08.04.2022 Counsel for the appellant present.

Learned counsel for the appellant seeks adjournment. Adjourned. To come up for preliminary hearing on 12.07.2022 before S.B.

(MIAN MUHAMMAD)
MEMBER(E)

06.10.2021 Nemo for the appellant.

Notice for prosecution of the appeal be issued to the appellant as well as his counsel and to come up for preliminary hearing before the S.B on 02.12.2021.

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

02.12.2021 None for the appellant present.

Notices be issued to the appellant and his counsel. To come up for preliminary hearing on 07.02.2022 before S.B.

(MIAN MUHAMMAD)
MEMBER (E)

07.02.2022 Due to retirement of the Hon'able Chairman, the case is adjourned to 08.04.2022 before S.B for the same.

Reader

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 6572 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	21/06/2021	The appeal of Mr. Manzoor Ahmad presented today by Mr. Irfan Ali Yousafzai Advocate, may be entered in the Institution Register and put up to the Worthy Chairman for proper order please. REGISTRAR
2-		This case is entrusted to S. Bench for preliminary hearing to be put up there on 09/08/21. CHAIRMAN
	09.08.2021	Nemo for the appellant. Notices be issued to appellant/counsel for next date. To come up for preliminary hearing on 06.10.2021 before S.B. Chairman

BEFORE THE KHYBER PAKHUNTKHWA SERVICES TRIBUNAL PESHAWAR

Service Appeal No. 6572 /2021

Manzoor Ahmad .....**Appellant**

V E R S U S

Govet of KPK and others .....**Respondents**

I N D E X

S.No	Description of Documents	Annex	Pages
1.	Memo of Appeal	*	1-5
2.	Affidavit	*	6
3.	Application for condonation of delay with affidavit	*	7-9
4.	Addresses of Parties	*	10
5.	Copy of impugned order	A	11
6.	Copy of appeal and order dated 25/04/2018	B & C	12-13
7.	Copy of judgment dated 09/04/2021	D	14-40
8.	Copy of order	E	41
9.	Wakalat Nama	*	42

Dated:-21/06/2021

Appellant

منظور احمد

Through:-

Irfan Ali Yousafzai
Advocates High Court,
Peshawar
Cell 0314-9070658

(1)

BEFORE THE KHYBER PAKHUNTKHWA SERVICES TRIBUNAL PESHAWAR

Service Appeal No. _____/2021

Manzoor Ahmad S/o Fazal Rabi R/o Village Mansoor Abad, Tehsil Khall Dir Lower.....**Appellant**

V E R S U S

1. Commandant Dir Levies/Deputy Commissioner, Dir Upper.
2. Subedar Major Dir Levies, Dir Upper.
3. Government of Khyber Pakhtunkhwa through Secretary Home, Civil Secretariat, Peshawar

.....**Respondents**

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER OF RESPONDENT NO.1 DATED 11/05/2009 VIDE WHICH IMPOSED MAJOR PENALTY OF "REMOVAL FROM SERVICE" UPON APPELLANT AND ORDER DATED 25/04/2018 WHERE BY THE RESPONDENT NO.3 DISMISSED THE DEPARTMENTAL APPEAL OF THE APPELLANT

Prayer in Appeal:

On acceptance of this appeal, the impugned order dated 11/05/2009 and 25/04/2018 may kindly be set

aside and the appellant may kindly be reinstated on his service with all back benefits.

Respectfully Sheweth:

1. That the appellant is permanent resident of address is given in the heading of the appeal and is performing his duty as "Sepoy" in the Dir Levies.

2. That the appellant is posted as Sepoy under the supervision of respondent No.1 and 2 on 28/09/2009 and performed his duty for a long period of 9 year in District Dir Upper with full zeal and zeest, with full devotion without nay complaint from his high ups.

3. That in the year 2009, due to some unavoidable circumstances, the appellant could not continue his service, and as such the appellant is remained absent from service for a short period.

4. That on 11/05/2009, the petitioner removed from his service by the respondent No.1 and 2 due to the absence from service. **(Copy of impugned order is attached as Annexure-A)**

5. That the petitioner got knowledge regarding the facts, that the respondent have reinstated some

of his colleagues in similar circumstances, so against the said dismissal from the service order, so the appellant filed departmental appeal before the respondent No.3 where the same was rejected vide order dated 25/04/2018. **(Copy of appeal and order dated 25/04/2018 are attached as Annexure-B and C respectively)**

6. That the appellant is aggrieved of the said order prefer this service appeal before this Hon'ble Tribunal on the following amongst other grounds:

GROUNDS:

A. That the impugned order dated 11/05/2009 and 25/04/2018 of the respondents is against the law, rules and policy on the subject as well as Rules, hence liable to be corrected.

B. That the respondent has committed serious illegalities and irregularities while issuing the impugned orders as no cogent reason is mentioned while imposing the penalty of dismissal from service, hence the impugned orders are illegal, unlawful, void-ab-initio as well as corum-non-judice.

C. That after dismissal of the department appeal, the appellant approached to the Hon'ble Peshawar High Court, Mingora Bench Swat through writ petition No. 595-M/2018 which was decided on 09/04/2021 with the observation that the appellant may kindly be pursue his remedy before the Provincial Service Tribunal, Peshawar, Hence the Present Appeal. **(Copy of judgment dated 09/04/2021 is attached as Annexure-D)**

D. That the many colleges of the appellant are reinstated on their services with all back benefits but refused of the appellant by the respondents is illegal and unlawful, which needs interference of this Hon'ble Tribunal. **(Copy of order is attached as Annexure-E)**

E. That the impugned order of the respondent is against the principle of natural justice and as no chance of personal hearing is given to the appellant.

F. That the impugned order is even against the Constitution of Islamic Republic of Pakistan 1973 as well as principle of policy, hence the same are liable to be set aside.

G. That the appellant is treated against the law, rather discriminately been treated and with

malafide, hence the impugned orders are liable to be set aside.

H. That any other ground will be agitated at the time of arguments with prior permission of this Hon'ble Tribunal.

For the aforesaid reasons, it is, therefore, humbly prayed that by accepting of this service appeal, the impugned orders dated 11/05/2009 and 25/04/2018 may kindly be set aside and the appellant may kindly be reinstated on his service with all back benefits.

OR

Any other remedy deems proper and just may also be granted in the circumstances of the case.

Dated:-21/06/2021

Appellant

Through:-

Irfan Ali Yousafzai
Advocates High Court,
Peshawar

CERTIFICATE:

Certified on instructions of my client that appellant has not previously moved such like appeal before this Hon'ble Tribunal.

ADVOCATE

(6)

BEFORE THE KHYBER PAKHUNTKHWA SERVICES TRIBUNAL PESHAWAR

Service Appeal No. _____/2021

Manzoor Ahmad .....**Appellant**

V E R S U S

Govet of KPK and others .....**Respondents**

AFFIDAVIT

I, **Manzoor Ahmad S/o Fazal Rabi R/o Village Mansoor Abad, Tehsil Khall Dir Lower**, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

منظور احمد

DEPONENT

21-6-21

Identified by

Irfan Ali Yousafzai
Advocate, High Court,
Peshawar

KHALID MAHMOOD ADVOCATE

(7)

BEFORE THE KHYBER PAKHUNTKHWA SERVICES TRIBUNAL PESHAWAR

Service Appeal No. _____/2021

Manzoor Ahmad .....**Appellant**

V E R S U S

Govet of KPK and others .....**Respondents**

APPLICATION FOR CONDONATION OF DELAY

Respectfully Sheweth:

1. That the above Service Appeal has been filed by the appellant and no date of hearing has yet been fixed.

2. That the appellant earlier approached to the Peshawar High Court, Mingora Bench Swat due to which the appellant time period was spent.

3. That delay in filing the titled service appeal is neither wilful nor deliberate but due to reason mentioned above.

4. That there is no legal bar on acceptance of instant application.

8

It is, therefore, most humbly prayed that on acceptance of this application, the delay, if any, in filing the above titled service appeal may kindly be condoned in the interest of justice.

