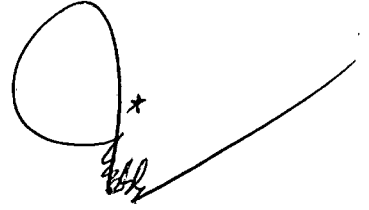


06.04.2022

Clerk of learned counsel for the appellant present.

Clerk of learned counsel for the appellant seeks adjournment on the ground that learned counsel is not available today due to general strike of the bar. Adjourned. To come up for preliminary hearing on 27.06.2022 before S.B.



(MIAN MUHAMMAD)
MEMBER(E)

27.06.2022

Learned Member (Executive), is on leave. Therefore, the case is adjourned to 03.08.2022 for the same as before.



READER

3rd August, 2022

Counsel for the appellant present.

The point involved in this matter is of jurisdiction whether this Tribunal or the Federal Service Tribunal will be exercising the jurisdiction in this matter. A similar matter came up before the Tribunal in which the preliminary hearing on the point of jurisdiction was adjourned to some other date. The office is directed to locate that case and fix both the cases on one and the same day. Notices be then issued to the appellant and his counsel for the date fixed. 3-10-22

Counsel was informed telephonically for the date fixed 03/10/2022



(Kalim Arshad Khan)
Chairman

25.11.2021

Junior of learned counsel for the appellant present.

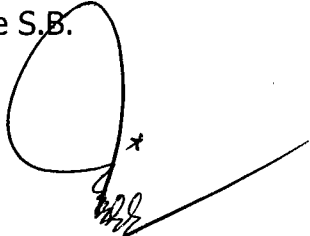
Junior of learned counsel for the appellant submitted an application for adjournment wherein he stated that senior counsel is indisposed today, which is placed on file. Granted. To come up for preliminary hearing on 31.01.2022 before S.B.


(MIAN MUHAMMAD)
MEMBER (E)

31.01.2022

Mr. Mulayam Zada, Junior of learned counsel for the appellant present.

Junior of learned counsel for the appellant submitted an application for adjournment alongwith cause list of the august Supreme Court of Pakistan wherein he stated that the learned senior counsel is busy before the august Supreme Court of Pakistan, Islamabad. Application is placed on file. Adjourned. To come up for preliminary hearing on 31.03.2022 before S.B.


(Mian Muhammad)
Member(E)

31st March, 2022

Junior to counsel for the appellant present. Seeks adjournment due to non-availability of learned senior counsel for the appellant. Adjourned. Last opportunity is granted. To come up for preliminary hearing on 06.04.2022 before S.B.


CHAIRMAN,

1114/19

06.07.2021

Junior to counsel for the appellant present and submitted an application for adjournment as his senior is not in attendance due to family bereavement. Adjourned to 29.09.2021 for preliminary hearing before S.B.


Chairman

29.09.2021

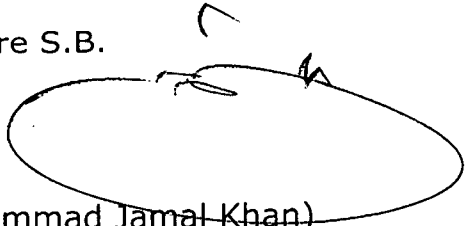
Mr. Mulaim Zada, Advocate, Junior of learned counsel for the appellant present.

Junior of learned counsel for the appellant requested for adjournment on the ground that learned senior counsel is not available today. Adjourned. To come up for preliminary hearing before the S.B on 25.11.2021.


(MIAN MUHAMMAD)
MEMBER (E)

22.10.2020

Since the Members of the High Court as well as of the District Bar Association Peshawar are observing strike today, therefore, the case is adjourned to 30.12.2020 on which date to come up for preliminary hearing before S.B.

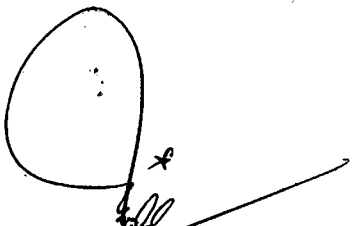

(Muhammad Jamal Khan)
Member (Judicial)

30.12.2020

Junior to counsel for the appellant present.

Former requests for adjournment as learned senior counsel has proceeded to Islamabad.

Adjourned to 25.03.2021 before S.B.


(Mian Muhammad)
Member(E)

25.03.2021

Appellant present through counsel.

He made a request for adjournment; adjourned. To come up for preliminary arguments on 06 / 07 / 2021 before S.B.


(Rozina Rehman)
Member (J)

19.02.2020

Learned counsel for the appellant present, submitted copy of order of the august Supreme Court of Pakistan dated 23.01.2020 in Civil Appeal No.105-P/2010 and Civil Appeal No.119-P/2011 and seeks adjournment. Adjourn. To come up for preliminary hearing on 02.04.2020 at the request of learned counsel for the appellant, before S.B.



