



**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

SERVICE APPEAL NO. 1455/2023

Sumaira Bibi, Deputy Public Prosecutor (BP-18).

Appellant.....

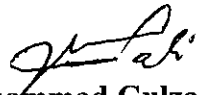
VERSUS

1. Govt. of Khyber Pakhtunkhwa, through Chief Secretary, Govt. of Khyber Pakhtunkhwa.
2. Chief Secretary, Govt. of Khyber Pakhtunkhwa.
3. Secretary, Govt. of Khyber Pakhtunkhwa, Establishment Department.
4. Secretary, Govt. of Khyber Pakhtunkhwa, Home & Tribal Affairs Department.
5. Director General Prosecution, Khyber Pakhtunkhwa.

Respondents.....

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Muhammad Gulzar Ali
(Superintendent)
Directorate of Prosecution,
Khyber Pakhtunkhwa

21/08/23

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1456/2023.

Sumera Bibi, Deputy Public Prosecutor, in the office of District public Prosecutor
Mansehra.

.....Appellant

VERSUS

1. **Government of Khyber Pakhtunkhwa**, through Chief Secretary Govt. of Khyber Pakhtunkhwa, Peshawar.
2. Chief Secretary Govt. of Khyber Pakhtunkhwa, Peshawar.
3. Secretary Establishment Government of Khyber Pakhtunkhwa, Peshawar.
4. Secretary Home & Tribal Affairs, Govt. of K.P.K Peshawar.
5. Director General Prosecution, Govt. of Khyber Pakhtunkhwa, Peshawar.

Khyber Pakhtunkhwa
Service Tribunal

No. 6894

04/08/23

..... Respondents

Comments On Behalf Of Respondents No.1 to 5.

PRELIMINARY OBJECTIONS:

1. That the Service Appeal is not maintainable on account of non-Joining of Necessary Parties.
2. That the Appellant has got no cause of action to file the instant Service Appeal.
3. That the main Prayer of the Appellant has already been decided and dismissed by the August Supreme Court of Pakistan in Civil Petitions No. 680-683-P of 2021.
4. The Impugned Rules have also been challenged by other officer(s) of the same Batch of Appellant, in Writ Petition No. 41-D/2023, which is pending adjudication before the Honorable Peshawar High Court, D.I.Khan and hence this Service Appeal is not maintainable.
5. That the Appellant has concealed material facts from this Honourable Tribunal, which is bad in eyes of law and facts both.
6. That the Appellant has drafted the Service Appeal in a form to mislead this Honourable Tribunal.
7. That the Appellant is estopped by her own conduct to file the present Appeal.
8. That the instant Service Appeal has no legal footings.
9. That the Appellant has got no locus standi to file the instant Service Appeal.
10. That the matter has already been agitated before this Honourable Tribunal and decided till Supreme Court of Pakistan hence this Honourable Tribunal has got no Jurisdiction to entertain the matter.

Para-Wise Reply.

1. Pertains to record.
2. Pertains to record.
3. Pertains to record.
4. Pertains to record.
5. Correct. However, it is to be clarified that the Impugned Rules are Comprehensive.