منظور احمد
Appellant

Dated:-21/06/2021

Through:-

Irfan Ali Yousafzai
Advocates High Court,
Peshawar

(9)

BEFORE THE KHYBER PAKHUNTKHWA SERVICES TRIBUNAL PESHAWAR

Service Appeal No. _____/2021

Manzoor Ahmad .....**Appellant**

V E R S U S

Govet of KPK and others .....**Respondents**

AFFIDAVIT

I, **Manzoor Ahmad S/o Fazal Rabi R/o Village Mansoor Abad, Tehsil Khall Dir Lower**, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Application for condonation of delay** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

منظور احمد

Identified by **DEPONENT**

21-6-21

Irfan Ali Yousafzai
Advocate, High Court,
Peshawar

(10)

BEFORE THE KHYBER PAKHUNTKHWA SERVICES TRIBUNAL PESHAWAR

Service Appeal No. _____/2021

Manzoor Ahmad .....**Appellant**

V E R S U S

Govet of KPK and others .....**Respondents**

ADDRESSES OF PARTIES

APPELLANT

Manzoor Ahmad S/o Fazal Rabi R/o Village Mansoor Abad, Tehsil Khall Dir Lower.

RESPONDENTS

1. Commandant Dir Levies/Deputy Commissioner, Dir Upper.
2. Subedar Major Dir Levies, Dir Upper.
3. Government of Khyber Pakhtunkhwa through Secretary Home, Civil Secretariat, Peshawar

منظور احمد

Dated:-21/06/2021 Appellant

Through:- **Irfan Ali Yousafzai**
Advocates High Court,
Peshawar

"A"

"B"

OFFICE OF THE DISTRICT COORDINATION OFFICER UPPER DIR.

OFFICR ORDER.

Where as Atif Rahman, District Coordination Officer Upper Dir in the capacity of competent authority under Section 2 (a) of North West Frontier Province Removal from Service (Special Powers) Ordinance, 2000 as amended vide NWFP Removal from Service (Special Powers) (Amended) Ordinance 2001, read with notification No.SOR-II(S&GAD)2000-Vol-III dated 28-09-2000, am of the considered opinion that Mr. Manzoor Ahmad Levy Sepoy (Provincial) Regimental No.175 Upper Dir has been proceeded against on account of mis-conduct as prescribed in section 3 of the said ordinance for the following acts of omission and commission:-

> **"That he is absent from duty since 17-03-2009 without sanctioning leave from the competent authority as reported by Subedar Major Dir Levies. This act on the part of the official is against the office discipline and amounts to misconduct."**

And whereas, for the purpose of scrutinizing the conduct of the said accused with reference to the above allegations, Mr. Gul Wahid District Officer Revenue & Estate Lower Dir was appointed as Inquiry Officer under Section 5 of the ordinance.

And whereas, the Inquiry Officer recorded his findings and recommendations in his report"recommended him for removal from service" The charge against the accused has been proved in the meaning of section 3 of the said ordinance.

Now therefore, I Atif Rahman DCO Upper Dir in the capacity of competent authority am satisfied, that the charge against the accused has been proved beyond any doubt. I, as a competent authority, under the powers conferred upon me under Section 3 of the NWFP S&GAD Peshawar Notification bearing No.SOS-III(S&GAD)1-80/73 dated 30-11-1973 impose major penalty of removal from service upon Manzoor AHmad Levy Sepoy (Provincial) Regimental No.175 Upper Dir with effect from his absence period i.e. 17-03-2009. Recovery of salary for the absence period shall be made from the official concerned.

(Atif Rahman)
District Coordination Officer
Upper Dir

No. 5088-91/DCO/LHC Dated Dir the, 11-5-/2009

Copy forwarded to the:-

1) The District Coordination Officer Lower Dir at Timergara.
2) The District Accounts Officer Upper Dir.
3) The Subedar Major Dir Levies.
4) Mr. Manzoor AHmad Levy Sepoy (Provincial) Regimental No.175 Upper Dir.

District Coordination Officer
Upper Dir

204900

"B"

12

بخدمت جناب ہوم سیکرٹری خیبر پختونخواہ (پشاور) دام اقبالکم

آپیل برخلاف حکم مورخہ 11/0 /2009 جاری کردہ سابقہ DCO اپردیر
جسکی رو سے من سائل کو سروس سے برطرف کیا گیا ہے

جناب عالی!

ذیل عرض ہے

(۱)۔ یہ کہ سائل مورخہ 26/04/2000 کو مجوزہ طریقہ کار کے مطابق بحیثیت سپاہی دیر اپر لیویز میں بھرتی ہوا۔

(۲)۔ یہ کہ سائل اپنی ڈیوٹی نہایت خوش اسلوبی سے سرانجام دے رہا تھا۔

(۳)۔ یہ کہ پوری سوات وادی عموماً اور دیر خصوصاً شر پسندوں کے نرغے میں تھا۔ سرکاری ملازمین کا ڈیوٹی سرانجام دینا موت کو دعوت دینے کے مترادف تھا۔ شر پسندوں کا ہر جگہ راج تھا۔ نہ صرف سرکاری ملازمین کو اغوا کیا گیا بلکہ بہت سوں کو نہ صرف قتل کیا گیا بلکہ ذبح بھی کیا گیا۔ حکومتی مشینری بالکل ناکام ہو چکی تھی۔

(۴)۔ یہ کہ سابقہ DCO اپردیر نے مورخہ 11/05/09 کو فرمان جاری کر کے بغیر انکوائری پر سائل کو سروس سے برطرف کیا ہے۔ سائل نے بحالی کیلئے نئی عرضداشت پیش کئے تھے لیکن بے سود

(۵)۔ یہ کہ نہ صرف سائل کے محکمے کے لوگ بلکہ دیگر محکموں کے ہزاروں لوگ سروس چھوڑ چکے تھیں بعد ازاں سارے محکموں نے اپنے ملازمین کو سروس پر بحال کیا ہے مذکورہ بالا حالات کی روشنی میں سائل بھی پس پردہ چلا گیا تھا۔

(۶)۔ یہ کہ سائل کو صوبہ سرحد اب خیبر پختونخواہ کے قانون سپیشل پاور آرڈیننس 2000 کے تحت سروس سے برطرف کیا گیا ہے قانون سائل پر لاگو نہیں ہوتا ہے کیونکہ سائل کا محکمہ خود مختیار صوبائی محکمہ ہے جبکہ مذکورہ بالا قانون کا اطلاق سول سرونٹس پر ہوتا ہے۔ لہٰذا حکم مذکورہ سرے سے غلط، خلاف قانون و واقعات ہے اور قانون مذکورہ کا کسی بھی طرح سائل کے کیس پر اطلاق نہیں ہوتا ہے۔

جناب سے التماس ہے کہ حکم مورخہ 11/05/2009 کو نا صرف منسوخ کیا جائے بلکہ سائل کو تمام مراعات کے ساتھ نوکری پر بحال کرنے کا حکم صادر کیا جائے۔

یہ کہ برطرفی سے پہلے سائل کو نہ کوئی نوٹس دیا گیا ہے نہ کوئی انکوائری کرائی گئی ہے اور نہ ہی ذاتی شنوائی کا موقع دیا گیا ہے۔

لہٰذا قانون مذکورہ لغو و بے بنیاد ہے۔

العارض

منظور احمد ولد فضل ربی

ساکن منصور آباد خال ڈیر لور

سابق سپاہی نمبر 194 دیر لیویز دیر اپر

IN THE COURT OF SECRETARY HOME
KHYBER PAKHTUNKHWA
(APPELLATE AUTHORITY)

"C"

13

CASE TITLE:

APPELLANT: MANZOOR AHMAD, DIR UPPER LEVIES
VERSUS
COMMANDANT LEVIES, DIR UPPER.

INTRODUCTION:-

The applicant submitted an appeal before the Competent Authority on 08.08.2017 for re-instatement into service.

The Deputy Commissioner / Commandant Levies was asked to furnish comments in the instant case. The office of DC/Commandant, Dir Upper submitted that the accused levy official amongst others refused to perform duty with Commissioner, Malakand Division Saidu Sharif Swat & disciplinary action initiated against him for this act.

The District Officer Revenue & Estate Dir Lower was appointed as inquiry officer with the direction to conduct the proper inquiry into the matter and to provide reasonable opportunity of hearing to the accused levy official & submit report within seven days. The District Officer Revenue & Estate recorded the statement of the official. According to the statement Mr. Manzoor Ahmad has committed the act of misconduct & violated the rules & regulation of levy force. Moreover, he has gone abroad without any permission of the Competent Authority.

PROCEEDINGS:-

The applicant was heard in person and supporting documents were also checked / scrutinized in details. The applicant recorded his statement that he is the sole bread earner of his family & prayed for the reinstatement into service on humanitarian basis.

DECISION:-

After perusal of available record and statement of the appellant, the appeal is rejected in light of the comments / views of DC / Commandant Levies Dir Upper. The appellant may be informed accordingly.

