shabbatabad 10/4/22

Certified to be True Copy
EXAMINER
09 FEB 2022

16

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3

Respectfully Sheweth;

1. That prosecution service was established in the province in the year, 1978. Subsequently, in the year 2005 the N.W.F.P Prosecution Service (Constitution, Function and Powers) Act, 2005 was promulgated. Separate Directorate of Prosecution was established under the control and administration of Home & Tribal Affairs Department. As such, the functions of Prosecutors are under the administrative control of respondent No. 2.
2. That the petitioners were inducted against the posts of Assistant Public Prosecutors in B.P.S 16 as per Prosecution Service Rules. However, the initial grade allowed to Assistant Public Prosecutors was found to be irrational, unfair and against the spirit of constitution as envisaged in Article 37 & 38. Process was undertaken to eliminate such anomaly in the provinces of Punjab, Sindh and Balouchistan. Nevertheless, Govt. of NWFP assumed the posture of silent spectator. Copy of Prosecution Service Rules is attached as Annexure "A".

RECEIVED TODAY
Additional Registrar
Peshawar High Court
Peshawar 18/1/22

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3. That in the said three provinces, posts of Assistant Public Prosecutors were upgraded. In Punjab, it was done in the year 2004 and in the other two provinces in the year 2007 but petitioners and their colleagues in K.P.K remained deprived of this right. Copies of, Notifications and Advertisements (Public Service Commission) of the other provinces are attached as Annexures "B" , "C" , "D" & "E".

4. That many departmental representations were made claiming the same right as allowed to Assistant Public Prosecutors in other three provinces by the petitioners and others but to no avail. It may be emphatically mentioned that denial of this right to petitioners and their colleagues in province of KPK, is apparently, violative of letter and spirit of the constitution and smacks of unrealistic approach almost amounting to lack of bonafides. Copies of some of the representation are attached as Annexures "F".

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 Peshawar High Court Atd. Bench
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Administrative Registrar
 Peshawar High Court
 Bench

That persons with similar qualifications and performing similar functions or such functions

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the nature and scope of which could be deemed pari materia with the qualifications and functions of the petitioners as Assistant Public Prosecutors are placed in BPS-17 in the province of KPK except the petitioners and their colleagues. These two aspects, i.e. allowing BPS-17 to aforesaid category of employees and also the same pay scale to the Assistant Public Prosecutors in the other three provinces is a glaring example of discrimination not countenanced at all by the constitution.

- 6. That it is surprising that Additional Govt. Pleaders, having similar qualifications and performing similar functions or such functions the nature and scope of which could be deemed in consonance with the qualifications and functions of the petitioners and are representing the province in civil cases are allowed BPS-17 on initial appointment. So much so, the Govt. has upgraded the post of Prison Officers working under the administrative control of respondent No. 2 and the judicial officers recently to BPS-17 and 18 but not the

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petitioners and their colleagues, which is against the spirit of the revised policy and criteria for up-gradation of posts. In such like situation, paucity of funds with the Govt. could be deemed as a filthy excuse but not constitutional justification to deny practically guaranteed right of the petitioners. Copy of advertisement No. 06/2009, copy of notification dated 30-05-2006 pertaining to upgradation of prison's officers, notification dated 26-12-2007 pertaining to upgradation of judicial officers and copy of the revised policy and criteria for upgradation of the post are attached as Annexures "G", "H", "I" & "J"

7. That there is another surprising mode adopted by the Govt. of K.P.K by upgrading the posts of District Public Prosecutor, Senior Public Prosecutor, Director Legal, Director Admn: and Director General Prosecution from BPS-18 to BPS-19 and BPS-19 to BPS-20. A pathetic question arises why not the Assistant Public Prosecutors who stand at par with other officers having similar qualifications and the standard of induction in service. There cannot be any

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 Abbottabad
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reasonable justification for it except the executive chauvinism, hence, repel-able being condemnable. Copy of Revised Service Rules and Order are attached as Annexure "K" & "L".

8. That it is deemed essential to refer here an earlier writ petition which was disposed of not favourably to the cause being advanced by the petitioners. However, the grounds urged and the propositions considered in reaching conclusion on the said writ petition were widely at variance with the present writ petition. Hence, it could not present any impediment in the way of petitioners to prosecute their cause successfully.

9. That after many representations by the petitioners, the department also took up their case with the Secretaries of Home & TAs and Finance Departments. Even the departmental recommendations were turned down on absolutely unreasonable grounds. Copy of the impugned order dated 09-08-2010 is attached as Annexure "M"

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Mottabad 18/4/20

10. That there being no other speedy, adequate, and efficacious remedy available to redress grievances against the aforesaid discriminatory, unreasonable, unfair and unjust treatment to the petitioners, the constitutional jurisdiction of this Honourable court is being invoked, inter-alia, on the following grounds:-

GROUND S

a) That if Govt. Pleaders in civil cases, the Prison Officers, the Judicial Officers having similar qualifications and required to meet similar standards in their functions are allowed BPS-17 why not the Assistant Public Prosecutors, who if not superior in their qualifications and performance of special functions cannot be deemed inferior to the aforesaid categories. Grant of grade on initial appointment is not the arbitrary discretion of the executive or sweet wish of its functionaries but is regulated by the constitution being fundamental right of the citizens, in whatever part of the country they may be. Hence, there can be no legal or moral

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justification in denial of the same privilege and right to the petitioners and their colleagues:

b) That the same grade i.e. BPS-17 having been allowed to the Assistant Prosecutors in the other three provinces and to the Additional Govt. Pleaders in K.P.K, after due consideration and deliberation by those who were responsible therefor is undeniable example of acceptance of the basic right of Assistant Prosecutors, so that, they be placed at par with the comrades in the other departments. The lame excuse of paucity of funds by the province of KPK on one hand is highly discriminatory and on the other amounts to malicious denial of the guaranteed rights of the petitioners. As such, the impugned Letter No. KC/SO(FR)FD/7-8/APP dated: 09-08-2010 is untenable at law and facts as well as devoid of any moral sanctity.

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Peshawar

That another striking example is in the form of upgradation of various posts by

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the province of KPK from grades 18 to 19 and 19 to 20. Should it be assumed that Assistant Public Prosecutors are the scapegoats or the step sons that they should be treated differently for no substantial, legal, factual or moral reasons? All civil servants are to be treated as far as possible equally, fairly and justly in conformity with the basic letter and spirit of the constitution. There is no visible justification in the overall perspective of the case to single out Assistant Public Prosecutors by withholding a benefit which is allowed to the contemporaries after due deliberations and consultations by upholding the constitutional values. Thus, the impugned Letter No. KC/SO(FR)FD/7-8/APP dated: 09-08-2010 suffer at equity and is manifestly discriminatory, visibly violating the rights of the petitioners guaranteed under article 4 of the constitution read with article 37 and 38.

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d) That it is established law in the country that mere technicalities cannot be allowed to come in the way of administration of justice. The law enjoins upon the respondents to liberally allow the rights and privileges to the civil servants not barred by any provision of law. Availability of funds must be ensured for such objectives by controlling the frivolous and wasteful expenses of the Govt. in various other fields. This is also the requirement of law to provide incentive to the civil functionaries rather than curbing their initiatives. Viewed from this perspective, the impugned Letter No. KC/SO(FR)FD/7-8/APP dated: 09-08-2010 is surely illegal, unlawful, without lawful authority, without jurisdiction, arbitrary, unilateral, perverse and of no legal or moral consequence. Hence, these are required to be reversed being unsustainable to the extent affecting rights of the petitioners and their colleagues adversely by directing the respondents to allow BPS 17 to the petitioners and their

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Admission
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 Peshawar

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colleagues on their first appointments
upholding the norms of constitution,
equity, fair play and justice.

Under the circumstances, it is respectfully
prayed that the impugned Letter No. KC/SO(FR)FD/7-
8/APP dated: 09-08-2010 be graciously set-aside and the
respondents be kindly directed to allow BPS-17 to the
petitioners and their colleagues, Assistant Public
Prosecutors w.e.f 29/05/2004. Any other relief which
this Honorable Court deems appropriate may also be
granted to the petitioners.

PETITIOINERS

Through

Mushtaq Ali Tahirkheli
(Mushtaq Ali Tahirkheli)
Advocate Supreme Court
High Court Bar Association,
Abbottabad

At Abbottabad
Dated: 16-04-2011

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Peshawar High Court
Abbottabad Bench
A.B/W

Address

Certified that addresses of the parties given in the title are correct.

[Signature]
PETITIONERS

Note:

Certified that no other writ petition has earlier been filed in any other court on the subject on similar grounds.

[Signature]
PETITIONERS

BOOKS

1. Constitution of 1973
2. NWFP Prosecution Service Act, 2005
3. Service Rules, 2005
4. Civil Procedure Code, 1908

[Signature]
PETITIONERS

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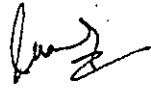
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Abbottabad Bench
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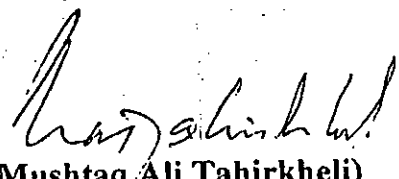
Mr. Waqas Ashraf Assistant Public Prosecutor
Abbottabad.

I, the deponent above named, do hereby solemnly affirm
and declare on oath that the contents of the foregoing
Constitution Petition are true to the best of my knowledge,
information and belief and nothing has been concealed.



DEPONENT

Identified by

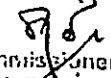


(Mushtaq Ali Tahirkheli)
Advocate Supreme Court
High Court Bar Association,
Abbottabad

AFFIDAVIT

S.No: 1190/496 Receipt No:

Certified that the above was verified on Sole
affirmation at Atk before me on the
..... 16th day of April 2021.....
Waqas Ashraf SA P.P. Caste.....
R/o Atk who was identified by M. A.
Tahirkheli, Adv. who is personally know is me.


Oath Commissioner
(Additional Registrar)
Peshawar High Court (Circuit) Bench
Abbottabad
16-4-21

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Abbottabad Bench

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PESHAWAR HIGH COURT ABBOTTABAD BENCH

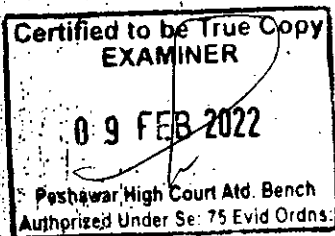
JUDICIAL DEPARTMENT

JUDGMENT SHEETW.P.No. 241 of 2011Date of hearing 21-11-2013Petitioner Waqas Ashraf by M.A. Tabatabaiee, AdvocateRespondents Chief Secretary et. al. by Mr. Nadeem Khan, Advocate

WAQAR AHMAD SETH, J. Waqas Ashraf and 17 other petitioners seek the constitutional jurisdiction of this Court praying for:-

“that on acceptance of the instant writ petition, the impugned letter No.KC/SO(FR)FD/7-9/APP dated 09.08.2010 be graciously set-aside and the respondents be kindly directed to allow BPS-17 to the petitioners and their colleagues, Assistant Public Prosecutors w.e.f. 29.05.2004”.

2- Brief facts, as per contents of petition, are that petitioners were inducted into service against the posts of Assistant Public Prosecutors BPS-16 and are serving as such whereas in the other three Provinces of the country the posts of Assistant Public Prosecutors were upgraded to BPS-17. It is also averred in the petition that the Govt. of KPK upgraded the posts of District Public Prosecutor, Senior Public



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Prosecutor, Director Legal, Director Admn: and Director General Prosecution from BPS-18 to BPS-19 and BPS 19 to BPS-20 but petitioners have been meted out discriminatory. Hence, this writ petition.

3- Arguments heard and record perused.

4- The record reveals that initial grade of BPS-16 allowed to Assistant Public Prosecutors was found to be irrational, unfair and against the spirit of Constitution of Islamic Republic of Pakistan, 1973. Even the process was undertaken to eliminate such anomaly but despite two months time given in Writ Petition No.1095/2010 decided on 05.10.2010 no effective and final order / decision has been made, which shows the attitude of the Government, specially in the circumstances when three other Provinces had removed the said anomaly and the post of Assistant Public Prosecutor had been upgraded in the years 2004 and 2007.

5- It is indeed a glaring example of discrimination that persons with exactly similar qualifications and nature of duties are treated with different yardsticks without any plausible, reasonable and justifiable classification. It is further astonishing that Additional Govt: Pleaders, having similar qualifications and performing with similar functions but in Civil Court are getting BPS-17.

6- The Prosecutors have got an important role in the Administration of Justice in criminal cases. The duties of

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the Prosecutor in order to conduct the case is rather equal to the other involved persons including the Presiding Officer as the Prosecutor is the officer, who presents the case. The Home & Tribal Affairs Department has prepared the working papers in this respect and has supported the upgradation of posts from BPS-16 to BPS-17 on all fours, reference is made to pages 30 to 32 Annexure-F of the writ petition.

7- In the comments submitted by the respondents the only reason for not allowing upgradation is peculiar circumstances and financial resources. The peculiar circumstances as narrated are that upgradation under hardships cases as per policy / criteria is not applicable to the petitioners' case. Under the law the reasons put forward by the respondents could not be termed a reasonable. Article 38(e) of the Constitution of Islamic Republic of Pakistan, 1973 reads:-

"38.(3) reduce disparity in the income and earnings of individuals including persons in the various classes or the service of Pakistan"

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8- The Courts could not be asked to presume that there must be some undisclosed or unknown reasons for subjecting certain individuals to discriminatory treatment, for in that case courts would be making a travesty of the fundamental right of equality before law enshrined in Article

25 of the Constitution. No doubt, State is not prohibited to treat its citizens on the basis of Article 25 of the Constitution that every citizen is to be treated alike in all circumstances, however, it would be applicable on the persons similarly placed or similarly situated. Reliance in this respect is placed on Lordmark judgment of I.A. Sherwani Vs. Government of Pakistan reported as 1991 SCMR 1041.

9- Under Article 38 of the Constitution the Government would secure well being of the people by raising their standards of living and by ensuring equitable adjustment of rights between employers and employees and provide for all citizens within available resources of country facilities for works and adequate livelihood and reduce disparity in income and earnings of individuals.

10- In the case of Government of Baluchistan through Additional Chief Secretary Home Quetta Vs. Azizullah Memo and another reported as NLR 1993 SCJ 527, it was held as under:-

"Art. 25. Equal Protection of Law forbids class legislation, but permits reasonable classification for purpose of legislation. Permissible classification is allowed by Art. 25 provided classification is founded on intelligible differentia, which distinguishes persons or things that are grouped together from others who are left out of groups. Such classification and differentia must be on rational relation to the object sought to be

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achieved by legislation. There should be a nexus between classification and objects of legislation. This principle symbolishes that persons or things similarly situated cannot be distinguished or discriminated while making or applying law. It has to be applied equally to persons situated similarly and in same situation. Any law made or action taken in violation of these principles would be liable to be struck down as violative of Art. 125. If law clothes any statutory authority or functionary with unguided and arbitrary power enabling it to administer it in a discriminatory manner, such law would violative equality clause of Art. 25. Substantive and procedural law and action taken under it can be challenged as violative of Arts 8, 25 on ground of absence of reasonable classification".

11- The policy of upgradation of the Province is not in line with the legal requirements nor there exists any reasonable classification for not allowing BPS-17 to the petitioners, thus, it is held that petitioners are discriminated. The Writ Petition is allowed and respondents are directed to upgrade the posts of Assistant Public Prosecutors from BPS-16 to BPS-17 w.e.f. 2010.

Announced.
21.11.2013.

JUDGE

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Government of Khyber Pakhtunkhwa
Home & Tribal Affairs Department
Dated 11/11/2014

NOTIFICATION

NO. SO (Prosecution) HD/1-10-UP/2013/VOL-I in light of judgment dated 31.11.2013 of Peshawar High Court (Abbotabad Bench) in writ petition No. 2417/2011; the Provincial Government of Khyber Pakhtunkhwa is pleased to upgrade the post of Assistant Public Prosecutor from BPS-16 to BPS-17 with effect from 1st December 2010. However, the seniority of the Deputy Public Prosecutors who are already in BPS-17, appointed through the Public Service Commission shall not be affected by the subject up-gradation.

--SO--

Secretary to Govt. of Khyber Pakhtunkhwa,
Home and Tribal Affairs Department

NO. KC/PO/SO (FR) 5-12/2010

Copy forwarded to the Accountant General Khyber Pakhtunkhwa Peshawar for information and further necessary action.

[Signature]
Section Officer (FR)
Finance Department

NO. SO (Prosecution) HD/1-10-UP/2013/VOL-I

Copy forwarded to:

1. The Secretary to Govt. of Khyber Pakhtunkhwa, Establishment Department.
2. The Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department.
3. The Registrar, Peshawar High Court, Peshawar.
4. The Additional Registrar, Peshawar High Court, Abbotabad Bench.
5. The Director General Prosecution, Khyber Pakhtunkhwa.
6. The Accountant General, Khyber Pakhtunkhwa.
7. The PS to Chief Minister Khyber Pakhtunkhwa.
8. The PSO to Chief Secretary Khyber Pakhtunkhwa.
9. The PS to Secretary Home, Khyber Pakhtunkhwa.
10. The Section Officer, Media, Home Department.

[Signature]
Section Officer (Prosecution)
Home Department

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**GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT**

Dated 11/11/2014

NOTIFICATION

NO.SO (Prosecution) HD/1-10-UP/2013/VOL-I in light of judgment dated 21.11.2013 of Peshawar high Court (Abbottabad Bench) in writ petition No. 241/2011: the provincial Government of Khyber Pakhtunkhwa is pleased to upgrade the post of Assistant Public Prosecutor from BPS-16 to BPS-17 with effect from 1st December 2010. However, the seniority of the Deputy Public Prosecutors who are already in BPS-17, appointed through the Public Service Commission shall not be affected by the subject up-gradation.

