

| Sr. No | Date of order/ proceedings | Order or other proceedings with signature of Judge or Magistrate   |
|--------|----------------------------|--|
| 1      | 2                          | 3  |
|        | 04.12.2018                 | <p style="text-align: center;"><b><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u></b><br/><b><u>At Camp Court Swat</u></b></p> <p style="text-align: center;"><b>Service Appeal No. 125/2018</b></p> <p style="text-align: center;">Date of Institution ..... 24.01.2018<br/>Date of Decision ..... 04.12.2018</p> <p>Mr. Bacha Hussain Ex-Constable No.465, District Police Swat.</p> <p style="text-align: right;"><b>Appellant</b></p> <p style="text-align: center;"><b>Versus</b></p> <ol style="list-style-type: none"> <li>1. The Provincial Police Officer Khyber Pakhtunkhwa Peshawar.</li> <li>2. The Regional Police Officer, Malakand, at Saidu Sharif, District Swat.</li> <li>3. The District Police Officer, District Swat at Gulkada.</li> </ol> <p style="text-align: right;"><b>Respondents</b></p> <p><b>Mr. Muhammad Hamid Mughal</b>-----<b>Member (J)</b><br/><b>Mr. Hussain Shah</b>-----<b>Member (E)</b></p> <p style="text-align: center;"><b><u>JUDGMENT</u></b></p> <p><b><u>MUHAMMAD HAMID MUGHAL, MEMBER:</u></b> - Learned counsel for appellant and Mr. Usman Ghani learned District Attorney alongwith Mr. Khawas Khan SI legal for the respondents present.</p> <p>2. The appellant has filed the present appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 07.11.2017 of the respondent No.3 whereby he upheld his previous</p> |

order dated 19.10.2016 resultantly the appellant was retired on superannuation pension w.e.f 02.10.2011 (Afternoon) with recovery of over payment of pay from his lum-sum payment/graduaty w.e.f 03.10.2013

3. Learned counsel for the appellant argued that the appellant joined the Police Force as Constable in the year 1979; that at the time of joining the Police Force, the date of birth of the appellant was recorded as 03.10.1957 and the appellant was planning to get retired on the due date in the year 2017 by attaining the age of superannuation; that to the utter surprise of the appellant the respondent No.3 issued order dated 19.10.2016 regarding his retirement w.e.f 02.10.2011 and for the recovery of over payment from his lum-sum payment/graduaty; that feeling aggrieved the appellant filed departmental appeal to the appellate authority but in vain; that the appellant then filed service appeal bearing No.1235/2016 and this Tribunal vide judgment dated 05.09.2017 directed the department to conduct Probe/Inquiry; that after a sham inquiry the respondent No.3 issued the impugned order dated ~~07.11.2017~~; that the departmental appeal of the appellant against the impugned order was also filed vide order dated 17.01.2018. Learned counsel for the appellant contended that the date of birth of the appellant as recorded in his Service Book as 03.10.1957 is correct and that his Service Book was lying in the custody of respondent department and was not within the reach of the appellant to make any tempering therein. Further argued that the inquiry officer has

held the appellant responsible for tempering in the date of birth in his Service Book, from 1951 to 1957, arbitrarily and in the mechanical manner. Further argued that the appellant performed his duties till the issuance of the order of his retirement dated 19.10.2016 as such the question of over payment does not arise.

4. As against that learned District Attorney argued that in the service record of the appellant his date of birth was recorded as 03.10.1951 in figures as well as in words but the appellant manipulated the service record by tempering and changed the figure 51 to 57 but he forgot to change the words Fifty One. Further argued that according to the findings of the inquiry officer, the date of retirement of the appellant on superannuation falls on 02.10.2011 as per entry in the service record therefore the appellant has rightly been retired w.e.f 02.10.2011 vide order dated 19.10.2016. Further argued that as per expert opinion of the Regional Forensic Science Laboratory Swat the original date of birth of appellant is 03.10.1951 in the Service Book which has been tempered to make it 03.10.1957. Further argued that as per directions of this Tribunal in the judgment passed in service appeal No.1235/2016 the matter was thoroughly probed and the inquiry officer also held the appellant responsible for tempering in his date of birth recorded in the Service Book and recommended that the order of retirement in respect of the appellant issued by the DPO Swat may be maintained.

5. Arguments heard. File perused.

6. Plain perusal of the relevant page of copy of Service Book

would show that the year of birth of appellant is 1957 in figures and 1951 in words. According to the report of Regional Forensic Science Laboratory (RFSL), Swat the date of birth of the appellant in his Service Book has been tempered and that the original date of birth is 03.10.1951 which has been tempered to make it 03.10.1957. In these circumstances, the inquiry officer correctly given the finding that the original date of birth on the Service Book of the appellant has been tempered to the effect that the original date of birth 03.10.1951 converted to 03.10.1957 and that the date of birth of the appellant for the purpose of service in his department is 03.10.1951 and his retirement was due on 02.10.2011.

7. However it may also be mentioned that on one hand the inquiry officer admitted in his report that nothing came on the surface that as to who from the office staff of Establishment Branch is responsible for tempering the date of birth of the appellant but on the other hand held the appellant responsible for tempering in his service record simply on the ground that the tempering was made to the advantage of the appellant with his connivance. Hence the argument of learned counsel for the appellant that finding of inquiry officer vis a vis holding the appellant responsible for tempering in the service record is but arbitrary, carries weight.

8. In the light of above, it was the authority who badly failed in issuing timely retirement order of the appellant w.e.f 02.10.2011. The authority was supposed to check and put signatures on the Service Book of appellant every year who joined his services from

the year 1979. There seems to be apathy on the part of respondent department that the delinquent official from the office staff of Establishment Branch, responsible for tempering in the Service Book, could not be traced out.

9. The department has issued the retirement order of the appellant with the delay of five (05) years and during these five (05) years the appellant was required to perform duties and was also paid monthly salaries. As such the monthly salaries paid to the appellant during these five years cannot be recovered otherwise the duty performed by the appellant would amount to forced labor. Hence the order of recovery of monthly salaries paid to the appellant w.e.f 03.10.2011 till 19.10.2016 is not tenable.

10. As a sequel to above, the order of retirement, of the appellant on superannuation w.e.f 02.10.2011 is upheld whereas the order regarding the recovery of salaries received by the appellant w.e.f 03.10.2011 till 19.10.2016 is set aside. The present service appeal is partially accepted in the above terms. Parties are left to bear their own costs. File be consigned to the record room.



(Hussain Shah)  
Member



(Muhammad Hamid Mughal)  
Member

Camp Court Swat.

ANNOUNCED

04.12.2018

02.10.2018


Appellant Bacha Hussan in person present. Mr. Khawas Khan, S.I (Legal) for the respondents alongwith Mr. Usman Ghani, District Attorney present. Rejoinder submitted. Appellant made a request for adjournment. Granted. To come up for arguments on 04.12.2018 before the D.B at camp court, Swat.


  
Member

  
Chairman  
Camp Court Swat

04.12.2018

Learned counsel for the appellant and Mr. Usman Ghani learned District Attorney present. Vide separate judgment of today of this Tribunal placed on file, the order of retirement, of the appellant on superannuation w.e.f 02.10.2011 is upheld whereas the order regarding the recovery of salaries received by the appellant w.e.f 03.10.2011 till 19.10.2016 is set aside. The present service appeal is partially accepted in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

  
(Hussain Shah)  
Member

  
(Muhammad Hamid Mughal)  
Member

Camp Court, Swat.

ANNOUNCED  
04.12.2018


09.05.2018

The Tribunal is non-functional due to retirement of the Worthy Chairman. To come up for the same on 06.06.2018 before the S.B at camp court, Swat.

  
Reader


06.06.2018

Neither the appellant nor his counsel present. Syed Muhammad Musa, Head Constable alongwith Mr. Usman Ghani, District Attorney for the respondents present. Representative of the department submitted written reply, which is placed on file. To come up for rejoinder, if any, and arguments on 07.08.2018 before D.B at Camp Court Swat.

  
Chairman  
Camp Court, Swat

07.08.2018

Appellant in person present. Mr. Khawas Khan, S.I for respondents present. Due to summer vacation the case is adjourned to 02.10.2018 for the same at camp court Swat.

  
Reader

09.03.2018

Counsel for the appellant present. Preliminary arguments heard. The learned counsel for the appellant argued that initially the appellant ~~was~~<sup>is</sup> retired on superannuation through an order dated 19.10.2016 from a back date i.e. 2.10.2011. That the said controversy was finally resolved by this Tribunal vide judgment dated 05.09.2017 whereby the department was directed to hold proper enquiry regarding the actual date of birth of the appellant. That thereafter, the department again passed an order dated 07.11.2017 on the same line as that of order dated 19.10.2016. That against this order, the appellant filed departmental appeal on 21.11.2017 which was rejected on 17.1.2018 and thereafter, he filed the present service appeal.

The grounds as argued by the learned counsel for the appellant are that the department did not follow the directions given by this Tribunal in the judgment dated 05.09.2017. That the order dated 07.11.2017 has got no legal status.

The points raised need consideration. The appeal is admitted to regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 04.04.2018 before S.B at camp court, Swat.


Appellant Deposited  
Security & Process Fee

  
Chairman

Camp Court, Swat.

04.04.2018

Clerk of the counsel for appellant and Mr. Usman Ghani, District Attorney alongwith Mr. Khawas Khan, S.I (legal) for the respondents present. Written reply not submitted. District Attorney seeks further adjournment Granted. To come up for written reply/comments on 09.05.2018 before S.B at Camp Court, Swat.

  
Chairman



Camp court, Swat



**Form-A**  
**FORM OF ORDERSHEET**

Court of \_\_\_\_\_

Case No. 125/2018

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge   |
|-------|---------------------------|--|
| 1     | 2                         | 3  |
| 1     | 24/1/2018                 | <p>The appeal of Mr. Bacha Hussain presented today by Mr. Aziz-ur-Rehman Advocate, may be entered in the Institution Register and put up to Worthy Chairman for proper order please.</p> <p style="text-align: right;"><br/>REGISTRAR</p> |
| 2-    | 8-2-2018                  | <p>This case is entrusted to Touring S. Bench at Swat for preliminary hearing to be put up there on <u>09-03-2018</u></p> <p style="text-align: right;"><br/>CHAIRMAN</p>   |

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR

Service Appeal No. 125 of 2018

Bacha Hussain Ex-Constable No. 465, District Police, District Swat.

...Appellant

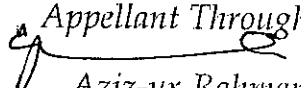
VERSUS

The Provincial Police Officer Khyber Pakhtunkhwa and Others.

...Respondents

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| 9.  | Copy of the Appeal                        | D        | 19    |
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Appellant Through  


Aziz-ur-Rahman  
Advocate Swat

Office: Khan Plaza, Gulshone Chorok,  
Mingora Swat, Cell 0333 929 7746

Dated: 23-01-2018

①

BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 125 of 2018

Bacha Hussain Ex-Constable No. 465, District Police, Khyber Pakhtunkhwa  
District Swat. Service Tribunal

Diary No. 137

...Appellant dated 24-1-2018

VERSUS

1. The Provincial Police Officer Khyber Pakhtunkhwa Peshawar.
2. The Regional Police Officer, Malakand, at Saidu Sharif, District Swat.
3. The District Police Officer, District Swat, at Gulkada.

