



THE ASSAM GAZETTE

অসাধাৰণ

EXTRAORDINARY

প্ৰাপ্ত কৰ্তৃত্বৰ দ্বাৰা প্ৰকাশিত

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No. 540 Dispur, Thursday, 7th December, 2023, 16th Agrahayana, 1945 (S. E.)

GOVERNMENT OF ASSAM

ORDERS BY THE GOVERNOR

HOME AND POLITICAL DEPARTMENT

DISPUR ::: GUWAHATI-06

NOTIFICATION

The 7th December, 2023

No. HMA.145/2023/39.- In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India read with sections 24 and 25 of the Code of Criminal Procedure, 1973 (Act-II of 1974), the Governor of Assam is hereby pleased to make the following rules for regulating the recruitment and conditions of service of the persons appointed to the Assam Prosecution Service, in the manner herein after appearing, namely :-

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|------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Short title and commencement | 1. (1) These rules may be called the Assam State Prosecution Service Rules, 2023.
(2) These rules shall come into force with immediate effect. |
| Definitions | 2. In these rules, unless, there is anything contrary to the subject or context-
(a) "Appointing Authority" means the Governor of Assam;
(b) "Citizen of India" means a person who is or deemed to be a citizen of India under part-II of Constitution;
(c) "Constitution" means the Constitution of India;
(d) "Director General" means the Director General of Police, Assam;
(e) "Government" means the State Government of Assam;
(f) "Governor" means the Governor of Assam;
(g) "Member of the Service" means a person appointed in different cadres under this rule;
(h) "Selection Board" means the Selection Board constituted as per the provisions of this rule; |

- (i) "Service "means the Assam State Prosecution Service;
- (j) "Substantive Appointment" means an appointment not being ad hoc appointment, on a post in the cadre of the service made after selection in accordance with the rules and if there are no rules, in accordance with the procedure for the time being by executive instructions issued by the Government;
- (k) "Transition period" means the period during which all the appointments of different cadres are made by direct recruitment or promotion as prescribed under this rule;
- (l) "Year of recruitment" means a period of twelve months commencing from the first day of January of a Calendar year.

Cadre of Service 3. The strength of the service and of each category of posts therein shall be such as may be determined by the Government from time to time and notified accordingly. For the time being, the strength of each category of posts is indicated at **Schedule-I**.

Provided that the Governor may create such additional permanent or temporary posts, as he may consider proper, by way of subsequent notification.

The Assam Prosecution service shall consist of the following classes, categories of posts, namely:-

- (i) Public Prosecutor;
- (ii) Additional Public Prosecutors;
- (iii) Assistant Public Prosecutor.

Powers and Functions 4. The following shall be the powers and functions of the members of the service, namely:-

Sl.	Name of Post	Powers and Functions	
1	Public Prosecutor	(1)	To give legal advice to the District Administration/Police and conduct trials in Sessions Court
		(2)	Any other responsibility as may be assigned by the Director/ Deputy Director/ Government from time to time.
		(3)	Annual Confidential Report of his subordinate cadres.
2	Additional Public Prosecutor	(1)	To give legal advice and conduct trials in the court of Chief Judicial Magistrate/Additional Chief Judicial Magistrate / Assistant District Judge.
		(2)	Any other responsibility as may be assigned by the Director/Deputy Director/ Assistant Director/ Public Prosecutor from time to time.
3	Assistant Public Prosecutor	(1)	Conduct trials before the Judicial Magistrate / Sub-Divisional Judicial Magistrate.
		(2)	Any other responsibility as may be assigned by the Director/ Deputy Director /Assistant Director/ Public Prosecutor from time to time.

Method of Appointment 5. Subject to other provisions in these rules, the method of appointment for the several categories shall be as follows: -

Category	Method of appointment
Public Prosecutor	75% by direct recruitment through Selection Board from Advocates basically on the criminal side having not less than eight years of experience at the Bar and 25% by promotion from the cadre of Additional Public Prosecutor with service of not less than seven years of service.
Additional Public prosecutor	75% by direct recruitment through Selection Board from Advocates basically on the criminal side having not less than seven years of experience at the Bar and 25% by promotion from the cadre of Assistant Public Prosecutor with a service of not less than seven years of service.
Assistant Public Prosecutor	By direct recruitment through Selection Board from Advocates basically on the criminal side having not less than three years of experience at the Bar.