- 6. Incorrect hence denied. In fact these Rules have not left the status of the Appellant un-attended rather the Appellant is contradictorily trying to present his case as such by ignoring the Services the Appellant has rendered in BPS-17. Moreover, the main prayer of the Appellant has already been decided and declined by the August Apex Court vide its Judgement dated 15.12.2022, delivered in Civil Petitions No. 680-683-P of 2021 (Copy Annexure-A). Moreover, the Impugned Rules have also been challenged by other officer(s) of the same Batch of Appellant, in Writ Petition No. 41-D of 2023, which is pending adjudication before the Honorable Peshawar High Court, D.I.Khan, and hence this Service Appeal is not maintainable. Copy of the writ Petition is annexed (Annexure-B).
- 7. Incorrect and misleading hence denied. The said Rules do not call for 5 PERs or 5 years' service as Assistant Public Prosecutor for Promotion to the post of Senior Public Prosecutor (BPS-19) rather a Combined service of 12 years in BPS-17 and 18 is required.
- 8. Incorrect and misleading hence denied. The Prosecution officers who were Junior to the Appellant in the Seniority list were qualified for the said Promotion as they were having the required length of Service. This Para has mixed up two different questions, apparently, to deceive this Honorable Tribunal. The Promotion of the Appellant has not been declined due to his lack of Seniority rather it was due to the shortage in the required length of Service. The Seniority of the Appellant is intact in line with the Judgement of Honorable Peshawar High Court and August Supreme Court of Pakistan. Furthermore, The Appellant and his batch mates have, jointly and separately, engaged the Government in numerous litigations on the same Cause of Action and others, which include Service Appeal No. 13582/2020 (On the same Cause of Action), Execution Petition No. 269/2021(on the same Cause of Action), Service Appeal No. 518/2022 (on the same Cause of Action), C.O.C No. 08/2020 (date of Up-gradation of their post), Writ Petition 41-D/2023 (on the same cause of Action) etc. More so, this cause of Action has already been finally decided by the Apex Court vide its Judgement dated 15.12.2022, delivered in Civil Petitions No. 680-683-P of 2021 (already Annexure-A), more so, a review petition is also pending adjudication before August Supreme Court of Pakistan hence, cannot be called in question before this Honorable Tribunal.
- 9. Incorrect. As replied vide para 8 above.
- 10. The Apex Court has, in essence, declined the plea of Appellant and thus the present Service Appeal has been filed just to engage the Government in futile litigations.
- 11. The seniority of the Appellant is kept intact, however could not be promoted due to shortage in the required length of Service. Moreover, the posts for promotion of the appellant and his batch mates will be left reserved till completion of their required length of service for promotion. No officer junior to the appellant will be promoted on the seats reserved for the appellant and his batch mates.
- 12. Pertains to record.
- 13. Pertains to record.
- 14. As stated earlier, the Appellant has got no logical or legal grounds for his plea.
- 15. As stated earlier, the plea of the Appellant has been declined upto Supreme Court of Pakistan and hence he has got no grounds to plead.

Grounds:

- A. Misleading, Incorrect, hence denied. As already replied vide Para 6 of the Para-wise Reply.
- B. Misleading, Incorrect, hence denied. As already replied vide Para 8 of the Para-wise Reply. Moreover, the referred Judgement of Peshawar High Court has been presented with distorted interpretation.
- C. Misleading, Incorrect, hence denied. As already replied vide Para 8 of the Para-wise Reply.
- D. Misleading, Incorrect, hence denied. As already replied vide Para 8 of the Para-wise Reply, the said never ending and troublesome Litigation has been initiated by the Appellant (and her batch mates), without any logical reason, for which exemplary Costs should be imposed.
- E. Incorrect, misleading hence denied. This Para/Ground has mixed up two different questions, apparently, to deceive this Honorable Court. The Promotion of the Appellant has not been declined due to her lack of Seniority rather it was due to the shortage in the required length of Service. The Seniority of the Appellant is intact in line with the Judgement of Honorable Peshawar High Court and August Supreme Court of Pakistan. Moreover, the required length of Service for all the Officers of Prosecution is same and the Appellant cannot be offered any special measures or treatment against the Law.
- F. As replied vide Para 7 of the para-wise Reply.
- G. Incorrect hence denied. As already replied vide Para 8 of the Para-wise Reply. Moreover, the main question raised has already been decided by the August Apex Court, vide its Judgement dated 15.12.2022, delivered in Civil Petitions No. 680-683-P of 2021 (Copy already Annexed as Annexure-A) and thereby the Logic of the required length of Service for Promotion, has been maintained.
- H. As replied vide Para 8 of the para-wise comments. Moreover, the Appellant has called in question the Promotion of other Prosecution officers who's Promotion has been validated by the August Apex Court vide its Judgement dated 15.12.2022, delivered in Civil Petitions No. 680-683-P of 2021.

