**JUDICIAL SERVICE RULES OF RECRUITMENT, TRANSFER/POSTING AND DISCIPLINARY RULES**

It was felt that the different rules and procedures regarding recruitment, transfer and posting and evaluation etc should be consolidated in one set of rules. Hence the present draft rules.

Although the administrative committee is itself constituted under existing High Court Rules & Orders and is to be nominated by the Chief Justice, it was felt that a settled administrative committee will ensure more stability and clarity in its decisions. The words permanent have be deliberately included to ensure their independence. It was debated whether the constitution of the administrative committee should be enlarged to include more members or the whole High Court as a collegium but it was felt that it should be left for the High Court to decide.

Presently the PERs of the Additional District & Sessions Judges is recorded by the administrative committee. Since we envisage in these rules a complete departure from the existing PERs, this definition would make the District & Sessions Judge the reporting officer of the AD&SJs also. The issue will be clarified once the suggested efficiency index form is perused.

An independent commission responsible for the purposes of these rules is envisaged and its constitution is open to debate. The constitutional make up of the commission is elaborated in rule-3.

The definition of corruption has been restricted to undue material gains deliberately to distinguish it from petty dishonesty and violation of the code of conduct.

**WHEREAS** it is expedient to consolidate and amend the rules for the recruitment transfer evaluation and discipline of the district Judiciary and to create a service structure. It is hereby enacted as follows: -

***PART-I***

1. **Short title and commencement: -**
2. These rules may be called the judicial service rules.
3. It shall come into force at once.
4. **Definitions: -** In these rules, unless there is anything repugnant in the subject or context,-
5. ***“Administrative Committee”*** of the High Court shall consist of three senior most permanent puisne Judges in addition headed by the Chief Justice of Peshawar High Court, Peshawar.
6. ***“Advocate”*** shall mean any advocate enrolled and licensed by any Bar Council of the Country to practice law in any court within Pakistan.
7. ***“Advocate with not less than three years standing”*** means an advocate who has been enrolled to practice law in any of the Bar Council of Pakistan for at least three years and shall include any person who is in service of any organization for a period of three years in the field of law.
8. ***“Appointing Authority”*** means the Chief Justice Peshawar High Court, Peshawar.
9. ***“An offence of the same nature”*** shall mean an offence falling under anyone of the sub clause contained in Rule-9 of these rules.
10. ***“Controlling Officer”*** for in-cadre post the controlling officer for all officers shall be the District & Sessions Judge and for the ex-cadre posts the next superior officer.
11. ***“Chief Justice”*** means the Chief Justice of Peshawar High court, Peshawar.
12. ***“Commission”*** shall mean the commission constituted under these rules.
13. ***“Corruption”*** shall consist of the receipt of any material benefit with a view to extend an undue benefit in a judicial pronouncement or decision.
14. ***“Efficiency Index”*** means the index as defined under these rules.
15. “***Ex-cadre”*** means all postings which are not in-cadre and includes the posting in Peshawar High Court and Judicial Academy.
16. ***“In-cadre”*** means all postings in the district as a judicial officer.
17. ***“Inefficient Officer”*** meansan officer who has not scored the following points on the efficiency index calculated annually on average.
18. Civil Judge: 30
19. Senior Civil Judge: 40
20. Additional Sessions Judge: 45
21. District & Sessions Judge: 50

It was necessary to define inefficiency as action has been envisaged in these rules for inefficient officers. The need for quantification for assessment under the inefficiency index is suggested to curtail discretion and ensure transparency to stated factors controlling the efficiency of an officer.

The definition of zones was thoroughly debated and tempered down to avoid administrative complications in the implementation of these rules.

Debate can be generated and decisions made on the constitution of the commission. The present definition gives sole powers to the administrative committee by making its nominee the chairman of the commission. However it could be elaborated by taking into the commission members representing various stakeholders to give it a more representative and rounded formation.

