

## CHAPTER 29

# Public Prosecutors

### Part A

#### APPOINTMENTS OF PUBLIC PROSECUTORS

**1. Appointment, transfer, etc.**—(a) All matters relating to the appointment remuneration, transfer or removal of Public Prosecutors rest with the Executive and not with the Judicial Department.

(b) Except temporary additional Public Prosecutors appointed by the Government or the Legal Remembrancer, Punjab, under the rules contained in the Punjab Law Department Manual, the Public Prosecutors are now designated as District Attorneys and Assistant District Attorneys.

**2. Recruitment and conditions of service of District Attorney & Assistant District Attorneys**—The District Attorneys and the Assistant District Attorneys are whole time Government servants, in a regular cadre of service called the District Attorney Service, and their recruitment and conditions of service are regulated by the Punjab District Attorney Service Rules, 1960, reproduced in Part C of this Chapter.

**3. Temporary Additional Public Prosecutors**—(i) When the State of work so requires, temporary additional Public Prosecutors may be appointed, under the provisions of the Public Law Department Manual, for period not exceeding three months by the Legal Remembrancer and for periods exceeding three months by the Government.

(ii) Temporary Additional Public Prosecutors are not whole time Government servants and are ordinarily allowed the pay of Rs. 400 per mensem.

**4. Cases in which Public Prosecutors may be required to appear**—Public Prosecutors are required by Law [Section 225 (Section 270 of old Code)] of the Code of Criminal Procedure, 1973 to conduct the prosecution in all criminal trials held in a Court of Sessions but it rests entirely with Executive to decide in what appeals or revision cases Public Prosecutors are to appear in the Sessions Court.

They will be required to appear on behalf of the Government in the following cases  
Government—

(a) All Sessions Cases;

- (b) All Section 29 cases as headquarters where the Public Prosecutor is posted;
- (c) All Section 29 cases in out-stations when required to appear by the District Magistrate;
- (d) All commitment cases at headquarters, except ordinary Section 70 cases where appearance is unnecessary;
- (e) All similar commitment cases in out-stations when required to appear by the District Magistrate;
- (f) All criminal appeals where on or after the admission of the appeal the Sessions Judge notes that he considers appearance necessary, and in all criminal appeals which the District Magistrate considers of sufficient importance to require representation of the Government;
- (g) Subject to the time being available all original cases which the District Magistrate considers of sufficient importance to require representation; and

They will also furnish opinion in all criminal cases when required by the District Magistrate and by a Sub-Divisional Officer through the District Magistrate.

Public Prosecutors shall also appear in any cases or give opinion regarding any matter when required by the Legal Remembrancer.

5. On the request of a Public Prosecutor who appears before a Sessions Judge, the Sessions Judge will certify that the Public Prosecutor had so appeared.
6. A brief diary should be maintained by each Public Prosecutor showing the work done by him during each month. This diary is to be submitted to the Legal Remembrancer at the end of the month in accordance with instructions issued from time to time.

Part B  
THE SUPPLY OF COPIES TO THE ADVOCATE-GENERAL  
AND PUBLIC PROSECUTORS

**1. Records and copies to be supplied in cases before Subordinate Courts**—When the Advocate General as Public Prosecutor, has been ordered to undertake a case, he shall, if his appearance is required in any Court other than the High Court be supplied as soon as practicable with the following papers, according to the stage which the proceedings may have reached:—

- (a) In original trials and inquiries before a Magistrate (1) a list of the witnesses for the prosecution with a note of the evidence each is expected to give; (2) copies of any documents material to the case which are available.
- (b) In original trials before a Court of Sessions, a complete copy of the record of the Committing Magistrate except formal papers, which do not affect the merits of the case.

(c) In appeals before a Court of Sessions, a complete copy of the record of the lower Court, except formal papers not affecting the merits of the case.

(d) Copies of the Police papers whenever, in the opinion of the officer applying for the services of the Advocate-General, they are likely to help materially to a proper understanding of the case.

*Note*—Copies of records, required by Local Public Prosecutors or the Legal Remembrancer should be supplied and their cost met by District Magistrate or the Courts concerned. (*Punjab Government Notification No. 1025, dated 21st October, 1914*).