SD

Secretary to Govt. of Khyber Pakhtunkhwa
Home and Tribal Affairs Department

NO.KC/FD/SO(FR)5-12/2010

Copy forwarded to the Accountant General Khyber Pakhtunkhwa Peshawar for information and further necessary action.

**Section Officer (FR)
Finance Department**

NO.SO(Prosecution) HD/1-10-UP/2013/VOL-I

Copy forwarded to:-

1. The secretary to Govt, of Khyber Pakhtunkhwa, Establishment Department.
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- 9.
- 10.

**Section Officer (Prosecution)
Home Department**

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Annexure
C.

BEFORE THE HONOURABLE PESHAWAR HIGH COURT, PESHAWAR

Writ Petition No. 110-P/2015



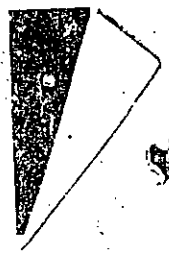
- 1- Mian Aziz Ahmad,
Deputy Public Prosecutor,
District Peshawar.
- 2- Sifatullah,
Deputy Public Prosecutor,
District Peshawar.
- 3- Wajid Ali,
Deputy Public Prosecutor,
District Charsaddah.
- 4- Zafar Ali,
Deputy Public Prosecutor,
District Charsaddah.
- 5- Taimur Khattak,
Deputy Public Prosecutor,
District Mardan.
- 6- Jamshaid Khan Mahsud,
Deputy Public Prosecutor,
District Dera Ismail Khan.
- 7- Azhar Ali,
Deputy Public Prosecutor,
District Kohat.
- 8- Shafiullah,
Deputy Public Prosecutor,
District Peshawar.
- 9- Usman Zaman Mohmand,
Deputy Secretary Home(Judicial),
Peshawar.

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Deputy Registrar
10 JAN 2015

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EXAMINER
Peshawar High Court

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- 10. Qasim Farooq,
Deputy Public Prosecutor,
District Peshawar.
- 11. Qaisar Khan,
Deputy Public Prosecutor,
District Peshawar.

Respondents

Versus

- 1- ~~Govt~~ Govt of Khyber Pakhtunkhawa,
Through Chief Secretary,
Peshawar.
- 2- Secretary,
Home & Tribal Affairs Department,
Civil Secretariat,
Province of Khyber Pakhtunkhawa,
Peshawar.
- 3- Secretary,
Finance Department,
Civil Secretariat,
Province of Khyber Pakhtunkhawa,
Peshawar.
- 4- Secretary,
Establishment & Administration Department
Civil Secretariat,
Province of Khyber Pakhtunkhawa,
Peshawar.
- 5- Director General,
Prosecution Department,
~~Civil Secretariat~~,
Province of Khyber Pakhtunkhawa,
Peshawar.

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Peshawar High

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6- Deputy Director,
Administration,
Civil Secretariat,
Prosecution Department,
Province of Khyber Pakhtunkhawa,
Peshawar.

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RESPONDENTS

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF
ISLAMIC REPUBLIC OF PAKISTAN, 1973 ("CONSTITUTION")

RESPECTFULLY SHEWETH.

1. That the Khyber Pakhtunkhawa Province Prosecution Institution has been established under section 3 of the Khyber Pakhtunkhawa Prosecution Service (Constitution, Functions and Power) Act, 2005. The Prosecution Institution is headed by Director General of Prosecution under the administrative control of the Provincial Government through Home & Tribal Affairs Department.

True Copies of the Act & Rules are annexed herewith as mark "A-A1"

2. That the Petitioners are employees of Prosecution Department of Khyber Pakhtunkhawa and performing their duties as Deputy Public Prosecutors in various districts of the Province.

3. That the Petitioners were given initial appointment in BPS-17 by the Provincial Government as Deputy Public Prosecutor in the year 2010 and ever since their appointment, they are performing their duties on the said post in different courts throughout the province.

4. That it would be worth-mentioning that Additional Government Pleader/Government Pleader who are possessed of similar qualification and

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performing same functions as that of Petitioners, and represent the provincial government in civil cases, were appointed by the Law Department in BPS-17. Nevertheless, government of Khyber Pakhtunkhawa, on complaint of one of the Additional Government Pleader before the Human Right Cell of Supreme Court of Pakistan against non up-gradation of their posts by government, up-graded the post of Additional Government Pleader to BPS-18 and to further streamline and rationalize the same, the post of Government Pleader was also up-graded to BPS-19.

True Copy of the Notification dated 9th August, 2012 is annexed herewith as mark "B"

5. That it is of axiomatic importance to mention that Prosecutors/Deputy District Attorney (BPS-17) in province of Punjab has been upgraded to BPS-18 since 2004 and in the Province of Sindh and Baluchistan in the year 2007. It also need to be emphasize that Home Department/Respondent No 2 in order to rationalize this anomaly moved a summary in year 2009 for one-step up-gradation of all posts of Prosecutors, but nothing substantial happened for up-gradation of the post of Dy. PP.

True Copy of the Up-gradation order in other provinces & up-gradation order dated 5.08.2009 are annexed herewith as mark "C1-C4 "

6. That the Petitioners also moved complaint before the Human Right Cell of the Honourable Peshawar High Court, Peshawar wherein they asserted all the afore-said facts which advance their case for up-gradation of their post. Resultantly, a committee was constituted by the Respondents to resolve this issue but till date no progress has been made regarding the up-gradation of the post of Dy. PP.

True Copy of the complaint before HC is annexed herewith as mark "D"

7. That recently Assistant Public Prosecutor of the same Directorate filed Writ Petition No 241/2011 before the Honourable Peshawar High Court, Circuit Bench, Abbottabad and highlighted the gross discriminatory treatment meted

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out to them especially when in other provinces i.e. Punjab, Sindh and Baluchistan the posts of Assistant Public Prosecutors have been upgraded to BPS-17. It was also stated that Additional Government Pleaders, having similar qualification and performing similar functions as that of APPs are allowed BPS-17 on initial appointment.

True Copies of the Writ Petition alongwith comments are annexed herewith as mark "E-E1"

8. That the said writ petition was allowed vide order dated 21.11.2013. In paragraph '5' of the judgment, Honourable Court observed, " It is indeed a glaring example of discrimination that person with exactly similar qualification and nature of duties are treated with different yardstick without any plausible, reasonable and justifiable classification. It further astonishes that Additional Govt: Pleaders, having similar qualification and performing with similar functions but in Civil Courts are getting BPS-17."

True Copy of the Judgment/order dated 21.11.2013 is annexed herewith as mark "F"

9. That pursuant to the above, Home & Tribal Affairs Department/ Respondent No 2 issued a notification dated 11.11.2014 whereby the post of Assistant Public Prosecutors was upgraded to BPS-17 from 1st December, 2010.

True Copy of the order dated 11.11.2014 is annexed herewith as mark "G"

10. That meanwhile C.M No 334-A/2014 was also filed for implementation of the judgment of the Honourable Court which was disposed off with the following observations :-

" The learned Counsel stated at the bar that Petitioners are satisfied with their up-gradation from BPS-16 TO BPS-17 in accordance with judgment of this Court dated 21.11.2013, however, express reservation about up-gradation with effect from 01.12.2010

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10 JAN 2015

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instead 01.01.2010, start of the Calendar year, or at the most from start of Financial year from 01.07.2010.

In view of the above, the Petition is disposed off for having served the purpose, with the direction to the respondents to correct and modify Notification dated 11.11.2014 in the light of the relevant rules applicable to the Petitioners".

True Copies of the Application & Order dated 19.11.2014 is annexed herewith as mark "I-H1"

11. That subsequent to the above, Respondent No 6 quiet surprisingly issued letter dated 15th December, 2014 wherein it is conveyed that the posts of Assistant Public Prosecutors in BPS-16 have been upgraded to BPS-17 besides step/action have been taken/initiated to change the nomenclature of such posts to Deputy Public Prosecutor.

True Copies of the impugned letter dated 15.12.2014 & 30.12.2014 are annexed herewith as mark "I-II"

12. That it is preposterous that the Respondents under garb of the Honourable Court order for up-gradation of posts of APPs to BPS-17 changed the nomenclature of the APPs to Dy.PPs inspite of the fact the Honourable Court order was only in respect of the up-gradation of post and not nomenclature. *Mala fide* is apparent.

13. That the Petitioners are constantly given assurance and re-assurance by the Respondents that their post is also going to be up-graded to BPS-18 in order to bring it in conformity with other similarly placed Additional Government Pleaders representing the provincial government in civil cases and that of Prosecutors in other three provinces. But to no avail.

True Copies of Representations are annexed herewith as mark "I-III"

14. That the Petitioners feeling aggrieved and dissatisfied from the actions and inactions of the Respondents, and having no other alternate adequate

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10 JAN 2015

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remedy, seeks the indulgence of this Honourable Court on the following amongst other grounds:

GROUNDS

- A. Because Respondent No 6 had no authority to issue the impugned letter dated 15.12.2014. Indeed, the impugned letter is beyond the authority of its maker.
- B. Because the impugned letter dated 15.12.2014 passed by Respondent is illegal and without lawful authority being *coram non judice* and suffering from defect of jurisdiction.
- C. Because the Honourable Court directions were only in respect of up-gradation of post of Assistant Public Prosecutor from BPS-16 to BPS-17 and nowhere in the said order it was mentioned that nomenclature of post of the APPs be changed to Dy.PPs. *Mala fide* is apparent.
- D. Because the post of similarly placed Additional Government Pleaders/Government Pleaders who represent the Provincial Government in civil cases have been up-graded to BPS-18 & BPS-19 respectively. However, the Petitioners are discriminated as the same beneficial considerations are not extended to the Petitioners who are possessed of similar qualification and performing similar functions.
- E. Because the post of similarly placed Prosecutors in other three provinces have already been up-graded to BPS-18 and the inaction of the Respondents to extend similar benefits to the Petitioner is discriminatory, arbitrarily and capricious.
- F. Because one of most cherished right of modern jurisprudence which is also incorporated in Article 25 of the Constitution of Islamic Republic of Pakistan enjoins that all citizens are equal before law and are entitled to equal protection of law. This

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establish that no discrimination is permitted among the similarly placed citizen, hence the discriminatory treatment meted out to the Petitioners in the grant of pay scale is illegal, highly discriminatory and not sustainable in the eyes of law.

G. Because the inaction of the Respondents to up-grade the post of Dy.PP to BPS-18 is not only discriminatory and violative of Article 25 and 27 of the Constitution of Pakistan but also violates principle of "equal pay for equal work".

H. Because actions and inactions of the Respondents are highly discriminatory set against the current of Article 4 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973. The Petitioners humbly demand to be treated in accordance with policy of equal opportunity as enshrined in the 1973 Constitution. They are entitle to equal treatment with the similar placed Additional Government Pleaders in the province of KPK, and Prosecutors in other three provinces.

I. Because the classifications of employees whose posts are up-graded and the Petitioners are not based on any rationale or intelligible differentia. It is a virulent form of discrimination with no rational nexus with logic, equity, conscience or fair play or justice.

J. Because the up-gradation of the post of Assistant Public Prosecutors to BPS-17 in the aftermath of judgment of this Honourable Court also vest the Petitioners with right and the Respondents with the duty to up-grade the post of Deputy Public Prosecutors to BPS-18.

K. Because the Superior Courts have repeatedly held that where a point of law is decided by the Superior Courts that cover the cases of all those civil servants/employees who have not litigated than the good governance require that the benefit of such judgment should also be given to those who may not be parties to the litigation instead of compelling them to approach any other forum. Reference can be drawn to the case reported

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1996 SCMR 1185 & 2009 SCMR 1. Hence, the action of the Respondents not to up-grade the post of Petitioners on the same ground of discrimination which was deliberated and upheld by the Honourable Court for up-grading the post of Assistant Public Prosecutor is violative of the law laid down by superior courts.

L. Because the Petitioners are unnecessarily and unreasonably ignored from up-gradation of post though similarly placed officers have been extended the benefit. Under the circumstance the Petitioners deserve that their post of DY.PP be up-graded to BPS-18 with effect from the date when similarly placed Prosecutors posts were upgraded in other provinces.

M. Because there is no contemporaneous law in existence empowering the Respondents to allow "Up-gradation of post" by applying different and/or preferential standards among its employees similarly placed and performing similar functions. The action of Respondents is clearly based on discrimination.

N. Because the Superior Courts have also held in plethora of its judgments that state and government has to be forthright, meaningful, protective and loyal to its employees. And promises, representations and commitments made by state and government are always meaningful, serious, responsible, solemn and somber which correspondingly are so received by its employees in particular and the citizens in general. Such representation, promises, commitments and assurances cannot be pretextual, meaningless, non-serious, fraudulent or purposeless.

O. Because the Petitioner craved for leave to add further grounds at the time of their oral arguments before this Hon'ble Court highlighting further contraventions of the provisions of the Constitution which adversely affected the Petitioners.

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PRAYER:

- (i) Declare the letter dated 15.12.2014 as illegal, without lawful authority, coram non iudice and patently suffer from defect of jurisdiction.
- (ii) Restrain the Respondents from changing the nomenclature of Assistant Public Prosecutor to Deputy Public Prosecutor.
- (iii) Declare inaction of the Respondents whereby they refuse to up-grade the post of the Deputy Public Prosecutor to BPS-18 as without any lawful authority and of no legal effect.
- (iv) Direct the Respondents to up-grade the post of Deputy Public Prosecutor to BPS-18 as similarly placed Additional Government Pleaders/ Government Pleaders in Khyber Pakhtunkhwa and similarly placed Prosecutors in other three provinces have already been up-graded.
- (vii) Any further better relief deemed, just and equitable in the circumstances of the case may also kindly be granted.

Interim Relief

The operation of the letter dated 15.12.2014 be suspended till final decision of the present Petition.

Petitioners

Through

Abdul Latif Afridi
Abdul Latif Afridi,

Advocate Supreme Court

Jahanzeb Mahsud
&
Jahanzeb Mahsud

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Deputy Registrar
10 JAN 2015

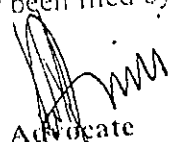
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EXAMINED
Cashewer High Court
Authorised Under
The Oath and Statute
26 JAN 2015

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Certificate

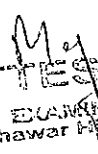
Certified that no writ pertaining to the subject matter had earlier been filed by the Petitioner before this Honourable Court.

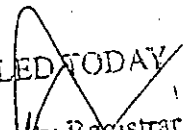

Advocate

Books

- The Constitution of Islamic Republic of Pakistan, 1973.
- Khyber Pakhtunkhawa Prosecution Service (Constitution, Functions and Power) Act, 2005




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Peshawar High Co

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Judgment.
BEFORE PESHAWAR HIGH COURT,
PESHAWAR.

Judicial Department.

Writ Petition 110-P of 2015

Mian Aziz Ahmad & others.....Petitioners.

Vs

Govt. of Khyber Pakhtunkhwa and others.....Respondents.

Date of hearing.....7th June, 2016.....

Petitioner(s) by *Jehanzeb Mehsood - & - Abdul Aziz Ajoid*

Respondent(s) by *Muhammad uddin Humayun AG*

WAQAR AHMAD SETH, J:- Through this single judgment we intend to dispose of the instant writ petition as well as connected writ petition No. 811-P of 2015, as common question of law and facts are involved therein.

2. Mian Aziz Ahmad & 10 others, hereinafter called the petitioners, have invoked the constitutional jurisdiction of this Court, under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, with the prayer to declare the notification dated 15.12.2014, as illegal, without lawful authority; restrain the respondents from changing the nomenclature of Assistant Public Prosecutor to Deputy Public

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Prosecutor; direct the respondents to upgrade the post of Deputy Public Prosecutor to BPS-18 like others already upgraded in other Provinces, whereas in the connected WP No. 811-P of 2015, filed by Public Prosecutors are seeking up-gradation from BPS-18 to BPS-19.

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3. Facts, in brief, relevant for the disposal of this writ petition are that, petitioners who were appointed as Deputy Public Prosecutor in BPS-17 are performing their duties since 2010 and are seeking up-gradation of their post to BPS-18 on the analogy that the post of Deputy Public Prosecutor has been up-graded in other Provinces since; 2004/2007 and they are being discriminated. It is averred that the post of Additional Government Pleader / Government Pleader, similar in function and qualification to petitioners has been upgraded from BPS-17 to 18/19. Further averred that through writ petition No. 241 of 2011 this Court while accepting the writ petition directed the respondents to upgrade the post of Assistant Public Prosecutor from BPS-16 to BPS-17 which was upgraded vide notification dated 11-11-2014; that despite CM / complaint before Human Right Cell, constitution of committee and constant assurance for redressal of the grievance, but to no avail, hence, having no

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other efficacious and alternate remedy petitioners have filed the instant writ petition.

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4. Comments were called from respondents which they furnished and denied the assertion of petitioners and stated that the post of Assistant Public Prosecutor BS-16 was upgraded to BPS-17 on the direction of this Court; that the judgment referred to is past and closed transaction and the same has no relevancy with the present writ petition, moreover, the officers benefited by the said judgment have also not been arrayed as party in the writ petition. That the Directorate of Prosecution has already processed a case of up-gradation of officers from BPS-17 to BPS-18 and from BPS-18 to BPS-19 and shortly a high level committee, in Establishment Department constituted under the Chairmanship of Chief Secretary, Khyber Pakhtunkhwa, notified for the purpose and will decide the up-gradation.