Member

01.04.2020

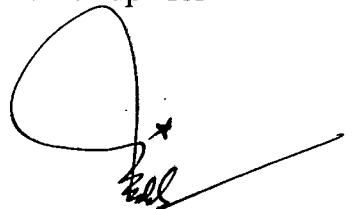
Due to public holiday on account of COVID-19, the case is adjourned for the same on 25.06.2020 before S.B.



Reader

25.06.2020

None for the appellant present. Notices be issued to the appellant and his counsel. Adjourned. To come up for preliminary hearing on 31.08.2020 before S.B.



MEMBER

31.08.2020

Nemo for the appellant. Notice be issued to the appellant and his counsel. Adjourned. To come up for preliminary hearing on 22.10.2020 before S.B.



Member (E)

03.12.2019

Counsel for the appellant present.

Learned counsel states that the matter of jurisdiction of learned Federal Service Tribunal in respect of officials of Levy Force came up for hearing before the Apex Court on 20.11.2019. Copy of order passed by the august Court is to be obtained by the appellant for which he has already applied. In order to find the fate of instant appeal qua jurisdiction of this Tribunal, learned counsel requests for time to lay hands on the verdict of Apex Court.

Adjourned to 09.01.2020 before S.B.

Chairman 

09.01.2020

Junior to counsel for the appellant present.

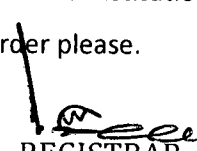


Requests for adjournment due to general strike of the Bar. Adjourned to 19.02.2020 for hearing in the light of order dated 03.12.2019.

Chairman 

Form- A
FORM OF ORDER SHEET

Court of _____

Case No.- 1114/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	02/09/2019	<p>The appeal of Mr. Arbab Hussain presented today by Mr. Asif Hameed Qureshi Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 2/9/19</p>
2-	03/09/19	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>16/10/19</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	16.10.2019	<p>Counsel for the appellant present.</p> <p>In response to a question regarding jurisdiction of this Tribunal in entertaining the appeal in hand in view of Khyber Pakhtunkhwa Ordinance No. 1 of 2019, learned counsel requests for time to further prepare the brief.</p> <p>Adjourned to 03.12.2019 before S.B.</p> <p style="text-align: right;"> Chairman</p>

BEFORE THE SERVICE TRIBUNAL, KPK, PESHAWAR.

Service Appeal No:- 1114 /2019

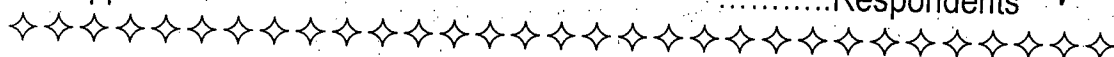
Arbab Hussain

Versus

Home Secretary KPK & others

..... Appellant

..... Respondents



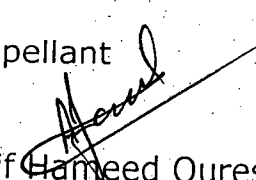
INDEX

S#	Description of the Documents	Annex	Pages
1.	<i>Grounds of Service Appeal</i>	*	1-7
2.	<i>Affidavit</i>	*	8
3.	<i>Addresses of Parties</i>	*	9
4.	<i>Copy of appointment order dated 27/12/1997</i>	"A"	10-11
5.	<i>Copies of the DPC meeting and seniority list</i>	"B" & "C"	12-16
6.	<i>Copies of mercy of appeals</i>	"D"	17-23
7.	<i>Copies of Writ Petition and order dated 13/03/2019</i>	"E" & "F"	24-35
8.	<i>Copies of KPK Ord No 1 of 2019 departmental appeal and judgment in Writ Petition No 354/2017 dated 01/03/2018</i>	"G" "H" & "I"	36-58
9.	<i>Wakalat Nama</i>	*	59

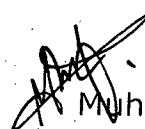
Dated:- 30/08/2019

Through:-

Appellant


 Asif Hameed Qureshi
 Advocate Supreme Court

&


 Muhammad Azeem
 Advocate High Court
 Peshawar.

(2)

1. *That the appellant was appointed as clerk out of benevolent fund on 27/12/1997 vide order No 8430 of the Worthy Political Agent (Respondent No 4). (Copy of order dated 27/12/1997 is attached as annexure "A").*
2. *That the service of the appellant then converted by appointing authority as Soldier Clerk in the office of Worthy Deputy Commissioner the then Political Agent (respondent No 4) on the recommendation of departmental promotion committee vide impugned order dated 23/02/2006. (Copies of the DPC meeting and seniority list are attached as annexure "B" & "C" respectively).*
3. *That the appellant has been working as a Soldier Clerk from the date of his appointment/conversion and was not considered for due promotion till now despite of fact that he was a senior most clerk of his previous cadre.*
4. *That appellant submitted mercy appeal dated 25/02/2006 and 24/03/2011 to the respondent No 4 for considering/including his previous service for the purpose of his seniority and next higher grade promotion as a junior clerk on the basis of specified cadre quota i.e. 33% but no action/proper order was passed by the competent authority.*

(Copies of the mercy appeals are attached as annexure "D").