**2. Records and copies to be supplied in cases before Subordinate Courts**—In addition to the above any papers and records, including copies of depositions of witnesses recorded by the trying Courts which may be required by the Law Officer, shall be supplied as soon as possible after receipt of the requisition.

*Note*—The Public Prosecutors should, however, use more discrimination in their requests for full copies of evidence and should, as far as possible, obtain the material required by them from inspection of judicial records; copies should not be obtained by them except in complicated cases, when inspection will not serve the purpose. (*Punjab Government Letter No. 12012- Judl. dated the 15th April, 1926, and Legal Remembrancer's Letter No. 1829, dated the 7th May, 1926*).

**3. Copies in cases before High Court**—In cases in which the Advocate General is ordered to appear in an appeal or revision case before the High Court, it will ordinarily be for him to obtain copies of such parts of the record as he requires; but if in any case copies can be more conveniently obtained by the officer who has applied for his services, such officer may be required to obtain and transmit the necessary copies. In any case, the cost of obtaining copies shall be defrayed by the officer who has applied for the Advocate-General's services.

Part C  
RULES RELATING TO RECRUITMENT AND CONDITIONS OF SERVICE OF DISTRICT  
ATTORNEYS AND ASSISTANT  
DISTRICT ATTORNEYS

THE PUNJAB DISTRICT ATTORNEYS SERVICE RULES, 1960

**1. (1) Short title and commencement**—These rules may be called the *Punjab District Attorneys Service Rule, 1960*.

(2) These shall come into force from the date of their publication in the official Gazette.

**2. Definition**—In these rules, unless there is anything repugnant in the subject or context.

(a) "Commission" means the Punjab Public Service Commission ;

(b) “direct appointment” means an appointment made otherwise than by promotion within the Service, or by transfer of an official already in the service of a State Government or of the Union of India.

(c) “Government” means the Punjab Government in the Administrative Departments;

(d) “Legal Remembrancer” means the Legal Remembrancer and Secretary to Government, Punjab, Legislative Department;

(e) “Recognised University” means:

(i) Any University incorporated by law in any of the States of India;

(ii) In the case of Degree or diplomas obtained as a result of examination held before the 15th August, 1947, the Punjab, Sind or Dacca University; and

(iii) Any other University which is declared by Government to be a recognised University for the purposes of these rules; and

(f) “Service” means the Punjab District Attorneys Service.

**3. Composition of service**—(1) The Service shall comprise the posts shown in Appendix ‘A’ to these rules :

Provided that the posts of Grade II of the District Attorneys cadre shall continue as such only so long as the existing incumbents of erstwhile Pepsu State hold them. These posts when falling vacant will be added to either in Grade I of District Attorneys cadre or to the cadre of Assistant District Attorneys:

Provided further that there shall be one or more District Attorneys or Assistant District Attorneys for each District as the Government may from time to time determine.

(2) Nothing in these rules shall affect the right of Government to make addition to, or reduction in, the cadre of the service whether permanently or temporarily.

**4. Appointing Authority**—Subject to the provisions of Rule 5, the appointments to the posts in the Service shall be made by the Government in consultation with the commission :

Provided that temporary appointments for a period of not exceeding three months shall be made by the Legal Remembrancer.

**5. Method of recruitment**—Posts in the Service shall be filled in as under:—

(a) In the case of District Attorneys—

(1) The first appointments to such number of posts as Government may determine shall be made by the Government by selection, on the advice of a Committee consisting of the Legal Remembrancer and the Home Secretary to Government, Punjab, from amongst those Public Prosecutors who were in the employment of the erstwhile State of Punjab and Patiala and East Punjab States Union immediately before the 1st November, 1956.

(2) the remaining posts and all future vacancies shall be filled—

(i) by selection from amongst the District Attorney Grade II or the Assistant District Attorneys; or

(ii) by transfer of an officer working under the Government of a State, or of Union of India; or

(iii) by direct appointment.

(b) In the case of District Attorney Grade II, by selection by the Government from amongst the Public Prosecutors in the employments of the erstwhile State of Pepsu, immediately before 1st November, 1956.

(c) In the case of Assistant District Attorneys—

(i) by selection form amongst the Legal Assistants and Superintendents of the office of Legal Remembrancer; or

(ii) by transfer of an officer working under the Government of a State of Union of India; or

(iii) by direct appointment.

