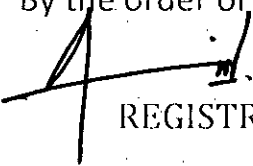


Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Implementation Petition No. 06/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	02.01.2024	<p>The implementation petition of Mr. Abdul Qudoos submitted today by Mr. Noor Muhammad Khattak Advocate. It is fixed for implementation report before Single Bench at Peshawar on _____.</p> <p>Original file be requisitioned. AAG has noted the next date. Parcha Peshi is given to the counsel for the petitioner.</p> <p>By the order of Chairman  REGISTRAR</p>

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

EXECUTION NO. \_\_\_\_\_/2023

ABDUL QUDUS

VS

GOVT. OF KPK & OTHERS

**APPLICATION FOR FIXATION OF THE ABOVE TITLED CASE AT**  
**PRINCIPAL SEAT, PESHAWAR**

Respectfully Sheweth:

5. That the above mentioned case is pending adjudication before this Hon'ble Tribunal in which no date has been fixed so far.
6. That according to Rule 5 of the Khyber Pakhtunkhwa Service Tribunal Rules 1974, a Tribunal may hold its sittings at any place in Khyber Pakhtunkhwa which would be convenient to the parties whose matters are to be heard.
7. That it is worth mentioning that the offices of all the respondents concerned are at Peshawar and Peshawar is also convenient to the appellant/applicant meaning thereby that Principal Seat would be convenient to the parties concerned.
8. That any other ground will be raised at the time of arguments with the permission of this Hon'ble tribunal.

**It is therefore prayed that on acceptance of this application the case may please be fixed at Principal Seat, Peshawar for the Convenience of parties and best interest of justice.**

Appellant/Applicant

Dated: 01-1-24

Through

  
**NOOR MOHAMMAD KHATTAK**  
ADVOCATE SUPREME COURT

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

Execution Petition No. 06 /2023  
In  
Appeal No. 1455/2023

**ABDUL QUDOOS**

**VS**

**GOVT OF KPK & OTHERS**

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**PETITIONER**

**Mr. Abdul Qudoos**

**Through:**

  
**Noor Mohammad Khattak**  
**Advocate Supreme Court**

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

Execution Petition No. 6 /2023  
In  
Appeal No. 1455/2023

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 10209

Dated 02-1-2024

Mr. Abdul Qudoos,  
Deputy Public Prosecutor in the Office of District Public Prosecutor  
Dera Ismail Khan.

.....PETITIONER

**VERSUS**

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

..... RESPONDENTS

**EXECUTION PETITION UNDER SECTION 7(2)(d) OF THE KP SERVICE TRIBUNAL ACT 1974, RULE 27 OF THE KP SERVICE TRIBUNAL RULES 1974 READ WITH SECTIONS 36 AND 51 OF THE CIVIL PROCEDURE CODE AND ALL ENABLING LAWS ON THE SUBJECT FOR THE IMPLEMENTATION OF THE JUDGMENT DATED 13/10/2023 IN LETTER AND SPIRIT.**

**R/SHEWETH:**


- 1- That the petitioner filed service appeal bearing No. 1455/2023 before this august Service Tribunal, against the inaction of the respondents department by not amending/modifying in the impugned Prosecution Service Rules, 2018 to the extent of appellant his batch mates.
- 2- That the appeal of the petitioner was finally heard on dated 13/10/2023 and as such the ibid appeal was decided with the following terms by this august Service Tribunal:


***"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".** Copy of the judgment dated 13/10/2023 is attached as annexure.....A

- 3- That after obtaining copy of the judgment dated 13/10/2023 the same was submitted with the respondents for implementation of his grievance coupled with an application, but the respondents/ department failed to do so, which is the violation of the judgment supra. Copy of application is attached as annexure.....B
- 4- That petitioner having no other remedy but to file this implementation petition.

It is therefore, most humbly prayed that on acceptance of the instant execution petition the respondents may kindly be directed to implement the Judgment dated 13/10/2023 passed in Appeal No. 1455/2023 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

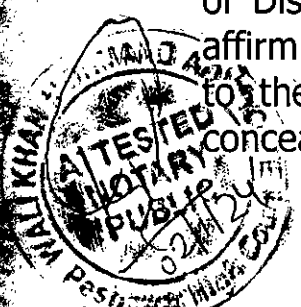
  
**PETITIONER**  
**Mr. Abdul Qudoos**

**THROUGH:**  
  
**NOOR MOHAMMAD KHATTAK**  
**ADVOCATE SUPREME COURT**

**AFFIDAVIT**

I Mr Mr. Abdul Qudoos, Deputy Public Prosecutor in the Office of District Public Prosecutor Dera Ismail Khan, do hereby solemnly affirm that the contents of this Execution Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

  
**DEPONENT**



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

Execution Petition No. \_\_\_\_\_/2023

In

Appeal No. 1455/2023

**MR. ABDUL QUDOOS**

**VS**

**CHIEF SECRETARY & OTHERS**

**APPLICATION FOR RESTRAINING THE RESPONDENTS, NOT TO PROMOTE JUNIORS TO THE PETITIONER TILL THE DISPOSAL OF THE ABOVE MENTIONED EXECUTION PETITION.**

