

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 1455/2023

BEFORE: MRS. RASHIDA BANO ... MEMBER(J)  
MR. MUHAMMAD AKBAR KHAN ... MEMBER(E)

Abdul Qudoos, Deputy Public Prosecutor in the office of District Public  
Prosecutor Dera Ismail Khan. ... (Appellant)

**VERSUS**

1. Government of Khyber Pakhtunkhwa, Chief Secretary Civil Secretariat Peshawar.
2. Secretary Establishment Department, Government of Khyber Pakhtunkhwa, Peshawar.
3. Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa Peshawar.
4. Director General Prosecution, Directorate of Prosecution Civil Secretariat Peshawar.

... (Respondents)

Mr. Noor Muhammad Khattak  
Advocate

... For Appellant

Mr. Muhammad Jan  
District Attorney

... For Respondents

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Date of Institution..... 26.06.2023  
Date of Hearing.....13.10.2023  
Date of Decision.....13.10.2023

**JUDGMENT**

**RASHIDA BANO, MEMBER (J):** The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

**“On acceptance of this appeal one time amendment/modification in the impugned prosecution service rules 2018 to the extent of appellant his batch mates may be made and their clear status may be mentioned as directly recruited DPPs who were later on upgraded to BPS-18”**

**“Amend/modify the service rules for one time for clearly mentioning the length of service of appellant alongwith his batch mates for their promotion to higher pay scales i.e 7 years service in BPS-18 and 10 year service in BPS-18 and above for their permanent promotion to BPS-20, from their date of up-gradation.”**



“Five years length of service as APP BPS-17 from appellant and his batch mates for their further promotion to BPS-19 under the cover of 12 years service in BPS-17 and 18 as wrongly mentioned, in the service rules 2018.”

“Service rules may be brought in conformity with the should and object of decision of Hon’ble High Court vide which the post of DPPs was upgraded to BPS-18 and to extend the consequential benefits of up-gradation granted by Hon’ble Peshawar High Court in letter and spirit.”

“12 years service in BPS-18 for the purpose of promotion of appellant and his batch mates may be declared against the uniform promotion policy of Khyber Pakhtunkhwa.”

“Junior most DPPs may not be permanently promoted to the post of Senior Public Prosecutor BPS-19 before the permanent promotion of appellant and his batch mates to BPS-19 to the post of Senior Public Prosecutor.”

“To implant the notification dated 11.11.2014 in letter and spirit vide which it was clearly mentioned by the respondents that Anti dated up-gradation of Assistant Public Prosecution from BPS-16 to BPS-17 shall not affect the seniority of Deputy Public Prosecutor.”

2. Through this single judgment we intend to dispose of instant service appeal as well as connected Service Appeal No. 1456/2023 “Sumaira Bibi Vs. Government of Khyber Pakhtunkhwa Secretary through Chief Secretary and others” as in both the appeals common question of law and facts are involved.

3. Brief facts of the case are that in view of the Prosecution Service Rules, 2005 amended in 2010 the appellant was appointed as Deputy Public Prosecutor (Dy PP) on 24.05.2016, through Public Service Commission. Under the said rules the post of Deputy Public Prosecutor was in BPS-17 and Assistant Public Prosecutor was in BPS-16. After decision of Worthy Peshawar High Court, Peshawar vide judgment dated 21.11.2013 the post of Assistant Public Prosecutor (APP) was upgraded to BPS-17 with retrospective effect from 01.12.2010. The up-gradation of the post of APP in BPS-17 created anomaly as the higher post of Dy.PP was still in BPS-17 and was not up-graded, therefore, the Dy.PPs filed Writ Petition which was allowed vide judgment dated 07.06.2016 and the post of Dy.PPs was also upgraded to BPS-18 and was given effect from 07.06.2016. The number of

anomalies were created due to the up-gradation of the posts of APP & Dy.PP, therefore, the method of appointments and promotion was amended vide notification dated 18.01.2018 within contemplation of Rule 3(2) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989. The post of Dy.PP was completely kept for promotion from amongst the AAP with at least five years service and the scope of direct recruitment has been exterminated. Similarly, for the purpose of promotion to the post of Senior Public Prosecutor BPS-19, 12 years' service in BPS-17 and above is required to a Dy.PP and APP with five years' service can be promoted to the post of Dy.PP. In the said Notification, the post of Dy.PPs and then after serving seven years as DPPs he become entitle for promotion to the post of Senior Public Prosecutor BPS-19. But, these amended rules are silent about the fate of those Dy.PPs who were directly appointed in BPS-17 on previous service rules and their post was upgraded to BPS-18 after 13 days of their service.

4. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned District Attorney for the respondents and perused the case file with connected documents in detail.

5. Learned counsel for the appellant argued that by notifying prosecution service rules 2018, the department have created a series of never ended anomalies which has obviously put appellants and department in a never ended expensive and troublesome litigation, which is neither in the interest of appellant nor in department. He further argued that rules of 2018 are clear violation of notification dated 11.11.2014 which clearly stated that seniority of Dy.PPs shall not be affected due to antedated upgradation of APPs due to which appellant alongwith others were superseded by violating the condition mentioned in the notification. Lastly he submitted that appellant cannot be superseded without any fault at his part by promoting his junior most officers to a permanent post of Senior Public Prosecutor BPS-19 as the impugned rules does not apply upon appellant being irrelevant, illogical and stagnant.



6. Conversely, learned District Attorney contended that appellant had been treated in accordance with law and rules. He further contended that appellants 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 junior to the appellant will be promoted on the seats reserved for the appellant and his batch mates.