5. *That the appellant was then constrained to file Writ Petition No 4005-P/2018 before the Honourable Peshawar High Court, Peshawar for getting his due legal right of promotion, but the same was dismissed for want of jurisdiction. (Copies of Writ Petition and order dated 13/03/2019 are attached as annexure "E" & "F" respectively).*

6. *That after the merger of tribal agency into province of KPK and promulgation of Ordinance No 1 of 2019 i.e. KPK Levies Force (Transition) Ord: 2019 dated 11/03/2019 and judgment of Honourable High Court passed in Writ Petition No 354-P/2017 dated 01/03/2018 the appellant then filed departmental appeal before the respondent No 1 on 22/05/2019 for the redressal of his grievances. (Copy of the Ord No 1, judgment of the Honourable Peshawar High Court, Peshawar in Writ Petition No 354-P/2017 dated 01/03/2018 and departmental appeal are attached as annexure "G" "H" & "I" respectively).*

7. *That on the above said departmental appeal, no final order has yet been passed by the respondent No 1 and therefore,*

the appellant is filing instant appeal against the order dated 23/02/2006 to the extent of conversion/inclusion of his previous service from the date of his appointment in his present post on the following amongst other grounds:-

Grounds:-

- A. That the appointment of appellant from cadre of benevolent fund clerk to the post of Soldier clerk by DPC (annexure "B") was actually the conversation of post from one cadre to another, but the Worthy the then Political Agent (respondent No 4) has wrongly and illegally treated/interpreted the recommendations of the DPC and due to that the appellant has been deprived from his due promotion to next higher post till date.

- B. That when the appellant was appointed as Soldier Clerk vide order dated 23/02/2006 from the cadre of benevolent fund clerk and at that time he was senior most official in his cadre (Annexure "C"), but his previous service was not added/included and due to that he has been placed junior in the seniority list of Soldier clerks prepared for next higher grade promotion. It is also pertinent to mention here that the report of learned APA/Account Officer Upper Kurram dated

27/02/2013 (Annexure "D/6") is of worth perusal, which clearly supports the contention/claim of the appellant.

- C. That the impugned act/actions of the appointing/competent authority is illegal, arbitrary, based on malafide and without any legal justification, hence untenable under the law.
- D. That the appointing/competent authority (respondent No 4) has not acted in accordance with law because no cogent reason and legal justification has been given for not considering the appellant to be promoted to next higher rank despite of the fact that he was senior most clerk from benevolent fund cadre when he was converted/appointed as a Soldier clerk by DPC at their own instance and if the previous service of the appellant would adjusted/included in the present post then he was senior most Soldier clerk in his cadre and was deserved to be promoted in the next higher rank/post in the same cadre under the principle of legitimate expectancy because of his good and satisfactory record.
- E. That the appointment of the appellant was made on regular basis (Annexure "A") and therefore it is settled principle

laid down by the Apex Court that seniority of civil servant shall be reckoned from the date of regular appointment and further that seniority is also vested right of civil servant and in this regard the reliance is placed as 2019 SCMR 830, 2011 SCMR 408, 2002 SCMR 1056.

- F. That the impugned act/actions of the respondents are illegal, arbitrary, based on malafide and without any legal justification, hence untenable under the law and in this regard the reliance is placed on PLD 2007 (SC) 582, 1997 SCMR 209 & 2018 PLC (CS) 539.
- G. That the act/action of respondents is also violation of fundamental rights guaranteed under Article 4,8,25 & 38 of the Constitution of Islamic Republic of Pakistan, 1973.
- H. That the Govt officials are duty bound to discharge their duties and functions in accordance with law but in the instant case the respondents have failed to perform/discharge their duties and functions fairly/properly which resulted to deprive the Petitioner from his legitimate legal right of his promotion under the law.

8

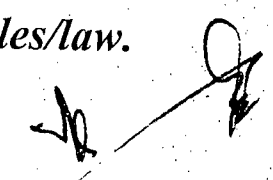
7

i) That any other ground which has not been specifically taken in the instant Service Appeal may be argued at the time of arguments with permission of this Hon'ble Tribunal.

It is, therefore, humbly prayed that on acceptance of this Service Appeal, the act/actions of the respondents may kindly be declared as illegal and without lawful authority and jurisdiction and the order dated 23/02/2006 may kindly be modified to this extent that the previous service of the appellant may kindly be added/included in the present post from the date of his conversation i.e. 23/02/2006 for the purpose of seniority and considering to be promoted in the next higher rank in the same cadre according to rules/law.