**R/SHEWETH:**

- 1- That the above mentioned execution petition along with this application has been filed by the appellant before this august Tribunal in which no date has been fixed so far.
- 2- That all the three ingredients necessary for the stay is in favor of the Petitioner.
- 3- That the respondents are going to promote juniors to the petitioner to the next higher post of Special Public Prosecutor [spp] (BPS-19), by ignoring the petitioner, despite of the clear directions of this Honourable Tribunal.
- 4- That the action of the respondents is violative of the judgment of this Honourable Tribunal as well as in utter disregard of law, prevailing rules.
- 5- That all the grounds of the main Execution Petition be consider as part and parcel of this application.

It is therefore, most humbly prayed that on acceptance of this application, the respondents may kindly be restrained from promoting the juniors to petitioner, till the disposal of the above mentioned Execution Petition.

  
**Petitioner**

**Through:**

  
**Noor Mohammad Khattak**  
**Advocate Supreme Court**

**AFFIDAVIT**

I Mr Mr. Abdul Qudoos, Deputy Public Prosecutor in the Office of District Public Prosecutor Dera Ismail Khan, do hereby solemnly affirm that the contents of this application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.

  
**DEPONENT**

"A" -4-

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

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

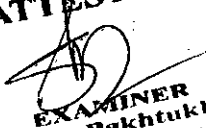
JUDGMENT

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.”

ATTESTED

  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

"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

**ATTESTED**

**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar



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.

**ATTESTED**

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Peshawar

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 APP 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.

ATTESTED

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Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar


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 recruits 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 recruits whose post were upgraded but no such opportunity/provision was given by respondents.


**ATTESTED**

**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

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 his 13<sup>th</sup> day of October, 2023.

  
(MUHAMMAD AKBAR KHAN)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

\*Kaleemullah

**Certified to be true copy**

  
**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Application 13/10/23  
Number of Words Page 6  
Copying Fee 30/-  
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Date of Completion of Copy 06/11/23  
Date of Delivery of Copy 06/11/23



**OFFICE OF THE DISTRICT PUBLIC PROSECUTOR  
DERA ISMAIL KHAN**

No. 1084 /DPP/DIK Dated D.I.Khan the: 07-12-2023

Office Phone & Fax # 0966-9280013

Email: dppdikhan@gmail.com

To

**The Worthy Director General Prosecution,**  
*Govt: of Khyber Pakhtunkhwa Peshawar.*

**Subject: REQUEST FOR IMPLEMENTATION OF JUDGMENT OF KPK  
SERVICE TRIBUNAL DATED 13-10-2023 TO REMOVE  
ANOMALIES IN PROSECUTION SERVICE RULES 2018.**

R/Sir,

Enclosed herewith a request/application submitted by Mr. Abdul Qudus Khan Deputy Public Prosecutor D.I.Khan, which is self-explanatory in nature.

Kindly review the contents of his request/application and take further necessary action as deemed appropriate.

  
District Public Prosecutor  
Dera Ismail Khan

**ATTACHED**

To

**The Worthy Director General Prosecution,**  
**Govt: of Khyber Pakhtunkhwa Peshawar.**

**THROUGH PROPER CHENNAL**

Subject:

**REQUEST FOR IMPLEMENTATION OF JUDGMENT OF KPK**  
**SERVICE TRIBUNAL DATED 13-10-2023 TO REMOVE**  
**ANOMALIES IN PROSECUTION SERVICE RULES 2018.**

R/Sir,

It is submitted that Honorable KPK Service Tribunal vide Judgment dated 13-10-2023 had referred the matter to SSRC Committee to remove the anomalies in Prosecution Service Rules 2018 which were created as a result of up gradation of the post of Deputy Public Prosecutor. The up gradation was granted vide Judgment of Peshawar High Court dated 07-06-2016.

It is therefore, requested that anomalies highlighted by Honorable KPK Service Tribunal (mentioned in judgment annexed with application) may kindly be removed by sending the matter to Standing Service Rules Committee (SSRC) for the ends of justice and to maintain the established seniority of applicant.

I shall be highly obliged.

Your sincerely,

ATTACHED



**Abdul Qudus Khan**  
Deputy Public Prosecutor  
Dera Ismail Khan

**VAKALATNAMA**  
**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR.**

Execution No        /2023

Abdul Qudoos

(APPELLANT)  
(PLAINTIFF)  
(PETITIONER)

**VERSUS**

Law  
State Deptt

(RESPONDENT)  
(DEFENDANT)

I/We Abdul Qudoos

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

Dated.        /        /2023

**CLIENT**

**ACCEPTED**

**NOOR MOHAMMAD KHATTAK  
ADVOCATE SUPREME COURT**

**WALEED ADNAN**

**UMAR FAROOQ MOHMAND**

**MUHAMMAD AYUB**

**&**

**MAHMOOD JAN  
ADVOCATES**