9/5/18

(IKRAM ULLAH)
SECRETARY HOME
KHYBER PAKHTUNKHWA

Announced
Dated 25.04.2018

c-f-c

"D"

(14)

BEFORE THE PESHAWAR HIGH COURT, MINGORA BENCH.

W.P NO. 595-M OF 2018.

SEAL OF HIGH COURT PESHAWAR

Manzoor Ahmad S/O Fazal Rabbi
(Sepoy Dir Upper Levies)
R/O Village Manssor Abad Tehsil Khall Dir Lower.....Petitioner.

VS

1. Commandant Dir Levies/Deputy Commissioner Dir Upper.
2. Subedar Major Dir Levies, Dir Upper.
3. Secretary Home, Government of Khyber Pakhtunkhwa, Peshawar.
4. Govt of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat, Peshawar.....Respondents.

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973 AGAINST THE IMPUGNED ORDERS DATED:11/05/2009 & 25.04.2018.

ATTESTED
EXAMINER
Peshawar High Court

Respectfully Sheweth:

Brief facts of the case are as under:

FACTS:

FILED TODAY
23 MAY 2018
Additional Registrar

1. That initially the petitioner joined the respondent/department since long and as such performed his duties with zeal and zest and till date no compliant what so ever has been recorded from any quarter.(Copy of appointment order is annexure-A)

2. That in the year 2009, the petitioner due to some un-avoidable circumstances could not continued his services and as such the petitioner remained absent from service for a short period.

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JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT)

WP No. 595-M/2018

Manzoor Ahmad vs. Commandant Dir Levies/Deputy Commissioner Dir Upper and others.

JUDGMENT.

SEAL OF HIGH COURT PESHAWAR

Date of hearing: 24.03.2021.

Petitioner (s) By M/s Shamsul Hadi & Azmat Khattak, Advocate.

Respondent (s) By Mr. Arshad Ahmad Khan AAG.

SYED ARSHAD ALI, J.:- For reasons recorded in the connected Writ Petition No. 528-M/2016, this petition stands disposed of accordingly.

ANNOUNCED.
Dated: 09.04.2021

Senior Puisne Judge

Judge

CERTIFIED TO BE TRUE COPY
Examiner
Peshawar High Court, Peshawar
Authorised Under Article 87 of
the Qanun-e-Shahadat Order 1984
23 APR 2021

ATTESTED
EXAMINER
Peshawar High Court

Nawab Shah CS (DB) Justice Rooh-ul-Amin Khan & Justice Syed Arshad Ali

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JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT)

WP No. 528-M/2016

Ikramullah and another vs. Deputy Commissioner/Commandant Dir Levies Provincial District Dir Upper and others.

SEAL OF HIGH COURT PESHAWAR

JUDGMENT.

Date of hearing: 24.03.2021.

Petitioner (s) By Syed Abdul Haq, Advocate.

Respondent (s) By M/s Arshad Ahmad Khan AAG & Ihsanullah Khan Advocate.

SYED ARSHAD ALI, J.:- Through this consolidated judgment, we shall dispose of this petition as well as connected petitions. Particulars of the said petitions are as under:-

S. No.	Case Title
1.	*WP No. 528-M/2016 "Ikramullah and another vs. Deputy Commissioner/Commandant Dir Levies Provincial District Dir Upper and others".*
2.	*WP No. 900-M/2017 "Ikramullah and another vs. Deputy Commissioner/Commandant Dir Levies District Dir Upper and others".*
3.	*WP No. 192-M/2018 "Inayat Ullah vs. Government of Pakistan through Secretary SAFRON, Civil Secretariat Islamabad and others".*
4.	*WP No. 303-M/2018 "Amir Nawaz Khan vs. Deputy Commissioner/Commandant Dir Levies District Dir Upper and another".*
5.	*WP No. 350-M/2018 "Bakhti Rehman vs. The Govt. of Pakistan through Secretary SAFRON Civil Secretariat, Islamabad and others".*
6.	*WP No. 398-M/2018 "Abdul Hamid and another vs. Federation of Pakistan through Ministry of SAFRON, Pak Secretariat, Islamabad and others".*
7.	*WP No. 595-M/2018 "Manzoor Ahmad vs. Commandant Dir Levies/Deputy Commissioner Dir Upper and others".*
8.	*WP No. 596-M/2018 "Shams-ul-Islam vs. Commandant Dir Levies/Deputy Commissioner Dir Upper and others".*
9.	*WP No. 740-M/2018 "Hanifullah vs. Secretary Home Khyber Pakhtunkhwa at Peshawar and another".*
10.	*Review Petition No. 4/2019 in COC No. 95-M/2018 in WP No. 883-M/2017 "Subidar Noor Azam Khan and others vs. Khurshid Alam Khan Deputy Commissioner Chitral".*

ATTESTED
EXAMINER
Peshawar High Court

17

11.	*WP No. 387-M/2019 "Subedar Noor Azam Khan vs. Govt. of KP through Chief Secretary KP, Peshawar and others".*
12.	*WP No. 745-M/2019 "Tawakal Khan and others vs. Govt. of KP through Chief Secretary at Civil Secretariat, Peshawar and others".*
13.	*WP No. 1008-M/2019 "Saifullah vs. Govt. of KP through Secretary Home and Tribal Affairs, Civil Secretariat, Peshawar and others".*

Writ Petition No. 528-M/2016

2. Petitioners, Ikramullah and another, through the instant constitutional petition, have approached this Court for the following relief:-

> *"It is therefore, humbly prayed that on acceptance of the instant writ petition, the impugned seniority list dated 10.03.2006 and subsequent promotion orders may kindly be set aside and the seniority list be prepared according to the spirit of Provincial Dir Levies Rules 2015, and further the Respondent No.1 may graciously be directed to determine the seniority list of petitioners as per their appointment order and then to consider them on the basis thereof for promotion to the post and rank according to their entitlement.*
>
> *Any other relief which this Honorable Court deems fit and proper in the circumstances may also be very kindly granted".*

It is alleged in the petition that the petitioners were appointed as Sepoy in Dir Levies vide office order dated 22.11.1999 and after assuming charge of their duties, they were placed at serial No. 122 & 143 of the seniority list dated 10.03.2006. It is further alleged that the petitioners and others had questioned the seniority list dated 10.03.2006 along with promotion order dated 22.03.2006 before this Court through Writ Petition No. 1855/2007, however, the said petition was disposed of vide order dated 02.11.2011 in view of undertaking given by respondent No.1 that the petitioners would be considered for promotion in accordance with law/rules and seniority-cum-fitness. Claim of the present petitioners is that respondent No.1 not only deviated from his stance but also based the alleged seniority list dated 10.03.2006 promoting juniors to them inspite of rules issued

ATTESTED
EXAMINER
Peshawar High Court

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by the Govt. of KP Home & Tribal Affairs Department vide Notification dated 15.05.2015 whereby criteria for promotion has been laid dow ; hence, the present petition.

Resp ndent No.1 has furnished his comments and opposed the cor ents of petition by stating that Provincial PATA Rules 20 5 are effective from April, 2015, therefore, fter issuance of hese rules, seniority list from serial No. 153 d has bee prepared on the basis of first come first serve. The petitioners' request/plea with regard to preparation of seniori t if admitted will damage the whole structure of the Force.

Writ Petition No. 9 M/2017

3. Petitioners, Ik ullah and another, through the instant constitutional petition, have approached this Court for the following relief:

> *"It is, therefore, humbly pr ed that on acceptance of this writ petition in the li of aforementioned submissions the impugned l No. 508 dated 11.12.2017 may be declared illegal, against the rules and be of no legal effect".*

It is alleged in the petition that the petitioners were appointed as Sepoy in Dir Levies vide appointment order dated 22.11.1999, however, they were dropped from promotion and filed Writ Petition No. 1855/2007 before the competent court of law, which was disposed of vide order dated 02.11.2011 on the assurance of respondent No.1 that petitioners would be considered for promotion in accordance with law. It is further alleged that the petitioners filed a C.M. for implementation of aforesaid order dated 02.11.2011, however, later the same was withdrawn and thus, filed a Writ Petition No. 528-M/2016 before this Court, which is pending. In the meanwhile, the petitioners submitted an application to the Director General Ehtesab Commission KP for redressal of grievance, who marked the same to respondent No.1, but respondent No.1 instead of redressing their grievance ordered for initiation of inquiry against them. On completion of

ATTESTED
EXAMINER
Peshawar High Court

(19)

inquiry, respondent No.3 submitted his report dated 28.12.2015 whereby minor penalty of withholding two annual increments was recommended, which was duly endorsed by respondent No.1 vide office order dated 26.01.2016. Against that, the petitioners filed appeal before respondent No.2 but the same was rejected vide order 12.04.2016. The petitioners, then, filed Writ Petition No. 106-M/2017 before this Court, which was allowed vide order dated 19.10.2017 and the respondents were advised to initiate fresh inquiry against the petitioners keeping in view the relevant law on the subject. On the strength of aforesaid judgment of this Court, fresh inquiry was initiated against the present petitioners and upon its conclusion, major penalty of removal from service was recommended vide letter dated 11.12.2017, which has now been impugned before this Court through the instant petition.

