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REGISTERED
No. C.As. 4054-4059/2022 – SCJ
SUPREME COURT OF PAKISTAN.

Islamabad, dated 27-01, 2023.

From

The Registrar,
Supreme Court of Pakistan,
Islamabad.

To

The Registrar,
K.P.K., Service Tribunal,
Peshawar.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 3470

Dated 8-2-2023

Subject: CIVIL APPEAL NOS. 4054 to 4059 OF 2022.
OUT OF
CIVIL PETITION NOS. 5940, 6111, 680-P to 683-P/2021.

To: 1. Asim Mehmood and others. (App. in C.A.4054/2022).
2. Javed Iqbal Anwar. (App. in C.A.4055/2022).
3. Government of Khyber Pakhtunkhwa, through Chief Secretary, Peshawar
and others. (App. in C.As.4056-4059/2022).

Versus

1. Abdul Qadus and others. (Res. in C.As.4054 & 4056/2022).
2. Farsat Ullah and others. (Res. in C.As.4055 & 4057/2022).
3. Mst. Sobia Rasheed Raja & others. (Res. in C.A. 4058/2022).
4. Bibi Sumaira and others. (Res. in C.A. 4059/2022).

On appeal from the Judgment/Order of the KPK., Service Tribunal, Peshawar
dated 16.09.2021, in Appeal Nos. 13581 to 13583/2020 & 16020/2020.

Dear Sir,

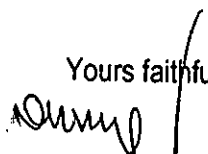
I am directed to forward herewith a certified copy of the Order/Judgment of this
Court dated 15.12.2022, converting into appeal the above cited civil petitions and allowing the
same, in the terms stated therein, for information and necessary action.

I am also to invite your attention to the directions of the Court contained in the
enclosed Order for immediate compliance.

Please acknowledge receipt of this letter along with its enclosure immediately.

Encl: Judgment:

Yours faithfully


(MUHAMMAD MUJAHID MEHMOOD)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

6/23

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Bench-V:

Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Muhammad Ali Mazhar

Civil Petitions No.5940 ,6111, 680-P to 683-P of 2021

Against the judgment dated 16.09.2021 passed by K.P.K. Service Tribunal,
Peshawar in Appcals No.13581-13583 and 16020/2020

and C.M.A.12719/2021 IN C.P.NIL/2021

(Permission to file and argue)

Asim Mehmood and others	C.P.5940/2021
Javed Iqbal Anwar	C.P.6111/2021
Govt. of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others	C.Ps.680-P to 683-P/2021
Muhammad Sohail	CMA.12719/21 ...Petitioners

Versus

Abdul Qadus and others	CPs.5940 and 680-P /2021
Farasat Ullah & others	CPs.6111 and 681-P/21
Mst. Sobia Rasheed Raja and others	CP.682-P/21
Bibi Sumaira and others	CP.683-P/21
Abdul Qadoos, Deputy Public Prosecutor, Bannu and others	CMA.12719/21 ...Respondents

In Attendance:

Mian Shafaqat Jan, Addl. AG KPK
Mr. Kamranullah, DS (Home)
Mr. M. Umair, Dy. Dir(P)


Mr. Sabir Hussain Tanoli, ASC
Mr. Noor Muhammad Khattak, ASC
Ms Sobia Rasheed Raja,
Ms. Bibi Summera,
Farhatullah

Date of Hearing: 15.12.2022

JUDGMENT

Syed Mansoor Ali Shah, J. Through this common judgment, we decide the listed civil petitions as common question of law and fact arises in all these cases. The question before us is how the appointment on acting charge basis is made to the post of Deputy Public Prosecutor (BS-19) from amongst the Deputy Public Prosecutors ("DPPs") in BS-18.

WITNESSED


Court Associate
Supreme Court of Pakistan
Islamabad

2. Brief facts of the case are that some of the respondents ("first set of DPPs") were appointed on acting charge basis in BS-19 on 30.6.2020. Their appointment was challenged by the other respondents ("second set of DPPs") on the ground that they were senior to the first set of DPPs and, therefore, they ought to have been appointed on acting charge basis. The first set of DPPs were appointed on 30.6.2020 and were first appointed in grade 16 and were later on promoted to BS-17 on 1.12.2020 and thereafter they were promoted to BS-18 on 20.5.2018. On the other hand, the second set of DPPs were initially appointed in BS-17, however, after a couple of days, the post was upgraded to BS-18 w.e.f. 07.6.2016 due to decision of the High Court and they were awarded BS-18 accordingly. Admittedly, the second set of DPPs are senior to the first set of DPPs who were appointed on acting charge basis on 30.6.2020.

3. We have heard the learned counsel for the parties and have examined the law. Rule 9 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, provides as follows:-

9. Appointment on Acting Charge or current Charge Basis.

(1) Where the appointing 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.