(d) In the case of temporary vacancies not exceeding a period of three months by the Legal Remembrancer out of District Attorneys, Grade II, or Assistant District Attorneys or from the counsel on the State list.

**6. Domicile and qualifications for appointment**—No person shall be appointed to the Service unless he is—

(a) a citizen of India; or

(b) a subject of Sikkim; or

(c) a subject of Nepal or of a Portuguese or former “French Possessions in India; or

(d) a person of Indian origin, who has migrated from Pakistan with the intention of permanently settling in India;

Provided that if he belongs to category (c) or (d) he must be a person in whose favour a certificate of eligibility has been given by the Government of India; or of the Punjab;

Provided, further that if he belongs to category (d) the certificate of eligibility shall be valid only for a period of one year from the date of his appointment beyond which he may be retained in service only if he has become a citizen of India.

A candidate, in whose case a certificate of eligibility is necessary, may be admitted to an examination or interview conducted by the Commission or any other recruiting authority and he may also provisionally be appointed subject to the necessary certificate being eventually given to him by Government.

**7. Disqualification**—No person who has more than one wife living, or in the case of a woman, is married to a person already having a wife living, shall be eligible for appointment to the Service:

Provided that the Government may in any exceptional case and for reasons to be recorded in writing exempt any person from the operation of this rule.

**8. Age limit**—No person shall be appointed to the Service by direct appointment to the post of—

(i) District Attorney, unless he is not less than 30 years and not more than 40 years of age on the date of selection;

(ii) Assistant District Attorney, unless he is not less than 25 years and not more than 35 years of age on the date of selection:

Provided that in the case of candidates belonging to the Scheduled Castes, Scheduled Tribes and Backward Classes, the maximum age limit shall be such as may be fixed by Government from time to time.

**9. Educational and other qualifications**—No person shall be appointed to the Service unless he possessed the educational qualifications mentioned in column 2 below and no person shall be appointed by direct appointment unless he also possessed the other qualifications mentioned in column three below—

Name of Post	Educational Qualifications	Other Qualifications
1	2	3
District Attorney	Degree of Bachelor of Laws of a Recognised University or a Barrister of England or Ireland or a member of the Faculty of Advocated of Scotland	Should have practised at the Bar for a period of not less than ten years
Assistant District Attorney	Ditto	Should have practised at the Bar for a period of not less

		than five years
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**10. Certificates and declarations to be attached with application**—(1) A candidate for appointment to the Service shall state his qualifications and attach to his application a declaration stating the period for which he has been practising as a lawyer and/or the period, if any, for which he remained in Government service or worked as a Public Prosecutor.

(2) No person shall be appointed direct to the Service unless he—

- (a) has obtained from a Standing Medical Board in the State of Punjab a certificate of mental and physical fitness as required under Rule 3.1 of the Punjab Civil Services Rules, Volume I, Part II; and
- (b) has produced a certificate of character from the Principal, academic officer of the university, college, school or institution, last attended, if any; and similar certificate from two responsible persons, not being his relatives, who are well-acquainted with him in private life and unconnected with his university, college, school or institution.

**11. Probation**—(1) Members of the Service recruited by direct appointment shall remain on probation for a period of two years and those recruited otherwise for a period of one year:

Provided that the District Attorneys Grade I, who are selected for appointment from the Public Prosecutors of erstwhile State of Punjab and Patiala and East Punjab States Union and the District Attorneys Grade II, shall not be required to remain on probation.

*Explanation*—The period of service as Public Prosecutor or the period of service as officiating District Attorney, Class I or officiating Assistant District Attorney may, at the discretion of Government, be allowed to count towards the period of probation fixed under the rule but not member of the Service, who is officiating in any appointment shall, on the completion of his period of probation be entitled to be confirmed, until he is appointed against a permanent vacancy.

(2) If the work or conduct of any member of the Service during the period of probation is, in the opinion of Government, not satisfactory, Government may dispense with his services, if recruited by direct appointment or revert him to his former post if recruited otherwise.

(3) On completion of the period of probation of any member, the Government may confirm such member in his appointment, if his work or conduct has, in the opinion of Government, not been satisfactory, dispense with his services if recruited by direct appointment or may revert him to his former post, if recruited otherwise, or may extend his period of probation and thereafter pass such orders as it could have passed on the expiry of the first period of probation:

Provided that the total period of probation including extensions, if any, shall not exceed three years.