5. We have heard learned counsel for the parties and perused the available record.

6. At the very outset learned counsel for petitioners abandoned his claim regarding the declaration that letter dated 15.12.2014 be declared as illegal, without lawful authority and

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corum non iudice, confined his arguments only to the extent of upgradation of the post of Deputy Public Prosecutor to BS-18 as similarly placed Additional Government Pleader / Government Pleader in Khyber Pakhtunkhwa and similarly placed Prosecutors in other three Provinces have already been upgraded. In view of which the CM No. 231-P of 2015 filed on behalf of beneficiary of order dated 15.12.2014 have become in fructuous and as such disposed of.

7. Petitioners who are posted as Deputy Public Prosecutors in various district of the province are seeking up gradation of their post from BPS-17 to 18 as they were initially appointed in BPS-17 in the year 2010 as Deputy Public Prosecutors, whereas, Assistant Public Prosecutors of their department, who were appointed in BPS-16, after the acceptance of their writ petition No. 241-A of 2011 vide judgment dated 21.11.2013 have been upgraded to BPS-17 and presently both the cadres i.e their cadre of Deputy Public Prosecutor and that of Assistant Public Prosecutor are in one and the same grade.

8. Record suggests that Additional Government Pleader / Government Pleaders who are having the same

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Peshawar High

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qualification and are performing their functions exactly that of petitioners, while representing the Provincial Government in civil cases have been upgraded to BPS-18 & 19. Record further suggestive that Prosecutor / Deputy District Attorneys in BPS-17 in the Province of Punjab have been upgraded to BPS-18 since 2004 and in the Provinces of Sindh and Baluchistan they have been upgraded to BS-18 in the year 2007. The stance of respondents / government is that they have constituted a Committee to resolve the issue of up gradation of the post of Deputy Public Prosecutor, but since then till today the discriminatory treatment meted out to the petitioners has not been rectified, inspite of the fact that this Court in WP No. 241/2011 decided on 21.11.2013 has dilated upon the core issues which are involved in the present case, as well.

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9. Article-38 (e) of the Constitution of Islamic Republic of Pakistan 1973, reads as under:-

“Reduce disparity in the income and earnings of individuals including person in the various classes or the service of Pakistan”.

10. We have before us, order No. SO (Prosecution) / HD / 1-10 / 2009 / Vol-V dated 5.8.2009 whereby sanctioned of

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the Provincial Government has been accorded to the up gradation of the posts of Directorate of Prosecution Khyber Pakhtunkhwa, with immediate effect and at serial No. 11, 14 posts of Deputy Public Prosecutors to be re-designated as Public Prosecutor from BPS-17 to BPS-18 and even that notification has not been implemented to the extent of petitioners inspite of the fact that the said order to the extent of certain employees have been implemented, as such law of locus poenitentiae would come into play. At present it seems that Assistant Public Prosecutors are also in BPS-17 and petitioners being Deputy Public Prosecutors are also in the same grade which would create great anomaly within their ranks. The qualification and nature of job when compared / equated with other three provinces would justify the claim of petitioner for up gradation to BPS-18 as Deputy Public Prosecutor. Moreover, the constitution of Islamic Republic of Pakistan, 1973, in its article 2, 3, 25, 37 & 38 (e) in particular unequivocally guarantees that equal pay for equal work with no discrimination. The notification dated 5.8.2009 notified one step up-gradation but since then there is no order in practical neither there is anything on record showing that said notification dated 5.8.2009 has been withdrawn or rescinded.

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The employees of law department who are performing almost similar duties in civil side have been upgraded on 9.8.2012 whereas petitioners have been denied the equal treatment.

11. The concerned department of the respondents prepared working papers for up-gradation of all the existing posts of the prosecutors in BPS-17 and 18, one step, which are reproduced below and confirmed that they are entitled to one step up-gradation but the government lacks the courage to pass an order in time.

"Prosecution is the main plank in the chain of Criminal Justice System. Effective prosecution links up investigation by the Police with justice delivery by the judiciary and it is the Prosecution which is involved with the criminal justice from the time when a crime is committed to the moment of final verdict delivered and eve thereafter. It is the prosecution who assails the decisions in the superior courts if not made in conformity with the provision of law. It supervises the process of investigation, gives opinions to the investigation agencies, issue guidelines for quality investigation, prosecutes criminal in the courts, leads witnesses, produces case laws in support of the prosecution version, assists the courts etc. Thus the job of the prosecution in the criminal justice system is parental and supervisor in nature.

With a vibrant prosecution services, the government has channel to counter check all the information pertaining to crimes and crime trends provided by the police. Effective prosecution not

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only improves quality of investigation by supervising the process as per the Khyber Pakhtunkhwa, Prosecution services (Constitution, Function and Powers) Act, 2005, but also acts as a filter to weed out weak cases at an early stage which on one side reduces burden on courts and improves conviction rate on the other side.

In a very short span of time the prosecution has recommended thousand of weak cases for discharge, thus the burden upon the courts is reduced on one hand, whereas the other hand, the innocent are protected from the agony of trials. Further in the preceding years, the conviction ratio in the province has considerably been increased not only in the cases before the courts of session or Magistrate but also in the Anti Terrorism cases.

Similarly the cases registered under Anti Terrorism Act 1997 the ratio of conviction has also been improved. To evaluate the performance of the Prosecution a Monitoring Cell is established which vigilantly supervises the operational activities of the prosecution. The information regarding criminal cases is shared with different agencies including the Superior Courts, Provincial government, Donors etc. Further a Reference & Research Cell is also working in the Directorate of Prosecution for the research of the latest case laws supporting the cause of the prosecution and amendments in the statutes.

In the year 2003 the prosecution in Khyber Pakhtunkhwa have conducted the prosecution of more than 100 thousand cases wherein as discussed above, the conviction ratio can be matched with the prosecution service of the Developed Countries.

In the year 2009 the Provincial Government of Khyber Pakhtunkhwa vide notification No. SO (Prosecution) HD/ 1-10/2009/Vol-V dated 5.8.2009, upgraded certain posts of the prosecutors, but

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without incumbents, thus, none of the prosecutors was benefitted from the same. In 2011 after 2- years of up-gradation those prosecutors who became otherwise eligible for regular promotions i.e completing length of service, seniority, PERs etc, their cases for regular promotions were sent to BPS for consideration, thus the Criteria for regular promotion was opted. Those who were found eligible for regular promotion their cases were considered for promotion and they were promoted on regular basis.

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The provincial Government of Khyber Pakhtunkhwa, has upgraded all posts of District Judiciary twicely. Likewise, in the other three provinces of the country the posts of prosecutors have been upgraded on step. The prosecutors working in different part of the country whose posts have been upgraded one step are having similar qualification and job descriptions with that of the prosecutors working in this province. The Notification of the up gradation of the sister provinces as discussed above are appended.

In the year 2004 vide notification dated 27.9.2004, the provincial government has detached the directorate of Prosecution form law department and placed the same under the administrative control of Home Department as its attached department.

Recently, the Government of the Khyber Pakhtunkhwa, has upgraded al post of Government Pleaders and additional Government pleaders one step vide notification No. E&A (LD)17-17/AGP(II)/2012 dated 9.8.2012. Pertinent to highlight that most of the upgraded Government Pleaders either have worked in subordination to majority of the Prosecutors or were their juniors when the prosecution was the subject of the law

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department. Further, by the up gradation those Government Pleaders are not in higher ranks than that of those who were earlier their superiors in the law department. The up gradation policy 2010, paragraph III (i) & (ii) provides the following.

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III. Up-gradation of post proposed on grounds of principles of parity.

"While processing the cases where the proponent department seeks up gradation of certain posts to a higher pay scale on the analogy of similar posts in some other departments in this province created with same nomenclature the committee shall take into account following parameters;

- i) *Ascertainment of full details about all such posts created with same nomenclature by any other department in addition to those departments whose analogy has been quoted by proponent department.*
- ii) *Nomenclature shall not be the sole criterion for determining parity / comparability of posts. Other details i.e the job description and prescribed qualification would necessarily be examined.*

The prosecutors in the province are having the similar qualification with that of the Government Pleaders. Their job is also to defend the cause of the Government in the courts. The duties assigned to the Prosecution are rather more challengeable / demanding.

The total number of posts in PBS-17 required to be upgraded being 42 whereas, in BS-18 the number of such posts being 39.

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12. The Assistant Public Prosecutors writ petition was allowed by this Court, in which exactly similar discrimination and entitlement, but from BS-16 to 17 was dealt with, whereas in the instant case exactly same reasons and justification, the claim of Deputy Public Prosecutors from BPS-17 to 18 has been made. While allowing the writ petition of Assistant Public Prosecutors was held verbatim as under:-

The Court could not be asked to presume that there must be some undisclosed or unknown reasons for subjecting certain individuals to discriminatory treatment, for in that case courts would be making a travesty of the fundamental right of equality before law enshrined in Article 25 of the Constitution. No doubt, State is not prohibited in treat its citizens on the basis of Article 25 of the Constitution that every citizen is to be treated alike in all circumstances, however, it would be applicable on the persons similarly placed or similarly situated. Reliance in this respect is placed on Lordmark Judgment of I.A Sherwani Vs Government of Pakistan reported as 1991 SCMR 1041.

Under Article 38 of the Constitution the Government would secure well being of the people by raising their standard of living and by ensuring equitable adjustment of rights between the employers and employees and provide for all citizens within available resources of country facilities for works and adequate livelihood and reduce disparity in income and earnings of individuals.

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In the case of Government of Baluchistan through
Additional Chief Secretary Home Quetta Vs.
Azizullah Memo and another reported in NLR 1993
SCJ 527 it was held as under:-

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Art. 25. Equal Protection of law forbids class legislation but permits reasonable classification for purpose of legislation. Permissible classification is allowed by Art. 25 provided classification is founded on intelligible differentia which distinguishes persons or things that are grouped together from others who are left out of groups. Such classification and differentia must be an rational relation to the object sought to be achieved by legislation. There should be a nexus between classification and objects of legislation. This principle symbolizes that persons or thing similarly situated cannot be distinguished or discriminated while making or applying law. It has to be applied equally to persons situated similarly and in same situation. Any law made or action taken in violation of these principles sold be liable to be struck down as violative of Art. 25. Law clothes any statutory authority or functionary with unguided and arbitrary power enabling it to administer it in a discriminatory manner, such law would violative equality clause of Art. 25. Substantive and procedural law and action taken under it can be challenged as violative of Arts. 8, 25 on ground of absence of reasonable classification.

The policy of up-gradation of the province is not in line with the legal requirement nor there exists any reasonable classification for not allowing BS-17 to the petitioners, thus it is held that petitioners are discriminated. The writ petition is allowed and respondents are directed to upgrade the post of Assistant Public Prosecutor from BPS-16 to BPS-17 w.e.f 2010.

13. Indeed, anomaly has cropped up in the sense th
Assistant Public Prosecutor have been upgraded to BPS-17 v.

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the Court order whereas petitioners being Deputy Public Prosecutors are also in BPS-17 and since in other three provinces the post of Deputy Public Prosecutors has already been upgraded to BPS-18 and petitioners are performing their duties exactly as is done by the Deputy Public Prosecutor in other three provinces therefore, on the analogy of similarly placed employees with no reasonable element of reasonable classification the petitioners are also entitled for up-gradation to BPS-18.

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14. In view of above this writ petition as well as the connected writ petition are allowed. Respondents are directed to issue the notification of petitioners in BPS-18 as Deputy Public Prosecutor and petitioners of connected writ petition in BPS-19 as Public Prosecutors, with immediate effect.

Announced.
7th June, 2016
 Tariq Jan.

JUDGE

JUDGE

No. 22189
 Date of Presentation of Application 26/01/22
 No of Pages 24
 Copying fee 1/-
 Total 96
 Date of Preparation of Copy 26/01/22
 Date of Delivery of Copy 26/01/22

Signature
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 The Statute

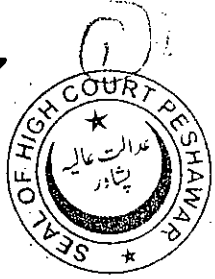
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Annexure

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IN THE PESHAWAR HIGH COURT PESHAWAR



COC No. _____/2019
In W.P No. 110-P/2015

Farasat Ullah
Son of Sibghat Ullah
Deputy Public Prosecutor
Presently posted at DI Khan

.....PETITIONER

VERSUS

1. Dr. Kazim Niaz
Chief Secretary KP
Peshawar
2. Ikramullah Khan
Secretary Home & Tribal Affairs
Civil Secretariat
Peshawar
3. Atif Ur Rehman
Secretary Finance
Civil Secretariat
Peshawar
4. Jamal Uddin
Secretary Establishment & Administration Department
Civil Secretariat
Peshawar
5. Akbar Ali Khan
Director General Prosecution
Civil Secretariat
Peshawar

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EXAMINER
Peshawar High Court

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6. Zia Ul Qamar Safi
Deputy Director Administration
Civil Secretariat
Peshawar

.....RESPONDENTS

PETITION UNDER ARTICLE 204 OF THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973 READ WITH SECTION 3 & 12 OF THE CONTEMPT OF COURT ORDINANCE, 2003, FOR SEEKING THIS AUGUST COURT TO DIRECT THE RESPONDENTS FOR IMPLEMENTATION OF JUDGMENT AND ORDER DATED 07.06.2016 PASSED IN WRIT PETITION NO. 110-P/2015

Respectfully sheweth:

1. That petitioner herein is serving as Deputy Public Prosecutor and is presently posted in District and Sessions Courts at Dera Ismail Khan.
2. That petitioner was initially appointed against the said post on 24.05.2016. At that point of time the post of Deputy Public Prosecutor was in BPS-17. A writ petition (WP No. 110-P/2015) was filed in this august court by similarly placed Deputy Public Prosecutors and others for seeking upgradation of their post from BPS-17 to BPS-19. This writ petition was allowed and accepted by this august court on 07.06.2016 and a direction was issued to the official respondents to upgrade the posts '*with immediate effect*'.
3. Although the respondents had issued an up-gradation notification whereby the post of Deputy Public Prosecutor has been upgraded to BPS-18 but this order has been issued on 02.02.2017, but not '*with immediate*'

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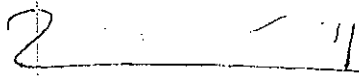
effect' as directed in the judgment dated 07.06.2016 of this august court. The true implementation and compliance of the judgment ibid would be that notification of up-gradation should be issued w. e. f. 07.06.2016 i.e. date of judgment.

- 4. That non-compliance of the judgment supra by respondents as regards the date of giving effect to the up-gradation has prejudiced the petitioner badly. If incase the up-gradation order is issued from the date of judgment (i.e. with immediate effect) the petitioner would by now complete the qualifying service for promotion to the next higher grade. So, enforcement of judgment passed in WP No. 110-P/2015 as regard giving effect to the up-gradation is all the more crucial and important for the petitioner.
- 5. That petitioner has time and again requested the respondents to do the needful but in vain, hence this petition.

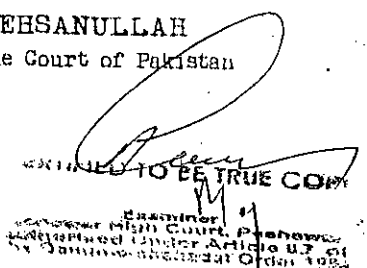
It is, therefore, respectfully prayed that on acceptance of this application this august court may be pleased to direct the respondents to obey and implement the judgment of this august court dated 07.06.2016 passed in WP No. 110-P/2015 by requiring them to formally issue up-gradation notification in question with immediate effect (i.e. from the date of announcement of judgment) as ruled by this august court.

Petitioner

Through



QAZI JAWAD EHSANULLAH
Advocate Supreme Court of Pakistan


OFFICER TO BE TRUE COPY
Examiner
Supreme Court of Pakistan
Established Under Article 177 of
the Constitution of Pakistan 1973

27 JAN 2024

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IN THE PESHAWAR HIGH COURT PESHAWAR

COC No. _____/2019
In W.P No. 110-P/2015

Farasat Ullah

VERSUS

Dr. Kazim Niaz & Others

MEMO OF PARTIES

PETITIONER

Farasat Ullah

Son of Sibghat Ullah
Deputy Public Prosecutor
Presently posted at DI Khan

RESPONDENTS

1. Dr. Kazim Niaz
Chief Secretary KP
Peshawar
2. Ikramullah Khan
Secretary Home & Tribal Affairs
Civil Secretariat
Peshawar
3. Atif Ur Rehman
Secretary Finance
Civil Secretariat
Peshawar

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Peshawar High Court

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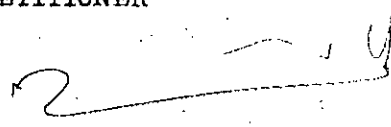
4. Jamal Uddin
 Secretary Establishment & Administration Department
 Civil Secretariat
 Peshawar

5. Akbar Ali Khan
 Director General Prosecution
 Civil Secretariat
 Peshawar

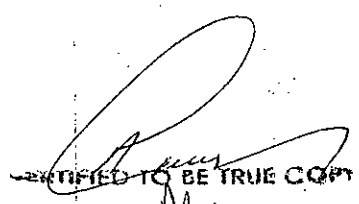
6. Zia Ul Qamar Safi
 Deputy Director Administration
 Civil Secretariat
 Peshawar

PETITIONER

Through



QAZI JAWAD EHSANULLAH
 Advocate Supreme Court of Pakistan



CERTIFIED TO BE TRUE COPY
 M.A.
 Peshawar High Court, Peshawar
 Subscribed Under Article 87 (1)
 of the Constitution of Pakistan

27 JAN 2022

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Annexure - E.