The commission is envisaged to have a permanent secretariat whose sole job shall be to concentrate upon the purposes of these rules and to ensure that committed effort research and proper choices are put up before the commission.

**Note: -** No officer shall be designated inefficient unless he has completed three years of judicial service in that position and superceded twice.

1. ***“Officer”*** means judicial officer.
2. ***“Recruitment”*** shall mean the initial induction of a Judge as a member of the District Judiciary.
3. ***“Zone”*** means the zones created under these rules.
4. **CONSTITUTION OF THE COMMISSION: -**

There shall be constituted in the High Court a commission for the purposes of these rules which shall consist of following: -

1. Chairman shall be a nominee of the administrative committee from amongst its members.
2. The Registrar shall be the secretary of the Commission.
3. The commission shall have a secretariat consisting of the following: -
4. Additional Registrar Recruitments.
5. Additional Registrar Transfer/Posting.
6. Additional Registrar Discipline and litigations.
7. Additional Registrar Evaluation.
8. Any other staff appointed to assist the commission.
9. **Duties, Responsibilities and Powers of the Commission: -**
10. The commission shall be responsible for taking steps for the recruitment of judicial officers.
11. For transfer and posting of judicial officers.
12. For initiation and conclusion of disciplinary proceedings against officers.
13. For defending any litigation by any judicial officer in any court of law or tribunal and for dealing with the representation of all judicial officers.
14. For evaluating the efficiency of all judicial officers and for their career planning.
15. The Administrative Committee shall frame rules for the effective working of the Commission.

***PART-II***

**RECRUITMENT**

1. The commission shall be responsible for the recruitment of all officers.
2. All initial recruitments shall be made at the level of the Civil Judge and no other post.

Rule-7 has been added to streamline the recruitment procedure and three years experience has been made compulsory for initial appointment. In such circumstances the induction of the ADJs from the members of the Bar is dispensed with as it skews the whole service structure and has been the cause of immense heart burning amongst the initially recruited civil judges as it curtails their chances of career enhancement. Since Civil Judges are now recruited in grade 18, if considered proper we could increase the experience required. **Note:**- There was a view that all posts should be made initial recruitment posts prescribing minimum experience tenure for all the advocates and judges to compete.

The rest of these rules in part-II have been framed to ensure better recruitments by making the exercise more transparent and in accordance with stated criteria. It also envisages that the High Court could presently involve the Public Service Commission and or the NTS for ensuring the above until the High Court develops the capacity to carryout the purposes of these rules independently. There was a clear view that the commission should be aloof from recruitment responsibilities and leave it to the Public Service Commission. However this could be decided by the High Court if it feels that recruitment should not be the responsibility of the High Court.

The purpose of Part-III is to ensure a more even handed and stated criteria . Prior to this only policy statements were issued by the High Court for transfers and posting but such policies were implemented more in their exception then implementation. Stating them in these rules shall make them binding and not prone to whimsical change. The zones have been defined to ensure even transfers of all officers throughout the province. Since postings in various stations adds a depth in variety of experience of the officers, this has been made part of the evaluation process of a judicial officer rather than curtailing the powers of the commission and hence the High Court. The question of introducing hard area zones was discussed and discarded as a more even distribution of postings shall ensure the transfer of officers to hard areas also. The incentives attached to postings in various zones also reduce the need of compulsory postings. The creation of various zones and the inclusion of one station in another zone could be reassessed.

1. All initial recruitment shall be from amongst the advocates of not less than three years standing at the bar duly certified by the District & Sessions Judge. For the purposes of this section the term “standing at the Bar” shall mean an advocate with at least three years work experience in any field related with law.
2. The commission shall conduct a written examination, interview and arrange for psychiatric evaluation of the prospective candidates.
3. The purpose of the above rule will be to evaluate the candidate’s legal knowledge experience, intellectual and analytical ability, some judgments, decisiveness, communication of listening skill, authority and case managements, integrity and independence, fairness and impartiality and psychological fitness to assess whether the candidate shall be able to comply with the code of conduct.
4. The commission shall ensure that the written tests are conducted in a manner which is transparent and above board. The commission shall be free to either hold such examinations itself or to contract out the testing procedures to any independent institution or body as a whole or part thereof.
5. The interviews shall be designed to test the personality and psychological makeup of the aspiring candidate and shall not be a repetition of the written test.