Respondent No.1 has furnished his comments and opposed the contents of petition.

Writ Petition No. 192-M/2018

4. Petitioner, Inayatullah, through the instant constitutional petition, have approached this Court for the following relief:-

> *"In the above circumstances, it is most humbly prayed that on acceptance of this writ petition the impugned minutes/order No. 210-14/DC/CSL dated 10.07.2017 may kindly be set aside to the extent of petitioner and the respondent may graciously be directed to promote the petitioner to the post of Lance Naik BPS-06 with back benefits".*

It is alleged in the petition that the petitioner was recruited as Sepoy in Swat Levies vide order dated 18.05.2010 and placed him at serial No. 5 of the final seniority list issued on 20.12.2016. Claim of the present petitioner is that a meeting of Departmental Promotion Committee was held on 10.07.2017, whereby juniors were promoted to the rank of Lance Naik (BPS-06) while he was deferred on account of observation of respondent No.4/Assistant Commissioner Matta at Swat being not fit for promotion. Against that, the

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petitioner filed an application before respondent No.3 for redressal of grievance but the same was not addressed. Thereafter, the petitioner filed appeal before respondent No.2 but instead of addressing his grievances, the petitioner was directed to follow the legal course of action vide letter dated 23.01.2018; hence, the present petition.

Respondent No.3 has furnished his comments and opposed the contents of petition by stating that promotion of petitioner to the rank of Lance Naik was withheld/deferred after the written complaint/report received from the then Assistant Commissioner Matta, Swat.

Writ Petition No. 303-M/2018

5. Petitioner, Amir Nawaz Khan, through the instant constitutional petition, has approached this Court for the following relief:-

> *"It is, therefore, in view of the above submissions, it is most humbly prayed that on acceptance of this writ petition.*
> *i) The petitioner may kindly be allowed to join their duty according to his entitlement.*
> *ii) That if there is any adverse order against the petitioner may kindly be declared void ab-initio, unlawful, and be set aside.*
> *iii) Any other relief which are proper in the instant circumstances of the case may also be granted".*

It is alleged in the petition that the petitioner was appointed as Sepoy in Dir Levies vide appointment order dated 22.11.1999 and was promoted from time to time to the rank of Naik vide office order dated 08.09.2010. However, the petitioner was allegedly informed that his services have been terminated and in this regard, he approached the concerned office but no order has been handed over to him; hence, the present petition.

Respondents No. 1 & 2 have furnished their comments and opposed the contents of petition by stating that as per report of Subidar Major Dir Levies dated 17.03.2009, petitioner has failed to make compliance of the order of his superiors and refused to perform squad duty of Commissioner

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Malakand Division; thus, requested for initiation of disciplinary proceedings against him and stoppage of his salary. Owing to this reason, proper inquiry was conducted and upon its conclusion, the inquiry officer recommended that the petitioner may be proceeded against under the NWFP Removal from Service Rules (Special Powers) Ordinance 2000 (Amended Ordinance, 2001) and thereby the then District Coordination Officer/Commandant Dir Levies imposed major penalty of removal from service against the petitioner w.e.f.17.03.2009 vide letter dated 11.05.2009.

Writ Petition No. 350-M/2018

6. Petitioner Bakhti Rehman, through the instant constitutional petition, has approached this Court for the following relief:-

> *"It is, therefore, humbly prayed that on acceptance of this writ petition, the order # 548-50 dated 23.01.2017 issued by respondent # 3 may please be set aside as null and void, unlawful against merits, contrary to the rules and regulations and the respondent # 3 may kindly be directed to re-instate/promoted the petitioner with all back benefits as Subsedar in accordance with law/old Rules. Any other relief which this august court deems just in the circumstances may also be granted in favour of petitioner though not specifically prayed for".*

It is alleged in the petition that the present petitioner was serving in the Malakand Levies as Naib Subedar, however, on completion of seven years tenure, he was retired from service vide order dated 23.01.2017. Against that, the present petitioner filed Writ Petition No. 342-M/2017 before this Court, which was allowed vide order dated 19.10.2017 and the respondents were directed to consider the petitioner for promotion in line with the judgment of this Court in W.P. No. 479-M/2017. The petitioner, then, filed COC No. 84-M/2017 before this Court, which was disposed of vide order dated 05.03.2018 in the following manner:-

> *"When learned counsel for the petitioner was confronted with the comments that since the petitioner has retired from service how could he be again reinstated with all back benefits, he still argued that the judgment of this court had to be*

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implemented in letter and spirit and the petitioner is entitled to be promoted. The prayer in the main writ petition was for setting aside notification dated 23.01.2017 but since the main writ petition was though allowed and the matter was referred to the respondents for consideration which they did as per their comments and if the petitioner still feels that he has got a further cause of action against any official, he may invoke the same. Learned A.A.G submitted a copy of judgment dated 24.01.2018 of August Supreme Court of Pakistan passed in civil petitions No. 1557 and 1569 of 2017 wherein the petitioners were considered eligible for promotion but the determining factor was that a junior person was promoted instead of the petitioner. In the instant case no other official who was considered to have superseded the petitioner was impleaded as respondent to show that a junior official has been promoted in his place as it is purely a case of entitlement to promotion but this exercise could not be done by invoking jurisdiction of this court through the instant petition as the respondents have already undertaken this exercise.

In view of the above, this petition stands disposed off".

Hence, having no other alternate remedy, the petitioner on the ground of compulsion has filed the instant Writ Petition.

Respondent No. 3 has furnished his comments and opposed the contents of petition by stating that the petitioner was retired from service after completion of seven years tenure as Naib Subedar as per Levy Rules, 2016. Furthermore, in pursuance of order dated 19.10.2017 of Hon'ble Peshawar High Court Mingora Bench (Dar-ul-Qaza), Swat, a meeting of Departmental Promotion Committee was convened and the promotion case of the petitioner was discussed in detail and in light of record, the same was rejected.

Writ Petition No. 398-M/2018

7. Petitioners, Abdul Hamid and another, through the instant constitutional petition, seek issuance of an appropriate writ for directing respondent No.4 to appoint them as Sepoy with all back benefits.

It is alleged in the petition that the petitioners were appointed as Sepoy in Dir Levies vide appointment

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orders dated 01.02.2010 & 27.05.2010, however, they were removed from service vide order dated 14.07.2011 on the ground of being remained absent from duty. Against that, the petitioners filed departmental appeals before the respondents but in vain; hence, the present petition.

Respondent No. 4 has furnished his comments and opposed the contents of petition by stating that as per report of the Incharge Subidar Levy Post at Panakot Dir, the petitioners remained absent from their duties since long without any prior permission of the competent authority due to which they were proceeded against under the rules and notices were issued to them with direction to submit their reply within three days positively but they failed to do so. Resultantly, final show cause notice/notice for personal hearing was issued to the petitioners and again they were directed to submit written reply within seven days and to appear before the competent authority for personal hearing, but, this time too, they neither submitted their written reply nor appeared before the competent authority for personal hearing, thus, they were dismissed from services vide order dated 14.07.2011.

Writ Petition No. 595-M/2018

9. Petitioner, Manzoor Ahmad, through the instant constitutional petition, has approached this Court for the following relief:-

> *"It is, therefore, most humbly prayed that on acceptance of this petition, impugned Orders dated 11.05.2009 and 25.04.2018 regarding major penalty i.e. dismissal from service of petitioner may kindly be set aside and the petitioner may kindly be re-instated to his service with all back benefits of service".*

It is alleged in the petition that initially, the petitioner joined the respondent-department as Levy Sepoy vide office order dated 26.04.2000 and performed his duties

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with zeal and zest, however, in the year, 2009, due to some unavoidable circumstances, he could not continue his service and thus, remained absent from duty. Later, the petitioner was dismissed from service vide impugned order dated 11.05.2009 without observing legal formalities. According to the petitioner, the respondents had reinstated some of his colleagues in similar circumstances and thus, he filed departmental appeal against his impugned dismissal order before respondent No.3 but the same was rejected vide order dated 25.04.2018; hence, the instant petition.