...Respondents

APPEAL UNDER SECTION 4 OF THE  
KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL ACT, 1974 AGAINST THE  
ORDER O.B. NO. 181 DATED 07-11-2017  
WHEREBY THE ORDER O.B. NO. 179  
DATED 19-10-2016 IS UPHELD, VIDE  
WHICH THE APPELLANT IS NOT  
ONLY PREMATURELY RETIRED FROM  
SERVICE WITH RETROSPECTIVE  
EFFECT FROM 02-10-2011, BUT ORDER  
OF RECOVERY OF SALARIES TILL HAS  
ALSO BEEN MADE AGAINST THE LAW  
AND RULES AND IS NOT  
SUSTAINABLE UNDER THE LAW.  
FEELING AGGRIEVED THE  
APPELLANT PREFERRED A  
DEPARTMENTAL APPEAL WHICH  
WAS DISPOSED OFF VIDE NO. 659/E  
DATED 17-01-2018 IN A VERY

Filed to-day

Registrar

24/1/18

MECHANICAL AND CLASSICAL  
MANNER HAVING NO SUCH  
PRECEDENT, HENCE BOTH THE  
ORDERS ARE LIABLE TO BE SET  
ASIDE.

PRAYER:

*That on acceptance of this appeal both the orders impugned may very kindly be set aside being void ab initio and against the law and rules and retire the appellant with effect from the 02-10-2017 with all consequential benefits till date.*

---

Respectfully Sheweth:

Facts:

- i. *That the appellant joined the Police Force back in the year 1979 as constable and since then regularly permed his duties with great zeal and vigor.*
- ii. *That at the time of joining of the Police Force the date of birth of the appellant is recorded as 03-10-1957 by the authorities in the Service Book. Copy of the relevant page is enclosed as annexure "A".*
- iii. *That the appellant was regularly performing his duties without any objection of any sort either by the authorities or the general public and was planning to get retired on the due date in the year 2017 by attaining the age of superannuation under the law.*
- iv. *That to utter surprise a bolt from the blue fell on the appellant when he was issued his retirement*

order on attaining the age of superannuation vide order O.B. No. 179 dated 19-10-2016. Copy of the order dated 19-10-2016 is enclosed as Annexure "B".

- v. That the authorities are adamant enough that in the order impugned the appellant is retired by attaining the age of superannuation retrospectively i.e. 02-11-2011 and also that recovery be made for the over payment, strange enough for the period he remained in service and performed duties till the order impugned is issued. Copies of the various "mads" are enclosed as Annexure "C", showing the duties performed by the appellant.
- vi. That feeling aggrieved from the order impugned the appellant preferred a departmental appeal to the respondent No. 1 for setting aside the order impugned a being void ab initio, but the same is filed vide memo No. 9538/E dated Saidu Sharif, the 14-11-2016 in a very classical manner and without giving any reasons or even findings as to why the order impugned is not set aside. Copy of the appeal is enclosed as Annexure "D" and that of the memo dated 14-11-2016 is enclosed as Annexure "E", respectively.
- vii. That the appellant feeling aggrieved approached this Honourable Tribunal for the redressal of his grievance which was decided vide judgment dated 05-09-2017 whereby the department was considered to conduct de novo inquiry to ascertain the facts. Copy of the judgment dated 05-09-2017 is enclosed as Annexure "F".

- viii. That in compliance of the judgment a shame inquiry was conducted in light of which the impugned order dated 19-10-2017 was upheld vide order O.B. No. 181 dated 07-11-2017. Copy of the order dated 07-11-2017 is enclosed as Annexure "G".
- ix. That feeling aggrieved of the same the appellant preferred a departmental appeal which was disposed off in a mechanical manner vide order No. 659/E dated 17-01-2018 against the law, rules and in negation of the specific directions given by this Honourable Tribunal. Copy of the appeal is enclosed as Annexure "H" and that of the order dated 17-01-2018 is enclosed as Annexure "I", respectively.
- x. That still feeling aggrieved and having no other option this Honourable tribunal is approached on the following grounds for the redressal of the grievances.

Grounds:

- a. That under the law a Civil Servant is to be retired on attaining the age of superannuation, which is to be calculated from the date of birth recorded in the service book at the time of joining the service, but the same is not the case with the appellant and his age of superannuation is calculated from the sources not finding any mention in his service record, thus the appellant has not been treated in accordance with the law and rules.

- b. That the appellant's date of birth as recorded in the service book by the authorities is 03-10-1957 and the same was lying in the custody of the respondents, yet the age of superannuation is wrongly been calculated and the appellant is relieved of his duties prematurely against the law and rules. Moreover the alleged alteration in the service book of the appellant is attributed to the appellant whereas the same was in the custody under safe lock and key of the Respondents.
- c. That this is a classic case of its kind wherein not only the age of superannuation is calculated wrongly, but even strange enough the same has been done with retrospective effect.
- d. That the appellant was regularly performing his duties till the date the order impugned was passed and also received salaries legally till the same period as well. Copy of the pay roll is enclosed as Annexure "J".
- e. That the appellant has neither moved an application for early retirement nor has committed any act of commission or omission which may constitute any offence under any law, or which may render him disqualified for further service.
- f. That further strange enough when a Police Constable is to be retired on attaining the age of superannuation so under the Policy Guidelines "Promotion of Constable on Superannuation PG-4/2013 he is to be promoted C-II Head Constable, but the same is ignored in case of the appellant without any reasons.

- g. That the respondents have misused their official authority and have used the same in a very colourful manner to the detriment of the appellant.
- h. That the respondents have used the authority not vested in them.
- i. That the appellant is wrongly been deprived of his legal and legitimate right without any reasons.

It is, therefore, very respectfully prayed that on acceptance of this appeal the orders impugned may very kindly be set aside being void ab initio and against the law and rules and retire the appellant from service with effect from 02-10-2017 with all back/consequential benefits.

Any other relief deemed appropriate in the circumstances and not specifically prayed for may also very kindly be granted.

Appellant  
باجا ہسین  
Bacha Hussain  
Through Counsels,  
Aziz-ur-Rahman  
Imdad Ullah  
Advocates Swat



7

BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. \_\_\_\_\_ of 2018

Bacha Hussain Ex-Constable No. 465, District Police,  
District Swat.

...Appellant

VERSUS

The Provincial Police Officer Khyber Pakhtunkhwa and  
Others.

...Respondents


AFFIDAVIT

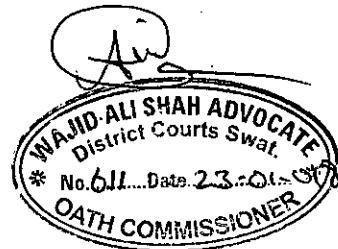
It is solemnly stated on Oath that all the contents of  
this service appeal are true and correct to the best of my  
knowledge and belief and nothing has either been  
misstated or kept concealed before this Honourable  
Tribunal.

Deponent

  
Bacha Hussain

Identified By:

  
Imdad Ullah  
Advocate Swat



BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. \_\_\_\_\_ of 2018

*Bacha Hussain Ex-Constable No. 465, District Police,  
District Swat.*

*...Appellant*

**VERSUS**

*The Provincial Police Officer Khyber Pakhtunkhwa and  
Others.*

*...Respondents*

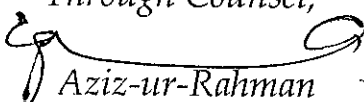
ADDRESSES OF THE PARTIES

Appellant:

*Bacha Hussain Ex-Constable No. 465, District Police,  
District Swat.*

Respondents:

- 1. The Provincial Police Officer Khyber Pakhtunkhwa  
and Others.*
- 2. The Regional Police Officer, Malakand, at Saidu  
Sharif, District Swat.*
- 3. The District Police Officer, District Swat, at  
Gulkada.*

*Appellant  
Through Counsel,  
  
Aziz-ur-Rahman  
Advocate Swat*

BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. \_\_\_\_\_ of 2018

Bacha Hussain Ex-Constable No. 465, District Police,  
District Swat.

...Applicant/Appellant

**VERSUS**

The Provincial Police Officer Khyber Pakhtunkhwa and  
Others.

...Respondents

APPLICATION FOR GRANT OF INTERIM RELIEF.

Respectfully Sheweth:

- a. That the above titled case is pending before this Honourable Tribunal, in which no date of hearing is fixed as yet.
- b. That the appellant has got prima facie case in his favour.
- c. That the balance of convenience is also in favour of the appellant.
- d. That if the interim relief in the shape of suspension of the operation of the order impugned is not stopped the appellant will suffer irreparable loss.

It is, therefore, very respectfully prayed that on acceptance of this application the operation of the order impugned may very kindly be suspended till the final disposal of the appeal.

Applicant/Appellant

پادشہ  
Bacha Hussain  
Through Counsels,

ع  
Aziz-ur-Rahman

Imdad Ullah  
Advocates Swat

BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. \_\_\_\_\_ of 2018

Bacha Hussain Ex-Constable No. 465, District Police,  
District Swat.

...Appellant

VERSUS

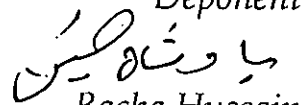
The Provincial Police Officer Khyber Pakhtunkhwa and  
Others.

...Respondents

AFFIDAVIT

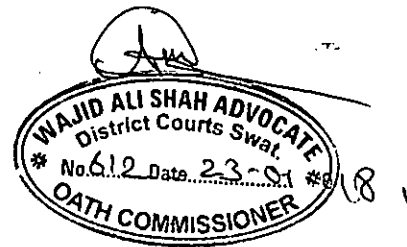
It is solemnly stated on Oath that all the contents of  
this application are true and correct to best of my  
knowledge and belief and nothing has either been  
misstated or kept concealed before this Honourable  
Tribunal.

Deponent

  
Bacha Hussain

Identified By:

Imdad Ullah  
Advocate Swat



Annexure "A"

12

CHARACTER AND SERVICE ROLL OF

REGISTRATION NO. ( ) in  
 District ( ) in  
 Ditto ( ) in

DISTRICT.  
 DISTRICT.  
 DISTRICT.

|      |               |                |                 |                           |                      |           |            |               |           |                   |                   |                  |                    |
|------|---------------|----------------|-----------------|---------------------------|----------------------|-----------|------------|---------------|-----------|-------------------|-------------------|------------------|--------------------|
| Name | Father's Name | Tribe or Caste | Village or Town | Post and Telegraph Office | Police Station       | District  | Province   | Date of Birth | Height    | Chest Measurement | Date of Enrolment | Age on Enrolment | Distinctive Marks  |
|      | Mohd. Jinnah  | Ahghar         | Thosar          | Deo                       | Mohd. Agency, Thosar | M. Agency | N.W.P.F.P. | 3.10.1957     | 5' 7 1/2" | 35x35             | 13.10.1979        | 23 years         | As per entry in... |

Verification Roll No. dated received back and attached to the Fauji Misal.

Government Service prior to present employment, which is approved for pension service.

| Service or department                                   | Rank or Grade   | Pay of last Appointment | From | To | PERIOD |        |      |
|---|---|-------------------------|------|----|--------|--------|------|
|   |   |                         |      |    | Years  | Months | Days |
|   |   |                         |      |    |        |        |      |
| Cause of and character on discharge from above service. | Reference to orders approving above service for pension service in the Police Department. |                         |      |    |        |        |      |

Agreement.—I understand that I have been appointed under section 7 of the Police Act (V of 1861), and the purport of that section and the provisions of the Act and of the Rules issued under it and now in force, by which my discipline and conduct are governed, have been explained to me. I agree to serve faithfully under the provisions of the said Police Act and to obey all lawful orders issued to me by my Superior Officers and undertake not to resign my appointment within three years from the date of my enrolment. I have received a certificate of appointment issued under section 8 of the Police Act (V of 1861).