***PART-III***

**TRANSFER/POSTING**

1. The province shall be divided into the following zones for the transfer and posting of the judicial officers: -
2. South Zone-I (D.I.Khan, Tank, Lakki Marwat).
3. South Zone-II (Bannu, Karak, Kohat and Hangu).
4. Central Zone (Peshawar, Charsadda, Mardan, Swabi and Nowshehra).
5. Hazara Zone-I (Haripure, Abbottabad and Mansehra).
6. Hazara Zone-II (Battagram, Kohistan and Shangla).
7. Malakand Zone (Batkhela, Swat, Lower Dir and Buner).
8. Chitral Zone (Upper Dir and Chitral).
9. Ex-cadre Zone.
10. The posting in one zone shall be of at least one year duration cumulatively to count as posting in one zone.
11. The commission shall give opportunity to all officers for posting in each zone unless foregone by the officer himself.

***PART-IV***

**DISCLIPINE**

1. All judicial officers shall adhere to the code of conduct prescribed hereunder: -
2. A judge shall uphold the integrity and independence of the judiciary.
3. A judge shall avoid impropriety and the appearance of impropriety in all of the judge’s activities.

This code of conduct has been borrowed from the US Judicial Officers Code of Conduct and is deliberately kept general in nature to give enhanced powers to the commission to interpret the same in specific cases. The case law made under such a situation should be publicized so that the disciplinary law could evolve in the future.

A simplified version of punishments is envisaged for violation of the code of conduct and is at variance from the existing adopted government rules. It is also deliberately envisage that the punishments for violation of the code of conduct are different from the punishments for corruption.

Light punishments for first offenders are envisaged with a view that the erring officers shall reform himself.

Corruption has been defined separately and zero tolerance for the same has been envisaged. It is recognized that corruption is a crime entails criminal prosecution for which strict rules of evidence are stipulated. We may introduce a separate section to state that the rules entailing the punishment for removal from service would entail a relaxed set of evidentiary requirements in view of the difficulties in collecting evidence against corruption.

For the eradication of corruption the theories of preemption, policing and prosecution have been kept in mind. The ideal form of combating corruption is prevention and preemption. It is by way of preemption that the punishments have been linked to enhanced salaries. Without ensuring a conducive working atmosphere and retirement ease total policing and prosecutorial methods shall come to naught. Hence the mandatory nature of these rules.

1. A judge shall perform the duties of judicial office impartially, competently, and diligently.
2. A judge shall so conduct the judge’s quasi-judicial and extrajudicial activities as to minimize the risk of conflict with judicial obligations.
3. A judge shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.
4. Comply with the code of conduct and judicial ethics.
5. Violation of the above stipulations contained in Rule-8 shall lend the offending judicial officer to the penalties prescribed hereunder: -
6. Censure
7. Fine
8. Dismissal from service
9. No penalty contained in Rule-10 shall be imposed on any judicial officer without due inquiry by the commission.
10. First offence shall entail the punishment of censure only.
11. Second offence of the same nature would invoke the penalty of fine.
12. The penalty of dismissal from service shall only be invoked on the repetition of an offence of the same nature by the judicial officer.
13. First offender guilty of corruption shall be punished with dismissal from service.
14. Corruption shall consist of the receipt of any material benefit with a view to extend an undue benefit in a judicial pronouncement or decision.
15. Transfer and posting shall not be used as a tool of punishment.
16. The invoking of any penalty for the first offender shall automatically entail transfer from the supervision of the controlling officer.
17. Competency and efficiency shall be determined by the efficiency index.
18. Inefficient officers shall be compulsorily retired from the service with full retirement benefits after granting them antedated seniority to fulfill the codal formalities for retirement.
19. Any officer who suffers any disability during his service that renders him incapable of continuing his service or if he dies shall be considered retired from service with full pensionary benefits after giving him antedated seniority to fulfill the codal formalities for retirement with benefits.
20. An officer shall be entitled to get retirement benefits on completion of 10 years of service.
21. Pay shall be linked with the inflation index and shall be raised by the same percentage points as the inflation determined by the State Bank of Pakistan annual report.