PRAYER:

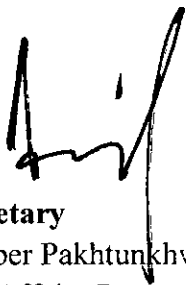
In light of the above facts and circumstances of the case, the Service Appeal, being devoid of any merits and legal substance, may kindly be dismissed with Special cost, please.



Chief Secretary
Govt. of Khyber Pakhtunkhwa,
(Respondent No.1 & 2)



Secretary Establishment
Govt. of Khyber Pakhtunkhwa,
(Respondent No.3)



Secretary
Govt. of Khyber Pakhtunkhwa
Home & Tribal Affairs Department
(Respondent No.4)
Home Secretary,
Khyber Pakhtunkhwa



Director General
Directorate of Prosecution,
Khyber Pakhtunkhwa
(Respondent No. 5)

**Director General
Prosecution
Khyber Pakhtunkhwa**

5

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 Appeals 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
Javed Iqbal Anwar
Govt. of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and others
Muhammad Sohail

C.P.5940/2021
C.P.6111/2021
C.Ps.680-P to
683-P/2021
CMA.12719/21
...Petitioners

Versus

Abdul Qadus and others
Farasat Ullah & others
Mst. Sobia Rasheed Raja and others
Bibi Sumaira and others
Abdul Qadoos, Deputy Public Prosecutor, Bannu
and others

CPs.5940 and
680-P /2021
CPs.6111 and
681-P/21
CP.682-P/21
CP.683-P/21
CMA.12719/21
...Respondents

In Attendance:

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

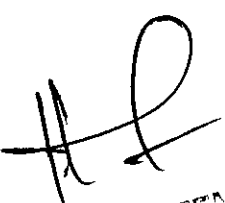
Mr. Sabir Hussain Tanoli, ASC
Mr. Noor Muhammad Khattak, ASC
Ms. Sobia Rasheed Raja,
Ms. Bibi Summera,
Farhatullah

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.


GOVERNMENT
Directorate of Prosecution
Home & Tribal Affairs Department
KPK

ATTESTED

Senior 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.

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SUPERINTENDENT
 Directorate of Prosecution
 Home & Tribal Affairs Department
 KPK

ATTESTED

Senior Court Associate
 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 atleast 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 1(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.

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 Prosecution
 Home & Tribal Affairs Department
 KPK

ATTESTED

Senior 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.

Sd/-J
Sd/-J

Certified to be True Copy

Senior Court Associate
Supreme Court of Pakistan
Islamabad

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ISLAMABAD
16th December, 2022
Not approved for reporting
Mudassar & Saadqat

33-P/2023

GR No: _____ Civil/Criminal
Date of Presentation 9-1-2023
No of Words: 1200
No of Folios: 12
Requisition Fee Rs 8.00
Copy Fee In: 7.44
Court Fee Stamp: 12.44
Date of Completion of Copy 17/1/23
Date of Delivery of Copy 20-01-23
Compared by/Prepared by [Signature]
Received by _____



BEFORE THE HONOURABLE PESHAWAR HIGH COURT,

D.I.KHAN BENCH

W.P No. 41 - D / of 2023


Farasat Ullah

VS

Govt. of Khyber Pakhtunkhwa & Others

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1	Grounds of W.P alongwith Interim Relief	-----	
2	Copy of appointment order of the petitioner and prosecution service rules 2005 & 2010.	A, B & C	
3	Copy of Notification dated 11.11.2014.	D	
4	Copies of Upgradation Notifications.	E & E1	
5	Copy of Notification dated 18.01.2018.	F	
6	Copy of relevant page of Promotion policy of 2009	G	
7	Copy of seniority list.	H	
8	Copy of notice alongwith original receipts	----	
9	Vakalatnama	-----	