Dated:- 30/08/2019

Through:-


Appellant
Arbab Hussain


Asif Hameed Qureshi
Advocate Supreme Court


Muhammad Azeem Adv.

9

BEFORE THE SERVICE TRIBUNAL, KPK, PESHAWAR.

Service Appeal No:- _____/2019

Arbab Hussain

Versus

Home Secretary KPK & others

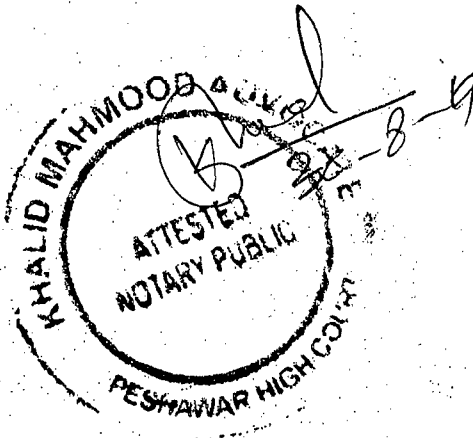
..... Appellant

..... Respondents



AFFIDAVIT

I, Arbab Hussain S/o Yousaf Hussain Soldier Clerk presently working as Steno to Assistant Commissioner Upper Kurram Tribal District Kurram, Parachinar do hereby solemnly affirm and declare on oath that the contents of this accompanying Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.



Arbab Hussain S/o Yousaf Hussain
DEPONENT
CNIC No:- 21303-9725086-5
Cell No:- 0305-9328037

Annexure
A

(11)

ORDER

Airbab Hussain son of Yousaf Hussain resident of Shalozan Kurram Agency is hereby appointed as soldier clerk out of Benevolent Fund with immediate effect.

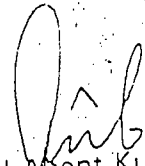
Political Agent Kurram

No. ~~873~~ 21AN

dated 27-12-87

Copy to:-

- 1. Asstt. Political Agent, Upper Kurram.,
- 2. Agency Nazir PA office Kurram.
- 3. Official concerned.


Political Agent Kurram

CTG
cy

OFFICE ORDER

Consequent upon the recommendations of Tehsildar Mahul and Asstt Political Agent (UK) linked with this office order No. 8430-32/AN dated 21/12/1997 the undersigned is pleased to amend the order as under:-

" Pay of Mr. Arbab Hussain working as clerk paid out of benevolent fund is hereby increased to Rs. 2000/- per month w.e.f 01/3/1999 "

Political Agent Kurram

No. ~~2626-28~~ / Reader,

Dated 05/8/1999

Copy to the:-

1-Ass't Political Agent (UK) Parachinar for inf:Pl:

2-Agency Nazim for inf: and n/action.

3-Official concerned for inf:

Political Agent Kurram

cit

my

Amendment
**MINUTES OF THE DEPARTMENTAL SELECTION COMMITTEE MEETING
HELD ON 22ND FEBRUARY 2006 FOR APPOINTMENT OF TWO JUNIOR
CLERK 1 IN PA'S ESTABLISHMENT AND ONE IN LEVY FORCE.**

A meeting of the Departmental Selection Committee was held on 22nd February 2006 ^{to consider} for appointment of two junior clerks one in Political Establishment (Ration Branch) and ^{another} one in the Levy Force which ^{became} were vacant due to promotion of Shabir Hussain Junior Clerk as Senior Clerk and one already vacant on promotion of Mr. Rashid Ali as Senior Clerk in levy force. The following attended the meeting:-

- | | |
|------------------------------------|----------|
| 1. Political Agent, Kurram | Chairman |
| 2. Assistant Political Agent, (LK) | Member |
| 3. Assistant Political Agent, (CK) | Member |
| 4. Superintendent PA's Office | Member |

The service books, bio-data and record of the following levy sepoy (Soldier Clerk) who were in ^{panel} penal were through^{ly} checked and examined.

1. Mr. Gulzar Hussain son of Muhammad Hussain
2. Mr. Daud Shah son of Badshah Khan
3. Syed Ashiq Hussain son of Syed Badshah
4. Mr. Mushtaq Hussain son of Muhammad Ali

The committee also checked and examined the seniority of class IV Government Servant and record of employ^{ees} paid out of Agency Welfare Fund who are serving as clerk in the offices. The Departmental Selection Committee decided and recommended the following Levy Sepoy (Soldier Clerk) for appointment as Junior Clerk in BPS-5 who are senior in the seniority, qualified and are fit for appointment:

1. Mr. Gulzar Hussain
2. Mr. Daud Shah

^{currently} The Committee also decided to appoint Mr. Arbab Hussain ^{employ} paid out of Agency Welfare Fund and Muhammad Mudassar Khan son of Syed Rahim (Ex-Senior Clerk) as Soldier Clerk against the vacancies arise on the appointment of Mr. Gulzar Hussain and Daud Shah in levy force.