Signature

3. Rolled impression of fingers and thumb of left hand.

|             |           |             |
|-------------|-----------|-------------|
| Left little | Left ring | Left middle |
|             |           |             |

ATTESTED  
 [Signature]  
 ADVOCATE



Annexure B

(13)

**ORDER**

On attaining age of superannuation i.e 60 years Constable. Bacha Hussain No.465 of this district Police is hereby retired on superannuation pension in the light Medical Certificate dated 03/10/1979 placed in his Service Roll, with effect from 02/10/2011 (A.N). The overpayment of pay shall be made from his lump sump payment/gratuity with effect from 03/10/2011.

District Police Officer, Swat.

O.B. No. 179

Dated 19.10/2016.

\*\*\*\*\*

**OFFICE OF THE DISTRICT POLICE OFFICER, SWAT.**

No. \_\_\_\_\_/E, dated Gulkada the, \_\_\_\_\_/2016.

Copies to:-

- 1) District Accounts Officer, Swat for necessary action.
- 2) Pay Officer.

District Police Officer, Swat

**ATTESTED**

*Awaz*

**ADVOCATE**

کاپی

تاریخ 48 روزنامه 06/06/06

نہایت منقولہ

Annexure "C" (14)

مرد 48 روزانہ شیر بھادر خان ASI وقت 05:45 بجے مورخ 06/06/06 میں سے کہیں ان جتیا  
1996ء ہمارے 351 گاہکوں میں سے ایک اور ایکسپورٹ باجہ شخص نے 465  
موریا کیل گشت علاقہ بھانہ بھانہ پوریا پوریا

جناحیال

مقرر/مقرر

MM. P. Singh ors  
16-11-06

ATTESTED

*Chand*  
ADVOCATE



تسل نمبر ۹۹ مورخہ ۱۰/۷/۱۶

مر ۹۹ روایتی لویو سعید خان ۸۵۴۰ حقیت ۱۵۱۹۵ ع قوہ ۱۰/۷/۱۶  
اس حقیت میں مع میرا بیٹا شہزاد بخشیار ۱۶۹۶ یا سر علی ۲۵۶  
سوارہ کا لڑکا سرکار بنو میں ڈرائیور با جا حسین ۷۸۵ بوض  
جو بائیل گشت با صل حکمت بیٹک سوار خان و سرور قمان بول

جائیداد

تسل نمبر ۹۹

۱۵  
mm. f. s. min ۰۶۹  
۱۶ - ۱۱ - ۰۱۶

ATTESTED



ADVOCATE

صالحہ

نمبر 59 روزنامہ 03/08/016

نہایت سیکورہ

(16)

مرد 59 روزنامہ اکبر علی خان اس وقت 05:45 بجے مورخہ 03/08/016 اس وقت میں 1500  
پہاڑانہ یا سرکاری 2100 حجہ ہادق 351 لبریں موبائل سٹیشن سوار گاڑی  
سرکاری ڈرائیور یا چیمپین 465 باوردی ہیکل چیک کروانا ہوں۔

صالحہ عالی  
نقل از اصل  
MM.PS Min Jor  
16-11-016

ATTESTED  
*Abul*  
ADVOCATE

فلم جو ریت

نقل نمبر 45 ریت 18/10/16

خانہ نمبر

نمبر 45 ورائٹس گورنمنٹ ہاؤس از ریت 05:45 ع صوفی 18/10/16 ریت میں ممبران  
مستقبلہ، 1696 گورنمنٹ ہاؤس از ریت 05:45 ع صوفی 18/10/16 ریت میں ممبران  
ڈیپارٹمنٹ آف سوشل ویلفیئر گورنمنٹ ہاؤس از ریت 05:45 ع صوفی 18/10/16 ریت میں ممبران

خانہ نمبر  
نقل نمبر 45 ریت

P. A. A.  
AMHC PS Mirsora  
15 - 11 - 16

نمبر 57 ورائٹس گورنمنٹ ہاؤس از ریت 05:45 ع صوفی 14/10/16 ریت میں ممبران  
مستقبلہ، 351 گورنمنٹ ہاؤس از ریت 05:45 ع صوفی 14/10/16 ریت میں ممبران  
ڈیپارٹمنٹ آف سوشل ویلفیئر گورنمنٹ ہاؤس از ریت 05:45 ع صوفی 14/10/16 ریت میں ممبران

خانہ نمبر  
نقل نمبر 57 ریت

P. A. A.  
AMHC PS Mirsora  
15 - 11 - 16

ATTESTED  
[Signature]  
ADVOCATE


ٹیکری 62 دورہ ناچ 19/10/16

18

عد 62 ریپورٹ دوائی پیش 5110 وقت 16:55 بجے 19/10/16 دد 2 صفحہ  
 نیشنل بادشاہ حسین 465 ڈرائیور مائیکرو پیکاپ آفدہ اطلاع 33 والا  
 08 179 کو عرصہ 10/16 اس سے منظور ہو کر حکمہ میں فارغ ہوئے گا  
 19-10-16  
 جلم سوانحی گھنٹہ گزردہ کو منظور شدہ پیش بہ روانہ کیا گیا۔ نقل  
 لفرم اظہار عیاشی اشرف والا نے مددیت میں فرسٹل ہوگی

خا۔ عا۔ ا

نقل بطریقہ

  
 M.M. P. Minger  
 22-10-16

ATTESTED



ADVOCATE

خدمت خراب ڈی۔ ای۔ جی صاحبہ عدالت سندھ سندھ سہولت  
علوان: درخواست مرثیہ رحم امین  
خواب عالی

گزارش صید سائیل سال 1976 میں محکمہ لوہس  
میں کثیف کنٹریبل لکھی گئی تھی۔ اور تاریخ پیدائش اس وقت میں شناختی  
کارڈ میں 12-06-1957 تاریخ تھا۔ جبکہ سائیل کے عمل نامہ اسروس رپورٹ  
میں تاریخ پیدائش 3-10-1957 لکھی ہے۔ سائیل کے شناختی کارڈ اور عمل نامہ اسروس رپورٹ  
میں تاریخ پیدائش میں معمولی فرق تھا۔ سائیل نے دونوں کو درست کرنے کے لیے درخواست  
لکھی۔ کہ تپ ریکارڈ کو صحیح کریں۔ تو سائیل کو عمل نامہ تاریخ سے ریٹائرمنٹ کا آرڈر ملا۔  
تو معلوم ہوا کہ سائیل کو وضع 10/2011 سے ریٹائرڈ کر دیا گیا ہے۔

خواب عالی۔ یہ تو سہرا صہرا ہے میں نے ابھی تک بیمار وجود پر اپنی ڈیوٹی نبھاتی ہی  
احسن طریقے سے سر انجام دی ہے۔ اور متعلقہ برانچ والوں نے لکھا ہے کہ ان سے یک مشقت  
ریگوری کر دینا۔ اس میں میرا کوئی تصور نہیں۔ اور میرے تنخواہ پر سب سے بڑے کا فرض حل ہونے  
سائیل کا تعلق ایک غریب خاندان سے ہے۔ اور اب 90 سالہ عمر میں سینئر خواتین اور حکم  
جاری کیا گیا۔ کہ جو بھی کنٹریبل 60 سال پر ریٹائرڈ ہوگا۔ آخری 5 ماہ میں اس کو بحیثیت  
سید کنٹریبل ترقی کر دیا جائے گا (مجھے صہرا لفظ ہے)

سیدہ امیرہ درخواست استدعا ہے کہ سائیل کے حال پر رحم فرمائے تاکہ سائیل کو  
وضع 10/2017 سے ریٹائرڈ کر کے اور سیدہ کنٹریبل ترقی کرنے کا حکم صادر فرمائیں  
تو سائیل صاحبہ دعا گو رہیں گی



العارض

انکوائری افسر ایس۔ ایچ۔ سی۔ 465 صفحہ لوہس سندھ  
سندھ سہولت

DPO Sweet  
For Comments.

ATTESTED  
*[Signature]*  
ADVOCATE

*[Signature]*  
RPO MCD Kalyan

From : The Regional Police Officer,  
Malakand, at Saidu Sharif, Swat.

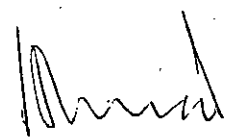
To : The District Police Officer, Swat.

No. 9538 /E, dated Saidu Sharif, the 14-11- /2016.

Subject: MERCY PETITION.

Memorandum:

Please refer to your office memo No. 13627/E, dated 04/11/2016.  
Mercy petition of Retired Constable Badshah Hussain No. 665 of  
Swat District has been examined and seen by Worthy Regional Police Officer,  
Malakand.



(OFFICE SUPDT: )  
For Regional Police Officer,  
Malakand, at Saidu Sharif Swat

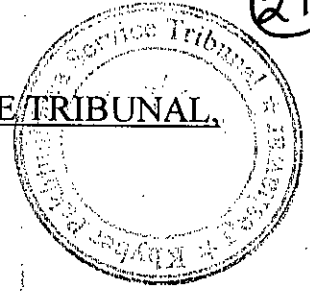


ATTESTED



ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
CAMP COURT SWAT



Service Appeal No 1235/2016

Date of Institution... 22.11.2016

Date of decision... 05.09.2017

Bacha Hussain Ex-Constable No.465, District Police,  
District, Swat.

... (appellant)

Versus

1. The Regional Police Officer, Malakand, at Saidu Sharif,  
District Swat and another. ... (Respondents)

Mr. Imdad Ullah ... For appellant  
Advocate

Mr. Muhammad Zubair, ... For respondents.  
District Attorney

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN  
MR. AHMAD HASSAN, ... MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the

Learned Counsel for the appellant and learned District Attorney for the  
respondents heard and record perused.

FACTS

The appellant was retired from service vide impugned order dated  
19.10.2016 from back date i.e 03.10.2011 against which he filed  
departmental appeal which was rejected on 14.11.2016 and thereafter  
appellant brought the instant appeal on 22.11.2016. The reason for the  
impugned order is that according to the medical certificate submitted by the  
appellant at the time of entry into service his age was 28 years and if his date

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
ATTESTED  
*[Signature]*

ATTESTED  
*[Signature]*  
ADVOCATE

of birth is considered to be correct, according to the medical certificate then his age of superannuation falls on 03.10.2011.

### ARGUMENTS

3. Learned counsel for the appellant argued that medical certificate on which the authority had relied cannot be conclusive evidence of the age of the appellant as the same was not written on any scientific ground but only on the basis of appearance. That the appellant had disclosed his age as 28 years before the Medical Superintendent at the time of issuing of certificate. That the impugned order is, therefore, not sustainable in the eyes of law.

4. On the other hand the learned District Attorney argued that not only the medical certificate speaks about the age of the appellant as 28 years but his service record also affirms the same. The learned District Attorney referred to the service book of the appellant wherein the date of birth originally entered as 03.10.1951 both in figure and words. That in the figures 1 has been converted into 7. That in the words "fiftyone" is still intact. That the authority has rightly issued the impugned order.

### CONCLUSION

After hearing both the learned counsel for the parties and perusing the record, this Tribunal is of the view that it was necessary for the authority issuing the retirement order to have probed into the matter whether any tampering was made in the record and whether the discrepancy between letters and figures has been made intentionally and which one of the two is correct because the date of birth written in figures is in harmony with the statement of the appellant before the Medical Officer whereas the date of birth written in words is in consonance with the medical certificate. But the

EXAMINER  
Khwabul Pakirullah  
Tribunal

ATTESTED

ATTESTED  
Advocate  
ADVOCATE



(23)

authority only referred to the medical certificate in the impugned order and not touched other aspects of the matter as discussed above. Therefore, this Tribunal by accepting this appeal directs the authority that before issuance of retirement order to probe the matter by taking into account all other facts including record of birth maintained at local level, if any, school record, if any, and NADRA record. The department is directed to complete the whole proceedings within a period of two months from the date of receipt of this judgment and then issue a fresh order on the basis of report failing which the appellant shall be deemed to have been reinstated in service and shall continue his service till his superannuation as alleged by him. Parties are left to bear their own costs. File be consigned to the record room.