Respondents No. 1 to 3 have furnished their comments and opposed the contents of petition by stating that as per report of Subidar Major Dir Levies, District Dir Lower dated 17.03.2009, the petitioner has failed to make compliance of the order of his superiors and refused to perform squad duty of Commissioner Malakand Division and thus, requested for initiation of disciplinary proceedings against him. Owing to this reason, proper inquiry was conducted and upon its conclusion, the inquiry officer recommended that the petitioner may be proceeded against under the NWFP Removal from Service Rules (Special Powers) Ordinance 2000 (Amended Ordinance, 2001) and thereby the then District Coordination Officer/Commandant Dir Levies imposed major penalty of removal from service upon the petitioner vide letter dated 11.05.2009.

Writ Petition No. 596-M/2018

9. Petitioner, Shams-ul-Islam, through the instant constitutional petition, has approached this Court for the following relief:-

> *"It is, therefore, most humbly prayed that on acceptance of this petition, impugned Orders dated 14.07.2011 and 25.04.2018 regarding major penalty i.e. dismissal from service of petitioner may kindly be set aside and the petitioner may kindly be reinstated to his service with all back benefits of service".*

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It is alleged in the petition that initially, the petitioner was appointed as Sepoy in Dir Levies vide office order dated 22.11.1999 and performed his duties with zeal and zest, however, in the year, 2011, due to some unavoidable circumstances, he could not continue his service and thus, remained absent from duty. Later, the petitioner was dismissed from service vide impugned order dated 11.05.2009 without observing legal formalities. According to the petitioner, the respondents had reinstated some of his colleagues in similar circumstances and thus, he filed departmental appeal against his impugned dismissal order before respondent No.3 but the same was rejected vide order dated 25.04.2018; hence, the instant petition.

Respondents No. 1 to 3 have furnished their comments and opposed the contents of petition by stating that the Incharge Subidar Levy Post Wari reported that the petitioner has left his duty point and is continuously remained absent from his duty since 19.05.2011 despite the fact that he has been contacted several times to make sure his presence for duty, however, later, it has been confirmed that he has left for Saudi Arabia for earning livelihood. Owing to this reason, proper inquiry was conducted wherein the petitioner has neither submitted written reply to the final show cause notice nor appeared before the competent authority for personal hearing and thus, the competent authority imposed major penalty of removal from service upon the petitioner vide letter dated 14.07.2011.

Writ Petition No. 740-M/2018

10. Petitioner, Hanifullah, . through the instant constitutional petition, has approached this Court for the following relief:-

> *"It is, therefore, humbly prayed that on acceptance of this writ petition in the light of aforementioned submissions, the order dated 16.04.2018 may kindly be set aside and the petitioner may kindly be reinstated w.e.f. 18.04.2013 with all back benefits".*

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It is alleged in the petition that the petitioner was appointed as Sepoy in Dir Levies vide order dated 29.06.2005. Later, a criminal case was registered against the petitioner and he was terminated from service vide office order dated 10.12.2009. According to the petitioner, although he was reinstated in service on filing of departmental appeal vide order dated 18.04.2013 but at that time, he was in Saudi Arabia for earning livelihood and again he was removed from service vide office order dated 14.07.2014. On returning back to Pakistan and getting knowledge regarding his removal order, the petitioner filed departmental appeal on 22.10.2017 before the competent authority but the same was rejected vide order dated 16.04.2018; hence, the instant petition.

Respondents No. 1 to 3 have furnished their comments and opposed the contents of petition by stating that as per report dated 14.10.2009 of Incharge Naib Subidar Levy Post Wari, the petitioner was at home and due to some unknown reasons, he assassinated a man and ran away from the spot; thus, an F.I.R. was registered against him. Further, the petitioner neither surrendered to police nor appeared at his post for duty. Owing to this reason, proper inquiry was conducted against the petitioner and upon its conclusion, major penalty of removal from service was imposed upon him vide order dated 10.12.2009. Further stated that although the petitioner had recently been reinstated by the Home Department but he has failed to appear for duty and thus, another inquiry was conducted against him and upon its conclusion, major penalty of removal from service was imposed upon him vide order dated 16.07.2014.

Review Petition No. 4/2019 in COC No. 95-M/2018 in WP No. 883-M/2017

11. Petitioners, through the instant petition, seek review of judgment/order dated 04.03.2019 delivered by this Court delivered in COC No. 95-M/2018 with the following prayer:-

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"It is therefore most humbly prayed that on acceptance of this Review Petition, the impugned order may graciously be reviewed and suitable and effective measures and directions be added in the judgment/order for the safe administration of justice and check the arbitratrial and prejudicial attitude and practice of the respondent which he has adopted during the proceedings of the C.O.C.

It is alleged in the petition that the petitioners had filed Writ Petition No. 883-M/2017 before this Court with a prayer to direct the respondents to act upon and comply with newly amended Rules of 2016 with further direction to respondent No.3 to initiate and take immediate steps for their promotion to the next higher posts strictly in accordance with the newly amended Rules of 2016 and to abstain from taking any action which may prove fatal and violation to their fundamental rights especially to their right of promotion under the newly amended Rules of 2016. The said petition came up for hearing and the same was allowed vide consolidated judgment dated 02.05.2018 with direction to the respondents to strictly follow the amended updated rules in the matter of promotion/retirements by examining the case of petitioners, individually, in the light of ibid rules and if any, right of the petitioners accrued under the amended rules notified on 25.08.2016, their grievances be redressed within a period of two months from the date of receipt of this order. The present petitioner, thereafter, filed C.O.C. No. 95-M/2018 before this Court for implementation of aforesaid judgment/order dated 02.05.2018. The said petition was disposed of vide order dated 04.03.2019 with direction to the respondents to pass an appropriate order with regard to redressal of grievance of the petitioners in the light of directions handed down by this Court in Writ Petition bearing No. 883-M/2017. Hence, the instant review petition.

Writ Petition No. 387-M/2019

12. Petitioner, Subedar Noor Azam Khan, through the instant constitutional petition, has approached this Court for the following relief:-

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"In the background of the above factual and legal grounds inter alia, a suitable writ may graciously be issued directing:

i. The orders of respondent No. 3 dated 02.02.2018 and 02.03.2019 to be declared void ab initio, illegal, ultra vires, malicious, malafide and ineffective upon the rights of the petitioner.

ii. Declaring the petitioner to be entitled to promoted as Subedar Major with effect from 25.08.2016 when the new rules of 2016 were promulgated or from 23.05.2017 when the writ petitions challenging the vires of the said rules, were dismissed by this Honorable Court.

iii. To pass order of promotion of the petitioner to the post of Subedar Major being the senior most serving Subedar and regulated by new rules of 2016.

iv. Any other order this Honorable Court may deem just and proper may also be granted in favour of the petitioner".

It is alleged in the petition that the petitioner was appointed as Sepoy Border Police and from time to time, he was promoted to the post of Subedar on 27.11.2014. According to the petitioner, the post of Subedar Major was vacant and his case for promotion was delayed by the respondents, therefore, he approached this Court through writ petition No. 883-M/2017, however, during its pendency, the petitioner was issued his retirement order dated 02.02.2018, which was further challenged before this Court in Writ Petition N. 179-M/2018. Both the petitions were decided by single judgment dated 02.05.2018 in favour of petitioner, however, the respondents failed to comply with the same and thus, the petitioner had filed contempt petition before this Court, which was disposed of vide order dated 04.03.2019 with advised to petitioner to challenge the order dated 02.03.2019 of learned Deputy Commissioner, Chitral before appropriate forum; hence, the instant petition.

Respondents No. 2 & 3 have furnished their comments and opposed the contents of petition that the matter was under adjudication in the Apex Court and in the meanwhile the petitioner has crossed the age limit and retired from service honourably by granting him all benefits. Further,

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all those promotees, who were promoted with the petitioner, were reverted to their legal ranks i.e. Sepoys and the financial benefits were recovered from them and deposited in government exchequer.