Note:

- (a) If a suitable or qualified person in the category of Public Prosecutor, Additional Public Prosecutor or Assistant Public Prosecutor is not available, the said vacancies shall be filled by direct recruitment or by contract for the time being.
- (b) The Selection Board shall from time to time hold the examination/selection for the candidates for appointment by direct recruitment.

Nationality 6. The candidate shall be a citizen of India.

Qualifications 7. (1) No person shall be eligible for appointment to the categories specified in column (1) of the Table below by the method specified in column (2) unless he possesses the minimum qualifications specified in the corresponding entry in column (3) thereof: -

Category (1)	Method of appointment (2)	Minimum Qualifications (3)	
Public Prosecutor	By direct recruitment or by promotion	(i)	Must be a graduate with a Bachelor's Degree in Law from a recognized University of India (established or incorporated by or under a Central Act or Provincial Act) or an Institution recognized by the Govt. of Assam or University Grants Commission.
		(ii)	Must have experience as Additional Public Prosecutor for 7 (seven) years for promotion.
		(iii)	<u>Direct recruitment:</u> Must have practiced as a regular Advocate for not less than 8 (eight) years basically on the criminal side including practice before the High Court.
Additional Public Prosecutor	By direct recruitment or promotion	(i)	Must be a graduate with a Bachelor's Degree in Law from a recognized University of India (established or incorporated by or under a Central Act or Provincial Act) or an Institution recognized by the Govt. of Assam or University Grants Commission
		(ii)	Must have experience as Assistant Public Prosecutor for 7 (seven) years for promotion.
		(iii)	<u>Direct recruitment:</u> Must have practiced as an Advocate for not less than 7(seven) years basically in the criminal side including practice before High Court.
Assistant Public Prosecutor	By direct recruitment	(i)	Must be a graduate with a Bachelor's Degree in Law from a recognized University of India (established or incorporated by or under a Central Act or Provincial Act) or an Institution recognized by the Govt. of Assam or University Grants Commission
		(ii)	Must have practiced as an Advocate with not less than 3 (three) years active practice in Criminal Courts.

- (2) **Upper Age limit:** 45 years for General category with applicable relaxation as applicable for other categories beyond 45 years.
- Probation 8. Every person appointed by direct recruitment shall be on probation for a total period of two years on duty within a continuous period of three years.
- Training 9. (a) The approved candidates shall undergo training before promotion to any cadre, training as per such programme and syllabus as may be prescribed by the Director of Prosecution with the approval of the Government from time to time.
- (b) Every person appointed by direct recruitment shall undergo, immediately after appointment, a course of training for such period and as per such programme and syllabus as may be prescribed by the Director of Prosecution with the approval of the Government.
- (c) Every person appointed by direct recruitment as Asst. Public Prosecutor or Addl. Public Prosecutor or Public Prosecutor shall before commencement of training, execute an Agreement bond that he shall serve the department for a period of not less than three years after the completion of training referred to in sub-rule (b).
- (d) He will be liable to refund to the Government the pay and allowances and any other remuneration received by him in addition to the amount spent by the Government on his training: -
- (i) If he fails to serve the Department for a period of 3 years after the completion of his training for any reason; or
- (ii) If he discontinues the training or is discharged from training course for misconduct or any other reason; or
- (iii) If he secures any other employment elsewhere than under the State Government.
- (iv) The period of training shall count for purpose of probation, increments and leave.
- (v) A direct recruit shall be eligible during the period of training for the initial pay of the post with usual allowance admissible at the place of training.
- Transitional Provisions 10. Till such time a member of the service becomes eligible for promotion, 25% of the posts of Public Prosecutor or Additional Public Prosecutor, may be filled up on contract for not more than 3 years and/ or on such terms and conditions as the State Government may prescribe in this behalf by persons who have been in practice as an Advocate for not less than seven years from a panel.