[Signature]
Superintendents
PA's Office

[Signature]
Assistant Political Agent,
Central Kurram

[Signature]
Assistant Political Agent
Lower Kurram

[Signature]

[Signature]
Assistant Political Agent,
Central Kurram

1

(19)

Working Paper for appointment of two Junior Clerks, one in Levy Force and one in Ration Branch P.A Kurram office.

Two posts of Junior Clerks have become vacant on account of promotion of Mr. Rashid Ali and Shabbir Hussain as Senior Clerk in the Levy Force and Ration Branch. The Departmental Selection Committee may therefore check and examine the service books record, Bio-data and Seniority list of the following Soldier Clerks, who are on roll and senior in the Levy staff and claim right for appointment: - (Annex A)

- a. Mr. Gulzar Hussain s/o Muhammad Hussain
- b. Mr. Dawood Shah s/o Badsha Khan
- c. Syed Ashiq Hussain s/o Syed Badshah
- d. Mr. Mushtaq Hussain s/o Muhammad Ali

The DSC members may also check and examine the service record of the following Benevolent Fund Clerks (Employees out of Agency Welfare Fund) who also claim their right for appointment. (Annex B)

- a. Mr. Arbab Hussain
- b. Mr. Naqceb Hussain
- c. Syed Nasir Hussain
- d. Mr. Shah Jehan

The DSC members may also checked and examined the seniority of class IV Govt: servants who are Matric and serving as clerk in the offices who also claim their right for promotion of Junior Clerk where the Govt: has given 20% quota for promotion. (Annex C)

- a. Mr. Islam Khan Daftri (BPS-2)
- b. Mr. Abdul Jalil Daftri (BPS-2)
- c. Mr. Ashiq Hussain Niab Qasid (BPS-1)
- d. Mr. Ashiq Hussain Niab Qasid (BPS-1)
- e. Mr. Altaf Hussain Niab Qasid (BPS-1)

The DSC members may also considered the application of Mr. Syed Rahim, proceeded on pension with effect from 15/01/2006 after 60 years of age (Annex D), who has requested for appointment of his son on compassionate grounds as Junior Clerk, and has quoted a number of officials who have been appointed previously on the vacancy arise due to retirement of their fathers.

Mr. Mehdi Shah, Levy Sepoy (Working as Clerk) has also requested for appointment a Junior Clerk on vacancy with the ground that his father Mr. Hussain Shah, Junior Clerk Levy Force has been retired on 01/10/2003, on superannuation of 60 years of age. He claims right for appointment a Junior Clerk as per past practice in vague, where a number of official has been recruited on the vacancy of their fathers. (Annex D)

Fresh applications of the following have also been received for appointment /consideration.

1. Muhammad Munir s/o Muhammad Malik r/o Alisherzai
2. Riaz Ali s/o Yousuf Ali r/o Mohazai
3. Mehmood Khan s/o Sardar Khan Caste Jaji r/o Parachinar (Soldier Clerk Levy office)
4. Knadim Hussain s/o Wahab Ali r/o Hazar Parachinar
5. Shoib Hussain s/o Noor Hussain r/o Burki
6. Habib Khan s/o Amir Khan s/o Mangal
7. naqceb Hussain s/o Younas Ali r/o Jail Road Parachinar.
8. Jamil Hussain s/o Israr Hussain of Shublan

Previously, the Political Agent, Kurram vide order No. 6084/Acctt dated 08/09/1992

(Annex E) and the Promotion /Selection Committee in its first meeting held on 26/08/1992

(Annex F) have decided and recommended to the effect that "Any vacancy in the post of Junior Clerks arising in the establishment of the Political Agent, Kurram Office will be filled up out of the Sepoys (Soldier Clerks) and the Clerks out of Benevolent Fund on the basis of their seniority."

C.T. /

B/2

15

seniority in each of the cadre i.e. the senior most on each list will be taken in the Political Agent establishment having due regard to their length of service inters".

Several Appointments/Promotion have been made on the basis of the same decision/recommendation, which are evident from the various office orders and seniority list of Soldier Clerks and Benevolent Fund Clerks where serial 1 to 5 and 8 have been appointed from Soldier Clerks and serial 1 to 4 from Benevolent Fund Clerks. In an appeal case the than Commissioner Kohat Division Kohat has also announced the order vide (Annex F) that:-

" To ensure President carriage of justice, the practice of posting/absorption of the existing Benevolent Fund /Soldier Clerks already in practice may be continued as they have the superior rights of promotion/appointment on the regular posts. However no further appointment as Levy Soldier Clerks and Benevolent Fund Clerks be made: -

Therefore, the DSC members may select/recommend two person out of above category for appointment of Junior Clerk one in the Levy Force and one in the P.A regular establishment (Ration Branch).