Writ Petition No. 745-M/2019

13. Petitioners, Tawakal Khan and others, through the instant constitutional petition, have approached this Court for the following relief:-

> *"It is therefore, in view of aforementioned submission, most humbly prayed that on acceptance of this writ petition, this honourable Court may kindly directed the respondents to release the salaries of the petitioners from 1.12.2014 to up to date and further be directed to posting and granting others benefit of the petitioners which they have been reinstated in light of the judgments passed by this Hon'ble Court".*

It is alleged in the petition that the petitioners were appointed as Sepoy Border Police and performed their duties with full devotion for the last twenty years, however, on 27.11.2014, the respondents promoted 29 levy personnel to different ranks by superseding the petitioners and lastly on 01.12.2014, the petitioners were forcibly retired from service. Against that, the petitioners filed Writ Petition No. 608-M/2014 before this Court, which was allowed vide order dated 07.02.2018 by directing the respondents to reinstate the petitioners. The respondents challenged the said order before the Apex Court through Civil Petition No. 296-P of 2018, however, the same was dismissed vide order dated 04.07.2018. Thereafter, the present petitioners were reinstated in service on 05.10.2018 and working with the respondents-department but did not release their salaries. The petitioners submitted an application to respondent No.4 for providing salaries and their posting but refused; hence, the instant petition.

Respondents No. 2 & 4 have furnished their comments and opposed the contents of petition by stating that the petitioners did not report for duty from 01.12.2014 to

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07.02.2018; hence, cannot claim any benefit. Further, the accounting system could not accept their salaries as three personnel have crossed superannuation and four personnel have crossed the required length of service for Sepoys i.e. 25 years.

Writ Petition No. 1008-M/2019

14. Petitioner, Saifullah, through the instant constitutional petition, has approached this Court for the following relief:-

> *"It is, therefore, humbly prayed that on acceptance of this petition, cancellation order dated 23.04.2013 as well as order dated 25.04.2018 and 21.08.2019 may kindly be set aside and that of order dated 22.04.2013 may graciously be restored and the petitioner may also be appointed as Sepoy with all consequential back benefits".*

It is alleged in the petition that the respondents have advertised the posts of Sepoy (BPS-05) in Malakand Levies (Federal) and the petitioner applied for the same and after qualifying written test/physical test, he was appointed vide order dated 22.04.2013, however, on the following day i.e. 23.04.2013, his appointment order was cancelled being not fulfilled the required height. Against that, the petitioner filed appeal before respondent No.1 but the same was rejected on 25.04.2018. Against the said order, the petitioner filed review petition, but the same was also dismissed on 21.08.2019; hence, the instant petition.

15. Learned counsels appearing on behalf of respondents have raised a preliminary objection to the maintainability of these petitions by arguing that all the petitioners are the employees of Provincial Levies Force, which was constituted for maintaining law & order situation in the erstwhile Provincially Administered Tribal Area (***"PATA"***) and thus, for all practical purposes, they were performing police services and as such falls within the definition of civil servants. The matter in issue relates to enforcement of the terms & conditions of their service; hence,

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this Court has no jurisdiction in the matter being barred under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 (***"Constitution"***).

16. While rebutting the arguments of the said preliminary objection, the learned counsels representing the petitioners have argued that the levy force was established through a separate instrument i.e. the Provincially Administered Tribal Areas Provincial Levies Force Regulation, 2014 (Khyber Pakhtunkhwa Regulation No.1 of 2014) and as such, they are not governed under any provision of the Civil Servants Act, 1973; hence, these constitutional petitions are maintainable.

17. Heard.

18. Article 247 of the Constitution envisages the mechanism for extension and making of laws for the erstwhile FATA/PATA, which reads as under:-

> *"247. (1) Subject to the Constitution, the executive authority of the Federation shall extend to the Federally Administered Tribal Areas, and the executive authority of a Province shall extend to the Provincially Administered Tribal Areas therein.*
> *(2) The President may, from time to time, give such directions to the Governor of a Province relating to the whole or any part of a Tribal Area within the Province as he may deem necessary, and the Governor shall, in the exercise of his functions under this Article, comply with such directions.*
> *(3) No Act of [Majlis-e-Shoora (Parliament)] shall apply to any Federally Administered Tribal Area or to any part thereof, unless the President so directs, and no Act of [Majlis-e-Shoora (Parliament)] or a Provincial Assembly shall apply to a Provincially Administered Tribal Area, or to any part thereof, unless the Governor of the Province in which the Tribal Area is situate, with the approval of the President, so directs; and in giving such a direction with respect to any law, the President or, as the case may be, the Governor, may direct that the law shall, in its application to a Tribal Area, or to a specified part thereof, have effect subject to such exceptions and modifications as may be specified in the direction.*
> *(4) Notwithstanding anything contained in the Constitution, the President may, with respect to any matter within the legislative competence of [Majlis-e-Shoora (Parliament)], and the Governor of a Province, with the prior approval of the President, may, with respect to any matter within the legislative competence of the Provincial Assembly make*

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regulations for the peace and good government of a Provincially Administered Tribal Area or any part thereof, situated in the Province.

(5) Notwithstanding anything contained in the Constitution, the President may, with respect to any matter, make regulations for the peace and good governance of a Federally Administered Tribal Area or any part thereof.

(6) The President may, at any time, by Order, direct that the whole or any part of a Tribal Area shall cease to be Tribal Area, and such Order may contain such incidental and consequential provisions as appear to the President to be necessary and proper:

Provided that before making any Order under this clause, the President shall ascertain, in such manner as he considers appropriate, the views of the people of the Tribal Area concerned, as represented in tribal jirga.

(7) Neither the Supreme Court nor a High Court shall exercise any jurisdiction under the Constitution in relation to a Tribal Area, unless [Majlis-e-Shoora (Parliament)] by law otherwise provides:

Provided that nothing in this clause shall affect the jurisdiction which the Supreme Court or a High Court exercised in relation to a Tribal Area immediately before the commencing day".

19. The Provincial Levies Force (***"Force"***) was granted statutory cover through Khyber Pakhtunkhwa Regulation No.1 of 2014 ("***Regulation***"). Paragraph No.3 of the Regulation envisages for constitution and establishment of the Force and its functions. For ease reference paragraph Nos. 3 and 4 of the Regulation are reproduced as under:-

*"**3. Power to constitute and maintain by the Force and its functions.**--- (1) Government may constitute and maintain a Force for performing the following functions, namely:*

(a) ensuring security of roads in PATA;
(b) ensuring security and manning of piquet;
(c) guarding Government institutions and installations;
(d) ensuring security of jails and arrested criminals;
(e) generally maintaining law and order providing mobile escort to VIPs;
(f) anti-smuggling activities especially timber smuggling;
(g) destruction of illicit crops;
(h) serving of summons or procedures;
(I) raid and ambush; and
(j) such other functions as Government may, by notification in the official Gazette, require the Force to perform.

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(2) In discharge of their functions, officers and staff of the Force shall be guided in accordance with this Regulation and the rules.

(3) The head of the Force shall be Commandant in his respective jurisdiction.

(4) Secretary to Government, Home and Tribal Affairs Department shall be the competent authority of the Force.

(5) The Force shall consist of such ranks and number of officers and members and shall be constituted in such manner as may be prescribed by rules.

(6) The officers and members of the Force shall receive such pay, pension, allowances and other remunerations and shall enjoy such leave and other privileges as may be prescribed by rules.

(7) The officers and members of the Force shall wear such uniform as may be prescribed by rules or instructions.

(8) The administration of the Force shall vest in the Commandant in his jurisdiction who shall administer it in accordance with the provisions of this Regulation, rules and instructions.

(9) The Commandant shall exercise his powers and perform his functions under the general supervision and directions of Government.

*4. **Powers and duties of officers and members of the Force.**—An officer or member of the Force shall-*

(a) take effective measures for ensuring security of assigned jurisdiction and for safeguarding against acts of unlawful interference;

(b) prevent unauthorized persons and vehicles from access to the territorial jurisdiction;

(c) take effective measures for preventing sabotage, placement of car bombs, letter bombs, dangerous article and carriage of arms and ammunition into the restricted area;

(d) use such arms and ammunition and equipment as may be authorized by the Commandant or an officer authorized by him;

(e) search and arrest without warrant any person who he suspects of endangering or attempting to endanger or having endangered the safety of an installation and may use such force as may be necessary in the discharge of his aforesaid duties; and

(f) perform such other legal functions as the competent authority may require him to perform".

20. The close perusal of the Regulation would clearly shows that the Force is receiving its salary from the Provincial Exchequer and performs the policing service in the erstwhile PATA.

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21. Having said this, we would now refer to the crucial issue as to whether the employees of the Force can be termed as a civil servants and as such they cannot maintain a constitutional petition before this Court for enforcement of the terms & conditions of their service.