SECRETARY
 Director of Prosecution
 Home & Tribal Affairs Department
 KPK

Humble Petitioner

Farasat Ullah
 Through Counsel

Dated: ___/01/2023

Muhammad Mohsin Ali
 Advocate Supreme Court

BEFORE THE HONORABLE PESHAWAR HIGH COURT
BENCH, DERA ISMAIL KHAN

Writ Petition No: _____ of 2023

Farasat Ullah son of Sibghat Ullah resident of Junaid Abad,
Multan Road, District Dera Ismail Khan.

.....PETITIONER

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary Govt. of Khyber Pakhtunkhwa, Peshawar.
2. Secretary Home & Tribal Affairs, Govt. of K.P.K Peshawar.
3. Secretary Establishment, Govt. of K.P.K Peshawar.
4. Director General Prosecution, Khyber Pakhtunkhwa, Peshawar.
5. Director Admin, Directorate of Prosecution, Peshawar.

....Respondents

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

Respectfully Sheweth:

A. That the addresses of the parties as given above are correct and sufficient for the purpose of service.

B. That the petitioner, in view of the Prosecution Service Rules, 2005 as amended in 2010, was directly appointed as Deputy Public Prosecutor on 24.05.2016 through Public Service Commission, out of 50% quota of initial recruitment. Under the said Rules of 2010, the post of Deputy Public Prosecutor (Dy:PP) was in BPS-17, whereas, Assistant Public Prosecutors (APP) was in BPS-16. It is pertinent to mention that Assistant Public Prosecutors

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 Director General Prosecution
 Home & Tribal Affairs Department
 K.P.K

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were having 50% promotion quota to the post of Deputy Public Prosecutor (Dy:PP). Copy of appointment order of the petitioner and prosecution service rules 2005 & 2010 are enclosed as **Mark-A, B & C respectively**.

C. That thereafter, owing to the decision of Honourable Peshawar High Court vide Judgment dated 21.11.2013 in Writ Petition No.241/2011, the posts of APP was upgraded to BPS-17 with retrospective effect from 01.12.2010 and Notification of up-gradation was issued on 11.11.2014. However, it was clarified in the said Notification that the up-gradation of APP to BPS-17 shall not affect the seniority of Dy:PPs appointed through public service Commission in BPS17. Copy of Notification dated 11.11.2014 is enclosed as **Mark-D**.

D. That the up-gradation of the post of APP in BPS-17 created anomaly as the higher (promotion-able) post of Dy:PP was still in BPS-17 and was not upgraded. Therefore, the Dy:PPs also filed a Writ Petition No.110-P/2015 before this Honourable Court, which was allowed vide Judgment dated 07.06.2016. Accordingly, vide Notification dated 02.02.2017, the post of Dy:PP stood upgraded to BPS-18, subsequently, the COC Petition No.08-P/2020 (decided on 18.06.2020) was filed and the up-gradation to the post of Dy:PP was given effect from 07.06.2016. Copies of up-gradation Notifications are enclosed as **Mark-E & E-1**.

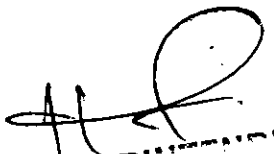
E. That the petitioner was directly appointed to the post of APP (BPS-17) on 24.05.2016, and just after 13 days of

his appointment, his post i.e. Dy:PP stood upgraded to BPS-18 w.e.f. 07.06.2016 i.e. date of the Judgment of Honourable High Court; therefore, He being appointed on a higher post carrying higher pay-scale, upgraded to BPS-18, shall be presumed to be in BPS- 18 for all purposes from his date of up-gradation. It would not be out of place to mention that the post of Dy:PP is always higher than the post of APP.