CTC
as

Amir
C

(16)

~~SECRET~~

~~SECRET~~

NAME

DATE OF APPOINTMENT

2-
3-
4-
5-
6-
7-
8-

~~SECRET~~
Naqeeb Hussain
Syed Nasir Hussain
Shah Jehan
Yousuf Hassan
Shah Marjan
Saib Marjan
Ihsanullah

~~SECRET~~
27-12-1997
23-12-2002
23-01-2003
04-02-2003
04-02-2003
03-04-2003
16-08-2004
18-02-2004

CIC
[Signature]

[Signature]
for Political Agent, Kurram

(17)

C/11

Office of the Political Agent
Kurram Agency, ParachinarORDERNo. 93-47/Kurram LevyDated 23/07 /2006

On Selection/Recommendation of Departmental Selection Committee, the following persons are hereby appointed as Levy Sepoy (Soldier Clerks) in Kurram Levy Force against the vacancies arise on appointment of Mr. Gulzar Hussain and Dawood Shah as Junior Clerks with immediate effect, subject to the production of Health/Age Certificates and Surety Bond.

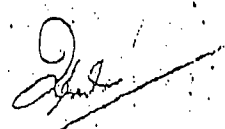
- ✓ a. Mr. Arbab Hussain s/o Yousuf Hussain Caste Billa Bangush r/o Parachinar.
b. Muhammad Mudasser Khan s/o Syed Rahim (Ex-Senior Clerk) r/o Parachinar.

No. and date is given.

Political Agent, Kurram

Copy forwarded to the: -

1. Assist. at Political Agent, Upper Kurram.
2. Agency Accounts Officer, Kurram Agency.
3. Superintendent P.A.'s Office.
4. Sub. Major Kurram Levy Force.
5. Head Office Kurram Levy Force.
6. Office Concerned

C/11
af

Political Agent, Kurram

(Better Copy)

From : PA Kurram

FAX NO.: 0926310599

2 May 2018 7:00

PM P1

Office of the Political Agent
Kurram Agency, Parachinar

ORDER

No.93-97/Kurram Levy

Dated 23/02/2006

On Selection/ Recommendation of Departmental Selection Committee, the following persons are hereby appointed as Levy Sepoy (Soldier Clerks) in Kurram Levy Force against the vacancies on appointment Mr. Gohar Hussain and Dawood Shah as Junior Clerks with immediately effect, subject to the production of Health / Age Certificates and Surety Board.

- a. Mr. Arbab Hussain S/o Yousaf Hussain Caste ^{Sick} __ Bangash r/o Parachinar
- b. Muhammad Mudasser Khan s/o Syed Rahim Ex-Snior Clerk) r/o Parachinar

Political Agent, Kurram

No. and date is even,
Copy forwarded to the: -

1. Assistant Political Agent Upper Kurram
2. A __ Accounts Officer, Kurram Agency
3. Superintendent P.A's Office.
4. __ Major Kurram Levy Force
5. Head Office Kurram Levy Force.
6. Office Concerned.

Pontifical Agent, Kurram

Annexure D

To

The Political Agents,

Subject: ^{Muram} Mercy Petition (Protection of Seniority) in my previous cadre i.e. A.W. Fund

R/Sir, I may kindly be allowed to refer with reference to your kind order No. 93-97/K.L. v.p dated: 23-2-2006 appointing me as Soldier clerk.

Sir Since 2003, I am repeatedly requesting to gain right but in vain. I am compelled to submit my helpless position once again that I have been remained the unique candidate from A.W. Fund as per past practice & decision of Commissioner Kohat Div. keeping in view of my appointment in 1997. Now when I am appointed as Sol/clerk, my seniority of 8 years spoiled, I will be treated a fresh one.

Sir kindly accept my Mercy petition being my supreme guardian 1st & than my request for reconsideration of order.

I hope my request will kindly be seen kin. sympathetically & to kindly review & revise the appointment order by restoration of my seniority

since 1997 as above. Thanking in anticipation as my approach is only left. Yr. Sir.

Yours Sincerely,

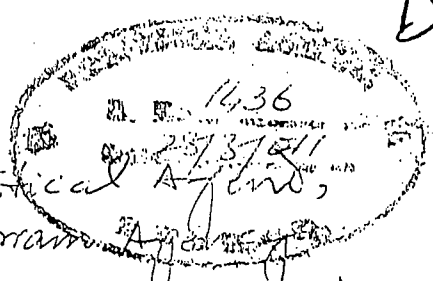
Asbab Hussain
Sol/clerk T.M.S office

Political Agent Muram
4.3.06

c/c
[Signature]

924
24/3/06

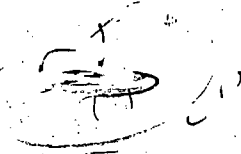
D/1 (19)



To
The Political Agent,
Kurram Agency

Its (Lang)
Sm

Page
5/03/2011



Subject: Mercy Petition (Protection of Seniority)

R/Sol:

I would like to attract your kind soul and nature towards certain injustices inflicted upon me during my service career. I got my 1st appointment as POF clerk on 27/12/1997. On 23/2/2006 certain adjustment/promotions were made and I was adjusted as Sol: clerk rendering my cadre change but no protection was given to me for my past service. I filed a mercy petition about my seniority/promotion keeping in view the decision made by the W/Commissioner Kohat Division Kohat on 3/1/1998 which it was clearly announced that promotion must be made from the both cadres i.e. POF clerks and Soldier clerks separately in view the seniority of the concerned officials.