- Character 11. The Character of a candidate for any posts in the service shall be such that he is suitable in all respects for employment in the Government service.
- Note – Persons dismissed by the Union Government or any State Government or any local Authority or by any corporation or body held or controlled by the Union Government or any State Government shall not be eligible for appointment by direct recruitment to any post in the service.
- Persons convicted of any offence of moral turpitude shall not be eligible both for direct recruitment and also in case of promotion will also depend on service conduct.
- Marital Status 12. 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 of any post to the service.
- Small Family Norms 13. (a) No person having more than two living children on or after 01.01.2021 from a single or multiple partners shall be eligible for appointment in any service and post under the State Government:
- Provided that where an applicant has only one living child from an earlier delivery but more than one child are born of a single subsequent delivery, the children so born shall be deemed to be one entity while counting the number of children:
- Provided further that a person having more than two living children before 01.01.2021 shall not be ineligible so long as the number of children he/she had before 01.01.2021 does not increase on or after 01.01.2021.
- (b) No person shall be eligible for appointment to any service and post under the Government of Assam if the person has married in violation of the provisions contained in the Prohibition of Child Marriage Act, 2006 (Act 6 of 2007).
- Physical Fitness 14. No candidate shall be appointed or promoted to any post in the service unless he is in good health mentally and physically and he shall be free from any physical defect due to which there is a possibility of hindrance to performing his duty efficiently. Any candidate before finally approved for direct appointment will be expected to pass the Medical Board Examination.
- Selection Board 15. Selection of candidates for direct recruitment shall be conducted by the Selection Board, to be chaired by a retired judge of a High Court and other members, as may be notified by the State Government, from time to time.
- Promotion or Transfer Committee 16. Recruitment by promotion to the post of Public Prosecutor/ Additional Public Prosecutor shall be made on the basis of seniority cum merit by a Committee which shall be comprised of the following members, namely:-

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|-------------------------------------------|-----|-------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | (a) | Additional Chief Secretary of Home and Political Department | - Chairman |
| | (b) | Director General of Police | - Member |
| | (c) | L.R.-cum- Secretary, Judicial Department | - Member |
| | (d) | Secretary, Home Department | - Secretary |
| | (e) | A nominee of Gauhati High Court | - Member |
| | (f) | DIG, CID | - Member |
| Reservation in Appointments and Promotion | 17. | (a) | General rule for reservation as applicable in any recruitment of Government of Assam will be applicable in case of direct recruitment and promotions. Reservation will be based on the total cadre strength. |
| | | (b) | The quota earmarked for Persons with Benchmark Disabilities shall be filled up by eligible orthopedically challenged persons only i.e., those whose speech, hearing and sight are not impaired or those who suffer from autism, intellectual disability, mental illness and multiple disabilities. |
| Determination of vacancies | 18. | | The Appointing Authority shall determine the number of vacancies to be filled up during the year and the number of vacancies to be reserved as per reservation policy of the State Government. The cadre strength will depend upon the number of courts, which may increase with the increase in the number of courts. |
| Procedure of Direct Recruitment | 19. | (i) | Selection of candidates for direct recruitment shall be conducted by the Selection Board, to be chaired by a retired Judge of a High Court and other members, as may be notified by the State Government, from time to time. |
| | | (ii) | Evaluation of the candidates with substantial experience for the highly skilled roles like public prosecution would require a specialized testing for assessing the requisite qualities, drafting skills, analytical and presentation skills, mental agility and quick grasp of the arguments and quoting judicial precedence etc. Accordingly, the Selection Board may devise appropriate method of proficiency-cum-skill test by conducting a viva-voce test. |
| | | (iii) | Decision of the majority of all the Members including the Chairman, shall be the decision of the Selection Board and no Member of the Selection Board shall abstain from any decision-making meeting of the Selection Board. |
| | | (iv) | A true and faithful record of the proceedings of the Selection Board authenticated by the Chairman shall be maintained. |
| | | (v) | The Selection Board shall, in the discharge of their duties, be guided by any general or particular directions as may be given by the Government. |

