

¹[CHAPTER 29]

Public Prosecutors

PART A.-APPOINTMENTS OF PUBLIC PROSECUTORS

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

Appointment,
Transfer, etc.

(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. 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 B of this Chapter.

Recruitment and
conditions of
service of District
Attorney and
Assistant District
Attorney.

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

Temporary
Additional
Public
Prosecutors.

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

4. Public Prosecutors are required by Law (section 270 of the Code of Criminal Procedure, 1898) to conduct the prosecution in all Criminal trials held in a Court of Sessions, but it rests entirely with

Cases in which
Public Prosecutors
may be
required to
appear.

1. Inserted vide Correction Slip No. 5 Rules/XXII-A-2 dated 7th November 1963.

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-

- (a) all Sessions Cases;
- (b) all Section 30 cases at headquarters where the Public Prosecutor is posted;
- (c) all section 30 cases in out-stations when required to appear by the District Magistrate;
- (d) all commitment cases at headquarters, except ordinary section 75 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.-RULES RELATING TO RECRUITMENT AND
CONDITIONS OF SERVICE OF DISTRICT ATTORNEYS
AND ASSISTANT DISTRICT ATTORNEYS

THE PUNJAB DISTRICT ATTORNEYS SERVICE
RULES, 1960.

1. (1) These rules may be called the Punjab District Attorneys Service Rules, 1960.

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

2. 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 Department;

(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 recognized University for the purposes of these rules; and

(f) "Service" means the Punjab District Attorneys Service.

Short title
and
commence
ment.

Definitions

Composition
of Service.

3. (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.

Appointing
Authority.

4. 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.

Method of
recruitment.

5. 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 Attorneys 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 Attorneys Grade II by selection by the Government from amongst the Public Prosecutors in the employment of the erstwhile State of Pepsu, immediately before 1st November, 1956.
- (c) In the case of Assistant District Attorneys-
- (i) by selection from 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, or 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. (1) 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:

Domicile and qualifications for appointment.

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.

Disqualification. 7. 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.

Age limit.

8. 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. 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:-

Educational and other qualifications.

Name of post	Educational qualifications	Other qualifications
1.	2.	3.
District Attorney	Degree of Bachelor of Laws of a Recognized University or a Barrister of England or Ireland or a member of the Faculty of Advocates of Scotland.	Should have practiced at the Bar for a period of not less than ten years.
Assistant District Attorney	Ditto	Should have practiced at the Bar for a period of not less than five years.

10. (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 practicing as a Lawyer and/or the period, if any, for which he remained in Government Service or worked as a Public Prosecutor.

Certificates and declarations to be attached with application.

(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.

Probation.

11. (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 States 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 no 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. (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: Seniority

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 be given to a member who was drawing 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, and older member shall be senior to a younger member.

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

Pay of
Members of
Service.

13. 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.

Transfer.

14. 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.

Conditions of
service.

15. (1) The posts in the service shall be pensionable and 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 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.

Penalty
discipline and
appeals.

16. (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) of the rule 10 of the said rules shall be Government.

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

Interpretation

18. Where the Government 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.

Power to relax.

APPENDIX "A"

Number of the posts	Designation of the posts	Scale
Eight	District Attorneys Grade I	Rs.500-30-800/30-1,100/50-1200
Nine	District Attorneys Grade II	Rs.250-25-375/25-700/25-750
Nine	Assistant District Attorneys	Rs.300-15-450/15-480/20-540/20-600

APPENDIX "B"

Designation of service	Nature of Penalty	Authority competent to impose penalty	Appellate Authority
Members of Service	(a) Censure	Legal Remembrancer	Government
	(b) With-holding of increments including stoppage at efficiency bar.	Ditto	Do
	(c) Reduction to lower stage in the time scale.	Government	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

(Published in the PUNJAB GOVERNMENT GAZETTE, dated 22nd December, 1961/Pausa I, 1883 Saka, Legislative Supplement, Part IV, page 107, -vide notification No.G.S.R-8-Const/Art-309/61, dated 12th December, 1961).

PART C-Notification relating to Public Prosecutors.

I.- *Punjab Government Notification No. 698, dated the 18th May, 1899.*

In exercise of the powers conferred by section 492 of the Code of Criminal Procedure, 1898, the Lieutenant Governor is pleased to appoint the Legal Remembrancer to the Punjab Government and the Government-Advocate, Punjab, respectively, to be Public Prosecutors generally for the Punjab.