I have already submitted a petition about the same to the then Political Agent Kurram on 4/3/2006. The relevant documents are attached with this application for your kind perusal.

When I was appointed as Sol: clerk vide PAF Kurram NO: 93-97/K-levy, dated: 23/2/2006, my seniority of 8 years was spoiled and I became a fresh one as Sol: clerk.

As I remained deprived from my just rights, I therefore requested that my previous cadre seniority (eight years) may kindly be included in the present cadre so that my past services may not go astray.

Yours Obediently,
[Signature]
24/3
Soldier clerk

CJC
aj

11.03.2011

~~scribble~~

D/2

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17

circ

OFFICE OF THE
POLITICAL AGENT, KURRAM
No. 287 /PAK/K.Levy
Dated 31 / 103 - /2011


To

The Agency Account Officer
Kurram.

Subject: MERCY PETITION.

Memo:

Enclosed please find herewith an application submitted by Mr. Arbab Hussain s/o Yousaf Hussain alongwith its enclosures for your views/comments please.


For Political Agent Kurram

c/c
af

Ⓢ

D/3

21

OFFICE OF THE AGENCY ACCOUNTS
OFFICER KURRAM

No. 2756 /AAO, Admn:
Dated: 22-5-2011 /2011

Ⓢ

To The Political Agent, Kurram

Subject: - MERCY PETITION.
Memo:

Reference your office No.287/PAK/K.Levy dated:31-03-2011.

The views/comments of the undersigned are as under:-

- 1- That one Mr. Arbab Hussain was appointed as Junior Clerk in (BF) on 27-12-1997.
- 2- He was adjusted as Soldier Clerk in Levy Force on 23-02-2006 with out counting his past service rendered in BF cadre.
- 3- Prior to his adjustment as Soldier Clerk , he was top in the seniority list of Benevolent Fund Clerks.
- 4- After his adjustment as Soldier Clerk he was kept deprived of the counting of his past 8 years service in BF and was placed at the bottom of seniority list of soldier Clerks.
- 5- As per order of the Commissioner Kohat Division, Kohat Notification on 31-08-1998 "Parrallel promotion should be made from both the cadres i.e BF and Soldier Clerks on seniority and fitness basis".

~~It is therefore suggested that either the Clerk Mr. Arbab Hussain be reverted to BF cadre by allowing all the back benefits on his 8 years service rendered in BF may be counted for seniority in the cadre of Soldier Clerks so that the parameter of natural justice be fulfilled.~~

Agency Accounts Officer
Kurram 19/5

HC Jany

Ⓢ

Political Agent Kurram
30.5.2011

252660
31.5.2011

etc
af

To

The Political Agent Kurram Agency

Subject: REQUEST FOR PROMOTION AS JUNIOR CLERK IN THE ESTABLISHMENT OF POLITICAL AGENT OFFICE.

Sir,

I would like to attract your gentle soul and kind nature towards certain injustices inflicted upon me during my service career. I got my first appointment as BF Clerk on 27.12.1997, on 23.02.2006 certain adjustment/promotions were made and I was adjusted as Soldier Clerk rendering my cadre change but no protection was given to me for my past service. I filed a mercy petition about my seniority/promotion keeping in view the decision made by the Commissioner Kohat Division Kohat on 03.01.1998 in which it was clearly announced that promotion must be made from the both cadres i.e. BF Clerks and Soldier Clerks separately keeping in view the seniority of the concerned officials.

I have come to know that a DPC will be constituted to decide a promotion case for filling up the vacant post of steno typist in the near future.

It is therefore requested that my name may kindly be considered either in coming DPC for promotion as Junior Clerk as a deserving or my seniority from 1997 may kindly be restored as I have already submitted a petition about the same to the then Political Agent Kurram on 04.03.2006. All the relevant documents are attached with this application for your kind perusal.

With profound regards.

Yours faithfully,

Mr. Arbab Hussain
Soldier Clerk PA's Office

Arbab Hussain
Arbab Hussain
Arbab Hussain
Arbab Hussain
Arbab Hussain
23/7/2006

Arbab Hussain
Arbab Hussain

(22) *(21)* *(0/4)*

22

22

D/S

Mercy Petition / Application for restoration of seniority.