PESHAWAR HIGH COURT, PESHAWAR. FORM "A" FORM OF ORDER SHEET.



Serial No of order or proceeding	Date of Order or Proceeding	Order or other proceedings with Signature of judge or Magistrate and that of parties or counsel where necessary
1	2	3
	18.06.2020.	<p><u>COC No.08-P/2020 in W.P.No.110-P/2015 (D).</u></p> <p><u>Present:-</u> Qazi Jawad Ehsanullah, Advocate for the petitioner.</p> <p>Mr.Atif Ali Khan, A.A.G alongwith Shafi Ullah, Deputy Director (Legal) Prosecution.</p> <p><u>LAL JAN KHATTAK, J:-</u> The former stated that the petitioner would not claim any arrear from the Department in case effect is given to the notification dated 02.02.2017 from 07.06.2016 in light of the judgment dated 07.06.2016 delivered in W.P No.110-P of 2015 to which the latter readily agreed.</p> <p>In view of the above, we dispose of this petition by directing the respondents to give effect to notification dated 02.02.2017 from the date of passing of the judgment dated 07.06.2016 but sans any arrears.</p>

No. 22193
 Date of Presentation of Application 26/01/22
 No of Pages 6
 Copying fee 1
 Total 24
 Date of Preparation of Copy 27/01/22
 Date of Delivery of Copy 27/01/22
 Received By UW

JUDGE

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(For Court Use Only)

HON'BLE MR. JUSTICE LAL JAN KHATTAK &
HON'BLE MR. JUSTICE DAZ ANWAR.

WITNESSE THE TRUE COPY
 At Peshawar
 Peshawar High Court, Peshawar
 Authorized Under Article 87 of
 the Constitution of Pakistan
 27 JAN 2022

-65-

Annexure

-F-

Dated Peshawar the 02nd February, 2017.

NOTIFICATION

NO:SO (Prosecution) HD/1-10-UP/2017/VOL-I in pursuance of the consolidated judgment of the Honorable Peshawar High Court, Peshawar dated 07th June, 2016 in Writ Petitions No. 110-P & 811 P/2015, the Government of Khyber Pakhtunkhwa, Finance Department letter No. KC/SO(FR)/FD/7-8/APP dated 02-02-2017, is pleased to order upgradation of the posts of Deputy Public Prosecutors and Public Prosecutors from BPS-17 to 18 and BPS-18 to 19, respectively in the Directorate of Prosecution, with immediate effect, in the public interest.

Secretary to Government of Khyber Pakhtunkhwa
Home and Tribal Affairs Department

NO: KC/SO(FR)/FD/7-8/APP

Copy forwarded to:

1. Accountant General, Khyber Pakhtunkhwa, Peshawar for information and further necessary action.
2. All District Accounts Officer in Khyber Pakhtunkhwa.

(Hidayat Ullah)
Section Officer (FR)
Finance Department

Dated Peshawar the 02nd February, 2017

NO:SO (Prosecution) HD/1-10-UP/2017/VOL-I

Copy forwarded to:-

1. The Principal Secretary to Chief Minister, Chief Minister's Secretariat, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Peshawar.
3. The Secretary to Government of Khyber Pakhtunkhwa, Finance Department, Peshawar.
4. The Registrar, Peshawar High Court, Peshawar.
5. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
6. The Director General Prosecution, Khyber Pakhtunkhwa, Peshawar.
7. The Manager, Government Printing & Stationery Department, Shami Road, Peshawar for publication in the official Gazette with the request to kindly supply 50 copies of the Gazetted Notification to this Department.
8. The PSO to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
9. The Section Officer (Media), Home Department, Peshawar.
10. The Budget Officer-III, Finance Department, Peshawar for allocation of additional budget, as well as reflection of these upgraded posts in the Budget Book.
11. The PS to Secretary Home, Khyber Pakhtunkhwa, Peshawar.
12. The PS to Special Secretary Home, Khyber Pakhtunkhwa, Peshawar.

(Jenanzeel Khan)
Section Officer (Prosecution)

9 Feb. 2017 2:27

FAX NO: 0919212359

FSD

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- 66 -

Better Copy

Dated Peshawar the 02-February, 2017,

NOTIFICATION.

NO.SO (Prosecution) HD/1-10-UP/2017/VOL-L in pursuance of the consolidated judgment of the Honorable Peshawar High Court, Peshawar dated 07 June, 2016 in Writ Petitions No. 110-P & 811 P/2015, the Government of Khyber Pakhtunkhwa, Finance Department letter No. KC/SO/FR/FD/7-8/APP/ dated 02-02-2017, is pleased to order upgradation of the posts of Deputy Public Prosecutors and Public Prosecutors from BPS-17 to 18 and 3PS-18 to 19 respectively in the Directorate of Prosecution, with immediate effect, in the public interest

Secretary to Government of Khyber Pakhtunkhwa
Home and Tribal Affairs Department

NO. K.C/SO (FR) / FD /7-8/App

Copy forwarded to

1 Accountant General Khyber Pakhturikhwa, Peshawar for information and further necessary Action.

2. All District Accounts Officer in Khyber Pakhtunkhwa

(Hidayat Ullah)

Section Office (FR)
Finance Department

Dated Peshawar the 02 February 2017

NO SO (Prosecution) HD/1-10-UP/2017/VOL-I.

Copy forwarded to

1 The Principal Secretary to Chief Minister, Chief Minister's Secretariat, Khyber Pakhtunkhwa Peshawar.

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

3. The Secretary to Government of Khyber Pakhtunkhwa, Finance Department, Peshawar

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Section Officer Prosecution



Dated Peshawar, the 21/05/2021.

NOTIFICATION**No.SO(PROSECUTION)/1-27/2020/Vol-1/**

In pursuance of Section-8(1) of Khyber Pakhtunkhwa Civil Servants Act,

1973, read with Rule-17 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, the competent authority is pleased to notify/circulate Final Seniority List of Deputy Public Prosecutor (BS-18) of the Directorate of Prosecution, Khyber Pakhtunkhwa as stood on 31/12/2020.

Sl. No.	NAME OF OFFICER WITH QUALIFICATION	DATE OF BIRTH & DOMICILE	DATE OF FIRST ENTRY INTO GOVT SERVICE WITH BPS	REGULAR APPOINTMENT/PROMOTION TO PRESENT POST			PRESENT POSTING
				DATE	BPS	METHOD OF PROMOTION	
1.	Shafiullah, B.A, LL.B	31/12/1982 FR, Bannu.	21/09/2010 as Deputy Public Prosecutor, (BPS-17) The post of Deputy Public Prosecutor was upgraded from BS-17 to BS-18 in light of Peshawar high court order/judgement dated 21-11-2013 vide notification dated 11-11-2014.	21/09/2010	The officer has been promoted to the post of Senior Public Prosecutor (BS-19) on acting charge basis.	By promotion	Deputy Director Legal Directorate of Prosecution
2.	Usman Zaman Mohmand B.A, LL.B	04/11/1980 Mohmand Agency	26/05/2008 as Assistant Public Prosecutor (BPS-16) and 21/09/2010 as Deputy Public Prosecutor	21/09/2010	Deputy Public Prosecutor (BS-18)	-do-	On Deputation to Establishment Department
3.	Qasim Farooq, M.A, LL.B	27/12/1979 Abbottabad	05/05/2008 as Assistant Public Prosecutor (BPS-16) and 21/09/2010 as Deputy Public Prosecutor	21/09/2010	The officer has been promoted to the post of Senior Public Prosecutor (BS-19) on acting charge basis.	-do-	Senior Public Prosecutor BS-19 on A.C.B. Kohistan.
4.	Hussain Ahmad, B.A, LL.M	10/04/1980 Shagla	17/06/2009 as Assistant Public Prosecutor (BPS-16) and 03/06/2014 as Deputy Public Prosecutor	21/09/2010	-do-	-do-	Senior Public Prosecutor BS-19 on A.C.B at Kohistan.
5.	Sifarullah, B.A, LL.B	10/04/1978 Peshawar	21/09/2010 as Deputy Public Prosecutor, (BPS-17)	21/09/2010	-do-	-do-	Senior Public Prosecutor BS-19 on A.C.B at Malakand.

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Sl. No.	NAME OF OFFICER	DATE OF BIRTH	DATE OF ENTRY INTO SERVICE	REGULATORY APPOINTMENT FROM WHICH ON TO PRESENT		PRESENT POSTING
				DATE	METHOD OF RECRUITMENT	
6.	Taimur Khattak, B.A, LLB	25/12/1980 Nowshera	21-09-2010 as Deputy Public Prosecutor, (BPS-17)	21/09/2010	-do-	Senior Public Prosecutor BS-19 on A.C.B at Swat
7.	Taj Muhammad, B.A, LLB	05/03/1978 Lakki Marwat	21/09/2010 as Deputy Public Prosecutor, (BPS-17)	21/09/2010	-do-	Senior Public Prosecutor BS-19 on A.C.B at Karak
8.	Bakhtiar Khan, B.A, LLB	12/01/1978 Mohmand Agency.	21/09/2010 as Deputy Public Prosecutor, (BPS-17)	21/09/2010	-do-	Senior Public Prosecutor BS-19 on A.C.B at Charsadda.
9.	Wajid Ali, M.A, LL.B	02/04/1980 Charsadda.	05/05/2008 as Assistant Public Prosecutor (BPS-16)	24/09/2010	-do-	Senior Public Prosecutor BS-19 on A.C.B at Dir-Lower
10.	Miss Shaheen Tabasum, B.A, LL.B	12/4/1982 Kohat	11/03/2009 as Assistant Public Prosecutor (BPS-16) and 27/08/2009 as Deputy Public Prosecutor	27/08/2009	-do-	Senior Public Prosecutor BS-19 on A.C.B at Kohat
11.	Azhar Ali, B.A, LL.B	18/04.1983 Peshawar	24/09/2010 as Deputy Public Prosecutor (BPS-17)	24/09/2010	-do-	Senior Public Prosecutor BS-19 on A.C.B at Anti-Corruption, Peshawar.
12.	Jamshid Khan Mahsud, B.A, LL.B	01/06/1977 S.W.Agency.	24/09/2010 as Deputy Public Prosecutor (BPS-17)	24/09/2010	-do-	Senior Public Prosecutor BS-19 on A.C.B at Tank.
13.	Qaisar Khan, B.A, LL.B	01/01/1980 Peshawar.	05/05/2008 as Assistant Public Prosecutor (BPS-16) and 24/09/2010 as Deputy Public Prosecutor	24/09/2010	BS-18	By promotion Senior Public Prosecutor BS-19 on A.C.B at Khyber.
14.	Ayaz Zarin, B.A, LL.B	20/04/1983 Chitral	24/09/2010 as Deputy Public Prosecutor. (BPS-17)	24/09/2010	-do-	Senior Public Prosecutor BS-19 on A.C.B at Chitral
15.	Zafar Ali, B.A, LL.B	30/03/1982 Mohmand Agency.	26/05/2008 as Assistant Public Prosecutor (BPS-16) and 24/09/2010 as Deputy Public Prosecutor	24/09/2010	-do-	Senior Public Prosecutor BS-19 on A.C.B at Mohmand Agency.

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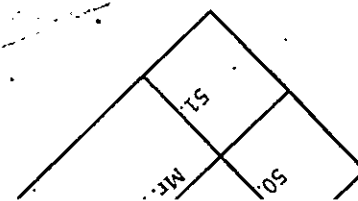
16.	Sangeen Shah, B.A, LL.B.	12/04/1982 Charsadda.	05/05/2008 as Assistant Public Prosecutor (BPS-16) and 24/09/2010 as Deputy Public Prosecutor	24/09/2010	-do-	-do-	Senior Public Prosecutor BS-19 on A.C.B at Malakand.
17.	Asmat ullah, M.A, LL.B	15/03/1980 S.W.Agency.	24/09/2010 as Deputy Public Prosecutor, (BPS-17)	24/09/2010	-do-	-do-	Senior Public Prosecutor BS-19 on A.C.B at Bannu.
18.	Mian Aziz Ahmad, M.A, LL.B	05/06/1979 Dir (Upper).	24/09/2010 as Deputy Public Prosecutor, (BPS-17)	24/09/2010	-do-	-do-	Senior Public Prosecutor BS-19 on A.C.B at Khyber.
19.	Muhammad Bilal Qureshi B.A, LL.B	04/07/1983 Abbottabad.	24/09/2010 as Deputy Public Prosecutor, (BPS-17)	24/09/2010	-do-	-do-	Senior Public Prosecutor BS-19 on A.C.B at Haripur
20.	Akhtar Nawaz Khan, B.A, LL.B	19/12/1978 Haripur.	24/09/2010 as Deputy Public Prosecutor, (BPS-17)	24/09/2010	-do-	-do-	Senior Public Prosecutor BS-19 on A.C.B at Swabi
21.	Javeed Hussain Mughal B.A, LL.B	10/10/1961, Chitral	01/10/1987 as PSI (BPS-11) in Police Department.	27-02-2012	-do-	-do-	Senior Public Prosecutor BS-19 on A.C.B at Chitral
22.	Mr. Zia-ul-Haq BA, LL.B.	01/08/1978, Dir (Lower)	03/01/2011 as Assistant Public Prosecutor (BPS-16) and 03/06/2014 as Deputy Public Prosecutor	03/06/2014	-do-	-do-	Dir Lower
23.	Mr. Attiq-ur-Rehman MA, LLB	01/04/1980 Peshawar	05/05/2008 as Assistant Public Prosecutor (BPS-16) and 03/06/2014 as Deputy Public Prosecutor	03/06/2014	-do-	-do-	Director Administration, Directorate of Prosecution.
24.	Mr. Zeeshan Ullah Afridi BA, LLB	10/06/1982 FR Kohat	03/01/2011 as Assistant Public Prosecutor (BPS-16 and 03/06/2014 as Deputy Public Prosecutor)	03/06/2014	-do-	-do-	Senior Public Prosecutor BS-19 on A.C.B at Peshawar.
✓ 25.	Miss. Sobia Rasheed Raja MA, LLB	16/05/1982 Abbottabad	24/05/2016 As Deputy Public Prosecutor (BS-17)	24/05/2016	-do-	-do-	Abbottabad
26.	Mr. Farsatullah	31/10/1984 Tank	24/05/2016 As Deputy Public Prosecutor (BS-17)	24/05/2016	Deputy Public Prosecutor (BS-18)	By initial recruitment on 24-05-2016.	D.I Khan
✓ 27.	Miss. Bibi Sumaira MA, LLB	05/05/1979 Manshera	24/05/2016 As Deputy Public Prosecutor (BS-17)	24/05/2016	-do-	-do-	Mansehra
28.	Miss, Mahjabeen MA, LLB	20/02/1980 Battagram	24/05/2016 As Deputy Public Prosecutor (BS-17)	24/05/2016	-do-	-do-	Mansehra

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Senior Public
Prosecutor BS-19 on
A.C.B at
Chitral
Abbottabad

Sl. No.	NAME OF OFFICER	DATE OF BIRTH	DATE OF APPOINTMENT	DATE	POST	DATE OF LEAVE	POST
29.	Abdul Qadus Khan	03/10/1987 Bannu	24/05/2016 As Deputy Public Prosecutor (BS-17)	24/05/2016	-do-	-do-	DI Khan
30.	Miss. Fari Rafique	21/10/1979 Abbottabad	30/09/2016 As Deputy Public Prosecutor (BS-17)	30/09/2016	-do-	-do-	Abbottabad
31.	Mr. Altaf Hussain, B.A, LL.B	12/02/1961, D.I.Khan	17/09/1989 as PSI (BPS-11) in Police Department	20/05/2018	The officer has been promoted to the post of Senior Public Prosecutor (BS-19) on acting charge basis.	By promotion	Senior Public Prosecutor BS-19 on A.C.B at D.I.Khan.
32.	Mr. Fazale Hadi, B.A, LL.B	03/10/1960, Dir (Upper)	09/12/1990 as PSI (BPS-14) in Police Department	-do-	-do-	-do-	Senior Public Prosecutor BS-19 on A.C.B at Nowshera.
33.	Mr. Altaf Hussain Akhtar, B.A, LL.B	01/04/1962, Mansehra	31/07/1991 as PSI (BPS-14) in Police Department.	-do-	-do-	-do-	Senior Public Prosecutor BS-19 on A.C.B at Battagram.
34.	Muhammad Changaiz Khan, B.A, LL.B	01/05/1962, Abbottabad	03/08/1991 as PSI (BPS-14) in Police Department.	08/10/2019	Deputy Public Prosecutor (BS-18)	-do-	Haripur
35.	Mr. Qamar Zeb, B.A, LL.B	21/08/19965 Nowshera	18/12/1991 as PSI (BPS-14) in Police Department.	-do-	-do-	-do-	Charsadda.
36.	Mr. Muhammad Afzal Khan, M.A, LL.B	01/05/1965, Chitral	18/06/1992 as PSI (BPS-14) b in Police Department.	20/05/2018	The officer has been promoted to the post of Senior Public Prosecutor (BS-19) on acting charge basis.	By promotion	Senior Public Prosecutor BS-19 on A.C.B at Dir-Upper
37.	Muhammad Saeed, BA, LL.B	14/08/1962, Mardan	21/02/1993 as PSI (BPS-14) b in Police Department.	08/10/2019	Deputy Public Prosecutor (BS-18)	-do-	
38.	Mr. Javid Iqbal Anwar, B.A, LL.B	20/09/1965, Haripur.	29/03/1993 as PSI (BPS-14) in Police Department.	20/05/2018	The officer has been promoted to the post of Senior Public Prosecutor (BS-19) on acting charge basis.	By promotion	Senior Public Prosecutor BS-19 on A.C.B at Orakzai.
39.	Mr. Muhammad Shakeel Ahmad B.A, B.Ed. LL.B	02/05/1968, D.I.Khan.	02/04/1999 as PSI (BPS-14) in Police Department.	-do-	-do-	-do-	Senior Public Prosecutor BS-19 on A.C.B at DI Khan
40.	Mr. Attaullah, B.Sc, LL.B	20/08/1971, Lakki Marwat	06/04/1999 as PSI (BPS-14) in Police Department.	-do-	-do-	-do-	Senior Public Prosecutor BS-19 on A.C.B at Kuram.