F. That the number of anomalies were created due to the up-gradation of the posts of APP & DY:PP, therefore, the method of appointments & promotions was amended vide Notification dated 18.01.2018 within the contemplation of Rule 3(2) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989. In the said Notification, the post of Dy:PP was completely kept for promotion from amongst the APP with at least five (05) years' service and the scope of direct recruitment has thereby been exterminated. Similarly, according to said amendments, for the purpose of promotion to the post of Senior Public Prosecutor B-19, twelve (12) years' service in BPS-17 & above is required to a Dy:PP. Hence, an APP with five years' service can be promoted to the post of Dy:PP and then after serving seven years as Dy:PP (i.e. total twelve years' service), he become entitle /eligible for promotion to the post of Senior Public Prosecutor (BPS-19). But, these amended rules (Notification dated 18.01.2018) are silent about the fate of those Dy:PPs who

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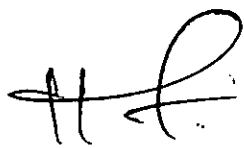
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Service Rules, having no service career as an APP. Copy of Notification dated 18.01.2018 is enclosed as Mark-F. ✓

G. That there were thirty two (32) Deputy public prosecutors serving in the Province including the petitioner at the time of up-gradation of the post of Dy:PP to BPS 18. The strength of applicant's batch was seven (7) i.e. 20% of the serving DY.PPs. The respondents were well in knowledge that after up-gradation of the post of Dy.PPs to BPS (18), 20 % of upgraded slot of Dy:PPs possess only 13 days service in BPS 17 at their credit. And those 20 percent Deputy Prosecutors neither served 5 years in BPS 17 as Dy.PP under the old rules 2010, nor possess 5 years PERs in BPS 17, but despite of this fact Impugned rules 2018 were left unattended for 20 % upgraded Dy.PPs. In the impugned rules respondents badly ignored the old service rules 2005 as amended in 2010 under which those specific 20% Dy.PPs were recruited.



SUBSTITUTE

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H. That status of specific set of 20 % upgraded Dy.PPs is badly ignored in amended service rules 2018. Respondents failed to realize the direct recruitment of petitioner in an upper cadre of Dy.PP under old rules 2010 and his new length of service as a result of up-gradation while making impugned service rules 2018. Length of service of petitioner for further promotion to higher pay scale 19 is obviously 7 years in BPS 18, after their up-gradation to BPS 18. Respondents wrongfully mentioned those

upgraded Dy.PPs under impugned service

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rules 2018 and mentioned illogical length of service of 12 years, including 5 years service as APP in BPS 17 for their further promotion to BPS 19. It is so strange that 5 years service as APPs in BPS 17 has been made a condition for the petitioner who didn't serve as assistant public prosecutor for a period of 5 years as petitioner was directly recruited as Dy:pp. Moreover production of at least 5 PERs is an essential condition for promotion to BPS-19 for an officer who is promoted on the basis of 12 years service in BPS 17 and 18. The petitioner doesn't have five PERs in BPS 17.

- I. That it is well settled principle of law that service rules are always made, modified, and suppressed, whenever any change in the service structure is made specially it is done after up-gradation process in order to bring the existing service rules in conformity with that of upgraded posts/grades/cadres. In the impugned prosecution amended service rules 2018, this was done by the Government to the extent of Assistant public prosecutors who were given antedated up-gradation. Their grade has been rightly mentioned as BPS 17 after up-gradation and they have been provided further avenues for their promotion to higher pay scales by mentioning their respective length of service. These impugned rules also provide opportunity to twenty six (26) Dy:PPs who were seniors to the petitioner as a result of up-gradation. As they fulfill the criteria mentioned in the impugned rules i.e.