Legal Remembrancer and the Government Advocate appointed Public Prosecutors.

II.-*Punjab Government Notification No. 1789, dated the 11th December, 1899.*

In exercise of the powers conferred by Section 492 of the Code of Criminal Procedure, 1898, the Lieutenant Governor is pleased to appoint the Assistant Legal Remembrancer to the Punjab Government to be Public Prosecutor generally for the Punjab.

Assistant Legal Remembrancer appointed Public Prosecutors.

III.-*Punjab Government Notification No. 213, dated the 3rd March, 1887....*

In exercise of the authority conferred by section 13(1) of Act X of 1886 *(Section 495, Code of 1898) and with the previous sanction of the Governor-General in Council, the Hon'ble the lieutenant-Governor (now Governor) is pleased to prescribe the rank of Deputy Inspector as that below which an Officer of Police shall not be permitted by a Magistrate inquiring into or trying any case to conduct the prosecution.

Police Officers allowed to conduct prosecution.

IV.-*Punjab Government Notification No. 2204-J(C)-57/5256, dated the 24th March, 1957.*

In exercise of the powers conferred on him by section (1) of section 492 of the Code of Criminal Procedure, 1898 the Governor of Punjab is pleased to appoint-

Police Officers allowed to conduct prosecution.

- (i) the Prosecuting Deputy Superintendent of Police Ferozepure;

(ii) the Prosecuting Deputy Superintendent, Police, Amritsar;

(iii) the Prosecuting Inspectors of Police in the Hissar, Rohtak, Gurgaon, Karnal, Ambala, Hoshiarpur, Ludhiana, Jullundur, Kangra, Ferozepore, Amritsar and Gurdaspur;

to be Public Prosecutors for their respective districts;

V.-Punjab Government Notification No. 4372-J(C)-57/9649, dated the 24th May, 1957.

Police Officers
allowed to
conduct
prosecution.

In exercise of the powers conferred by sub-section (1) of 492 of the Code of Criminal Procedure, 1898, the Governor of Punjab is pleased to appoint the Prosecuting Inspector of Police in the Government Railway Police, Punjab to be a Public Prosecutor for the State of Punjab.

VI.-Punjab Government Notification No. 4672-J(C)-57/20594, dated the 13th September, 1957.

Police Officers
allowed to
conduct
prosecution

In exercise of the powers conferred by sub-section (1) of section 492 of the Code of Criminal procedure, 1898, the Governor of Punjab is pleased to appoint, all the Prosecuting Sub-Inspectors of Police in all the Districts of the Punjab State to be Public Prosecutors for their respective jurisdiction.

VII.- Punjab Government Notification No. 6769-J(C)-58/32147, dated the 21st September, 1958.

Police Officers
allowed to
conduct
prosecution.

In supersession of Punjab Government notification No. 399-J(C)-58/1214, dated the 16th January, 1958, in exercise of the powers conferred by section (1), of section 492 of the Code of Criminal Procedure, 1898, the Governor of Punjab is pleased to appoint the Prosecuting Deputy Superintendents of Police, and the Prosecuting Inspectors of Police, in the Patiala Range, to be Public Prosecutors for within the jurisdiction of local area for their respective division.

VIII.- *Punjab Government Notification No. 1217-J(C)-59/5036, dated the 18th March, 1959.*

In exercise of the powers conferred by section 492 of the Code of Criminal Procedure, 1898 (V of 1898), the Governor of Punjab hereby appoints the Public Prosecutor Central Investigating Agency as Public Prosecutor to conduct cases of the Special Police Establishment before the Courts of Magistrates, Special Judges and Sessions Judges in the State of Punjab.

Police Officers
allowed to
conduct
prosecution.

IX.-*Punjab Government Notification No. 12897-J-59/35653, dated the 17th December, 1959.*

In exercise of the powers conferred by section 492 of the Code of Criminal Procedure, 1898 (V of 1898), the Governor of Punjab is pleased to appoint the Company Prosecutor attached to the office of the Regional Director, Department of Company Law Administration, Kanpur, to be Public Prosecutor for conduct of the company Law Administration Department, cases in the original as well as appellate courts in the State of Punjab, with effect from the 23rd November, 1959.

Company
Prosecutor
attached to
Regional
Director,
Company Law
Administration,
Kanpur allowed
to conduct
prosecution.

C.S. No. 5-Rules/XXII-A-2, dated the 7th November, 1963.