Sd-  
(Ahmad Hassan)  
Member

Sd-  
(Niaz Muhammad Khan)  
Chairman  
Camp Court, Swat

ANNOUNCED  
05.09.2017

Certified to be true copy

*Fazle*  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Camp Court, Swat

Date of Presentation of Application 05-09-2017  
Number of Words 1200  
Copying Fee 8-00  
Urgent -  
Total 8-00  
Name of Copyist FAZLE SUBHAN  
Date of Copying 06-09-2017  
Date of Submission 06-09-2017

ATTESTED

*Chul*  
ADVOCATE

Annexure

24

**ORDER**

In compliance with directions of the Service Tribunal dated 05-09-2017 issued in Service Appeal No.1235/2016 titled as Bacha Hussain Ex-Constable No.465 vs Government, the undersigned vide this office order bearing 15386-88/P, dated 04-10-2017 appointed Superintendent of Police, upper Swat to conduct enquiry and probe into the matter as per judgment of the Service Tribunal cited ibid. The enquiry officer conducted a full fledged enquiry and submitted a comprehensive findings report, wherein he found that date of birth of the appellant Ex-constable Bacha Hussain has been tampered and 1951 has been converted to 1957 to get prolong and maximum service benefits and recommended upholding of his retirement order O.B No.179, dated 19-10-2016.

The undersigned being competent authority agree with the findings of the enquiry officer and retirement order of Constable Bacha Hussain No.465 O.B. No.179, dated 19-10-2016 is hereby upheld.

District Police Officer, Swat.

OB No. 181

Dated 7-11 /2017.

\*\*\*\*\*

**OFFICE OF THE DISTRICT POLICE OFFICER, SWAT.**

No. 17960-88, dated Saidu Sharif the, 8-11-2017.

Copies to:-

- 1) District Accounts Officer, Swat.
- 2) Pay Officer, Swat.

District Police Officer, Swat.

**ATTESTED**



**ADVOCATE**

(25)

**Finding Report**

Reference worthy District Police Officer order bearing No.15386-88/P dated 04/10/2017, the undersigned was appointed as enquiry officer to probe into the matter in accordance with judgment of August Service Tribunal in Service Appeal No.1235/2016 dated 05/09/2017 titled as Ex-Fc Badshah Hussain vs Government. Hence, in compliance with order referred above of the competent authority, a full fledged fact finding enquiry was conducted as per judgment of the Service Tribunal.

**The following were facts-in-issue before the enquiry officer:-**

- Whether the appellant Ex-Fc Badshah Hussain was enlisted in Police as constable on the basis of Medical Certificate in accordance with law/rules or otherwise?
- Whether the appellant's date of birth was recorded in Service Book as per Medical Certificate?
- Whether the Date of Birth recorded in Service Book is tampered to the advantage of the appellant?
- Whether the appellant has raised the issue of alteration/rectification in age recorded in Service Book before the competent authority within limitation?
- Whether the appellant had rightly and legally been retired from service from back date?
- Whether any official or dealing head of Establishment Branch can be held responsible for alleged tampering in Service Book or negligence?

**Finding on Fact-in-issue (a):-**

Statement of the appellant Ex-Fc Badshah Hussain was recorded who did not dispose as to whether he was enlisted on the basis of Medical Certificate, rather stated that he was enlisted at the age of 21 years on 13/10/1979 in Police department as foot Constable. He further stated that his correct Date of Birth is 12/06/1957. In absence of any other documents, Police Constables used to be recruited in Police on the basis of the apparent age. According to record, he was recruited in Police on the basis of Medical Certificate. Hence, it is held that appellant was appointed as Constable in Police department on the basis of Medical Certificate issued on 13/10/1979 according to law and rules.

**Finding on Fact-in-issue (b):-**

As per Medical Certificate issued to the appellant on 03/10/1979, the appellant's apparent age was recorded as 28 years and accordingly Date of Birth of the appellant was undoubtedly settled as 03/10/1951. Since, the appellant had neither presented School leaving certificate nor any other document specifying his age at the time of enrolment in Police department, therefore his Date of Birth i.e. 03/10/1951 was settled and recorded in Service Book as per Medical Certificate which has rightly been done.

**ATTESTED****ADVOCATE**

Finding on Fact-in-issue (c):-

To probe into the fact-in-issue regarding tampering of Date of Birth in Service Book; the Service Book in original was examined by the enquiry officer. It was transpired that Date of Birth recorded in words i.e. "Nineteen Fifty-one" remained intact whereas Date of Birth in digits seemed to be tampered and 1951 had been converted to 1957. Difference and contradiction between words and digits was sufficient to prove tampering, but the matter needed a thorough probe, therefore vide letter No.17111/P dated 25/10/2017 expert opinion regarding tampering in Date of Birth was requested from Regional FSL Swat. The questioned documents branch of Regional FSL examined the relevant part of Service Book and vide Lab: case # QD / HW/2017-27 reported that "after careful examination and analysis of the questioned handwritten Date of Birth of Badshah Hussain on his Service Book (item No.02), it is concluded that the questioned Date of Birth of Badshah Hussain on his Service Book (item No.02), has been tampered. The original Date of Birth is 03/10/1951 which has been tampered to make it 03/10/1957". Hence, it is held that Date of Birth of the appellant had been tampered and original date of Birth handwritten i.e 03/10/1951 is illegally and dishonestly converted to 03/10/1957. Tampering is made in Date of Birth of appellant Badshah Hussain Khan to his advantage to get maximum and prolong service benefits.

Finding on Fact-in-issue (d):-

As per record, the appellant never approached the competent authority to alter, modify or rectify his Date of Birth in service record within period of limitation. Hussain Ali Ex-incumbent Senior Clerk Establishment Branch of DPO office recorded his statement and deposed that the appellant Badshah Hussain submitted an application dated 10/10/2016 which was forwarded by SHO Mingora and SDPO City praying therein to modify his Date of Birth in consonance with his CNIC so that he may not face complication in pension etc. Meaning thereby, the appellant had assumed criminal silence over tampered Date of Birth and at the eleventh hour just attempted to modify his Date of Birth in Service Book to the extent of year to make it in consonance with his CNIC. However, Rule-07 (2), Chapter-09 of Police Rules-1934 provides that alteration in date of Birth or age may only be made within two years of the Civil Servant's entry into service. Hence, it is held that the appellant never approached the competent authority within limitation for alteration in Date of Birth.

Finding on Fact-in-issue (e):-

As per law and Rules, once Date of Birth has been recorded in Service Book, it is settled that when not altered within limitation as discussed above, it would determine retirement age of Civil Servant.

As per reported case vide NLR 1995 TD (service) 232 (a) it has been held that "Medical Certificate fixing age of Police Official on date of his appointment, would determine retirement age of Police official. School leaving certificate stealthily introduced in service record be kept out of consideration in determining retirement age"

In view of the above, it is held that appellant has rightly and legally been retired from service in accordance with Medical Certificate.

ATTESTED



ADVOCATE

Finding on Fact-in-issue (f):-


There came nothing on surface as to whether who from office staff of Establishment Branch is responsible for tampering in the Date of Birth of the appellant, but it has been settled and proved that Date of Birth written in digits in Service Book has been tampered to the advantage of the appellant with his connivance to get maximum and prolong service benefits for a period of Six years, therefore, the appellant Bacha Hussain is held responsible for tempering in his Date of Birth recorded in his Service Book.

In addition thereto, all other relevant record i.e. NADRA record, Union Council record and service record was examined by the enquiry officer. His Birth Certificate was prepared on 11/10/2017, whereas his CNIC was issued to him on 10-08-2005 which cannot be made basis for termination of retirement age as per reported cases, NLR 1995 TD (service) 232 (a) 1994 SCMR 1633 and 1996 PLC (C.S) 447.


In view of the above findings, it is held that correct Date of Birth of the appellant Bacha Hussain for the purpose of service in Police department is 03/10/1951 and his retirement was due on 02/10/2011, therefore the competent authority has rightly and legally issued his retirement order on 19/10/2016 w.e.f 03/10/2011. The enquiry officer recommends that the order of retirement in respect of the appellant issued by the Worthy DPO Swat may be maintained.


Submitted, Please.

No 689 IST  
DATED 02/11/2017

  
Superintendent of Police,  
UpperSwat

*Agreed  
Previous order upheld*

  
8/11/17  
District Police Officer  
Swat

ATTESTED  
  
ADVOCATE



P06428101

حکومت خیبر پختونخوا پاکستان

THE GOVT OF KHYBER PAKHTUNKHWA PAKISTAN

28

پیدائش سرٹیفکیٹ

## BIRTH CERTIFICATE

CRMS No: B154015-17-0321

FORM No: P06428101

درخواست دہندہ کا نام: بادشاہ حسین  
درخواست دہندہ کا شناختی کارڈ نمبر: 1540290405691  
رشتہ: مرد خود

| بچے کا نام  | والد کا نام اشناختی کارڈ نمبر | والدہ کا نام اشناختی کارڈ نمبر | جنس | مذہب  | پیدائش کا ضلع / تاریخ |
|-------------|-------------------------------|--------------------------------|-----|-------|-----------------------|
| بادشاہ حسین | محمد امین                     | بسنی گئی                       | مرد | اسلام | مالاکند<br>12-6-1957  |

APPLICANT's NAME: BADSHAH HUSSAIN

APPLICANT's CNIC NO: 1540290405691

RELATION: SELF (MALE)

| CHILD's NAME    | FATHER's NAME / NIC NO | MOTHER's NAME / NIC NO | GENDER | RELIGION | DISTRICT AND DATE OF BIRTH   |
|-----------------|------------------------|------------------------|--------|----------|------------------------------|
| BADSHAH HUSSAIN | MUHAMMAD AMIN          | BASNIGAI               | MALE   | ISLAM    | MALAKAND P AREA<br>12-6-1957 |

GRAND FATHER's NAME: HAZRAT ULLAH

GRAND FATHER's CNIC NO:

دادا کا نام: حضرت اللہ  
دادا کا شناختی کارڈ نمبر:

لیٹ اندراج: [ ]

نارمل اندراج: [ ] 11-10-2017

تاریخ اندراج:

پتہ: محلہ بابا خیل، گاؤں تھانا، تحصیل: سوات رانی زائی، ضلع: مالاکند

ADDRESS: MOHALLA BABA KHEL, VILLAGE: THANA,  
TEHSIL: SWAT RANI ZAI SUB-, DISTRICT: MALAKAND P AREA

11-10-2017

تاریخ اجراء:

دستخط  
[Signature]  
تھانا کانس (015) ضلع: مالاکند  
Secretary  
VIC Baba Khail Thana

ATTESTED

[Signature]

ADVOCATE



RECEIPT



29

نام: بادشاہ حسین

والد کا نام: محمد امین

Date : 06-10-2017  
Consumer ID : 15602-0369236-1  
Verified CNIC : 15402-9040569-1  
In Database \* : YES  
Service Charges: 100.00  
Receipt No: 6928417100615153301

Remarks:

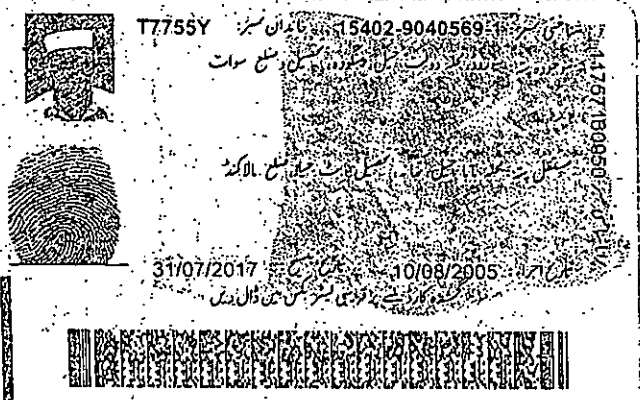
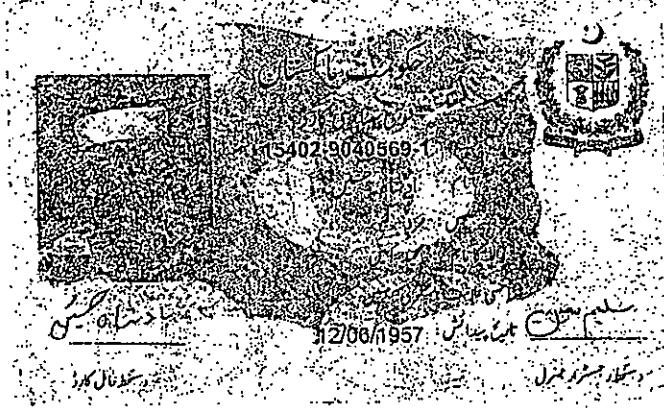
- Present in database.