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41.	Mr. Muhammad Nadeem, B.A, LL.B	09/04/1969, Lakki Marwat	06/04/1999 as PSI (BPS-14) in Police Department	-do-	-do-	-do-	Senior Public Prosecutor BS-19 on A.C.B at Karak.
42.	Mr. Hayatullah, B.A, LL.B	02/01/1970, Bannu	08/04/1999 as PSI (BPS-14) in Police Department.	-do-	-do-	-do-	Senior Public Prosecutor BS-19 on A.C.B at Lakki Marwat
43.	Mr. Sher Bahadar Khan, B.Sc LL.B	06/09/1973, D.I.Khan	02/04/1999 as PSI (BPS-14) in Police Department.	-do-	-do-	-do-	Senior Public Prosecutor BS-19 on a A.C.B at South Waziristan.
44.	Mr. Ziaullah Wazir, B.A, LL.B	26/10/1965, F.R Bannu	08/04/1999 as PSI (BPS-14) in Police Department.	-do-	-do-	-do-	Senior Public Prosecutor BS-19 on A.C.B at Hangu.
45.	Mr. Khalid Khan, B.A, LL.B	10/02/1969, Swabi.	15/10/1999 as PSI (BPS-14) in Police Department.	-do-	-do-	-do-	Senior Public Prosecutor BS-19 on A.C.B at Swabi.
46.	Mr. Tasawar Hussain, B.A, LL.B.	01/04/1970, D.I.Khan	02/04/1999 as PSI (BPS-14) in Police Department.	-do-	-do-	-do-	Senior Public Prosecutor BS-19 on A.C.B at ATC D.I.Khan
47.	Mr. Amanullah, M.A, LL.B	19/12/1966, Lakki Marwat	08/04/1999 as PSI (BPS-14) in Police Department.	-do-	-do-	-do-	Senior Public Prosecutor BS-19 on A.C.B at North Waziristan.
48.	Mr. Muzafar Ahmad, B.A, LL.B	12/02/1968; Dir (Lower)	05/04/1999 as PSI (BPS-14) in Police Department.	-do-	BS-18	By Promotion	Senior Public Prosecutor BS-19 on A.C.B at Mardan.
49.	Mr. Javed Ur Rehman, B.A, LL.B	02/09/1965, Mardan.	05/09/1999 as PSI (BPS-14) in Police Department	-do-	-do-	-do-	Senior Public Prosecutor BS-19 on A.C.B at Mardan.
50.	Mr. Syed Falak Sair, B.Sc, LL.B	05/12/1964, Dir (Upper)	06/04/1999 as PSI (BPS-14) in Police Department	-do-	-do-	-do-	Senior Public Prosecutor BS-19 on A.C.B at Peshawar.
51.	Mr. Manzoor Alam Khan, B.A, LL.B	27/04/1982, Peshawar.	05/05/2008 as Assistant Public Prosecutor (BPS-16)	-do-	-do-	-do-	Senior Public Prosecutor BS-19 on A.C.B at Peshawar

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POST No	NAME OF OFFICER WITH QUALIFICATION	DOMICILE	DATE OF ENTRY INTO GOVT SERVICE WITH BPS		POST		METHOD OF RECRUITMENT	POST
					BPS-18			
52.	Mr. Umer Niaz, B.A, LL.B	12/03/1981, Karak	05/05/2008 as Assistant Public Prosecutor (BPS-16)		-do-	-do-	-do-	Senior Public Prosecutor BS-19 on A.C.B at Orakzai.
53.	Mr. Rafi Ullah, M.A, LL.B	01/04/1983, Mohmand Agency	26/5/2008 as Assistant Public Prosecutor (BPS-16)		-do-	-do-	-do-	Senior Public Prosecutor BS-19 on A.C.B at Nowshera.
54.	Mr. Muhammad Tufail, B.A, LL.B	30/03/1981, Mohammad Agency	26/05/2008 as Assistant Public Prosecutor (BPS-16)		-do-	-do-	-do-	Senior Public Prosecutor BS-19 on A.C.B at Mohmand.
55.	Mr. Ibad-ur-Rehman, B.Sc, L.L.B	17/12/1978, Peshawar.	05/05/2008 as Assistant Public Prosecutor (BPS-16)		-do-	-do-	-do-	Senior Public Prosecutor BS-19 on A.C.B at Hangu
56.	Mr. Asim Mehmood, B.A, LL.B	01/04/1980, Abbottabad	05/05/2008 as Assistant Public Prosecutor (BPS-16)		-do-	-do-	-do-	Senior Public Prosecutor BS-19 on A.C.B at Abbottabad
57.	Mr. Waqas Ashraf, MA, LL.B	27/06/1979, Abbottabad.	05/05/2008 as Assistant Public Prosecutor (BPS-16)		08/10/2019	Deputy Public Prosecutor (BS-18)	-do-	Mansehra.
58.	Mr. Zia Ul Qamar Safi, BA, LL.B	30/01/1978, Mohmand.	05/05/2008 as Assistant Public Prosecutor (BPS-16)		-do-	-do-	-do-	Deputy Director Admin, Directorate of Prosecution.
59.	Mr. Rafiullah, BA, LL.B	31/08/1975, Swat	05/05/2008 as Assistant Public Prosecutor (BPS-16)		-do-	-do-	-do-	Swat
60.	Muhammad Muzafar, BA, LL.B	06/09/1979, Khyber Agency.	26/05/2008 as Assistant Public Prosecutor (BPS-16)		-do-	-do-	-do-	Nowshera.
61.	Mr. Bakht Baidar Khan, MA, LL.B	02/05/1980, Buner.	05/05/2008 as Assistant Public Prosecutor (BPS-16)		-do-	-do-	-do-	Buner.
62.	Mr. Anwar Khan, MA, LL.B	25/05/1980, FR Peshawar	05/05/2008 as Assistant Public Prosecutor (BPS-16)		-do-	-do-	-do-	Peshawar.
63.	Mr. Muhammad Zaib Khan, B.A, LL.B	01/03/1972, Swabi.	05/05/2008 as Assistant Public Prosecutor (BPS-16)		05/05/2008	-do-	-do-	Charsadda
64.	Mr. Muhammad Ilyas Khan, M.A, LL.B	20/09/1976, Abbottabad	05/05/2008 as Assistant Public Prosecutor (BPS-16)		05/05/2008	-do-	-do-	Haripur.
65.	Mr. Syed Asghar Asad, M.A, LL.M	20/08/1977, Peshawar	05/05/2008 as Assistant Public Prosecutor (BPS-16)		05/05/2008	-do-	-do-	Peshawar.
66.	Mr. Muhammad Inam, M.A, LL.B	30/05/1979, Mardan.	05/05/2008 as Assistant Public Prosecutor (BPS-16)		05/05/2008	-do-	-do-	Mardan.

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67.	Mr. Muhammad Naeem, B.A, LL.B	20/02/1980, Malakand Agency	05/05/2008 as Assistant Public Prosecutor (BPS-16)	05/05/2008	-do-	-do-	Peshawar.
68.	Mr. Javed Ali, B.A, LL.B	23/03/1981, Mohmand Agency	26/05/2008 as Assistant Public Prosecutor (BPS-16)	26/05/2008	-do-	-do-	Lakki Marwat
69.	Mr. Javed Akhtar Wazir, B.A, LL.B	01/10/1981, S.W. Agency	05/05/2008 as Assistant Public Prosecutor (BPS-16)	05/05/2008	-do-	-do-	Kurram
70.	Mr. Noor Salam Khan, B.A, LL.B	13/04/1973, N.W. Agency Miranshah.	05/05/2008 as Assistant Public Prosecutor (BPS-16)	05/05/2008	-do-	-do-	Bannu
71.	Mr. Yousaf Jamal, MA, LL.B	20/04/1981, Karak	05/05/2008 as Assistant Public Prosecutor (BPS-16)	05/05/2008	-do-	-do-	Bannu
72.	Mr. Latif Khan, B.A, LL.B	03/02/1975, Bannu	05/05/2008 as Assistant Public Prosecutor (BPS-16)	05/05/2008	-do-	-do-	Kohat
73.	Mr. Zahoor Khan, B.A, LL.B	04/03/1981, Peshawar	26/05/2008 as Assistant Public Prosecutor (BPS-16)	26/05/2008	-do-	-do-	Mansehra
74.	Mr. Sher Alam, M.A, LL.B	10/01/1980, Mansehra	08/07/2009 as Assistant Public Prosecutor (BPS-16)	08/07/2009	-do-	-do-	Battagram
75.	Mr. Muhammad Sohail, B.A, LL.B	20/05/1985, Battagram.	08/08/2009 as Assistant Public Prosecutor (BPS-16)	08/08/2009	-do-	-do-	Peshawar
76.	Miss Haseena Syed, B.A, LL.B	23/03/1984, Peshawar	01/09/2009 as Assistant Public Prosecutor (BPS-16)	01/09/2009	-do-	-do-	Peshawar

Secretary to Government of Khyber Pakhtunkhwa
Home & Tribal Affairs Department.

Endst: of Even No. & Date:

Copy forwarded to:-

1. The Secretary to Government Khyber Pakhtunkhwa, Establishment Department.
2. All the District Public Prosecutors in Khyber Pakhtunkhwa.
3. P.S to Secretary, Home & Tribal Affairs Department.
- 2- The Director General Prosecution, Khyber Pakhtunkhwa, Peshawar.
- 3- All the Deputy Public Prosecutor, Khyber Pakhtunkhwa.

Note:

*The Incumbent at S. No. 22 has been relieved from the post of Deputy Public Prosecutor (BS-18) in light of withdrawal of his recommendation by Khyber Pakhtunkhwa Public Service Commission in compliance of Peshawar High Court, Peshawar judgment.

**The Incumbents at S.No. 31 & 32 M/s Altaf Hussain & Fazali Hadi retired from service on attaining the age of superannuation on 11-02-2021 & 10-02-2020 respectively.

(Khushi Muhammad Khan)
Section Officer (Prosecution)

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Annexure - G -

D - (26)



GOVERNMENT OF KHYBER PAKHTUNKHWA HOME & TRIBAL AFFAIRS DEPARTMENT

Dated Peshawar the 30th June, 2020.

NOTIFICATION

No. SO(PROS)/HD/1-10/Unrec&Prom/2020

The Competent Authority, on the recommendations of the Provincial Selection Board, in its meeting held on 12-06-2020, is pleased to order appointment of the following Deputy Public Prosecutors BS-18 as Senior Public Prosecutors/District Public Prosecutors, BPS-19 on acting charge basis, with immediate effect:

S.#.	NAME OF OFFICERS	PRESENT POSTING
1.	Mr. Shafiullah, B.A, LL.B	Deputy Director (Legal), Directorate of Prosecution.
2.	Mr. Qasim Farooq, M.A, LL.B.	Dy. Public Prosecutor, Kohistan Lower.
3.	Mr. Hussain Ahmad, B.A, LLM	Dy. Public Prosecutor, Kohistan Upper.
4.	Mr. Sifatullah, B.A, LL.B	Dy. Public Prosecutor, Peshawar.
5.	Mr. Taimur Khattak, B.A, LL.B	DS (Judicial), Establishment Department.
6.	Mr. Taj Muhammad, B.A, LL.B	Dy. Public Prosecutor, Karak.
7.	Mr. Bakhtiar Khan, B.A, LL.B	Dy. Public Prosecutor, Mohmand.
8.	Mr. Wajid Ali, M.A, LL.B	Dy. Public Prosecutor, Dir Lower.
9.	Miss Shaheen Tabasum, B.A, LL.B	Dy. Public Prosecutor, Kohat.
10.	Mr. Azhar Ali, B.A, LL.B	Sr. Public Prosecutor, Anti-Corruption, Peshawar.
11.	Mr. Jamshid Khan Mahsud, B.A, LL.B	ATC D.I. Khan.
12.	Mr. Qaisar Khan, B.A, LL.B	Dy. Public Prosecutor, Peshawar.
13.	Mr. Ayaz Zarin, B.A, LL.B	District Public Prosecutor, Chitral.
14.	Mr. Zafar Ali, B.A, LL.B	District Public Prosecutor, Mohmand.
15.	Mr. Sangeen Shah, B.A, LL.B	Dy. Public Prosecutor, Peshawar.
16.	Mr. Asmat Ullah, M.A, LL.B	Dy. Public Prosecutor, South Waziristan.
17.	Mr. Mian Aziz Ahmad, M.A, LL.B	District Public Prosecutor, Khyber.
18.	Muhammad Bilal Qureshi B.A, LL.B	Dy. Public Prosecutor, Haripur.
19.	Mr. Akhtar Nawaz Khan, B.A, LL.B	Dy. Public Prosecutor, Swabi.
20.	Mr. Javeed Hussain Mughal B.A, LL.B	Dy. Public Prosecutor, Chitral.
21.	Mr. Attiq-ur-Rehman M.A, LL.B	Dy. Public Prosecutor, Peshawar.
22.	Mr. Zeeshan Ullah Afridi B.A, LL.B	Dy. Public Prosecutor, Swabi.
23.	Mr. Altaf Hussain B.A, LL.B	Dy. Public Prosecutor, Bannu.
24.	Mr. Fazale Hadi B.A, LL.B	Dy. Public Prosecutor, Nowshera.
25.	Mr. Altaf Hussain Akhtar B.A, LL.B	Dy. Public Prosecutor, Mansehra.

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(27)

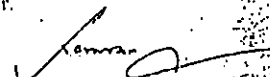
S.No.	Name of Officers	PRESENT POSTING
26.	Muhammad Afzal Khan MA, LLB	Dy. Public Prosecutor, Kohistan Chitral.
27.	Mr. Javid Iqbal Anwar BA, LLB	Dy. Public Prosecutor, Kohistan Haripur.
28.	Muhammad Shakeel Ahmad BA, LLB	Dy. Public Prosecutor, D.I. Khan.
29.	Mr. Attaullah BSc, LLB	Dy. Public Prosecutor, Bannu.
30.	Muhammad Nadeem BA, LLB	Dy. Public Prosecutor, Lakki Marwat.
31.	Mr. Hayatullah BA, LLB	Dy. Public Prosecutor, Lakki Marwat.
32.	Mr. Sher Bahadar Khan BSc, LLB	District Public Prosecutor, South Waziristan.
33.	Mr. Ziaullah Wazir BA, LLB	Dy. Public Prosecutor, Mansehra.
34.	Mr. Khalid Khan BA, LLB	Dy. Public Prosecutor, Swabi.
35.	Mr. Tasawar Hussain BA, LLB	Dy. Public Prosecutor, D.I. Khan.
36.	Mr. Amanullah MA, LLB	Dy. Public Prosecutor, North Waziristan.
37.	Mr. Muzafar Ahmad BA, LL	Dy. Public Prosecutor, Mardan.
38.	Mr. Jayesh-ur-Rehman BA, LLB	Dy. Public Prosecutor, Mardan.
39.	Syed Falak Sair BSc, LLB	Dy. Public Prosecutor, Peshawar.
40.	Mr. Manzoor Alam Khan BA, LLB	Dy. Public Prosecutor, Peshawar.
41.	Mr. Umer Niaz BA, LLB	District Public Prosecutor, Orakzai.
42.	Mr. Rafiqullah MA, LLB	Dy. Public Prosecutor, Peshawar.
43.	Muhammad Tufail BA, LLB	Dy. Public Prosecutor, Malakand.
44.	Mr. Ibad-ur-Rehman BSc, LLB	Dy. Public Prosecutor, Chitral.
45.	Mr. Asim Mehmood BA, LLB	Dy. Public Prosecutor, Abbottabad.

02. The officers on promotion shall remain on probation for a period of one year in terms of Section 6(2) of Khyber Pakhtunkhwa, Civil Servants Act, 1973, read with Rule 15(1) of Khyber Pakhtunkhwa, Civil Servants (Appointment, Promotion & Transfer) Rules, 1989.

SECRETARY
HOME DEPARTMENT

Encls: No. and date even :-
Copy forwarded to :-

1. The Secretary to Government of Khyber Pakhtunkhwa, Establishment Department.
2. The Secretary to Government of Khyber Pakhtunkhwa, Finance Department.
3. The Accountant General, Khyber Pakhtunkhwa.
4. The Director General Prosecution Khyber Pakhtunkhwa.
5. All District Public Prosecutors in Khyber Pakhtunkhwa.
6. All District Accounts Officers in Khyber Pakhtunkhwa.
7. P.S to Secretary Home & Tribal Affairs Department, Peshawar.
8. PS to Special Secretary, Home & Tribal Affairs Department, Peshawar.


Section Officer (Prosecution)

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Annexure
- H.

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Appeal No. 13582/2020

Diary No. 13888

Date 03/11/2020

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 today

03/11/2020

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- 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 CHRG 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 colleagues and junior colleagues of the appellant with


75.