22. The connotation 'civil servant' is defined and explained in respect to the Province of Khyber Pakhtunkhwa, in the Civil Servants Act, 1973 (***"Act, 1973"***). For ease reference, we would refer to Section 2 (b) of Act, 1973, which reads as under:-

> *"2. Definitions.—(1) In this act, unless the context otherwise requires the following expressions shall have the meanings hereby respectively assigned to them, that is to say--*
>
> *(a)* .....
> *(b) "civil servant" means a person who is a member of a civil service of the Province, or who holds a civil post in connection with the affairs of the Province, but does not include—*
> *(i) a person who is on deputation to the Province from the Federation or any other Province or other authority;*
> *(ii) a person who is employed on contract, or on work charged basis, or who is paid from contingencies; or*
> *(iii) a person who is a "worker" or "workman" as defined in the Factories Act, 1934 (Act XXV of 1934), or the Workman's Compensation Act, 1923 (Act VIII of 1923)".*

23. The perusal of the definition would show that a member of a civil service of the Province or who holds a civil post in connection with the affairs of the Province is civil servants. All Pakistan Services are explained in Article 260 of the Constitution, which reads as under:-

> *"260. (1).....*
> .....
> .....
> *"service of Pakistan" means any service, post or office in connection with the affairs of the Federation or of a Province, and includes an All-Pakistan Service, service in the Armed Forces and any other service declared to be a service of Pakistan by or under Act of [Majlis-e-Shoora (Parliament)] or of a Provincial Assembly, but does not include service as Speaker, Deputy Speaker, Chairman, Deputy Chairman, Prime Minister, Federal Minister, Minister of State, Chief Minister,*

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Provincial Minister, [Attorney-General], [Advocate-General],] Parliament Secretary] or [Chairman or member of a Law Commission, Chairman or member of the Council of Islamic Ideology, Special Assistant to the Prime Minister, Adviser to the Prime Minister, Special Assistant to a Chief Minister, Adviser to a Chief Minister] or member of a House or a Provincial Assembly;

Whereas Article 240 of the Constitution envisages that:-

"240. Subject to the Constitution, the appointments to and the conditions of service of persons in the service of Pakistan shall be determined –

(a) .....
(b) in the case of the services of a Province and posts in connection with the affairs of a Province, by or under Act of the Provincial Assembly.

Explanation.- In this Article, "All-Pakistan Service" means a service common to the Federation and the Provinces, which was in existence immediately before the commencing day or which may be created by Act of [Majlis-e-Shoora (Parliament)]".

24. The Phrase "performing in connection with the affairs of Federation or for present matter Province" was elaborately explained in the case of ***Salahuddin and 2 others vs. Frontier Sugar Mills & Distillery Ltd., Tokht Bhai and 10 others (PLD 1975 Supreme Court 244).*** In the said judgment, the Apex Court has held:

"Now, what is meant by the phrase "performing functions in connection with the affairs of the Federation or a Province". It is clear that the reference is to governmental or State functions, involving, in one from or another, an element of exercise of public power. The functions may be the traditional police functions of the State, involving the maintenance of law and order and other regulatory activities; or they may comprise functions pertaining to economic development, social welfare, education, public utility service and other State enterprises of an industrial or commercial nature. Ordinarily, these functions would be performed by persons or agencies directly appointed, controlled and financed by the State, i.e., by the Federal Government or a Provincial Government".

25. Admittedly, as evident from the bare reading of paragraph-3 & 4 of the Regulation, the present petitioners are performing policing service in the erstwhile tribal area,

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however, their terms and conditions are being regulating through Regulation No.1 of 2014 and after the omission of Article 247 from the Constitution; through a provincial statute i.e. the Khyber Continuation of Laws in the Erstwhile Provincially Administered Tribal Areas Act, 2018 (Khyber Pakhtunkhwa Act No. III of 2019), the operation of Regulation No.1 of 2014 was continued. Thus, the essential criteria for being a civil servant is that the person holding the post must perform his functions in connection with the affairs of Federation/Province and the terms and conditions of his service should be determined by or under the Act of Parliament/Provincial Assembly. The Apex Court in the case of ***Federation of Pakistan through Secretary, Ministry of Interior (Interior Division), Islamabad and 2 others vs. RO-177 Ex-DSR Muhammad Nazir (1998 SCMR 1081),*** while dealing with the case of an employee of Pakistan Rangers has observed that:

> *"7....Perusal of these rules clearly shows that they are all embracing, and therefore, under the amendment of section 1 of the Pakistan Rangers Ordinance, these rules would prevail over the Rules of 1973. The Pakistan Rangers Ordinance was promulgated to constitute a force called the Pakistan Rangers for the protection of and maintenance of order in the border areas. Since with regard to the status of the members of the force the Pakistan Rangers Ordinance is silent, therefore, it can be safely said that the employees of the Pakistan Rangers will be deemed to be civil servants as they are performing duties in connection with affairs of the Federation and hence under the Service Tribunals Act, 1973, an appeal by a member of the Pakistan Rangers regarding a matter relating to terms and conditions of his service is competent before the Federal Service Tribunal... ".*

26. Similarly, in the case of ***Commandant, Frontier Constabulary, Khyber Pakhtunkhwa, Peshawar and others vs. Gul Raqib Khan and others (2018 SCMR 903),*** the Hon'ble Apex Court has elaborately examined service structure of the employees of Frontier Constabulary, which is established under Frontier Constabulary Act (Act-XIII) of

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1915. Relevant paragraphs of the said judgment are reproduced as under:-

> *"6. Three broad tests for establishing the status and character of a civil servant emerge from the Constitutional mandate of the afore-going Articles. Firstly, under Article 240(a) of the Constitution, appointments to and the terms and conditions of service of the persons in the "service of Pakistan" are be determined by or under Act of Parliament. Secondly, by virtue of Article 260 of the Constitution, 'service of Pakistan' means any service, post or office in connection with the affairs of the Federation. Thirdly, under Article 212(1) (a) of the Constitution, the exclusive jurisdiction to adjudicate disputes relating to the terms and conditions of persons, who are in the service of Pakistan vests in an Administrative Tribunal, namely, the Federal Service Tribunal. These tests are mentioned in the Muhammad Mubeen-us-Salam case ibid (at pp. 686-689 of the law report). The definition of the term 'civil servant' in the Act adopts the Constitutional criteria given in Article 260 noted above to reiterate that a person who, inter alia, holds a civil post "in connection with the affairs of the Federation" including any such post connected with defence, to be a civil servant. The larger Bench has in this respect taken the logical step to incorporate the requirements under Article 240 (a) and 260 of the Constitution as the definitional criteria of the term "civil servant" (at p. 682 of the law report).*
>
> *7. Having noticed the qualifying criteria of a civil servant under the law, it is appropriate now to examine the factual matrix of the present controversy. The FC was established by the NWFP Constabulary Act, (Act-XIII) of 1915 ("Constabulary Act"). Section 3 of the Constabulary Act empowers the Federal Government to maintain the FC as a force "for the better protection and administration of the external frontiers of Pakistan within the limits of or adjoining North-West Frontier or any part thereof". Section 3-A of the Constabulary Act authorises the Federal Government to employ the FC outside the limits of or adjoining the North-West Frontier Province in other parts of Pakistan for the better protection and administration of those parts. Section 5(1) of the Act ibid vests the Federal Government with power to appoint the Commandant and other persons including the District Constabulary Officers or Assistant Constabulary Officers of the force in one or more districts. Section 6 delegates to the Commandant and District Constabulary Officer the power to appoint subordinate officers in the manner prescribed by Rules made under the Act. The Federal Government exercised its power conferred by Section 21 of the Constabulary Act, to frame the NWFP Constabulary Rules, 1958 ("Constabulary Rules"), in order to provide the terms and conditions of service of the officers and men in the FC.*

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8. It will be observed that the matter of terms and conditions of service of the respondent-employees of the FC, are in the first place regulated by the Constabulary Act and elaborated pursuant thereto by the FC Rules. The provisions made by the Constabulary Rules are in furtherance of and in exercise of the power conferred by the Constabulary Act. Therefore, the terms and conditions of service of the employees of the FC are prescribed in the Act and the Rules. The test laid down in Article 240(a) of the Constitution requires that the appointment to and the terms and conditions of service of posts in connection with the affairs of the Federation and of a service of Pakistan shall be determined "by or under an Act of" Parliament. The expression "by or under" in Article 240(a) of the Constitution authorizes the terms and conditions of service of a civil servant to be provided both by statute or by statutory rules. The provision made in the Constabulary Act and the Constabulary Rules, therefore, satisfy the Article 240(a) test. The judgment in the Muhammad Mubeen-us-Salam case ibid endorses this point of view:-