\* For Details refer to Kiosk Screen

ATTESTED

ADVOCATE

30




ATTESTED

ADVOCATE

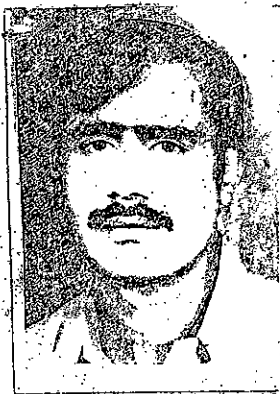


حکومت پاکستان  
 شناختی کارڈ



AG 554724

بار شاہ سید



31

1175-57-1609550

بار شاہ حسین

قصاب  
 قصاب  
 قصاب

المنان

سید زین العابدین

1957

ATTESTED

*[Signature]*

ADVOCATE

Before the Regional Police Officer Malakand Saidu Sharif Swat Annexure  
Bacha Hussain Retired Constable No. 465. ....Appellant

**Versus**

The District Police Officer Swat. ....Respondent

**Departmental appeal against the order OB No. 181 Dated 7/11/2017.**

Respected Sir,

The appellant submits as under.

That the appellant was retired from police as constable on 19/10/2016 through OB No. 179. The appellant was retired from 02/10/2011 (A.N) and also the overpayment of pay shall be made from his lump sump payment gratuity with effect from 03/10/2011.

The appellant filed a service appeal in service tribunal and decided it on 05.09.2017. the case was sent to department for inquiry.

The inquiry was conducted and the whole record put before the inquiry officer was not considered at all.

The NADRA record was not considered the NIC old and new was not considered.

The appellant was stated to have made the changes in the date of birth in digits but the service book was with the clerk and not the appellant but the inquiry officer did not noted the same and blamed the appellant for it.

The inquiry officer did not made the inquiry as was mentioned in the judgment of the service tribunal.

I want to be heard in person.

It is therefore very humbly requested that the order OB No. 181 Dated 7/11/2017 may be set aside and the appellant retired correctly from the correct date of birth of 3/10/1957.

**ATTESTED**

*[Signature]*

**ADVOCATE**

Appellant

*[Signature]*  
Bacha Hussain

**Affidavit**

It is solemnly stated on oath that all the contents of this departmental appeal are true and correct to the best of my knowledge and belief.

**ATTESTED**

*[Signature]*  
**Attestation Seal of an Advocate**  
District Court Swat.  
Date of Issuance 17 Dec 2017  
\* No. 382 Date 22/11/17  
**OATH COMMISSIONER**

Deponent

*[Signature]*  
Bacha Hussain

Dated: 21-11-2017



OFFICE OF THE  
**REGIONAL POLICE OFFICER, MALAKAND**

AT SAIDU SHARIF SWAT.

Ph: 0946-9240381 & Fax No. 0946-9240390

Email: digmalakand@yahoo.com

33


**ORDER:**

This order will dispose off departmental appeal of Ex-Constable Bacha Hussain No. 465 of Swat District for back benefit, being retired on 02/10/2011, while the applicant served upto 19/10/2016.

Brief facts of the case are that Ex-Constable Bacha Hussain No. 465 of Swat District was retired from service on 19/10/2016 from back date i.e 02/10/2011 because according to his medical certificate issued on 03/10/1979 his age was recorded as 28 years for the purpose of enlistment as Constable in Police Department and as per that certificate; he had to reach his superannuation on 02/10/2011. According to medical certificate, his date of birth was written as 03/10/1951, however date of birth recorded in words still remained intact i.e "Nineteen fifty one" resultantly he stayed in service beyond 60 years. The appellant challenged the order of his retirement in the service tribunal in service appeal no. 1235/2016. His appeal was accepted with the direction to probe the matter by taking into account birth record, school record and NADRA record vide judgment dated 05/09/2017. Therefore, in compliance with the aforementioned judgment of service tribunal, Superintendent of Police Upper Swat was appointed as enquiry officer to hold enquiry into the matter as per judgment of the service tribunal vide District Police Officer, Swat memo No. 15386-88/P, dated 04/01/2017. The enquiry officer conducted a full-fledged enquiry and submitted a comprehensive finding report, wherein he found that date of birth of the appellant has been tampered and 1951 has converted to 1957 to get prolong and maximum service benefits and recommended upholding of his retirement order OB No. 179 dated 19/10/2016. His service book was sent to RFSL for examination, who confirmed tampering in date of birth. The District Police Officer, Swat agreed with the finding of the enquiry officer and retirement order of Ex-Constable Bacha Hussain No. 465 OB No. 179 dated 19/10/2017 was upheld.

He was called in order room on 11/01/2018 and heard him in person. The enquiry papers was thoroughly perused which revealed that the order passed by DPO, Swat vide OB No. 181, dated 07/11/2017 in compliance of honourable Service Tribunal directions, is correct, because the tampering in date of birth of the appellant has been proved duly verified from FSL. Also the appellant could not produce any cogent reason in his defence. Therefore, his appeal is hereby filed.

Order announced.

  
(AKHTAR HAYAT KHAN) PSP  
Regional Police Officer,  
Malakand, at Saidu Sharif Swat

No. 659 /E,

Dated 17-01 /2018.

Copy to District Police Officer, Swat for information and necessary action with reference to his office Memo: No.19634/E, dated 29/11/2017. The Enquiry file and is returned herewith for record in your office.

\*\*\*\*\*

**ATTESTED**



**ADVOCATE**

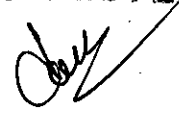
Annexure

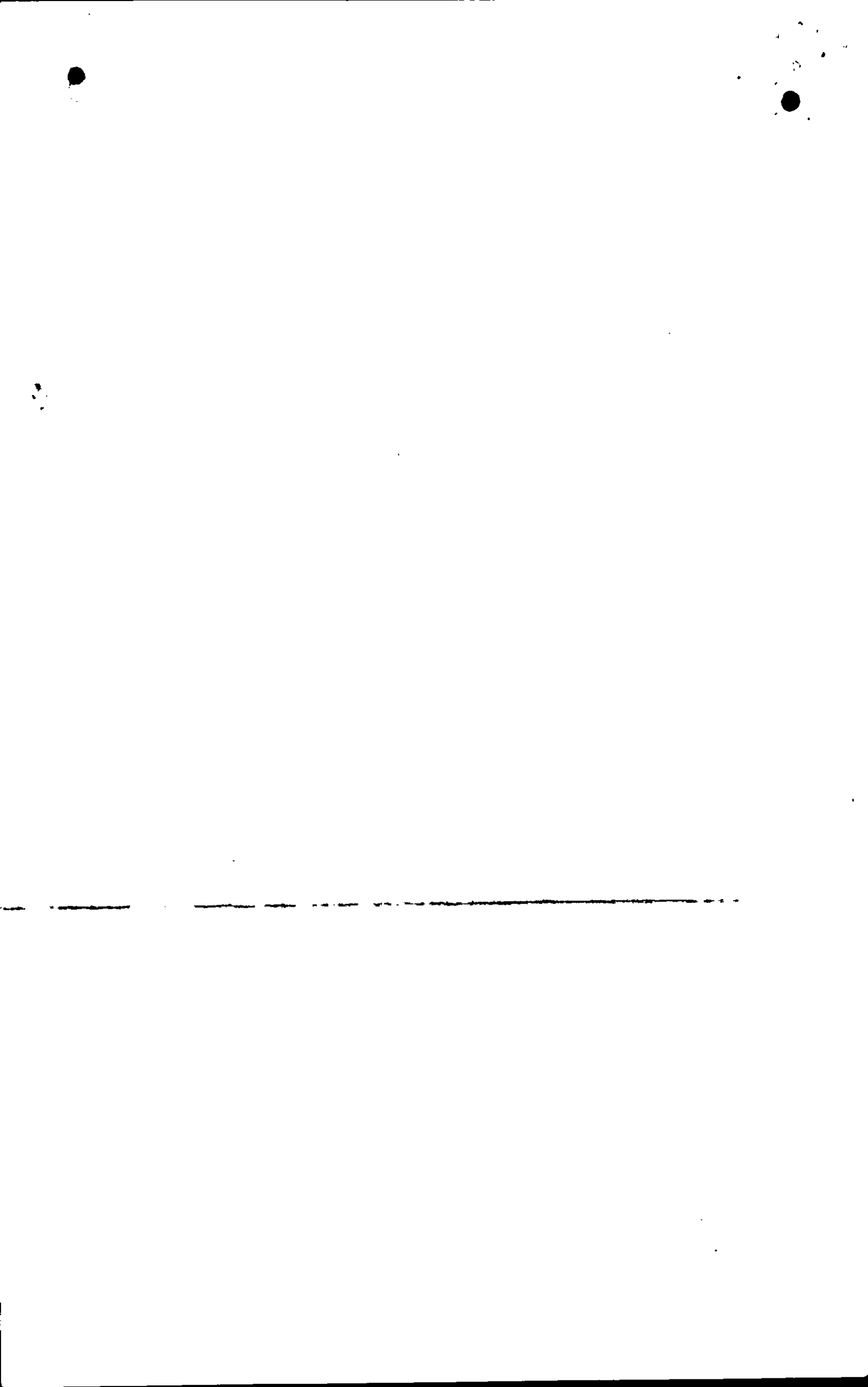
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34