Appellant alongwith his counsel Mr. Noor Muhammad, Khattak Advocate, present. Mr. Naeem Ullah, Assistant Director (Litigation) alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for official respondents No. 1 to 4 present. Mr. Yasir Khattak, Advocate for private respondents No. 28 & 29 present. Mr. Javed Iqbal Gulbela, Advocate, for private respondents No. 11, 12, 13, 15, 16, 18 to 25 present and submitted in writing that he rely upon the comments submitted by the official respondents. Arguments heard and record perused:


Vide our detailed judgment of today, separately placed on file, of service appeal bearing No. 13581/2020 "titled Abdul Qudus Vs. The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa Peshawar and twenty eights others", the instant appeal is 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 true copy


OFFICER
Khyber Pakhtunkhwa
Tribunal,
Peshawar

Date of Receipt 27/9/21
Number of copies 12
Date of issue 19/9/21
Date of filing 19/9/21
Date of disposal 28/9/21

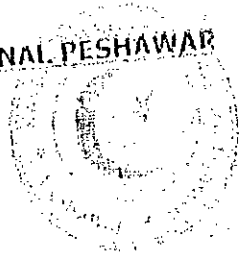
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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 13581/2020

Date of Institution ... 03.11.2020

Date of Decision ... 16.09.2021



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

VERSUS

The Government of Khyber through Chief Secretary, Khyber Pakhtunkhwa 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 ATIQ-UR-REHMAN WAZIR

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

Wh

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,

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Peshawar and twenty six others" as well as service appeal bearing No. 160/20/2020 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

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ACCEPTED

[Signature]
PROSECUTOR GENERAL
KHYBER PAKHTUNKHWA

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

Q3: Notices were issued to the respondents, who submitted their comments.

Q4: 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 SPF(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-

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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 (S/001/19) 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. Yasin 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.

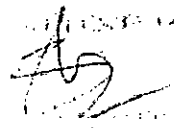
Signature and stamp of the court.

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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2. APPs argue as that the post of APP in the Prosecution Wing of Home Department was 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. 201-2011 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:

under: 

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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 BPS-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.

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APPELLANTS
[Signature]

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

Wm

ATTESTED

 (NAME)

- 85 .


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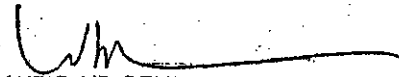
who are still junior to the appellants and were earlier serving under supervision of the appellants.

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 true copy


Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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Government of Khyber Pakhtunkhwa
Home & Tribal Affairs Department

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

Notification

No.SQ(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 (BPS-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 Asad MA.LLM	On Deputation as SO Police Home Department
13.	Muhammad Inam 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

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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.
4. The Director General Prosecution, Khyber Pakhtunkhwa.
5. All Regional Directors Prosecution in Khyber Pakhtunkhwa.
6. All District Public Prosecutors in Khyber Pakhtunkhwa.
7. All District Accounts Officers in Khyber Pakhtunkhwa.
8. Officers concerned through Directorate Prosecution Peshawar.
9. PS to Secretary Home & Tribal Affairs Department Peshawar.
10. PS to Special Secretary Home and Tribal Affairs Department, Peshawar.
11. PA to Additional Secretary (Judicial) Home & Tribal Affairs Department Peshawar.
12. Master File.

(Khushi Muhammad Khan)
Section Officer (Prosecution)

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Annexure

J



**GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME AND TRIBAL AFFAIRS DEPARTMENT**

Dated Peshawar the 31st January, 2022

NOTIFICATION

No.SO(Pros:)/HD/2-3/Post & Trans/2022. The Chief Minister Khyber Pakhtunkhwa is pleased to order postings/transfers of the following Prosecution Officers with immediate effect, in the best public interest:

S#	Name With Designation	From	To
1.	Mr. Usman Zaman Senior Public Prosecutor (BPS-19)	Deputy Secretary Administration, Establishment Department on deputation.	Senior Public Prosecutor, Mardan against vacant post
2.	Muhammad Changaiz Senior Public Prosecutor (BPS-19)	Deputy Public Prosecutor Haripur.	District Public Prosecutor, Kolai Palas against vacant post
3.	Mr. Qamar Zeb Senior Public Prosecutor (BPS-19)	Deputy Public Prosecutor Charsadda.	Senior Public Prosecutor, Peshawar vice Sr No.22
4.	Mr. Waqas Ashraf Senior Public Prosecutor (BPS-19)	Deputy Public Prosecutor Mansehra	Senior Public Prosecutor, Kolai Palas against vacant post
5.	Mr. Zia ul Qamar Safi Senior Public Prosecutor (BPS-19)	Deputy Director-Administration Directorate of Prosecution	Senior Public Prosecutor, Peshawar Anti-Corruption Court vice no 24
6.	Mr. Rafi Ullah Senior Public Prosecutor (BPS-19)	Deputy Public Prosecutor Swat	District Public Prosecutor, Upper Dir against vacant post
7.	Muhammad Muzafar Senior Public Prosecutor (BPS-19)	Deputy Public Prosecutor Nowshera	Senior Public Prosecutor, Lower Dir against vacant post
8.	Mr. Bakht Baidar Senior Public Prosecutor (BPS-19)	Senior Public Prosecutor (BPS- 19) (OPS) at ATC Court Swat at camp Court Buner	Senior Public Prosecutor, Swat at Anti-Terrorism camp court Buner against vacant post
9.	Mr. Anwar Khan Senior Public Prosecutor (BPS-19)	Deputy Public Prosecutor, Peshawar	Senior Public Prosecutor, ATC Peshawar, vice Sr No. 31
10.	Muhammad Zaib Khan Senior Public Prosecutor (BPS-19)	Deputy Public Prosecutor Charsadda	Senior Public Prosecutor, Mardan against vacant post
11.	Muhammad Ilyas Senior Public Prosecutor (BPS-19)	Deputy Public Prosecutor Haripur	Senior Public Prosecutor, Torghar vice Sr No. 104
12.	Syed Asghar Asad Senior Public Prosecutor (BPS-19)	On Deputation as SO Police Home Department	Senior Public Prosecutor, Dir Lower for one day to actualize his promotion and then report to Home Department for further posting.
13.	Muhammad Inam Senior Public Prosecutor (BPS-19)	Deputy Public Prosecutor Mardan	Senior Public Prosecutor, Dir Lower against vacant post

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**GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME AND TRIBAL AFFAIRS DEPARTMENT**



14.	Muhammad Naeem Senior Public Prosecutor (BPS-19)	District Public Prosecutor, Hangu	Senior Public Prosecutor, Shangla against vacant post
15.	Mr. Javed Ali Mohmand Senior Public Prosecutor (BPS-19)	Deputy Public Prosecutor Peshawar	District Public Prosecutor, Charsadda vice Sr No. 20
16.	Mr. Javed Akhtar Wazir Senior Public Prosecutor (BPS-19)	Deputy Public Prosecutor Lakki Marwat	Senior Public Prosecutor, Orakazai, against vacant post
17.	Mr. Noor Salam Khan Senior Public Prosecutor (BPS-19)	Deputy Public Prosecutor Kurram	District Public Prosecutor, Kurram, vice Sr No. 21
18.	Mr. Yousaf Jamal Senior Public Prosecutor (BPS-19)	Deputy Public Prosecutor Karak	Senior Public Prosecutor, Karak, against vacant post
19.	Mr. Latif Khan Senior Public Prosecutor (BPS-19)	Deputy Public Prosecutor Bannu	Senior Public Prosecutor, North Waziristan against vacant post
20.	Mr. Nasrat Ullah Jan, Senior Public Prosecutor (BPS-19)	District Public Prosecutor, Charsadda	Senior Public Prosecutor, Peshawar, vice Sr No. 28
21.	Mr. Atta Ullah Shah, Senior Public Prosecutor (BPS-19)	District Public Prosecutor, Kurram	Senior Public Prosecutor, Lakki Marwat against vacant post
22.	Syed Falak Sair, Senior Public Prosecutor (BPS-19)	Senior Public Prosecutor, Peshawar.	District Public Prosecutor, Buner vice Sr No. 23
23.	Muhammad Irshad, Senior Public Prosecutor (BPS-19)	District Public Prosecutor, Buner	Senior Public Prosecutor, Mardan vice Sr No. 102
24.	Mr. Azhar Ali, Senior Public Prosecutor (BPS-19)	Senior Public Prosecutor, Anti- corruption court, Peshawar	Senior Public Prosecutor, Buner against vacant post
25.	Mr. Salim Muhammad, Senior Public Prosecutor (BPS-19)	Director Monitoring, Directorate of Prosecution	Senior Public Prosecutor, Peshawar against vacant post
26.	Mr. Mian Aziz Ahmad, Senior Public Prosecutor (BPS-19)	District Public Prosecutor, Malakand	Director Monitoring, Directorate of Prosecution vice Sr No. 25
27.	Mr. Shahzada, Senior Public Prosecutor (BPS-19)	District Public Prosecutor, Bajaur	Senior Public Prosecutor, Swabi against vacant post
28.	Mr. Manzoor Alam, Senior Public Prosecutor (BPS-19)	Senior Public Prosecutor, Peshawar	District Public Prosecutor, Mohmand vice Sr No. 29
29.	Mr. Zafar Ali, Senior Public Prosecutor (BPS-19)	District Public Prosecutor, Mohmand	Senior Public Prosecutor, Malakand vice Sr No. 30
30.	Mr. Sangeen Shah, Senior Public Prosecutor (BPS-19)	Senior Public Prosecutor, Malakand	District Public Prosecutor, Malakand vice Sr No 26
31.	Mr. Alam Zaib, Senior Public Prosecutor (BPS- 19)	Senior Public Prosecutor, ATC, Peshawar	Senior Public Prosecutor, ATC, Mardan against vacant post.
32.	Mr. Zia Ul Haq, Deputy Public Prosecutor (BPS-18)	Deputy Public Prosecutor, Bajaur	Senior Public Prosecutor (BPS-19), Bajaur (OPS) against vacant post

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GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME AND TRIBAL AFFAIRS DEPARTMENT

33.	Mr. Fawad Ahmad Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Swat	Deputy Public Prosecutor, Swat against vacant post
34.	Mr. Amjad Ali Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Kohat	Deputy Public Prosecutor, Kohat against vacant post
35.	Mr. Zafran Ullah Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Kohat	Deputy Public Prosecutor, Karak against vacant post
36.	Mr. Qaidul Islam Deputy Public Prosecutors (BPS-18)	Assistant Public Prosecutor, Swat	Deputy Public Prosecutor, lower Chitral against vacant post
37.	Muhamamd Arif Masud Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Abbottabad	Senior Public Prosecutor (BPS-19), Anti-Terrorism Court Abbottabad (OPS) against vacant post
38.	Mr. Abdul Qasim Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Bannu	Deputy Public Prosecutor, Karak against vacant post
39.	Mr. Waheed Ullah Khan Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, D.I.Khan	Deputy Public Prosecutor, Office of the Regional Director Prosecution D.I.Khan against vacant post
40.	Mr. Atta ur Rehman Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Swat	Deputy Public Prosecutor, Swat against vacant post
41.	Ms Zobia Bibi Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Abbottabad	Deputy Public Prosecutor, Haripur against vacant post
42.	Mr. Gul Nawaz Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Deputation to Anti-corruption Directorate form 26.1.2018	Deputy Public Prosecutor, Mardan for one day to actualize his promotion and then report to Directorate of Anti-Corruption Establishment.
43.	Syed Mohsin Mustafa Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Manshera	Deputy Public Prosecutor, Office of the Regional Director Prosecution Abbottabad, against vacant post
44.	Mr. Ahmad Zaib Shah Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Swat	Deputy Public Prosecutor, Malakand against vacant post
45.	Muhammad Sajjad Khan Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Charsadda	Deputy Public Prosecutor, Charsadda against vacant post
46.	Mr. Imran Khan Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Kohistan Upper	Deputy Public Prosecutor, Swat against vacant post
47.	Muhammad Rashid Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Mardan	Deputy Public Prosecutor, Swabi against vacant post
48.	Ms Sahibzadi Yasmeen Ara Deputy Public Prosecutor (BPS-18)	Deputy Director Legal (OPS) Directorate of Prosecution as	Deputy Director Legal, Directorate of Prosecution against the already occupied post.
49.	Mr. Mukhtiar Ahmad Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Nowshera	Deputy Public Prosecutor, Nowshera against vacant post

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**GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME AND TRIBAL AFFAIRS DEPARTMENT**

50.	Muhammad Ayaz Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Malakand	Deputy Public Prosecutor, Charsadda against vacant post
51.	Mr. Zafar Ali Khan Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Tank	Deputy Public Prosecutor, D.I.Khan, against vacant post
52.	Mr. Khalid Khan Wazir Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, North Waziristan	Deputy Public Prosecutor, North Waziristan against vacant post
53.	Ms Amina Bibi Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Haripur	Deputy Public Prosecutor, Haripur against vacant post
54.	Mr. Amjid Khan Deputy Public Prosecutor, (BPS-18)	Assistant Public Prosecutor, Buner	Deputy Public Prosecutor, Swat vice Sr No. 06
55.	Mr. Ibrar Ahmad Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Kohat	Deputy Public Prosecutor, Karak vice Sr No. 18
56.	Syed Amir Shah Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Orakzai	Deputy Public Prosecutor, Kohat against vacant post
57.	Muhammad Naseem Khan Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Manshera	Deputy Public Prosecutor, Abbottabad against vacant post
58.	Mr. Mazhar Ali Shah Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Mardan	Deputy Public Prosecutor, Buner against vacant post
59.	Mr. Fazli Hadi Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Buner	Deputy Public Prosecutor, Buner against vacant post
60.	Muhammad Sikandar Khan Deputy Public Prosecutor (BPS-18)	Assistant Director Administration, Directorate of Prosecution	Deputy Director Admin, Directorate of prosecution vice Sr No.05
61.	Mr. Amir Anjum Deputy Public Prosecutor (BPS-18)	On Deputation to Anti-corruption	Deputy Public Prosecutor, Peshawar for one day to actualize his promotion and then report to Directorate of Anti-Corruption Establishment.
62.	Muhammad Ullah Deputy Public Prosecutor (BPS-18)	Deputy Public Prosecutor, Nowshera (OPS)	Deputy Public Prosecutor, Charsadda vice Sr No. 10
63.	Mr. Rashid Khan Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Swabi	Deputy Public Prosecutor, Swabi against vacant post
64.	Muhammad Umair Umer Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Swat.	Deputy Public Prosecutor, Nowshera vice Sr No.07
65.	Mr. Imran Ullah Khan Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Lakki Marwat	Deputy Public Prosecutor Lakki Marwat, against vacant post
66.	Mr. Habib Ullah Khan Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Haripur	Deputy Public Prosecutor, Haripur vice Sr No. 11

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**GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME AND TRIBAL AFFAIRS DEPARTMENT**

67.	Mr. Asfandyar Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Khyber	Deputy Public Prosecutor, Mohmand against vacant post
68.	Mr. Naeem Ullah Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Directorate of Prosecution as Assistant Director Complaint	Deputy Director Monitoring, Directorate of Prosecution against vacant post
69.	Muhammad Yasir Deputy Public Prosecutor, (BPS-18)	Assistant Public Prosecutor, South Waziristan	Deputy Public Prosecutor, South Waziristan against vacant post
70.	Mr. Irfan Ullah Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Dir Lower	Deputy Public Prosecutor, Dir upper against vacant post
71.	Mr. Rahamdil Haq Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Bajaur	Deputy Public Prosecutor, Bajaur against vacant post
72.	Mr. Iftikhar Ahmad Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Buner	Deputy Public Prosecutor, Office of the Regional Director Prosecution Malakand against vacant post
73.	Mr. Sheema Ayub Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, On deputation to PEDO	Deputy Public Prosecutor, Abbottabad against vacant post
74.	Mr. Umar Saiful Jalil Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Chitral Lower	Deputy Public Prosecutor, lower Chitral against vacant post
75.	Mr. Mazhar Ali Shah Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Swat	Deputy Public Prosecutor, Swat against vacant post
76.	Mr. Zahid Gul Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Buner	Deputy Public Prosecutor, Malakand against vacant post
77.	Ms Hina Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Khyber	Deputy Public Prosecutor, Office of the Regional Director Prosecution Mardan against vacant post
78.	Mr. Imtiaz Ali Deputy Public Prosecutor (BPS-18)	Deputy Public Prosecutor, Mansehra (OPS)	Deputy Public Prosecutor, Mansehra against vacant post on regular base
79.	Ms. Shabina Maqsood Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Khyber	Deputy Public Prosecutor, Nowshera vice Sr No. 62
80.	Mr. Farooq Hayat Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Dir Lower	Deputy Public Prosecutor, Dir Lower against vacant post
81.	Mr. Kifayat Ullah Barki Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, South Waziristan	Deputy Public Prosecutor, D.I.Khan against vacant post
82.	Mr. Ikram Ullah Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, On deputation to Anti-corruption	Deputy Public Prosecutor, Charsadda for one day to actualize his promotion and then report to Directorate of Anti-Corruption Establishment.
83.	Mr. Waheed Ullah Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Swat	Deputy Public Prosecutor, Dir Lower against vacant post
84.	Ms. Uzma Nasir Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Peshawar	Deputy Public Prosecutor, Peshawar against vacant post

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GOVERNMENT OF KHYBER PAKHTUNKHWA



GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME AND TRIBAL AFFAIRS DEPARTMENT