> *"86.... The terms and conditions of service of those employees, however, are required to be specified under Article 240 of the Constitution by or under Act of the Parliament. Thus, the conclusion would be that only those persons, who are in the service of Pakistan, as discussed hereinabove, and if their terms and conditions are governed either by a statute or statutory rules, in terms of Article 240 of the Constitution, can seek remedy before the Service Tribunals.."*

27. Similarly, this Court in the case of ***Gul Munir vs. The Government of Pakistan through Secretary, Ministry of States and Frontier Regions (SAFRON), Islamabad and others*** ***(2019 PLC (C.S) 645),*** on the basis of law laid down by the Apex Court in ***Commandant, Frontier Constabulary Khyber Pakhtunkhwa, Peshawar's case*** ***(2018 SCMR 903),*** while dealing with the case of Federal Levies Force, which was established through Federal Levies Force Regulation, 2012 having the same structure of service for its employees/force as provided in Regulation No. 1 of 2014 has held that employees of the Federal Levies Force whose terms and conditions of service are governed under Federal Levies Force Regulation, 2012 are civil servants. Keeping in view the

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above, the Force established under Regulation No. 1 of 2014 qualifies the criteria of being civil servant in view of its composition, functions and duties as per law laid down by the Apex Court in the cases of ***Federation of Pakistan through Secretary, Ministry of Interior (Interior Division), Islamabad and 2 others vs. RO-177 Ex-DSR Muhammad Nazir*** *(1998 SCMR 1081)* and ***Commandant, Frontier Constabulary, Khyber Pakhtunkhwa, Peshawar and others vs. Gul Raqib Khan and others*** *(2018 SCMR 903),* thus, the preliminary objection raised by the learned counsels for the respondents is is sustained and accordingly, the present petitions in view of clear bar contained in Article 212 of the Constitution are not maintainable. The present petitioners may agitate their grievances before the Provincial Services Tribunal. However, prior to this judgment, the status of present petitioners being a civil servant was not determined and in the similar cases, the Apex Court in ***Gul Raqib Khan's case*** *(2018 SCMR 903)* has held that:

> *"11. It follows from the dicta laid down above that the protection of the border areas is a sovereign function belonging to and performed by the Federation. The same duty is performed equally I the present case by the FC not only on the frontiers of KPK Province but also by maintaining order in other parts of Pakistan. For discharging such functions, the services rendered by the FC have direct nexus with the affairs of the Federation. Therefore, the reasons given in the Muhammad Nazir case (supra) fully apply here as well and we hold that the employees of FC are civil servants. Insofar as the question of competent remedy in respect of service disputes of FC men is concerned, we hold that in a matter relating to the terms and conditions of service of the respondent-employees of the FC, an appeal before the Federal Service Tribunal is available to them as the exclusive remedy under the law. Accordingly, this remedy may be availed by them within the statutory period of limitation commencing from the date of issuance of certified copy of this judgment. All these appeals filed by the appellant-Commandant, FC are according allowed in above terms".*

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28. Thus, while following the law laid down by the Apex Court, we hold that the present petitioners may pursue their remedy before the Provincial Services Tribunal within the statutory period of limitation commencing from the date of issuance of certified copies of this judgment.

29. All the petitions stands disposed of accordingly.

ANNOUNCED.
Dated: 09.04.2021

Senior Puisne Judge

Judge

No. 33859
Date of Presentation of Application 19/4/2021
No of Pages 27
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EXAMINER
Peshawar High Court, Peshawar
Authorized U/S 76 and Article 87 of
the Qanun-e-Shahadat Order 1984
23 APR 2021

IN THE COURT OF SECRETARY HOME
KHYBER PAKHTUNKHWA
(APPELLATE AUTHORITY)

APPELLANT Mr. Maqbool Shahzada s/o Anwar Khan, Levy Sepoy Dir Upper
VERSUS
COMMANDANT LEVIES, Dir Upper

OFFICE ORDER

OBSERVATIONS:-

This order will dispose off the departmental appeal filed by Levy Sepoy Mr. Maqbool Shahzada s/o Anwar Khan, Levy Sepoy district Dir Upper against orders issued by the DC / Commandant Levies, Dir Upper on 14.11.2011 on account of absence from duty since 25.09.2011.

2. The official was informed about his dismissal from service and his pay was stopped. The Deputy Commissioner / Commandant Levies Dir Upper stated in his comments that applicant has gone to abroad & not willing to perform Government service anymore. The applicant recorded their statement that his brother was a patient of cancer and due to medical treatment & financial burden he started private work at Karachi.

DECISION:-

3. After going through the record and statement of the appellant, it transpires that the punishment awarded is harsh in the circumstances. The undersigned being competent authority accepts the appeal and re-instates him in service with immediate effect on compassionate grounds. Intervening period from the date of termination to the date of reinstatement shall be treated as leave without pay besides stoppage of 01 increment. The appellant may be informed accordingly.

(HOME SECRETARY)
KHYBER PAKHTUNKHWA

Announced
Dated 29.09.2017

بعدالت جناب پشاور ہائی کورٹ مینگورہ بینچ دار القضاء سوات

کورٹ فیس		قیمت ایک روپیہ

مورخہ   سنہ ۲۰۲۱ منجانب

مقدمہ   بنام

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ بالا میں اپنے طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام سروس ٹریبونل [illegible] عدنان علی یوسفزئی ایڈووکیٹ + شمس الحق [illegible] ایڈووکیٹ مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ وتقرر ثالث وفیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور درخواست ہر قسم کی تصدیق زر اس پر دستخط کرنے کا اختیار ہوگا نیز بصورت عدم پیروی یا ڈگری ایک طرف یا اپیل کی برآمدگی اور منسوخ دائر کرنے اپیل نگرانی ونظر ثانی و پیروی کرنے کا اختیار ہوگا۔ بصورت ضرورت مذکور کے نسل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اسکا ساختہ برداختہ منظور وقبول ہوگا اور دوران مقدمہ میں جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب سے ہوگا اسکے مستحق وکیل صاحب ہونگے۔ نیز بقایا وخرچہ کی وصولی کرتے وقت کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہونگے کی پیروی مقدمہ مذکور لہٰذا وکالت نامہ لکھ دیا کہ سند رہے

المرقوم   ماہ   سنہ ۲۰

العبد   گواہ شدہ   العبد

بمقام   سروس ٹریبونل پشاور

کے لئے منظور ہے

0314-9070658

LC-09-1760

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

JUDICIAL COMPLEX (OLD), KHYBER ROAD, S.R
PESHAWAR.

No.

APPEAL No. 6572 of 20 21

Manzoor Ahmad

Apellant/Petitioner

Versus

Commandant Dir Levies DC Dir Upper.

RESPONDENT(S)

Notice to ~~Appellant/Petitioner~~ counsel Irfan Ali Yousafzai
Advocate High Court
Peshawar. Cell. 0314-9070658

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 6/10/2021 at 9. a.m.

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

6/9/21

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

S.B

No.

APPEAL No. 6572 of 20 21

Manzoor Ahmad Apellant/Petitioner

Versus

Commandant Dir Levies / D.C Dir Upper. RESPONDENT(S)

Notice to Appellant/Petitioner Manzoor Ahmad S/o Fazal Rabi R/o Village Mansoor Abad Tehsil Khall Dir Lower.

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 2/12/2021 at 9:00AM

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

S.B

No.

APPEAL No. 6572 of 2021.

Manzoor Ahmad

Apellant/Petitioner

Versus

Commandant Division/ D.C Dir Upper

RESPONDENT(S)

Notice to Appellant/Petitioner (Counsel) Irfan Ali Yousafzai Adv:
High Court Peshawar
Cell:- 0314-9070658

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 24/11/2021 at 9:00 AM

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

24/11/21

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

GS&PD.KP-2557/3-RST-5000 Forms-09.07.2018/P4(Z)/F/PHC Jos/Form A&B Ser. Tribunal

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

JUDICIAL COMPLEX (OLD), KHYBER ROAD, S.B
PESHAWAR.

No.

APPEAL No. 6572 of 20 21

Manzoor Ahmad

.....

Apellant/Petitioner

Versus

D.C Dir Upper

.....

RESPONDENT(S)

Notice to Appellant/Petitioner Manzoor Ahmad S/o Fazal Kabir R/o village Manzoor Abad Tehsil Khall Dir Lower.

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 1/2/22 at 9:00

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.