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 Sr. Asst. Secy.
 Home & Industries
 Govt. of Punjab
 Chandigarh

(15)

twelve years (12) service in BPS 17 and 18, because they had already served in BPS 17 as Dy:PP under the old rules 2005/2010 and possess about six years length of service as Dy.PPs in BPS 17 at the time of notification of new rules 2018. In this way these rules provided opportunity to the seniors of the petitioner for their further promotion to the next higher pay scale i.e. BPS-19, but unfortunately the impugned amended rules neither defines the status of petitioner nor provide the way of further promotion to higher pay scale rather these rules are mum and completely silent about the promotions of petitioner who possess only 13 days service in BPS-17 as Dy: PPs at the time of up-gradation of the post. Impugned rules demand 12 years' service from petitioner by wrongfully considering him as Promoted Deputy Public prosecutor from the post of Assistant Public Prosecutor after serving 5 years in BPS 17.

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 Home & Tribal Affairs Department
 K.A

That the Secretary Home & Tribal Affairs Department, sent the case of promotion of 45 Dy:PPs including 23 juniors of petitioner for their appointment to BPS 19 as Senior Public Prosecutors on Acting Charge Basis on the basis of newly amended prosecution service rules 2018. The Provincial Selection Board (PSB) in its meeting dated 11.06.2020, appointed 45 prosecutors including 23 officers who juniors from the petitioner to the post of Senior Public Prosecutor/District Public Prosecutor BPS-19 on acting charge basis, whereas, the petitioner despite being senior stood discriminated and deprived from the right of

appointment on acting charge basis due to newly amended prosecution service rules 2018. As in these rules petitioner was left unattended and his length of service was left ambiguous, therefore petitioner was not considered for promotion.

K. That petitioner challenged the appointment of 23 junior officers through Service Appeal No.13581/2020 which was allowed vide consolidated Judgment dated 16.09.2021. But the acting charge appointment of petitioner to BPS-19 was challenged by respondents and 3 junior most Dy.PPs before Supreme Court of Pakistan, on the basis of these newly amended prosecution service rules 2018 which were made against the interest of petitioner. Apex Court allowed the petitions of respondents to the extent of Acting Charge Appointment and categorically maintained the seniority of present petitioner.

L. That being seriously aggrieved from the impugned service rules, 2018 the petitioner challenge the same inter alia, on the following grounds;

GROUNDS

1. That after the decision of Honble High Court it was the duty of the respondents to implement the same in latter and spirit by amending service rules in order to bring the service rules in conformity with the directions of Honble High Court. But it is so strange

[Handwritten Signature]
 CHIEF JUSTICE
 SUPREME COURT OF PAKISTAN
 KARACHI

5. That it is an admitted fact that after the judgment of this Honourable Court, petitioner is serving in BPS 18 as Dy.PPs and this fact is obvious from notification issued by respondent No. 2 which clearly says that the post of Dy.PPs has been upgraded to BPS 18 in compliance of judgment dated 7th June, 2016 and COC No. 08-P/2020. So in these circumstances, petitioner is serving in BPS-18 since 7th June, 2016 and demand of 12 year's service in BPS-17 and 18 from him for further promotion to the post of Senior Public Prosecutor BPS 19 means that he will have to serve in BPS 18 till 2028 i.e. serve in BPS 18 for a period of 12 years, and this is a clear violation of Uniform promotion policy of Government Of KPK which is still in field and has been made by exercising Constitutional powers under the rules of business 1985. This 12 years service in BPS 18 is again in contrast with promotion policy 2009 which lays down criteria of permanent promotion to BPS 20 on the basis of only 10 years service in BPS 18 and above. So it is quite unjustified that a specific set of Dy.PPs Prosecutors, who have been upgraded by this Honourable Court to remove an anomaly in their service structure, should serve for a period for their promotion to BPS 19 for such a long period which is required for promotion to permanent BPS 20. Copy of relevant page of promotion policy of 2009 is enclosed as **Mark-G**.