00076754 BACHA HUSSAIN CNIC: 1560290405691 Desig: CONSTABLE (80237541) Grade: 05 NTN: 0 Buckle No.: 465 Gazetted/Non-Gazetted: N  
PAYMENTS AMOUNT DEDUCTIONS AMOUNT LOAN/FUND PRINCIPAL REPAYED BALANCE

|                           |           |                            |         |                     |                 |
|---------------------------|-----------|----------------------------|---------|---------------------|-----------------|
| 0001 Basic Pay            | 21,190.00 | 3005 GPF Subscription - Rs | 745.00- | GPF#: POLSW001679   | 162,753.00      |
| 1000 House Rent Allowance | 1,002.00  | 3511 Addl Group Insurance  | 7.00-   | INCOME TAX 2,078.40 | 522.00 1,557.36 |
| 1210 Convey Allowance 20  | 1,932.00  | 3530 Police wel:Fud BS-1 t | 424.00- |                     |                 |
| 1300 Medical Allowance    | 1,500.00  | 3604 Group Insurance       | 67.00-  |                     |                 |
| 1547 Ration Allowance     | 681.00    | 3609 Income Tax            | 174.00- |                     |                 |
| 1567 Washing Allowance    | 150.00    |                            |         |                     |                 |
| 1646 Constabulary R Allow | 300.00    |                            |         |                     |                 |
| 1901 Risk Allowance (Poli | 5,010.00  |                            |         |                     |                 |
| 1902 Special Incentive AI | 775.00    |                            |         |                     |                 |
| 1911 Compen Allow 20% (1- | 1,000.00  |                            |         |                     |                 |
| 1933 Special Risk Allowan | 3,000.00  |                            |         |                     |                 |
| 2148 15% Adhoc Relief All | 660.00    |                            |         |                     |                 |
| 2168 Fixed Daily Allowanc | 2,730.00  |                            |         |                     |                 |
| 2199 Adhoc Relief Allow @ | 429.00    |                            |         |                     |                 |
| 2211 Adhoc Relief All 201 | 2,119.00  |                            |         |                     |                 |

|                    |                         |                    |           |                         |           |                     |            |
|--------------------|-------------------------|--------------------|-----------|-------------------------|-----------|---------------------|------------|
| PAYMENTS           | 42,478.00               | DEDUCTIONS         | 1,417.00- | NET PAY                 | 41,061.00 | 01.09.2016          | 30.09.2016 |
| Branch Code:221276 | NEW ROAD, MINGORA SWAT. | HABIB BANK LIMITED |           | NEW ROAD, MINGORA SWAT. | SWAT      | Acct.No: 7900358103 |            |

**ATTESTED**  
  
**ADVOCATE**



In the matter of:-

Bacha Hussain Appellant

VERSUS

The PPO, K.P. and Others Respondent

KNOWN ALL to whom these present shall come that I/we, the undersigned appoint

**AZIZ-UR-RAHMAN and IMDAD ULLAH**

Advocates High Court

To be the advocate for the Appellant in the above mentioned case to do all the following acts, deeds and things or any one of them, that is to say:-

- ❖ To acts, appear and plead in the above mentioned case in this court or any other Court in which the same may be tried or heard in the first instance or in appeal or review or revision or execution or at any other stage of its progress until its final decision.
- ❖ To present pleadings, appeals, cross objections or petitions for execution review, revision, withdrawal, compromise or other petition or affidavits or other documents as shall be deemed necessary or advisable for the prosecution of the said case in all its stages.
- ❖ To withdraw or compromise the said or submit to arbitration any difference or dispute that shall arise touching or in any manner relating to the said case.
- ❖ To receive money and grant receipts therefore, and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.
- ❖ To employ any other Legal Practitioner authorizing him to exercise the power and authorities hereby conferred on the Advocate wherever he may think fit to do so.
- ❖ I understand that the services of aforesaid lawyer are hired irrespective of the outcome of the case.

And I/We hereby agreed to ratify whatever the advocate or his substitute shall to do in the said premises.

And I/We hereby agree not to hold the Advocate or his substitute responsible for the result of the said case in consequences of his absence from the Court when the said case is called up for hearing.

And I/We hereby agree that in the event of the whole or any part of the fee agreed by me/us to be paid to the Advocate remaining unpaid, the Advocate shall be entitled to withdraw from the prosecution of the case until the same is paid.

IN THE WITNESS WHEREOF I/WE hereunto set my/our hand(s) to these present the contents of which have been explained to and understood by me/us, this 18 day of 01 2018

\_\_\_\_\_  
(Signature or thumb impression)

\_\_\_\_\_  
(Signature or thumb impression)

\_\_\_\_\_  
(Signature or thumb impression)

Accepted subject to terms regarding fees

(AZIZ-UR-RAHMAN)

Advocate High Court

Office: Khan Plaza, Gulshone Chowk

G.T. Road Mingora, District Swat.

Cell No. 0300 907 0671

(IMDAD ULLAH)

Advocate High Court

Office: Khan Plaza, Gulshone Chowk,

G.T. Road, Mingora, District Swat

Cell No. 0333 929 7746

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.**

**Service Appeal No.125/2018**

**Bacha Hussain Ex-Constable No.465, District Swat Police, District Swat.**

----- (Appellant)

**Versus**

1. Provincial Police Officer Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Malakand at Saidu Sharif, Swat.
3. District Police Officer, District Swat at Gulkada.

----- (Respondents)

**INDEX**

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| 3     | Authority                | -        | 6     |
| 4     | Copy of FSL Report       | "A"      | 7-8   |
| 5     | Copy of Judgment         | "B"      | 9-11  |
| 6     | Copy of Enquiry paper    | "C"      | 12-14 |

  
**District Police Officer, Swat  
(Respondent No.03)**

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.**

**Service Appeal No.125/2018**

Bacha Hussain Ex-Constable No.465, District Swat Police, District Swat.

----- (Appellant)

**Versus**

1. Provincial Police Officer Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Malakand at Saidu Sharif, Swat.
3. District Police Officer, District Swat at Gulkada.

----- (Respondents)

**Parawise comments on behalf of Respondents.**

**Respectfully shewith:**

**Preliminarily objection:-**

1. That the service appeal is time barred.
2. That the service appeal is not maintainable in its present form.
3. The instant appeal is bad due to mis-joinder and non-joinder of necessary parties.
4. That the appellant is estopped due to his own conduct.
5. That the appellant has concealed material facts from this Honorable Tribunal.
6. That the appellant has got no cause of action and locus standi to prefer the instant appeal.
7. The appellant has not come to this Tribunal with clean hands.

**ON FACTS**

- i. Correct to the extent that the appellant had joined Police department as constable in the year 1979 as per service record, while rest of the para is not plausible because every police officer is under obligations to perform his duty with zeal and zest as being member of disciplined force there is no room for lethargy.



- 2
- ii. Incorrect. As per source record and relevant extract the date of Birth of appellant was recorded as 03/10/1951 in figures as well as in words but the appellant manipulated the source record by making over writing and changed the figure 51 to 57. It is worthwhile that a person however clever he may be, does make mistake while doing an illegal act and the same is case of appellant that he forgot to change the words fifty one.
  - iii. Incorrect. Date of retirement of the appellant on superannuation falls on 02/10/2011 as per entry in service record as well as according to medical Certificate.
  - iv. Incorrect. The appellant has rightly been retired by the competent authority accordingly.
  - v. Incorrect. The duty performed by the appellant had no legal status rather whatever he had done was for his own gain/benefits which was illegal and the same was absolutely in his knowledge. As per laboratory report, the appellant has tempered the original date of birth and is liable to be retired on attaining the age of superannuation i.e 02/10/2011. The question of retrospectivity does not arise in case of tempering of original record which has been provided by the Forensic Laboratory. He is not entitled for pay, service after 02/10/2011.
  - vi. Incorrect. As discussed earlier the very act of the appellant regarding manipulation is objectionable rather does come within the domain of cheating but the department by considering his length of service took a lenient view by not booking him under the substantive Law. Hence, order passed by the competent authority as well as appellate authority is in consonance with Law.
  - vii. Correct to the extent that appellant filed service appeal which was decided vide order dated 05/09/2017 whereby the department was directed to probe into the matter by taking into account all fact, hence in this respect the relevant extract of service book was also subjected to analysis through Regional Forensic Science Laboratory Swat. As per expert opinion "After careful examination and analysis of the questioned handwritten date of birth of Bacha Hussain on his service book has been

tempered. The original date of birth is 03/10/1951 which has been tempered to make it 03/10/1957. FSL report as annexure "A".

- viii. Incorrect. As per directions of the honorable Tribunal the matter was thoroughly probed inot during the course of which facts were shifted whereafter manipulation of the appellant was proved as broad day light. Vide judgment and Enquiry report are annexure "B" and "C".
- ix. Para already explained as the competent as well as appellate authority while taking into consideration the entire material and facts passed a speaking order, which is in consonance with Law, rules and directions of the honorable tribunal.
- x. Keeping in view the above facts appeal of the appellant is liable to be dismissed on the following grounds.

#### GROUNDS

- a. Incorrect. The age of superannuation is to be calculated from date of birth recorded in the service book record and the same was done in the case of appellant.
- b. Para already explained wherein each and every aspect of the stance of appellant was discussed have, stance of the appellant is not plausible because he cooked the story just to give legal cover to his illegality.
- c. Incorrect. The respondents department has acted in accordance with Law & Rules.
- d. Incorrect. Appellant performed his duties beyond the age of superannuation which has no legal status at all rather the same comes within the domain of cheating, misleading and imputation.
- e. Para already explained.
- f. Correct to the extent of policy Guidelines mentioned in the appeal but the policy has been devised in the year 2013 while the appellant attained the age of superannuation in the year 2011, hence his case does not hit by the said policy.

g. Incorrect. The respondent department has no grudge against the appellant.

h. Incorrect. The respondents acted in accordance with Law.

i. Incorrect. The respondent after taking into consideration the entire material passed the orders wherein sound reasons have been recorded.

**PRAYER:-**

In view of the above comments of answering respondents, it is prayed that instant appeal may be dismissed with cost.



Provincial Police officer,  
Khyber Pakhtunkhwa, Peshawar  
(Respondent No.1)



Regional Police Officer,  
Malakand Region at Saidu Sharif, Swat  
(Respondent No.2)



District Police Officer, Swat.  
(Respondent No.3)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.**

5

**Service Appeal No.125/2018**

**Bacha Hussain Ex-Constable No.465, District Swat Police, District Swat.**

----- (Appellant)

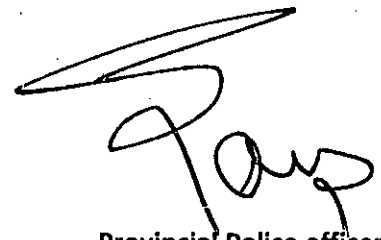
**Versus**

1. Provincial Police Officer Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Malakand at Saidu Sharif, Swat.
3. District Police Officer, District Swat at Gulkada.

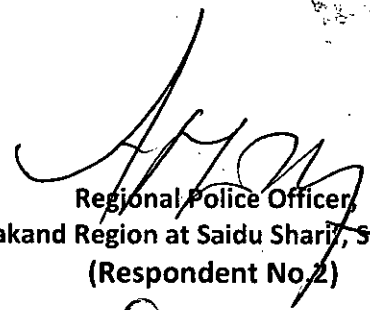
----- (Respondents)

**AFFIDAVIT**

We, the above respondents do hereby solemnly affirm on oath and declare that the contents of the appeal are correct/true to the best of our knowledge/ belief and nothing has been kept secret from the August Tribunal.



**Provincial Police officer,  
Khyber Pakhtunkhwa, Peshawar  
(Respondent No.1)**



**Regional Police Officer,  
Malakand Region at Saidu Sharif, Swat  
(Respondent No.2)**



**District Police Officer, Swat.  
(Respondent No.3)**

**Service Appeal No.125/2018**

Bacha Hussain Ex-Constable No.465, District Swat Police, District Swat.