85.	Mr. Zulfiqar Ali Deputy Public Prosecutor (BPS-18)	Deputy Public Prosecutor, Mardan (OPS)	Deputy Public Prosecutor, Swabi against vacant post
86.	Mr. Sadeeq Anjum Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor (BS-17) On deputation to Anti-corruption	Deputy Public Prosecutor, Office of the Regional Director Prosecution Peshawar for one day to actualize his promotion and then report to Directorate of Anti-Corruption Establishment.
87.	Mr. Kamran Ullah Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, On deputation to CM Sectt.	Deputy Public Prosecutor, Charsadda vice Sr No. 90
88.	Mr. Haroon Khan Safi Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Swat	Deputy Public Prosecutor, Mardan vice Sr No. 85
89.	Mr. Sikandar Zaman Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Nowshera	Deputy Public Prosecutor, Malakand against vacant post
90.	Mr. Shah Saud Deputy Public Prosecutor (BPS-18)	Deputy Public Prosecutor, Charsadda (OPS)	Deputy Public Prosecutor, Peshawar vice Sr No. 103
91.	Mr. Zeeshan Taj Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Manshara	Deputy Public Prosecutor Haripur vice Sr No.02
92.	Ms Andaleeb Shabir Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Torghar	Deputy Public Prosecutor, Manshara vice Sr No. 04
93.	Mr. Attaullah Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Battagram	Deputy Public Prosecutor, Kohistan Upper, against vacant post
94.	Muhammad Ali Shah Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Malakand	Deputy Public Prosecutor, Mardan vice Sr No. 99
95.	Mr. Umer Mahmood Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Swabi	Deputy Public Prosecutor, Swabi against vacant post
96.	Mr. Mukhtiar Ahmad Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Shangla	Deputy Public Prosecutor, Dir Upper against vacant post
97.	Mr. Zohaib Ahmad Sher Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Hangu	Deputy Public Prosecutor, Office of the Regional Director Prosecution Kohat against vacant post
98.	Mr. Imran Khan Deputy Public Prosecutor (BPS-18)	Assistant Public Prosecutor, Swabi	Deputy Public Prosecutor, Swabi against vacant post
99.	Mr. Taimur Khan Assistant Public Prosecutor (BPS-17)	Deputy Public Prosecutor, Mardan (OPS)	Assistant Public Prosecutor, Mardan vice Sr No. 58
100.	Mr. Sardar Ali, Assistant Public Prosecutor (BPS-17)	Assistant Public Prosecutor, Charsadda	Assistant Public Prosecutor, Khyber against vacant post
101.	Mr. Amjad Ali, Assistant Public Prosecutor (BPS-17)	Assistant Public Prosecutor, Malakand	Assistant Public Prosecutor, Charsadda vice Sr No. 100



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The
District Prosecution
Abbottabad

No: _____ /2022/DPP/ATD.
Dated Abbottabad Jan, 2022
Phone & Fax # 0992-405749
Email: dppatd@gmail.com

Annexure K

To

The Director General Prosecution,
Khyber Pakhtunkhwa,
Home & Tribal Affairs Department,
Peshawar.

Subject:

DEPARTMENTAL REPRESENTATION OF MRS. SOBIA
RASHEED RAJA DEPUTY PUBLIC PROSECUTOR,
ABBOTTABAD.

Dear Sir,

I have the honour to enclose herewith departmental representation
(in original) of Mrs. Sobia Rasheed Raja Deputy Public Prosecutor, Abbottabad for
your kind perusal and further necessary action please.

Faithfully Yours,

District Public Prosecutor,
Abbottabad.

No: 109-110 /DPP/ATD/22

Dated Abbottabad the 19-01- /2022

Copy forwarded to the:

1. Mrs. Sobia Rasheed Raja, Deputy Public Prosecutor, Abbottabad.
2. Office record.


District Public Prosecutor,
Abbottabad.

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The
District Prosecution
Abbottabad

No. 2022/DPP/ATD
District Abbottabad
Phone & Fax # 0992-405749
Email dppatd@gmail.com

To

The Director General Prosecution,
Khyber Pakhtunkhwa,
Home & Tribal Affairs Department,
Peshawar.

Subject:

DEPARTMENTAL REPRESENTATION OF MRS. SOBIA
RASHEED RAJA DEPUTY PUBLIC PROSECUTOR,
ABBOTTABAD.

Dear Sir,

I have the honour to enclose herewith departmental representation
(in original) of Mrs. Sobia Rasheed Raja Deputy Public Prosecutor, Abbottabad for
your kind perusal and further necessary action please.

Faithfully Yours,

District Public Prosecutor,
Abbottabad.

No: 109-110

/DPP/ATD/22

Dated Abbottabad the 19-01-2022

Copy forwarded to the:

- 1. Mrs. Sobia Rasheed Raja, Deputy Public Prosecutor, Abbottabad.
- 2. Office record.

District Public Prosecutor,
Abbottabad.

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THE HON'BLE CHIEF MINISTER KPK

Through: Proper Channel

DEPARTMENTAL REPRESENTATION AGAINST ILLEGAL APPOINTMENT OF 18 JUNIOR MOST DY.PPS TO THE POST OF SENIORS PP BPS19 ON ACTING CHARGE BASIS Vide Notification NO.SO(PROG)/HD/2-3/2022 Dated 11-01-2022 BY VIOLATING RELEVANT SERVICE LAWS RULES, POLICY AND JUDGMENTS OF SUPERIOR COURTS.

Respectfully Sheweth;

FACTS.

A) That appellant joined prosecution department on 24.05.2016 as Deputy Public Prosecutor after qualifying competitive examination of Public Service Commission KPK and now a day's appellant is serving as Deputy PP BPS (18) in District Abbottabad.

B). That when appellant joined prosecution department as Deputy Public Prosecutor, at that time lower cadre in prosecution i.e Assistant Public Prosecutor had been upgraded by the government. On the direction of Hon'ble Peshawar High Court, Peshawar but upper cadre i.e Deputy PP was not upgraded therefore, for a short span of time, both the cadres i.e. lower cadre Assistant Public Prosecutor and upper cadre i.e. Deputy Public Prosecutor were working in the same scale i.e. in (BPS-17). This situation was termed as Anomaly by the Director General Prosecution. Worthy DG requested quarter concerned for up gradation of post of Dy.PP from (BPS-17) to (BPS - 18) in order to remove this anomaly.

C). That writ petition of Assistant PPs for upgradation was allowed and Hon'ble Peshawar High Court awarded them **Ante Dated Upgradation** w.e.f

2010. Resultantly government issued notification of upgradation of APPs on 11.11.2014 i.e the post of APP was upgraded from BPS (16) to BPS (17) in the year 2014 but w.e.f Dec 2010. It is crystal clear that till issuance of notification for upgradation, Assistant PPs were working in BPS 16. **Ante-Dated Upgradation** awarded to APPs was purely for financial benefits, which were given to them, and not for any other purpose like seniority or for promotion to a higher scale by counting there that length of service which is result of **Ante Dated Upgradation**.

D) That as the post of Deputy Public Prosecutor is and was an upper cadre of Assistant Public Prosecutor (not only in KPK but also in sister provinces and capital territory) and Prosecution Department had also requested quarter concerned for upgradation of Dy.PPs, therefore, Dy.PPs filed writ petition in Peshawar High Court, Peshawar because their upgradation was delayed due to the fault of government. And deputy Public Prosecutor had to work in the same BPS in which their lower cadre i.e. APPs were working. Writ petition of Dy.PPs was allowed vide judgment dated 07-06-2016 with immediate effect and order in COC No08-P/2020

E). That appellant joined prosecution department as Deputy Public Prosecutor on 24-05-2016. Upgradation of Dy PP seat from BPS 17 to BPS 18 was obviously in pipe line, being a genuine and legal demand, though it was delayed but was never refused by the government. Just after 13 days of joining the Dy.PP post, the same was upgraded to BPS (18) by Hon'ble Peshawar High Court Peshawar, therefore, appellant had to work only for a period of 13 days in BPS-17 as Deputy Public Prosecutor. Thus chapter of appellant's service in BPS-17 was closed after upgradation of seat to BPS-18. And since 7th June 2016 appellant is working as Deputy PP in BPS 18.

F). That provincial government of KPK conducted provincial Selection Board on 11-06-2020 and issued impugned notification No SO-PROS/HD/1-10/Upgr & Prom/2020 dated 30/06/2020, wherein not only Seniors of appellant were promoted

to the post of Senior Public Prosecutor BPS (19), by enjoying benefits of upgradation, but also Twenty-Three (23) juniors were promoted to

Senior Public Prosecutor BPS (19) on acting charge basis. But astonishingly appellant was malafidely and illegally dropped despite of the fact that appellant was quite eligible and fit for promotion to BPS (19) on acting charge basis.

G) That the appellant made a departmental appeal to the quarter concerned for decision in accordance with law which was dismissed vide a non-speaking order dated 07/10/2020. Feeling aggrieved appellant filled service appeal in Honorable KPK Service Tribunal.

H). That Honorable Service Tribunal KPK allowed appellant's appeal vide consolidated judgment dated 16-09-2021, in service appeal No 13581 titled "Abdul Qadoos vs Govt of KPK and others" Honorable Service Tribunal declared appellant fit for promotion to the post of Senior Public Prosecutor BPS 19 on acting charge basis w.e.f 30 June 2020, declared act of respondents/ government illegal and has directed respondents to promote appellant to the post of Sr PP BPS (19) on acting charge basis with effect from 30-06-2020. Department and government were further directed to modify/rectify notification dated 30-06-2020 so that name of appellant may be placed at its right place.

I) That implementation of judgment of Honorable tribunal is pending in Honorable Service tribunal KPK wherein notice has been issued to respondents/ government.

J) That again a meeting of provincial selected board (PSB) was conducted on 02-12-2021 and 18 Junior most DY:PP's have been promoted to the post of Sr pps. (which are in addition to that of 23 juniors already promoted on 30-06-2020 and where declared illegal in service appeal No 13581 decided 16-09-2021).

K). That these illegally promoted Dy PP were initially inducted in prosecution department in BPS16 as Assistant Public Prosecutors in the year 2008. They practically served in BPS 16 till 11. 11.2014 i.e when notification of their **Ante Dated Upgradation** was issued.

GROUND.

1. That section 09 of APT rules deals and regulates the process of acting charge promotion which is given below for ready reference
 “ 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" Perusal of above section indicates that firstly this section has imposed an important condition that **most senior civil servant should be promoted on acting charge basis and** no circumstances have been mentioned in above section-9 of APT rules to promote junior officers before seniors”
2. That undue favor has been extended to the 18 Junior Most Deputy Public Prosecutors over snatching the rights of Senior Deputy Public Prosecutors by the Provincial Selection Board. Appellant is serving in BPS 18 on regular basis since June 2016 some of these junior most prosecutors were promoted to BPS 18 in the year 2019 and even some in the year 2020. Illegal benefit of ante-dated up-gradation to junior most Dy.PP's does not confer any right whatsoever for their promotion overnight to the post of Senior Public Prosecutor .
3. That Provincial Selection Board/ the competent authority has gone beyond its mandate and has cause grave miscarriage of justice whereby the juniors have been promoted in flagrant defilement of law and rules and seniority has been put to the winds.
4. That time and again illegal promotions of junior most officers are made on acting charge basis by violating relevant service laws. In the past twenty three junior most deputy public prosecutors were illegally promoted to BPS 19 on acting charge basis and then most of these illegally promoted Prosecutors, were posted as District Public Prosecutor in various district despite of the fact

that question mark has been imposed upon their promotion by Honble Service Tribunal KPK in service appeal No 13581.

- 5. That prior to the implementation of judgment dated 16-09-2021, promotion of other juniors most officers is against law where there is no mention of promotion of a junior most officer before senior officer.
- 6. That seniority of appellant is not disputed in any way, and also appellant has been declared eligible for promotion on acting charge basis. Government has challenged eligibility of appellant - in terms of length of service and has not challenged seniority of appellant. Thus promotion of junior most Dy.PPs is illegal and against relevant law. If it is presumed that if appellant was not illegible due to length of service in the eyes of PSB members then promoted 18 Dy.PPs were also not senior most in the cadre of Dy.PPs. So how essential condition of seniority has been ignored by PSB members.
- 7. That Promotion on acting charge basis is an extra ordinary situation if, it is presumed that , eligible civil servants were not available then how junior most civil servants have been appointed on acting charge basis.
- 8. That by promoting, unqualified servants, burden on Govt exchequer has been imposed. There is no significant difference between job of Dy PP and Senior PP on acting charge basis. If suitable civil servants, who would fulfil necessary conditions, were not available then illegal promotion on acting charge basis was never warranted by law, there was no emergency or compulsion to promote illegally junior officers on acting charge basis by leaving senior most officers.
- 9. That time and again Ante dated regularization, Ante dated promotion and Ante dated upgradations have been made either by the government or on the direction of services tribunals, High Court and Supreme Court. There is a settled principle that Ante dated regularizations, promotion and upgradation is granted only for financial benefits i.e. pay and pension and not for any other purpose. This also happened in the case of the then APPs (illegally promoted

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DyPPs) and Ante-dated upgradation awarded by High Court to them was solely for the purpose of financial and pensionary benefits and was not granted for the purpose of superseding senior officers by counting that period in their promotion to higher scales:

- 10. That actual Nine (9) years' service in BPS 17 and 18 was mandatory for junior Deputy PPs for their promotion to BPS 19 on acting charge basis under promotion policy which had been badly violated by PSB by promoting junior officers who did not actually serve for a period of 9 years in BPS 17 and 18 rather their 4 years of BPS 16 have been counted in their 9 years length of service for acting charge promotion Actual service of BPS 17 and BPS 18 is the requirement of law/promotion policy 2009 Neither actual service of BPS 16 can be considered substitute of BPS 17 nor BPS 16 actual service can be added and counted, in 9 years' service of BPS 17 and BPS 18. Junior most 18 Dy.PPs actually served in BPS 16 from December 2010 to Nov 2014. But astonishingly, in their promotion case this period i.e from December 2010 has been counted as period in BPS 17 and it has been presumed that they actually served in BPS 17.

- 11. That when these junior most Dy.PPs were promoted to BPS 19 vide impugned notification SO(PROSP)/HD/2-3/2022 dated 11-01-2022 astonishingly their Four (4) years length of service as a result of **Ante Dated Upgradation** has been counted in the required length of service i.e 9 year service in BPS 17 and 18 which was mandatory for those Prosecutors under promotion policy of 2009. It is so strange that civil servants who never worked in BPS 17 from December 2010 to November 2014 but their length of service has been counted as an officers of BPS (17)

- 12. That about 50 Prosecutors are working in the Province on regular basis in BPS 19. These senior most prosecutors may easily run all the Districts of KPK

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by working as District PPs and PPs Ante terrorism courts. So there was no need to made illegal promotions on acting charge basis. As junior most Dy PPs does not fulfill criteria of promotion on acting charge basis in BPS 19 mention in relevant law i.e section 9 of APT Rules KPK. Acting Charge promotion is always a prerogative of senior most officer.

13. That Honble Service tribunal vide consolidated judgment dated 16-09-2021, in service appeal No 13581 titled Abadul Qadoos vs Govt of KPK and others raised question mark on counting length of service as a result of **Ante dated Upgradation** in the following words

"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."

But it is so strange and painful that observation of Hon'ble Service tribunal KPK has never been taken into consideration by members of PSB and again benefit of Ante dated upgradation have been granted to junior most Dy PPs in their promotion case.

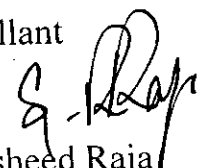
14. That time and again illegal promotion of junior most officers has not only badly effected rights of appellant but also caused mantel agony to appellant.

It is therefore humbly prayed that on the basis of above submissions, kindly

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- A Acting charge appointment of Junior Most Dy.PPs to the post of Senior Public Prosecutor BPS 19 may be declared illegal, ultravire and against law, rules, policy and Judgments of Superior courts.
- B. Junior most 18 Dy:PPs may not be posted as Sr.PPs on acting charge basis,
- C. Counting of their 4 years' length of service, as a result of Ante dated Upgradation, in promotion to higher scales may be declared illegal.
- D. Actual service in BPS 16 from 1. Dec 2010 to 11. November 2014 may not be presumed as service in BPS 17 for the purpose of promotion and for superseding senior most officers.
- E. Promotion of junior before senior officer on acting charge basis may be declared illegal, against law and section 9 of APT Rules Kpk.
- F. Ante Dated Upgradation of Assistant Public Prosecutors may be considered only for the purpose of pay and pension i.e for financial benefits and not for any other purpose like promotion before senior most Deputy Public Prosecutors.

Dated 19/01/2022

Appellant

 Sobia Rasheed Raja
 DyPP Abbottabad

- 104 - Annexure L



The
District Prosecution
Torghar

No: 12022/DPP/TOR.
Dated Torghar January, 18, 2022

To
The Director General of Prosecution,
Khyber Pakhtunkhwa Home and
Tribal Affairs Department, Peshawar.

Subject:- SERVICE APPEAL.

Dear Sir,
Please find attached herewith Service Appeal in respect of
Miss. Sumaira Bibi, Deputy Public Prosecutor, Torghar for further necessary
action please.

Itaf Hussain Akhtar
District Public Prosecutor
Torghar

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The Hon'ble Chief Minister KPK

Through: Proper Channel

DEPARTMENTAL REPRESENTATION AGAINST ILLEGAL APPOINTMENT OF 18 JUNIOR MOST DY.PPS TO THE POST OF SENIORS PP BPS19 ON ACTING CHARGE BASIS Vide Notification NO.SO(PROG)/HD/2-3/2022 dated 11-01-2022 BY VIOLATING RELEVANT SERVICE LAWS RULES, POLICY AND JUDGMENTS OF SUPERIOR COURTS.

Respectfully Sheweth;

Facts.