6. That 12 years service in BPS 17 and BPS 18 for promotion to BPS 19 has been mentioned in repealed prosecution service rules 2005, prosecution service rules 2010 and impugned amended prosecution service rules 2018 for those promotee officers who firstly served 5 years in BPS 17 and then promote to BPS 18. This 12 years service cannot be technically,

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 CHIEF JUSTICE
 HONOURABLE COURT OF APPEALS
 ISLAMABAD

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Prosecutors who have been upgraded to BPS 18 just after 13 days service in BPS-17.

7. The petitioner cannot be superseded without any fault at their part by promoting his junior most officers to permanent BPS 19 as Senior PPs on the basis of impugned Service Rules 2018. Because these impugned rules does not apply upon petitioner being irrelevant, illogical and stagnant. The status of petitioner has been mentioned as promoted Dy.PPs from amongst the APPs after 5 years service as APP in BPS 17 which is not the actual case. Petitioner were directly recruited as Deputy Public Prosecutor and was never promoted to the post Dy:pp. In this way respondents are trying to deprive the petitioner from his fundamental right of promotion in impugned amended rules.
8. That time and again Petitioner has been deprived from his right of appointment to BPS 19 on acting charge basis, due to applicability of impugned Service rules 2018 during the meetings of provincial selection board (PSB). Now, due to anomaly created as a result of impugned service rules 2018/notification dated 18-01-2018 respondents are going to promote on permanent basis, even those junior most assistant public prosecutor, who were even promoted from assistant PP BPS-17 to the post of Dy:pp BPS-18 in the mid of year 2020. And their names falls in the seniority list at serial no 72. Copy of seniority list is enclosed as Mark-G.
9. That now respondents are going to promote junior most Dy:pps to the permanent post of senior public prosecutor BPS-19 on the basis of impugned service

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 Director
 Home & Industries Department
 K.K.

17 and 18 has been wrongly mentioned including 5 years service as Assistant Public Prosecutors. It is a myth that an officer, Deputy public Prosecutor, who is never promoted to the post of Dy:pp has been asked to provide the length of service required for promotion to the post of Dy:pp

PRAYER

That by accepting instant writ petition respondents may be direct to

- A) amend, modify the impugned prosecution service rules 2018 to the extent of petitioners and similarly placed employees to the effect that their clear status may be mentioned as DYPPs.
- B) Amend/ modify the service rules for clearly mentioning the length of service of petitioners for their promotion to higher pay scales i.e 7 years service in BPS 18 to 19 from there date of upgradation.
- C) restrain the respondents from demanding 5 years length of service as Assistant PP BPS-17 from petitioners for further promotion to BPS - 19 in the cover of 12 years service in BPS - 17 and 18, in the service rules 2018.
- D) Bring in conformity the service rules with the soul and object of decision of Honorable High court vide which the post of DY.PPs was upgraded to BPS - 18 and the judgment of Honorable High Court may be implemented in letter and

Advocate General
Haryana & Punjab

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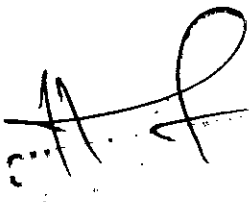
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spirit by extending all the benefits of upgradation granted by High Court.

E) declare the 12 years service in BPS 18 for the purpose of promotion from petitioner as illegal, against the uniform promotion policy of KPK.

INTERIM RELIEF:

In the meanwhile the Respondents may please be restrained from taking any adverse action against the petitioner and to restrain the respondents from promoting any person on the basis of impugned Service rules 2018 till the final disposal of instant writ petition.


Home of the Government

Humble Petitioner

Farasat Ullah
Through Counsel

Dated: ___/01/2023

Muhammad Mohsin Ali
Advocate Supreme Court

(22)

**BEFORE THE HONORABLE PESHAWAR HIGH COURT
BENCH, DERA ISMAIL KHAN**

Writ Petition No. _____ /2023

Farasat Ullah

VERSUS

Government of Khyber Pakhtunkhwa & Others

WRIT PETITION

CERTIFICATE:

It is certified that all the *parawise* contents of writ petition are true and correct, and no such writ petition has earlier been filed on the subject matter before this Hon'ble Court.