(2)

(3) In the case of a post in Basic Pay Scale 17 and above, reserved under the rules to be filled in by initial recruitment, where the appointing authority is satisfied that no suitable officer drawing pay in the basic scale in which the post exists is available in that category to fill the post and it is expedient to fill the post, it may appoint to that post on acting charge basis the most senior officer otherwise eligible for promotion in the organization, cadre or service, as the case may be, in excess of the promotion quota.

(4) Acting charge appointment shall be made against posts which are likely to fall vacant for period of six months or more. Against vacancies occurring for less than six months, current charge appointment may be made according to the orders issued from time to time.

(5) Appointment on acting charge basis shall be made on the recommendations of the Departmental Promotion Committee or the Provincial Selection Board, as the case may be.

ATTESTED



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Supreme Court of Pakistan
Islamabad

- (6) Acting charge appointment shall not confer any vested right for regular promotion to the post held on acting charge basis.

The above rule shows that for an officer to be appointed on acting charge basis, his length of service should not be short by more than three years of the prescribed length of service required to be promoted to higher scale. Considering that all the respondents belong to Prosecution Department, the length of service is prescribed under the Khyber Pakhtunkhwa Prosecution Service Rules, 2005. Rule 12 provides as follows:

12. Promotion.

Subject to the availability of posts:

- (i) Promotion to BPS-19 shall be on the basis of seniority-cum-fitness from amongst the officers in BPS-18, subject to completion of at least 12 years service in BPS-17 & 18.
- (ii) Promotion to BPS-18 shall be on the basis of seniority-cum-fitness from amongst the officers in BPS-17, subject to completion of at least 05 years service in BPS-17.
- (iii) Promotion to BPS 17 shall be on the basis of seniority-cum-fitness from amongst the officers in BPS-16, subject to completion of at least 05 years service in BPS 16 and qualifying of the departmental promotion exam.

The above shows that the length of service for a candidate to be promoted to BS-19 shall be at least 12 years service in BS-17 and 18. Admittedly, the length of service of the first set of DPPs is more than nine years while the length of service of second set of DPPs is around four years. Applying the criteria of length of service, the first set of DPPs meet the length of service prescribed under the proviso to Rule 9 above, while the second set of DPPs don't.

4. Learned counsel for the second set of DPPs took pains to argue that their case is covered under the N.W.F.P. Civil Servants Promotion Policy 2009 and has referred to clause I(b)(ii), which provides as follows:-

I. Length of service.

- (a) ...
- (b) Service in the lower pay scales for promotion to BP-18 shall be counted as follows:
 - (i) Half of the service in BS-16 and one fourth in Basic Scales lower than 16, if any, shall be counted as service in Basic Scale 17.

ATTESTED

[Signature]
 Court Associate
 Supreme Court of Pakistan,
 Islamabad

- (ii) Where initial recruitment takes place in Basic Scale 18 and 19, the length of service prescribed for promotion to higher Basic Scales shall be reduced as indicated below:

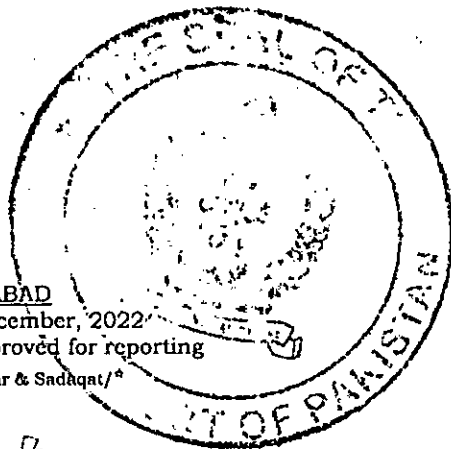
Basic Scale 19 : 7 years' service in BS-18

Basic Scale 20 : 10 years' service in BS- 18 and above or 3 years' service in BS-19.

Perusal of the above shows that the minimum length of service for BS-19 is 12 years service in BS-17 and above. Clause I(b)(i), however, deals with how to count the period of service for promotion to BS-18 and is not relevant for the purpose of this case as the said Policy is a promotion policy whereas the instant case is regarding appointment on acting charge basis and not a case of promotion. Thirdly, the 2005's Rules will prevail over the Policy and will be given preference.

5. By reading of the above Rules, it is clear that appointment to BS-19 on acting charge basis could be made if the length of service of the officer is not short by more than three years from the prescribed length of service required for promotion to BS-19. The length of service for promotion from BS-18 to BS-19 is undoubtedly 12 years in BS-17 and above. Therefore, the first set of DPPs fully qualify for the same and were rightly appointed on acting charge basis in BS-19 vide Notification dated 30.6.2020. The reliance by the High Court on clause 1(b)(ii) of the Promotion Policy is misplaced and the impugned judgment is, therefore, liable to be set aside.

6. In this background, the listed civil petitions are converted into appeals and allowed, whereas CMA No.12719/2022 shall stand disposed of accordingly.



ISLAMABAD
15th December, 2022
Not approved for reporting
Jaludassar & Sadhqaq/A

CHAND
16/1/23

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Certified to be True Copy

Court Associate
Supreme Court of Pakistan
Islamabad