A) That appellant joined prosecution department on 24.05.2016 as Deputy Public Prosecutor after qualifying competitive examination of public service Commission KPK and now a day's appellant is serving as Deputy PP BPS (18) in District Tor Ghar.

B). That when appellant joined prosecution department as Deputy Public Prosecutor, at that time lower cadre in prosecution i.e Assistant Public Prosecutor had been upgraded by the government. On the direction of Hon'ble Peshawar High Court, Peshawar but upper cadre i.e Deputy PP was not upgraded therefore, for a short span of time, both the cadres i.e. lower cadre Assistant Public Prosecutor and upper cadre

i.e. Deputy Public Prosecutor were working in the same scale i.e. in (BPS-17). This

situation was termed as Anomaly by the Director General Prosecution. Worthy DG requested quarter concerned for up gradation of post of Dy.PP from (BPS-17) to (BPS - 18) in order to remove this anomaly.

C). That writ petition of Assistant PPs for upgradation was allowed and Honble Peshawar High Court awarded them **Ante Dated Upgradation** w.e.f 2010.Resultantly government issued notification of upgradation of APPs on 11.11.2014 i.e the post of APP was upgraded from BPS (16) to BPS (17) in the

10/2017

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year 2014 but w.e.f Dec 2010. It is crystal clear that till issuance of notification for upgradation, Assistant PPs were working in BPS 16. **Ante-Dated Upgradation** awarded to APPs was purely for financial benefits, which were given to them, and not for any other purpose like seniority or for promotion to a higher scale by counting there that length of service which is result of **Ante Dated Upgradation**.

D) That as the post of Deputy Public Prosecutor is and was an upper cadre of Assistant Public Prosecutor (not only in KPK but also in sister provinces and capital territory) and Prosecution Department had also requested quarter concerned for upgradation of Dy.PPs, therefore, Dy.PPs filed writ petition in Peshawar High Court, Peshawar because their upgradation was delayed due to the fault of government. And deputy Public Prosecutor had to work in the same BPS in which their lower cadre i.e. APPs were working. Writ petition of Dy.PPs was allowed vide judgment dated 07-06-2016 with immediate effect and order in COC No08-P/2020

E). That appellant joined prosecution department as Deputy Public Prosecutor on 24-05-2016. Upgradation of Dy PP seat from BPS 17 to BPS 18 was obviously in pipe line, being a genuine and legal demand, though it was delayed but was never refused by the government. Just after 13 days of joining the Dy.PP post, the same was upgraded to BPS (18) by Hon'ble Peshawar High Court Peshawar, therefore, appellant had to work only for a period of 13 days in BPS-17 as Deputy Public Prosecutor. Thus chapter of appellant's service in BPS-17 was closed after up gradation of seat to BPS-18. And since 7th June 2016 appellant is working as Deputy PP in BPS 18.

F). That provincial government of KPK conducted provincial Selection Board on 11-06-2020 and issued impugned notification No SO-PROS/HD/1-10/Upgr&Prom/2020 dated 30/06/2020, wherein not only Seniors of appellant were promoted to the post of Senior Public Prosecutor BPS (19), by enjoying benefits of upgradation, but also Twenty-Three (23) juniors were promoted to Senior Public Prosecutor BPS (19) on acting charge basis. But astonishingly appellant was malafidely and illegally dropped despite of the fact that appellant was quite eligible and fit for promotion to BPS (19) on acting charge basis.

G) That the appellant made a departmental appeal to the quarter concerned for decision in accordance with law which was dismissed vide a non-speaking order

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dated 07/10/2020. Feeling aggrieved appellant filled service appeal in Honorable KPK Service Tribunal.

H). That Honorable Service Tribunal KPK allowed appellant's appeal vide consolidated judgment dated 16-09-2021, in service appeal No 13581 titled Abadul Qadoos vs Govt of KPK and others. Honorable Service Tribunal declared appellant fit for promotion to the post of Senior Public Prosecutor BPS 19 on acting charge basis w.e.f 30 June 2020, declared act of respondents/ government illegal and has directed respondents to promote appellant to the post of Sr PP BPS (19) on acting charge basis with effect from 30-06-2020. Department and government were further directed to modify/rectify notification dated 30-06-2020 so that name of appellant may be placed at its right place.

I) That implementation of judgment of Honorable tribunal is pending in Honorable Service tribunal KPK wherein notice has been issued to respondents/ government.

J) That again a meeting of provincial selected board (PSB) was conducted on 02-12-2021 and 18 Junior most DY:PP's have been promoted to the post of Sr pps. (which are in addition to that of 23 juniors already promoted on 30-06-2020 and where declared illegal in service appeal No 13581 decided 16-09-2021).

K). That these illegally promoted Dy PP were initially inducted in prosecution department in BPS16 as Assistant Public Prosecutors in the year 2008. They practically served in BPS 16 till 11. 11.2114 i.e when notification of their **Ante Dated Upgradation** was issued.

Grounds.

1. That section 09 of APT rules deals and regulates the process of acting charge promotion which is given below for ready reference

"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

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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" Perusal of above section indicates that firstly this section has imposed an important condition that **most senior civil servant should be promoted on acting charge basis and** no circumstances have been mentioned in above section-9 of APT rules to promote junior officers before seniors.

2. That undue favor has been extended to the 18 Junior Most Deputy Public Prosecutors over snatching the rights of Senior Deputy Public Prosecutors by the Provincial Selection Board. Appellant is serving in BPS 18 on regular basis since June 2016 some of these junior most prosecutors were promoted to BPS 18 in the year 2019 and even some in the year 2020. Illegal benefit of ante-dated up-gradation to junior most Dy.PP's does not confer any right whatsoever for their promotion overnight to the post of Senior Public Prosecutor .
3. That Provincial Selection Board/ the competent authority has gone beyond its mandate and has cause grave miscarriage of justice whereby the juniors have been promoted in flagrant defilement of law and rules and seniority has been put to the winds.
4. That time and again illegal promotions of junior most officers are made on acting charge basis by violating relevant service laws and then these blue eyed Prosecutors, whose names still fall in the seniority list of BPS 18, are posted as District Public Prosecutor in various district. It is so strange that despite of presence of an experienced lot of Senior Most Officers, who are posted in BPS 19 on Regular basis for the last so many years, these junior most prosecutors of BPS 18 are posted against the post of 19 Grade District PPs.
5. That prior to the implementation of judgment dated 16-09- 2021, promotion of other juniors most officers is against law where there is no mention of promotion of a junior most officer before senior officer.
6. That seniority of appellant is not disputed in any way, and also appellant has been declared eligible for promotion on acting charge basis. Government has challenged eligibility of appellant - in terms of length of service and has not challenged seniority of appellant. Thus promotion of junior most Dy.PPs is illegal and against relevant law. If it is presumed that if appellant was not illegible due to length of service in the eyes of

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PSB members then promoted 17 Dy.PPs were also not senior most in the cadre of Dy.PPs. So how essential condition of seniority has been ignored by PSB members.

- 7. That Promotion on acting charge basis is an extra ordinary situation if, it is presumed that , eligible civil servants were not available then how junior most civil servants have been appointed on acting charge basis;
- 8. That by promoting, unqualified servants, burden on Govt exchequer has been imposed. There is no significant difference between job of Dy PP and Senior PP on acting charge basis. if suitable civil servants, who would fulfil necessary conditions, were not available then illegal promotion on acting charge basis was never warranted by law, there was no emergency or compulsion to promote illegally junior officers on acting charge basis by leaving senior most officers.
- 9. That time and again Ante dated regularization, Ante dated promotion and Ante dated upgradations have been made either by the government or on the direction of services tribunals, High Court and Supreme Court. There is a settled principle that Ante dated regularizations, promotion and upgradation is granted only for financial benefits i.e. pay and pension and not for any other purpose. This also happened in the case of the then APPs (illegally promoted DyPPs) and Ante-dated upgradation awarded by High Court to them was solely for the purpose of financial and pensionary benefits and was not granted for the purpose of superseding senior officers by counting that period in their promotion to higher scales.
- 10. That actual Nine (9) years' service in BPS 17 and 18 was mandatory for junior Deputy PPs for their promotion to BPS 19 on acting charge basis under promotion policy which had been bad violated by PSB by promoting junior officers who did not actually serve for a period of 9 years in BPS 17 and 18 rather their 4 years of BPS 16 have been counted in their 9 years length of service for acting charge promotion Actual service of BPS 17 and BPS 18 is the requirement of law/promotion policy. 2009 Neither actual service of BPS 16 can be considered substitute of BPS 17 nor BPS 16 actual service can be added and counted, in 9 years' service of BPS 17 and BPS 18. Junior most 18 Dy.PPs actually served in BPS 16 from December 2010 to Nov 2014. But astonishingly, in their promotion case this period i.e from December 2010 has been counted as period in BPS 17 and it has been presumed that they actually served in BPS 17.

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11. That when these junior most Dy.PPs were promoted to BPS 19 vide impugned notification SO(PROSP)/HD/2-3/2022 dated 11-01-2022 astonishingly their Four (4) years length of service as a result of **Ante Dated Upgradation** has been counted in the required length of service i.e 9 year service in BPS 17 and 18 which was mandatory for those Prosecutors under promotion policy of 2009. It is so strange that civil servants who never worked in BPS 17 from December 2010 to November 2014 but their length of service has been counted as an officers of BPS (17)

12. That about 50 Prosecutors are working in the Province on regular basis in BPS 19. These senior most prosecutors may easily run all the Districts of KPK by working as District PPs and PPs Ante terrorism courts. So there was no need to made illegal promotions on acting charge basis. As junior most Dy PPs does' not fulfill criteria of promotion on acting charge basis in BPS 19 mention in relevant law i.e section 9 of APT Rules KPK. Acting Charge promotion is always a prerogative of senior most officer.

13. That Honble Service tribunal vide consolidated judgment dated 16-09-2021, in service appeal No 13581 titled Abadul Qadoos vs Govt of KPK and others raised question mark on counting length of service as a result of **Ante dated Upgradation** in the following words

"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 upgradation 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."

But it is so strange and painful that observation of Hon'ble Service tribunal KPK has never been taken into consideration by members of PSB and again benefit of Ante dated upgradation have been granted to junior most Dy PPs in their promotion case.

14. That time and again illegal promotion of junior most officers has not only badly effected rights of appellant but also caused mantel agony to appellant.

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It is therefore humbly prayed that on the basis of above submissions, kindly

A. Acting charge appointment of Junior Most Dy.PPs to the post of Senior Public Prosecutor BPS 19 may be declared illegal, ultravire and against law, rules, policy and Judgments of Superior courts.


B. Junior most 18 Dy:PPs may not be posted as Sr.PPs on acting charge basis,

C. Counting of their 4 years' length of service, as a result of Ante dated Upgradation, in promotion to higher scales may be declared illegal.

D. Actual service in BPS 16 from 1. Dec 2010 to 11. November 2014 may not be presumed as service in BPS 17 for the purpose of promotion and for superseding senior most officers.

E. Promotion of junior before senior officer on acting charge basis may be declared illegal, against law and section 9 of APT Rules Kpk.

F. Ante Dated Upgradation of Assistant Public Prosecutors may be considered only for the purpose of pay and pension i.e for financial benefits and not for any other purpose like promotion before senior most Deputy Public Prosecutors.


Appellant
Sumaira Bibi
DyPP Tor Ghar

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NOTICE

Subject; **WRIT PETITION TITLED SOBIA RASHEED
RAJA ETC.VS GOVT OF KPKAND OTHERS**

Please take the notice that the undersigned is going to file the above titled writ petition before the Honorable Peshawar High Court Bench Abbottabad.

You are also impleaded as respondent in the above titled writ petition. (Copy of the petition is enclosed herewith)

Through Counsel

Dated: / /2022

To

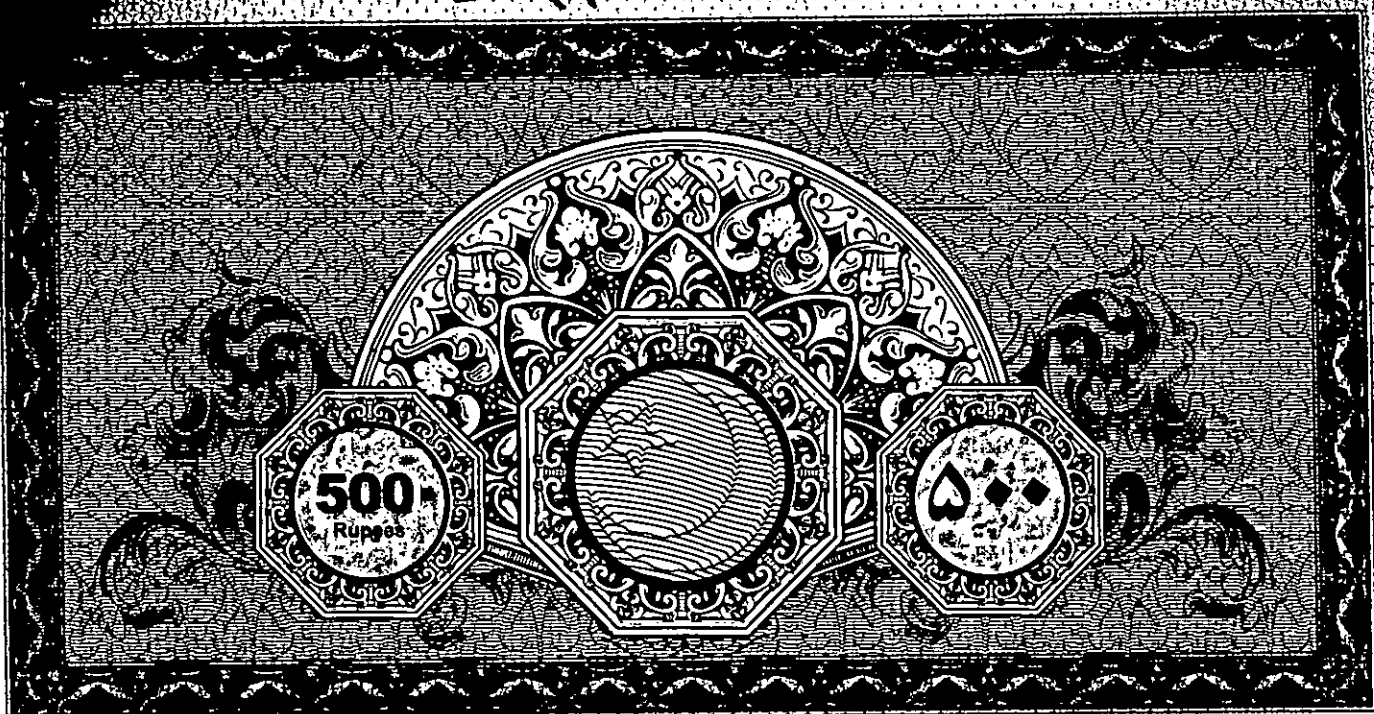
1. Government of Khyber Pakhtunkhwa through Chief Secretary KPK Civil Secretariat Peshawar.
2. Chief Secretary Government of Khyber Pakhtunkhwa /Chairman Provincial Selection Board Civil Secretariat Peshawar.
3. Secretary, Establishment Government of KPK/Secretary PSB Civil secretariat Peshawar.
4. Secretary Home KPK Civil Secretariat Peshawar/Member PSB Civil Secretariat Peshawar
5. Additional Chief Secretary Government of Khyber Pakhtunkhwa Planning and Development Department/ Member PSB Civil Secretariat Peshawar.

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6. Senior Member Board of Revenue Khyber Pakhtunkhwa/Member PSB Civil Secretariat Peshawar.
7. Section Officer Provincial Selection Board
8. Muhammad Changaiz District Public Prosecutor Kolai Palas
9. Mr. Qamar Zeb Senior Public Prosecutor Peshawar
10. Mr. Waqas Ashraf Senior Public Prosecutor Kolai Palas
11. Mr. Zia ul Qamar Safi Senior Public Prosecutor Peshawar Anti Corruption
12. M. Rafi Ullah District Public Prosecutor Upper Dir
13. Muhammad Muzafar Senior Public Prosecutor Lower Dir
14. Mr. Bakht Baidar Senior Public Prosecutor Anti Terrorism Camp Bunair Swat
15. Mr. Anwar Khan Senior Public Prosecutor Anti-Terrorism Court Peshawar
16. Muhammad Zaib Khan Senior Public Prosecutor Mardan
17. Muhammad Ilyas Senior Public Prosecutor Torghar
18. Syed Asghar Asad Home Department KPK
19. Muhammad Inam Senior Public Prosecutor Dir Lower
20. Muhammad Nadeem Senior Public Prosecutor Shangla
21. Mr. Javed Ali Mohmand District Public Prosecutor Charsada
22. Mr. Javed Akhtar Wazir Senior Public Prosecutor Orakzai
23. Mr. Noor Salam Khan District Public Prosecutor Kurram
24. Mr. Yousaf Jamal Senior Public Prosecutor Karak
25. Mr. Latif Khan Senior Public Prosecutor North Waziristan Tribal District

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PAKISTAN COURT FEE

No. 483

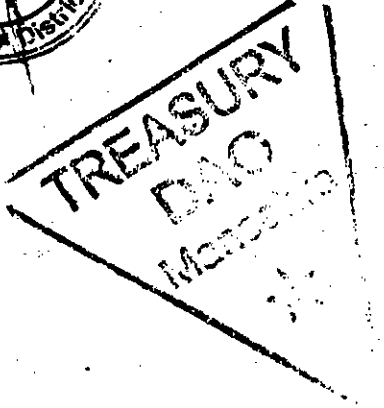


مجلس الزمان

مجلس الزمان في الزمان في مائة وعشرون سنة

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