In this connection if the pay structure of the judicial officer is delinked from the government structure, no objections could be raised. However in such eventuality it must be ensure that the pay structure in itself would be linked to inflationary trends. So that the structure moves ahead without annual tussles of the High Court with the Government.

A quantifiable evaluation structure is envisaged in these rules. This structure needs further deliberation and improvement. However the general idea has been stated in these rules without going into a detailed analysis. This structure is also an essential part of the evaluation index form attached herewith. Without one the other may not make much sense. When read together it clarifies the thrust of these rules and clarify for the judicial officers their adherence not only to the code of conduct but a constant improvement in their judicial pronouncements. It envisages continuous evaluation of the quality of the judgments, improvements and evaluation through compulsory training, varied postings and it also envisages constrains upon the reporting officer so that he does not evaluate an officer lightly or whimsically.

1. Medical benefits shall be removed from the salary of the officers and all officers and their dependents shall be entitled to avail free medical facilities from nominated private hospitals or the combined military hospitals.
2. Post retirement benefits shall include the provision of a house or cost thereof of one kanal of land in Hayatabad Peshawar.
3. Until the above conditions in rule-22 and 23 are complied with all punishments entailing from the code of conduct in rule-8 shall not be enforced except in case of corruption.

***PART-V***

**EVALUATION**

1. The commission shall maintain an efficiency index for all officers.
2. The efficiency index shall consist of
3. Assessment by the controlling officer who shall consult all stakeholders who are familiar with the current work of the officer reported upon and such consultation must be recorded.
4. Assessments made by formal trainers in prescribed courses.
5. Variety of experience which shall include zonal postings.
6. Quality of judgments.
7. Quantity of disposal.

***PART-VI***

**MISCELENIOUS**

1. The administrative committee may amend these rules for the furtherance of its objectives and preamble.
2. These rules shall replace: -
3. The North West Frontier Province Judicial Service Rule 2001.
4. NWFP Government Servant (E&D Rules) 1973.
5. Government Servants (Conduct Rules 1987).
6. Conduct of Judicial Officers for District Judiciary.

**Efficiency Index Report**

**PART-I**

**PERIOD**

From \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Introduction**

**Name of the Judicial Officer:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Personal Number:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Post(s) held**

|  |  |  |
| --- | --- | --- |
| **S.#** | **Place of posting** | **Tenure** |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

**PART-II**

**ASSESMENT BY THE CONTROLLING OFFICER**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **S.#** |  | **2014** | **2015** | **2016** | **2017** | **2018** | **TOTAL** |
| 1. | Legal Knowledge |  |  |  |  |  |  |
| 2. | Intellectual and Analytical Ability. |  |  |  |  |  |  |
| 3. | Sound Judgment |  |  |  |  |  |  |
| 4. | Decisiveness |  |  |  |  |  |  |
| 5. | Communication & Listening Skills |  |  |  |  |  |  |
| 6. | Authority and Case Management |  |  |  |  |  |  |
| 7. | Integrity and Independence |  |  |  |  |  |  |
| 8. | Fairness and Impartiality |  |  |  |  |  |  |
| 9. | Understanding of people and society |  |  |  |  |  |  |
| 10. | Maturity and Sound Temperament |  |  |  |  |  |  |
| 11. | Courtesy |  |  |  |  |  |  |
| 12. | Commitment, consciousness & diligence |  |  |  |  |  |  |

**Note:** The controlling officer shall assess the above on his observations and consultations and shall record his reasons for doing so. He may have to justify his assessment before the Commission. Each area of grading shall carry three (3) points for each year. For the purpose of total points calculated, the commission shall calculate the average points scored over the years. Reasons will be recorded by the Controlling Officer giving the names of the consultees on separate sheet for the scrutiny by the Commission.