Humble Petitioner

Book Reference

- Constitution of Islamic Republic of Pakistan 1973.
- Appointment, promotion, transfers Rule 1989 as amended upto date.

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 SUBMITTED
 DERA ISMAIL KHAN
 HONORABLE PESHAWAR HIGH COURT

AFFIDAVIT:

I, Farasat Ullah son of Sibghat Ullah resident of Junaid Abad, Multan Road, District Dera Ismail Khan, petitioner do hereby solemnly affirm and declare on oath that contents of above Writ Petition are true & correct that nothing has been concealed from this Honourable Court.

Identified by Counsel

DEPONENT

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NOTICE

To,

1. Government of Khyber Pakhtunkhwa through Chief Secretary Govt. of Khyber Pakhtunkhwa, Peshawar.
2. Secretary Home & Tribal Affairs, Govt. of K.P.K Peshawar.
3. Secretary Establishment, Govt. of K.P.K Peshawar.
4. Director General Prosecution, Khyber Pakhtunkhwa, Peshawar.
5. Director Admin, Directorate of Prosecution, Peshawar.

(Respondents)

Subject: NOTICE UNDER RULE 2 (3) CHAPTER 4-J, VOLUME-V OF HIGH COURT RULES & ORDERS

Please take the notice that the undersigned is going to file a writ petition titled "Farasat Ullah Vs Government of KPK & Others" for the redressal of the grievance of petitioner.

You are also impleaded as respondent in the above titled writ petition.

Handwritten signature and official stamp of the Secretary Home & Tribal Affairs, Govt. of K.P.K Peshawar.

Dated: __/01/2023

Muhammad Mohsin Ali
Advocate Supreme Court
Counsel for the Petitioner

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 1456/2023

Sumaira Bibi, Deputy Public Prosecutor (BP-18).

Appellant.....

VERSUS

1. Govt. of Khyber Pakhtunkhwa, through Chief Secretary, Govt. of Khyber Pakhtunkhwa.
2. Chief Secretary, Govt. of Khyber Pakhtunkhwa.
3. Secretary, Govt. of Khyber Pakhtunkhwa, Establishment Department.
4. Secretary, Govt. of Khyber Pakhtunkhwa, Home & Tribal Affairs Department.
5. Director General Prosecution, Khyber Pakhtunkhwa.

Respondents.....

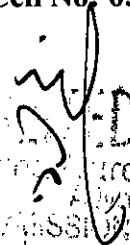
AFFIDAVIT

I, Muhammad Gulzar Ali, Superintendent, Directorate of Prosecution, Khyber Pakhtunkhwa, do hereby solemnly affirm and declare on oath that the contents of the application in the Service Appeal No. 1455/2023, are true and correct to the extent of office record and nothing has been concealed from Service Tribunal Khyber Pakhtunkhwa. It is further stated on oath that in this Appeal the answering respondents have neither been placed ex-party nor their defense struck off.


Deponent

CNIC No: 17301-1440140-1

Cell No: 0332-9279260


Miss Rozina
Commissioner
Judicial Complex, Peshawar

04.08.2023

DS

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

SERVICE APPEAL NO. 1456/2023

Sumaira Bibi, Deputy Public Prosecutor (BP-18).

Appellant.....

VERSUS

Government. of Khyber Pakhtunkhwa, through Chief Secretary, Government. of Khyber Pakhtunkhwa, Peshawar & Others.

Respondents.....

AUTHORITY LETTER

Mr. Gulzar Ali, Superintendent ,Directorate of Prosecution is hereby authorized to submit para wise comments and to appear before the Khyber Pakhtunkhwa Service Tribunal, at Peshawar , on behalf of Director General Prosecution in Service Appeal No.1455/2023.



Director General
Directorate of Prosecution
Khyber Pakhtunkhwa
Peshawar