----- (Appellant)

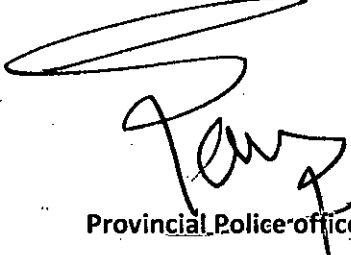
**Versus**

1. Provincial Police Officer Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Malakand at Saidu Sharif, Swat.
3. District Police Officer, District Swat at Gulkada.

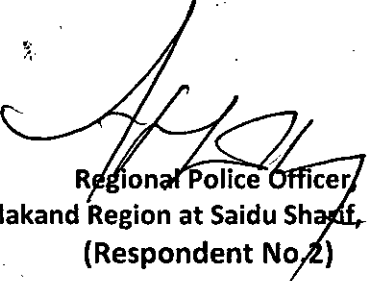
----- (Respondents)

**AUTHORITY LETTER**

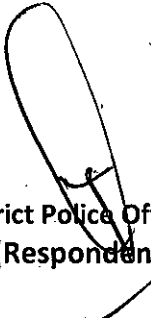
We, the above respondents do hereby authorize Mr. Khawas Khan SI Legal Swat to appear in the Service Tribunal on our behalf on each date fixed in connection with titled Service Appeal and do whatever is needed.



**Provincial Police officer,  
Khyber Pakhtunkhwa, Peshawar  
(Respondent No.1)**



**Regional Police Officer,  
Malakand Region at Saidu Sharif, Swat  
(Respondent No.2)**



**District Police Officer, Swat.  
(Respondent No.3)**

Am-2017 A 7



**REGIONAL FORENSIC SCIENCE LABORATORY (RFSL),  
LANDAKAY, SWAT,  
KP Police, Government of Khyber Pakhtunkhwa  
Tel: +92-946883129, Fax: +92-946883129**

**Questioned Documents Examination Report**

|                   |                                   |               |                                   |
|-------------------|-----------------------------------|---------------|-----------------------------------|
| Lab: Case#        | QD/HW/2017-27                     | Attention to  | District Police Officer,<br>Swat. |
| Submitting Agency | District Police Officer,<br>Swat. | FIR No.       | N/A                               |
| Complainant Name  | N/A                               | Victim's Name | N/A                               |

**Description of Evidence Submitted**

The following evidence items were submitted at RFSL, Swat for Forensic Document Examination.

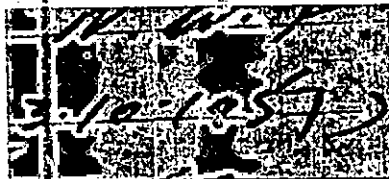
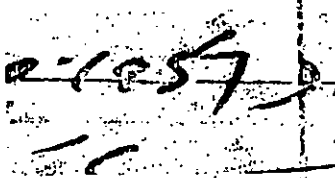

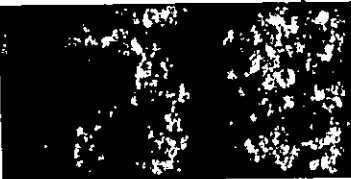
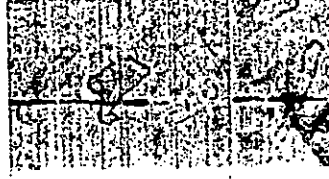
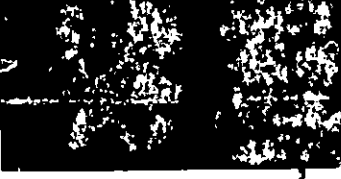
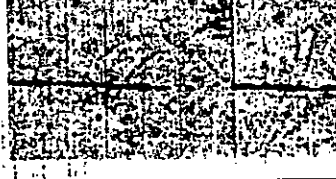
- | Item No. | Description  |
|----------|--|
| 1.       | Original cover letter no. 17111, Dated: 25/10/2017 of subject "REQUEST FOR EXPERT OPINION" from District Police officer, Swat to Assistant Director Regional Forensic Science Laboratory Malakand, at Landakay Swat. |
| 2.       | Original Service Book of Badshah Khan bearing questioned handwritten date of birth.<br>The case consists of total 02 items.  |

**Conclusion**

After careful examination and analysis of the questioned handwritten date of birth of Badshah Khan on his service book (item no. 02), it is concluded that the questioned date of birth of Badshah Khan on his service book (item no. 02), has been tempered. The Original Date of birth is 03/10/1951 which has been tempered to make it 03/10/1957.

Amir A  
8

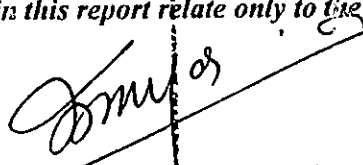
RFSL CASE NO. QD/HW/2017-27

| Before Examination/Analysis   |  |
|---|--|
|    |  |
| After Examination/Analysis  |  |
|   |   |
|  |  |
|  |  |

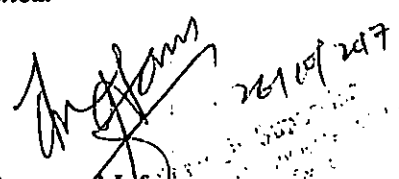
**Disposition of Evidence**

All the evidence of this case is preserved in Secure Vault and will be furnished upon request.

*Note: The results in this report relate only to the item(s) examined.*



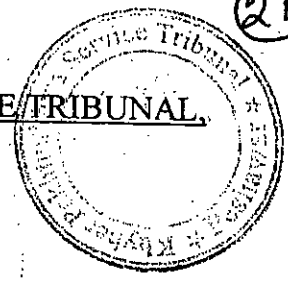
Assistant Director,  
Regional Forensic Science Laboratory  
(RFSL), Swat



Muhammad Irfan,  
Forensic Supervisor/QD Section,  
(RFSL), Swat

Am-Ex-2 B  
21

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F



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
CAMP COURT SWAT

Service Appeal No 1235/2016

Date of Institution... 22.11.2016  
Date of decision... 05.09.2017

Bacha Hussain Ex-Constable No.465, District Police,  
District, Swat.

... (appellant)

Versus

1. The Regional Police Officer, Malakand, at Saidu Sharif,  
District Swat and another. ... (Respondents)

Mr. Imdad Ullah  
Advocate ... For appellant

Mr. Muhammad Zubair,  
District Attorney ... For respondents.

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN  
MR. AHMAD HASSAN, ... MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the  
Learned Counsel for the appellant and learned District Attorney for the  
respondents heard and record perused.

FACTS

The appellant was retired from service vide impugned order dated  
19.10.2016 from back date i.e 03.10.2011 against which he filed  
departmental appeal which was rejected on 14.11.2016 and thereafter  
appellant brought the instant appeal on 22.11.2016. The reason for the  
impugned order is that according to the medical certificate submitted by the  
appellant at the time of entry into service his age was 28 years and if his date

EXAMINER  
Khyber Pakhtunkhwa  
Tribunal  
ATTESTED  
*[Signature]*

ATTESTED  
*[Signature]*  
ADVOCATE



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of birth is considered to be correct, according to the medical certificate then his age of superannuation falls on 03.10.2011.

ARGUMENTS

3. Learned counsel for the appellant argued that medical certificate on which the authority had relied cannot be conclusive evidence of the age of the appellant as the same was not written on any scientific ground but only on the basis of appearance. That the appellant had disclosed his age as 28 years before the Medical Superintendent at the time of issuing of certificate. That the impugned order is, therefore, not sustainable in the eyes of law.

4. On the other hand the learned District Attorney argued that not only the medical certificate speaks about the age of the appellant as 28 years but his service record also affirms the same. The learned District Attorney referred to the service book of the appellant wherein the date of birth originally entered as 03.10.1951 both in figure and words. That in the figures 1 has been converted into 7. That in the words "fiftyone" is still intact. That the authority has rightly issued the impugned order.

CONCLUSION

After hearing both the learned counsel for the parties and perusing the record, this Tribunal is of the view that it was necessary for the authority issuing the retirement order to have probed into the matter whether any tampering was made in the record and whether the discrepancy between letters and figures has been made intentionally and which one of the two is correct because the date of birth written in figures is in harmony with the statement of the appellant before the Medical Officer, whereas the date of birth written in words is in consonance with the medical certificate. But the

EXAMINER  
Prabir Palit  
Tribunal

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ATTESTED  
*[Signature]*  
ADVOCATE

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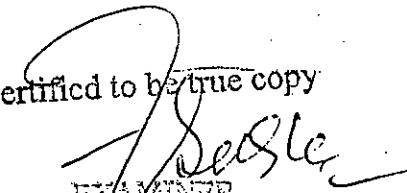
(23)

authority only referred to the medical certificate in the impugned order and not touched other aspects of the matter as discussed above. Therefore, this Tribunal by accepting this appeal directs the authority that before issuance of retirement order to probe the matter by taking into account all other facts including record of birth maintained at local level, if any, school record, if any, and NADRA record. The department is directed to complete the whole proceedings within a period of two months from the date of receipt of this judgment and then issue a fresh order on the basis of report failing which the appellant shall be deemed to have been reinstated in service and shall continue his service till his superannuation as alleged by him. Parties are left to bear their own costs. File be consigned to the record room.

Sd-  
 (Niaz Muhammad Khan)  
 Chairman  
 Camp Court, Swat

Sd-  
 (Ahmad Hassan)  
 Member

ANNOUNCED  
 05.09.2017

Certified to be true copy  
  
 EXAMINER  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Camp Court, Swat

Date of Presentation of Application 05-09-2017  
 Number of Words 1200  
 Copying Fee 8-00  
 Urgent -  
 Total 8-00  
 Name of Copyholder FAZLE SUBHAN  
 Date of Copying 06-09-2017  
 Date of 06-09-2017

ATTESTED

  
 ADVOCATE

Police Department

12  
Anwar C  
District Swat

### Finding Report

Reference worthy District Police Officer order bearing No.15386-88/P dated 04/10/2017, the undersigned was appointed as enquiry officer to probe into the matter in accordance with judgment of August Service Tribunal in Service Appeal No.1235/2016 dated 05/09/2017 titled as Ex-Fc Badshah Hussain vs Government. Hence, in compliance with order referred above of the competent authority; a full fledged fact finding enquiry was conducted as per judgment of the Service Tribunal.

#### **The following were facts-in-issue before the enquiry officer:-**

- a. Whether the appellant Ex-Fc Badshah Hussain was enlisted in Police as constable on the basis of Medical Certificate in accordance with law/rules or otherwise?
- b. Whether the appellant's date of birth was recorded in Service Book as per Medical Certificate?
- c. Whether the Date of Birth recorded in Service Book is tampered to the advantage of the appellant?
- d. Whether the appellant has raised the issue of alteration/rectification in age recorded in Service Book before the competent authority within limitation?
- e. Whether the appellant had rightly and legally been retired from service from back date?
- f. Whether any official or dealing head of Establishment Branch can be held responsible for alleged tampering in Service Book or negligence?

#### **Finding on Fact-in-issue (a):-**

Statement of the appellant Ex-Fc Badshah Hussain was recorded who did not dispose as to whether he was enlisted on the basis of Medical Certificate, rather stated that he was enlisted at the age of 21 years on 13/10/1979 in Police department as foot Constable. He further stated that his correct Date of Birth is 12/06/1957. In absence of any other documents, Police Constables used to be recruited in Police on the basis of the apparent age. According to record, he was recruited in Police on the basis of Medical Certificate. Hence, it is held that appellant was appointed as Constable in Police department on the basis of Medical Certificate issued on 13/10/1979 according to law and rules.