**PART-III**

**ASSESSMENT BY TRAINER**

|  |  |  |  |
| --- | --- | --- | --- |
| **S.#** | **Post** | **Name of compulsory Course/Training** | **Points obtained** |
| 1. | Civil Judge to Senior Civil Judge |  |  |
| 2. | Senior Civil Judge to ASJ |  |  |
| 3. | ASJ to D&SJ |  |  |
| 4. | D&SJ to Judge, High Court |  |  |

Note: Each compulsory course shall carry a total of forty (40) points. Only the last score obtained shall be taken into account when calculating the overall points in the Efficiency Index.

**PART-IV**

**VARIETY OF EXPERIENCE**

|  |  |  |
| --- | --- | --- |
| **Name of Zones served** | **Total Points (**14**)** | **Points obtained** |
|  |  |  |

Note: Each zonal posting shall carry two (2) points each and shall be calculated over the whole career.

**PART-V**

**ASSESSMENT BY THE COMMISSION**

|  |  |  |  |
| --- | --- | --- | --- |
| S.# |  | Total Marks (20) | Points obtained |
| A | Quality of Judgment | 10 |  |
| B | Quantity of Disposal | 10 |  |

**Note:** Each category above shall carry ten points each and shall consist of the average of each years assessment.

**DISCRETIONARY POINTS OF THE HON’BLE CHIEF JUSTICE SHALL BE FIVE (5).**

(Since the formulation of these rules is an institution-building step, therefore for benefit of the institution, the discretionary points have been given to worthy Chief Justice Peshawar High Court, Peshawar. However, the quantum of discretionary powers is subject to correction/adjustment.)

**INTRODUCTION**

It has been a longstanding desire of all judicial officers to have a stated service structure and career planning for the District Judiciary. Having been given the opportunity to give suggestions to revisit this, we have prepared draft rules for streamlining the same.

The rules and their explanation have been entered in the marginal notes. An attempt has been made to address into a single set of rules that deal with

* Recruitments
* Transfer Posting
* Career Planning
* Evaluations & their quantification for inter-se comparison
* Discipline & litigation
* Eradication of corruption

The draft rules are a total departure from the blind following of the existing rules, regulations and policies and therefore, at first sight may evoke an immediate adverse reaction. Debate generated by the draft will essentially serve our purpose. It is understood that the rules as drafted may have left out important issues and may be flawed in issues addressed. We are ready to answer all questions raised due to these shortcomings and concede on matters where flaws are pointed out.

It may be appreciated that the effort is a result of a three day workshop attended after completion of judicial work by all the judicial officers in Battagram and due to the paucity of time and lack of a wider consultation team, it is inevitable that the draft rules may carry mistakes. An attempt has been made to draft these rules in a manner that they are self evolving and liable to improvements with the passage of time.

The question of the legalities of issuing such rules without government sanction and approval was also debated. It shall be appreciated that the issuance of these rules shall finally remove the judicial officers from the definition of *civil* or in the least *government servants* and place them squarely in the ambit of the officers of the High Court alone. This will finally assert the independence of the judiciary as envisaged by the Constitution of Pakistan.

It may also be emphasized that the rules are to be taken as an integral whole and adoption of one and rejection of another concept taken without thorough deliberation therein may result in exacerbating the already existing situation.

**District Judiciary,**

**Battagram**