**12. Seniority**—(1) The seniority *inter-se* of members of the service holding the same class of posts shall be determined by the dates of their continuous appointments to such posts in the Service:

Provided that in the case of members appointed directly, the order of merit determined by the commission shall not be disturbed:

Provided, further, that in the case of two or more members appointed to the same class or posts on the same date, their seniority shall be determined as follows:—

(a) a member recruited by direct appointment shall be senior to a member recruited otherwise;

(b) a member recruited by promotion shall be senior to a member recruited by transfer;

(c) in the case of members who are recruited by promotion or transfer, seniority shall be determined according to the seniority of such members in the appointments from which they were promoted or transferred;

(d) in the case of members recruited by transfer from different cadres or by selection under Rule 5(a)(1) their seniority shall be determined according to pay, preference being given to a member who was drawing a higher rate of pay in his previous appointment, and if the rates of pay drawn be also the same, then by their length of service; and in case their length of service also happens to be the same, an older member shall be senior to a younger member.

(2) The *inter-se* seniority of Public Prosecutor appointed together to the service shall remain undisturbed and they shall be senior to the persons otherwise recruited.

**13. Pay of Members of Service**—Members of the Service shall be entitled to such scales of pay as may be authorised by Government from time to time. The pay scales at present in force are given in Appendix “A”:

Provided that a higher pay than the minimum pay may be allowed by Government in consultation with Finance Department, where qualification and experience so required.

**14. Transfer**—Every member of the Service shall be liable to transfer under the orders of the Government anywhere within the State of Punjab and shall also be liable to serve outside the State of Punjab.

**15. Conditions of service**—(1) The posts in the Service shall be pensionable and the members of the Service shall be whole time Government servants.

(2) In respect of leave, pension and other cognate matters not expressly provided for in these rules the members of the Service shall be governed by such rules and regulations as may be applicable to Government servants or such other rules and regulations as are framed or issued from time to time under the proviso to Article 309 of the Constitution of India:



Provided that notwithstanding anything contained in the leave rules for the time being in force the members of the Service may be permitted to absent themselves from duty during the period of the Sessions Courts are closed for vacation by debiting the period of absence to their leave accounts.

(3) No member of the Service shall have the right of private practice.

**16. Penalty discipline and appeals**—(1) In the matters relating to discipline punishment and appeals, members of the Service shall be governed by the Punjab Civil Services (Punishment and Appeal) Rules, 1952, as amended from time to time;

Provided that the nature of penalties which may be imposed and the authority empowered to impose such penalties shall be, subject to the provisions of any law or rules made under Article 309 of the Constitution of India, as specified in Appendix “B” to these rules.

(2) The authority competent to pass an order under clauses (c) and (d) or Rule 10 of the said rules shall be Government.

**17. Interpretation**—If any question arises relating to the interpretation of these rules, it shall be referred to the Government whose decision thereon shall be final.

**18. Power to relax**—Where the Government is satisfied that the operation of any of these rules causes undue hardship in any particular case, it may by order dispense with or relax the requirements of that rule to such extent and subject to such conditions as it may consider necessary for dealing with the case in a just and equitable manner.

APPENDIX “A”

Number of the posts	Designation of the posts	Scale
Eight	District Attorneys Grade I	Rs. 500-30-800/ 30-1, 100/50-1, 200
Nine	District Attorneys Grade II	Rs. 250-25-375/ 25-700/25-750
Nine	Assistant District Attorneys	Rs. 300-15-450/ 15-450/20-540/20-600

APPENDIX “B”

<i>Designation of service</i>	<i>Nature of penalty</i>	<i>Authority competent to impose penalty</i>	<i>Appellate Authority</i>

<i>Designation of service</i>	<i>Nature of penalty</i>		<i>Authority competent to impose penalty</i>	<i>Appellate Authority</i>
Members of Service	(a)	Censure	Legal Remembrancer	Government
	(b)	Withholding of increments including stoppage at efficiency bar	Ditto	Do
	(c)	Reduction to Government lower stage in the time scale		Nil
	(d)	Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of order	Do	Nil
	(e)	Suspension	Do	Nil
	(f)	Removal from service which does not disqualify for future employment	Do	Nil
	(g)	Dismissal from service which ordinary disqualifies from future employment	Do	Nil

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