#### **Finding on Fact-in-issue (b):-**

As per Medical Certificate issued to the appellant on 03/10/1979, the appellant's apparent age was recorded as 28 years and accordingly Date of Birth of the appellant was undoubtedly settled as 03/10/1951. Since, the appellant had neither presented School leaving certificate nor any other document specifying his age at the time of enrolment in Police department, therefore his Date of Birth i.e. 03/10/1951 was settled and recorded in Service Book as per Medical Certificate which has rightly been done.

Finding on Fact-in-issue (c):-

To probe into the fact-in-issue regarding tampering of Date of Birth in Service Book; the Service Book in original was examined by the enquiry officer. It was transpired that Date of Birth recorded in words i.e. "Nineteen Fifty-one" remained intact whereas Date of Birth in digits seemed to be tampered and 1951 had been converted to 1957. Difference and contradiction between words and digits was sufficient to prove tampering, but the matter needed a thorough probe, therefore vide letter No.17111/P dated 25/10/2017 expert opinion regarding tampering in Date of Birth was requested from Regional FSL Swat. The questioned documents branch of Regional FSL examined the relevant part of Service Book and vide Lab: case # QD / HW/2017-27 reported that **"after careful examination and analysis of the questioned handwritten Date of Birth of Badshah Hussain on his Service Book (item No.02), it is concluded that the questioned Date of Birth of Badshah Hussain on his Service Book (item No.02), has been tampered. The original Date of Birth is 03/10/1951 which has been tampered to make it 03/10/1957"**. Hence, it is held that Date of Birth of the appellant had been tampered and original date of Birth handwritten i.e 03/10/1951 is illegally and dishonestly converted to 03/10/1957. Tampering is made in Date of Birth of appellant Badshah Hussain Khan to his advantage to get maximum and prolong service benefits.

Finding on Fact-in-issue (d):-

As per record, the appellant never approached the competent authority to alter, modify or rectify his Date of Birth in service record within period of limitation. Hussain Ali Ex-incumbent Senior Clerk Establishment Branch of DPO office recorded his statement and deposed that the appellant Badshah Hussain submitted an application dated 10/10/2016 which was forwarded by SHO Mingora and SDPO City praying therein to modify his Date of Birth in consonance with his CNIC so that he may not face complication in pension etc. Meaning thereby, the appellant had assumed criminal silence over tampered Date of Birth and at the eleventh hour just attempted to modify his Date of Birth in Service Book to the extent of year to make it in consonance with his CNIC. However, Rule-07 (2), Chapter-09 of Police Rules-1934 provides that alteration in date of Birth or age may only be made within two years of the Civil Servant's entry into service. Hence, it is held that the appellant never approached the competent authority within limitation for alteration in Date of Birth.

Finding on Fact-in-issue (e):-

As per law and Rules, once Date of Birth has been recorded in Service Book, it is settled that when not altered within limitation as discussed above, it would determine retirement age of Civil Servant.

As per reported case vide NLR 1995 TD (service) 232 (a) it has been held that **"Medical Certificate fixing age of Police Official on date of his appointment, would determine retirement age of Police official. School leaving certificate stealthily introduced in service record be kept out of consideration in determining retirement age"**

In view of the above, it is held that appellant has rightly and legally been retired from service in accordance with Medical Certificate.

Answer

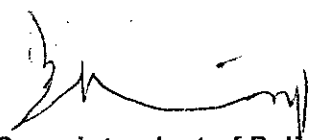
Finding on Fact-in-issue (f):-

There came nothing on surface as to whether who from office staff of Establishment Branch is responsible for tampering in the Date of Birth of the appellant, but it has been settled and proved that Date of Birth written in digits in Service Book has been tampered to the advantage of the appellant with his connivance to get maximum and prolong service benefits for a period of Six years, therefore, the appellant Bacha Hussain is held responsible for tempering in his Date of Birth recorded in his Service Book.

In addition thereto, all other relevant record i.e. NADRA record, Union Council record and service record was examined by the enquiry officer. His Birth Certificate was prepared on 11/10/2017, whereas his CNIC was issued to him on 10-08-2005 which cannot be made basis for termination of retirement age as per reported cases, NLR 1995 TD (service) 232 (a) 1994 SCMR 1633 and 1996 PLC (C.S) 447.

In view of the above findings, it is held that correct Date of Birth of the appellant Bacha Hussain for the purpose of service in Police department is 03/10/1951 and his retirement was due on 02/10/2011, therefore the competent authority has rightly and legally issued his retirement order on 19/10/2016 w.e.f 03/10/2011. The enquiry officer recommends that the order of retirement in respect of the appellant issued by the Worthy DPO Swat may be maintained.

Submitted, Please.

  
Superintendent of Police,  
UpperSwat

No. 687 IST  
DATED 02/11/2017.

*Agreed  
Previous order upheld*

  
8/11/17  
District Officer  
Swat

BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 125 of 2018

Bacha Hussain Ex-Constable No. 465, District Police,  
District Swat.

...Appellant

VERSUS

The Regional Police Officer, Malakand, at Saidu Sharif,  
District Swat and Other.

...Respondents

REJOINDER BY THE APPELLANT.

Respectfully Sheweth:

Preliminary Objections:

That all the preliminary objections are incorrect, baseless, against the law, rules, facts and Shariah, hence are specifically denied. Moreover the appellant has got a prima facie case in his favour and has approached this honourable tribunal well within time and this honourable tribunal has got the jurisdiction to adjudicate upon the same.

On Facts:

1. Para 1 of the comments as drafted being admission needs no reply.

*Plan on file  
2/10/2018*

2. *Para 2 of the comments as drafted is incorrect and baseless and in need of solid evidence. The change which is allegedly attributed to the appellant is very much mockery of the respondent department as the same is always under lock and key of the authorities and only they are supposed to make any sort of entry, whatsoever, thus the para is specifically denied.*
3. *Para 3 of the comments as drafted is incorrect and against the available record, thus the para is denied.*
4. *Para 4 of the comments as drafted is incorrect and against the available record, thus the para is denied specifically.*
5. *Para 5 of the comments as drafted is incorrect, based on misstatements and misrepresentation of the material facts, the laboratory never put the blame on the appellant as his hand writing samples were never taken, the alleged conclusion is drawn by the authorities as per their own whims and conjectures which cannot be substantiated at all. Moreover the service record is always in the safe custody of the department and not the employee and it is the authority, custodian, to be blamed and not the appellant, who is made the scape goat, thus the para is denied specifically.*
6. *Para 6 of the comments as drafted is also incorrect and based on whims and surmises as the service record of the appellant was always with the department in their safe custody and any change or alleged maneuvering if any was only to be*

attributed to the custodian and not the appellant, who is made to suffer for no fault of his, moreover the department has still not yet found the actual culprit behind the actual manipulator and made the appellant a scape goat. Further that the dicta of the Apex Court is very much clear that the work done by the appellant has to be paid otherwise the same is amounting to forced labor, thus the para is denied specifically.

7. Para 7 of the comments as drafted is illusive and misleading as the laboratory never put the responsibility on the appellant of the alleged tempering, but the department is making the appellant a scape goat to save its own skin at the cost of the vested rights of the appellant, thus the para is specifically denied.
8. Para 8 of the comments as drafted is incorrect and based on misstatements and whims of the department as the actual culprit is never brought to the front and the appellant is made to suffer without any proof, moreover the service record of the appellant was with the department and they were in such slumber that they could not point out the alleged tempering well in time so as to avoid this complication on one hand while bringing the actual manipulator to the front, thus the para is denied.
9. Para 9 of the comments is vague, evasive and devoid of merits as the actual culprit is yet to brought to light, the hiding of which is not known to the appellant, thus the para is denied.



10. Para 10 of the comments is against the law, rules and Shariah, the appellant has got a prima facie case in his favour and this honourable tribunal has got the jurisdiction to adjudicate upon the same, thus the para is denied.

On Grounds:

- a. Ground A of the comments as drafted is incorrect and volt face as the same is not only done with retrospective effect, but the same recovery is also order to be made for the legal duty the appellant has performed due to the deep slumber of the respondent department, which can never be attributed to the appellant by any stretch of imagination and law, thus the para is denied.
- b. Ground B of the comments as drafted is incorrect and based on whims and surmises, moreover the para is devoid of merits and in need of solid evidence, the appellant is made a scape goat just to save the skin of those who are at the helm of affairs and responsible as well, thus the para is denied specifically.
- c. Ground C of the comments as drafted is vague, evasive and devoid of merits as well as the law and rules emanating from the commands of the constitution are completely bulldozed, thus the para is denied.


- d. Ground D of the comments as drafted is incorrect and devoid of merits as the appellant was made to perform his duties due to the deep slumber of the respondent department for which the appellant cannot be held responsible, especially in light of plethora of judgments of the Apex Court on this very issue, thus the para is denied specifically.
- e. Ground E of the comments as drafted is vague and evasive and amounts to admission, thus needs no reply.
- f. Ground F of the comments as drafted is devoid of merits and against the facts and record, as the retirement order of the appellant is made with retrospective effect and that too due to the lapse of the department for which lapse the appellant cannot be held responsible, thus the para is denied specifically.
- g. Ground G of the comments as drafted is devoid of merits and volt face as the lapse of the department is attributed to the appellant, thus the para is denied.
- h. Ground H of the comments as drafted is also vague and devoid of merits, thus the same is denied.
- i. Ground I of the comments as drafted is incorrect and based on concealment of material facts to the utter detriment of the appellant, thus the para is denied.

It is, therefore, very respectfully prayed that on acceptance of this rejoinder the appeal of the appellant may very kindly be decided as prayed for originally.

Appellant

  
Bacha Hussain

Through Counsel,

  
Imdad Ullah

Advocate Swat

BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 125 of 2018.

Bacha Hussain Ex-Constable No. 465, District Police,  
District Swat.

...Appellant

VERSUS


The Regional Police Officer, Malakand, at Saidu Sharif,  
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...Respondents

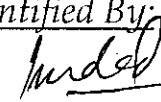
AFFIDAVIT

It is solemnly stated on Oath that all the contents of  
this rejoinder are true and correct to the best of my  
knowledge and belief and nothing has either been  
misstated or kept concealed before this honourable  
tribunal.

Deponent

  
Bacha Hussain

Identified By:

  
Imdad Ullah  
Advocate Swat



تاریخ

متل در ۴۵ روزهای ۱۵/۱۸

مردمان

مردمانی در وقتیکه آن در وقت ۵:۴۵ به وقت ۱۵/۱۸ رسیده است و هم در میان  
میتواند، ۱۶۹۶ مرد صادق ۳۵۱ نفر ضایع می باشد که مستقیم به سوی کاروان میگردانند  
و در مجاورت حرمین ۹۶۵ غلام در وقتیکه در وقتیکه رسیده است

ضمایم  
تغذیه و نقل

P. A. L.  
AMTC PS Mirzagarh  
15 - 11 - 66



مردمانی علی بن ابراهیم از وقت ۵:۴۵ به وقت ۱۵/۱۴ رسیده است و هم در میان  
صادق ۳۵۱ میوه کاروان متغیر و در مجاورت حرمین ۹۶۵ غلام میگردانند  
تست غلام نظام در وقتیکه در وقتیکه رسیده است

ضمایم  
تغذیه و نقل

P. A. L.  
AMTC PS Mirzagarh  
15 - 11 - 66



KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 2394 /ST

Dated 14 /12/ 2018

To

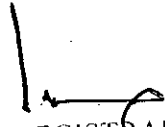
The District Police Officer,  
Government of Khyber Pakhtunkhwa,  
Swat at Gulkada.

Subject: -

JUDGMENT IN APPEAL NO 125/2018, MR. BACHA HUSSAIN

I am directed to forward here with a certified copy of Judgement dated 04.12.2018 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.