7. Perusal of record reveals that appellant was initially appointed in BPS-17 as Deputy prosecutor vide order dated 24-05-2016. Out of quota fixed for 50% direct, recruitment under Prosecution Service Rules 2005 as amended in 2010. It is important to note that under 2005 Rules post of the Deputy Public Prosecutor was of BPS-17 while that of Assistant Public prosecutor BPS-16 who filed writ petition bearing No. 241/2011 to worthy Peshawar High Court Peshawar which was decided on 21-11-2013 and as a result, post of Assistant Public Prosecutors were upgraded from BPS-16 to BPS-17 but created anomaly as higher post i.e promotion post of Dy.PPs was still in BPS-17 and not upgraded therefore Dy.PPs also filed writ petition bearing No. 110/2015 before worthy Peshawar High Court Peshawar which too was allowed vide order dated 07.06.2016 and the post of Dy.PPs were also upgraded from BPS-17 to BPS-18. Respondents in compliance with order of worthy Peshawar High Court in both the writ petition issued notification dated 11-11-2014 about up-gradation of APPs to BPS-17 and 02-02-2017 about DPPs upgradation to BPS-18 and was given from 07.06.2016. So this way appellant was although appointed in BPS-17 and due to upgradation of his post of DPP in BPS-18 just after 13 days of this appointment.

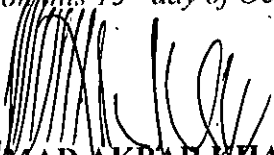
8. Respondent department remove anomalies created due to up-gradation of post of APP and Dy.PP amended their rules and issued notification in this respect on 18-01-2018. In the said amended rules post of Dy.PPs (BPS-18) were kept wholly for promotion from post of APPs (BPS-17) with at least 5 years service and scope of direct recruitment has been exterminated. In accordance with said rules criteria/requirement for promotion to the post of Senior Public Prosecutor BPS-19 was 12 years service in BPS-17 and above.


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9. It is important to note that Assistant Public Prosecutor after serving in BPS-17 as APP and 7 years as Dy.PP will be eligible for promotion to the post of Senior Public Prosecutor for Dy.PP of to have 12 years service in BPS-18 is harsh one because they will have to serve in BPS-18 for whole period of 12 years. There are Dy.PPs only six in number whose post was upgraded just after 13 days of their appointment. At the time of up-gradation of post of Dy.PPs to BPS-18 total 32 Deputy Public Prosecutor were serving in the province including directly recruited Dy.PPs i.e appellant and his batch mates which means 20% upgraded slot of Dy.PPs i.e direct recruitees possess only 13 days service in BPS-17 at their credit as this 20% neither serve as Dy.PPs under old rules nor possess 5 years PERS in BPS-17, but respondent after upgradation of Dy.PPs post to BPS-18 left unattended this aspect. It is also pertinent to mention here some of the APPs remain Junior to appellant as serving in BPS-16 before upgradation of their post into BPS-17 as they have length of service in BPS-16 upgraded to BPS-17 therefore now meet the criteria of 12 years\* length of service which was counted for the purpose of promotion to the post of Senior Public Prosecutor BPS-19. That juniors officers whose PERS were written by the appellant and his batch mates now became senior having required length of service at their credit. Now after this amendment there is drift/ anomaly created in the service rules. It is general rule that whenever a post is upgraded department will have to frame the rule to remove anomaly created with upgradation but in the instant case after the promulgation of impugned amended rules junior will become senior. It is not out of place to mention here that criteria for promotion to BPS-19 is seniority cum fitness and admittedly appellant and his/her batch mates are senior to the APPS who post were upgraded so in such a situation it will also create hurdle/blockage to other Dy.PPs who are junior to the appellants & they will also wait for 12 years for their regular promotion, despite having requisite length of service i.e 12 years. In our view after upgradation of the Dy.PPs post there must be some transaction/cushion period for direct recuritees whose post were upgraded but no such opportunity/provision was given by respondents.

10. In view of the above discussion, we are unanimous to refer the matter back to the respondents to look into the anomalies highlighted above and address them in a such a way that no one right are violated and the issue resolved amicably. It would be in fitness of matter to refer these impugned service rules to committee in order to come up with just and equitable solution by removing anomalies created by the impugned service rules with direction to decide it within sixty days after receipt of this judgment with further direction to reserve the posts for promotion of the appellant till decision of Standing Service Rules Committee, however respondents are at liberty to promote other eligible Dy.PPs after reserving post for appellant and his/her batch mates. Costs shall follow the event. Consign.

11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 13<sup>th</sup> day of October, 2023.*

  
(MUHAMMAD AKBAR KHAN)  
Member (E)

  
(RASHIDA BANO)  
Member (J)


13.10.2023

1. Appellant alongwith his counsel present. Mr. Muhammad Jan learned District Attorney for the respondents present.

2. Vide our detailed judgement of today placed on file, we are unanimous to refer the matter back to the respondents to look into the anomalies highlighted and address them in a such a way that no one right are violated and the issue resolved amicably. It would be in fitness of matter to refer these impugned service rules to committee in order to come up with just and equitable solution by removing anomalies created by the impugned service rules with direction to decide it within sixty days after receipt of this judgment with further direction to reserve the posts for promotion of the appellant till decision of Standing Service Rules Committee, however respondents are at liberty to promote other eligible <sup>J.P.</sup> DPPs after reserving post for appellant and his/her batch mates. Costs shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 13<sup>th</sup> day of October, 2023.*

  
(MUHAMMAD AKBAR KHAN)  
Member (E)

  
(RASHIDA BANO)  
Member (J)