- (vi) After holding the examinations, the Selection Board shall select the candidates in order of merit taking into consideration, reservations for SCs/STs/ OBCs/ MOBCs and other categories under Rule 17.
- (vii) The Selection Board will finally recommend the names of successful candidates to the Appointing Authority.
- Appointment/
Posting /Transfer
20. (1) The appointment will be as per the vacancy position and the posting will be in any Court in Assam. The initial preference will be given for posting in the Home District, subject to availability of vacancy. The tenure will generally be of 3 (three) years (which may be extended) but subject to transfer at any point of time of exigencies like vacancy, promotion, departmental proceeding, etc.
- (2) Notwithstanding anything contained above, in order to meet urgent requirement for prosecution service, State Government, after recording reasons thereof, may appoint a person or persons, otherwise qualified to be holding the posts of Public Prosecutor, Additional Public Prosecutor, and Assistant Public Prosecutor, against such vacant posts, as a temporary measure for a period of two years, extendable up to three years. During the period of such temporary arrangement, State Government shall take necessary steps to fill up the post by the regular process of recruitment as provided.
- Confirmation
21. A probationer shall be confirmed in his appointment at the end of the period of probation or the extended period of probation if,-
- (a) he has successfully undergone the prescribed training;
- (b) his work and conduct are reported to be satisfactory;
- (c) his integrity is certified; and
- (d) Appointing Authority is satisfied that he is otherwise fit for confirmation:
- Provided that on successful completion of probation initial or extended, as the case may be, the Appointing Authority shall issue confirmation order in writing.
- Seniority
22. (1) The seniority among the Direct recruits will be as per the merit list of the selected candidates prepared at the time of direct recruitment.
- (2) The seniority among the Public Prosecutor, Additional Public Prosecutor and Assistant Public Prosecutor shall be as per the Select List prepared by Appointing Authority (based on merit position in the promotional post).
- (3) Officers promoted in a given year will be senior to the direct recruits appointed in the same year.
- Disciplinary Matter
23. The Assam Services (Discipline and Appeal) Rule, 1964 shall mutatis mutandis apply in case of disciplinary proceedings drawn against any person under this service.

- Leave Rules 24. The Leave Rules, as applicable to State Government employees shall mutatis mutandis apply to all personnel under the cadres under these Rules.
- Retirement from Service 25. The age of retirement from service shall be the same as other State Government employees, as may be fixed by the Government from time to time.

- Pay and Allowances 26. (1) The scale of pay admissible to persons appointed to the various categories of posts in the service, whether substantive or officiating or on temporary basis shall be such as may be prescribed by the Government from time to time. At the commencement of these rules, the pay scale shall be as following,-

Sl.	Name of Post	Scale of Pay (in Rs.)
1.	Public Prosecutor	65000-112000 + Grade Pay 18500 + 30% Special Allowance of Basic Pay
2.	Additional Public Prosecutor	30,000 – 1,10,000 + Grade Pay -17500 + 30% Special Allowance of Basic Pay
3.	Assistant Public Prosecutor	30,000 – 1,10,000 + Grade Pay -16900 + 30% Special Allowance of Basic Pay

- (2) Other allowances as admissible under Government rules.

- Pay during probation 27. (1) Notwithstanding any provision in the Fundamental Rules to the contrary, a person on probation, if he is not already in permanent Government service, shall not be allowed his increment in the time scale unless he has completed two years probationary period, has passed Departmental examination and undergone training and his service is also confirmed:

Provided that if the period of probation is extended on account of failure to discharge satisfactory duty such extension shall not count for increment unless the Appointing Authority directs otherwise.

- (2) The pay during probation of a person who was already holding a post under the Government, shall be regulated by the relevant Fundamental Rules:

Provided that, if the period of probation is extend on account of failure to discharge satisfactory duty, such extension shall not be counted for increment unless the Appointing Authority directs otherwise.

- (3) The pay during probation of a person already in permanent Government service shall be regulated by the relevant rules, applicable generally to Government servants serving in connection with the affairs of the State.

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- Relaxation in the conditions of services
28. Where the State Government is satisfied that the operation of any rule regulating the conditions of service of persons appointed to the service causes undue hardship in any particular case, it may, notwithstanding anything contained in the rules applicable to such cases, by order, dispense with or relax the requirements of that rule to such extent and subject to such condition, as it may consider necessary for dealing with the case in a just and equitable manner.
- Interpretation
29. If any question arises relating to the interpretation of these Rules, the decision of the Home and Political Department shall be final.

Schedule-I

(See rule 3)

(Schedule of Posts)

Sl.	Name of the Cadre	No. of Posts
1	Public Prosecutor	34
2	Additional Public Prosecutor	117
3	Assistant Public Prosecutor	185

RAVI KOTA,

Additional Chief Secretary to the Government of Assam,
Home & Political Department.