Subject: -

Sir,

In pursuance of your good self order bearing No:11808-14/PAK/Hc Levy dated:14/12/2012. It is submitted before your kind honour that I was appointed as a Clerk out of benevolent fund vide the then Political Agent's (Arbab Mohd : Arif sahib) order dated 7/12/1997. The Then PA Kurram vide his order bearing No:5732/ Acctt: & 5736 /Acctt: dated 1/12/1996, appointed Mohd : Zahir Shah as J/Clerk & Abdul Wali as Daftari in PA's establishment. Mohd :Anwar BF Clerk , Ashiq Hussain & Gulzar Hussain Soldier Clerk agried with the order of the then PA Kurram & lodged an appeal before the Honorable court of Commissioner Kohat Division Kohat. The Commissioner Kohat Division vide his order dated 13/01/1998 accepted the appeal and set aside the appointment orders in respect of Mohd Zahir Shah & Abdul Wali. Besides , it was further ordered that "To ensure persistent carriage of justice the practice of posting / absorbtion of the existing Benevolent fund /Levy soldier Clerks already in regular posts . However, no further appointment as levy soldier clerks and BF Clerks be made in future."

In 2006, a DPC was held to fill up the two posts of junior clerks. I was on the top of seniority list from the BF cadre. But contrary to the Commissioner Kohat Division Kohat orders , the seniority of BF cadre was ignored and the two top senior soldier clerks were promoted as junior clerks. While I was shifted from the cadre of BF to the cadre of soldier clerks . I submitted an appeal to the then PA Kurram that my promotion as junior clerk has been ignored. (Copy attached) The remarks of the PA Kurram were considerable , but that copy had been removed from my file by the lower staff. I submitted another application for which the comments from Agency Accounts officer Kurram were requested . Please refer to the comments of the Ag: Ac/s officer kurram in my favour (copy attached.) Since 2006 , I am working as soldier clerk and according to the new directives / notification , the applicant has been placed fresh one of 2006. While the nature of my service is quite different from other soldier clerks.

Keeping in view the above , I have already requested for grant of seniority in the cadre of solder clerks since my date of appointment as BF Clerks w.e.f 27.12.1997. It is therefore once again requested that my ^{petition} request may be consider and orders may be issued for the retention /restoration of my seniority from 1997 onward.

Submitted for sympathetic consideration please.

Yours sincerely,

[Signature]
18/12/2012

Arbah Hussain S/o Yousaf Hussain
Working with TM Kurram .

APA vk
Pl. fontant a detaille
and comprehensive
report at the earliest
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PA (W)
20/12

[Signature]

No. 12050/87-08
DA 21/12/12

Mr Arsal Hussain with file has lodged a
complaint for restoration of his seniority in his career of
senior clerk on this regard it is recommended that the applicant
got his appointment as B.F. clerk with order no. 8430-32/HR
dated 07/12/1997. Afterwards in year 2006 as D.P.C. was held
to fill up the two vacant posts of junior clerk. The applicant
was on the top of seniority list of B.F. career. The seniority
of the B.F. career was ignored while the two senior most kept
were promoted as clerks.

According to the government circular by the commission
dated 03/11/1998, the right of parallel promotion
from the career of B.F. and holder clerks to the regular posts
of clerks has been directed as a matter of natural justice.
The applicant was assigned to the career of S.P. clerk
in the rank D.P.C. of work. After appl. he requested that
his (S) years service as B.F. clerk has been treated as the regular
for the preservation of his seniority.

According to the comments of Accounts officer at
Fing "N" the comment that it is not possible at this stage
that the applicant may be reverted to the B.F. career by
allowing all the back benefits which it is quite possible for
his past service as B.F. clerk may be considered for
his seniority in the career of regular clerks.

Submitted for review please
The above issue is in detail & work
The copy
27/12/12

Submitted for order please
M/10
M/12

Reference file

(28)
D/B
(29)
(25)

2/6

1. Reference Pur 0/6

Mr Arbab Hussain vide Pul has lodged a merry petition for restoration of his seniority in the cadre of soldier clerks. In this regard it is submitted that the applicant got his appointment As BF Clerk vide order No. 8430-32/AN dated 27/12/1997. Afterwards in year 2006 as DPC was held to full p the two vacant posts of Junior Clerk. The applicant was on the top of seniority list of BF Cadre. The seniority of the BF cadre wa ignored which the two senior most were promote as Junior clerk.

2. According to the judgment made by the commission Kohat Dir KOHAT dated 03/1/1998, the right of parallel promotion from the cadre of BF and __ Clerks to the regular post of Junior Clerks has been directed as mater of natural Justice.

3. The applicant we shifted top the car of Junior Clerk in the said DPC of 2006. that after appointment he requested that his 8 years service as BF Clerk has been affected as be requested for the preservation of his seniority.

4. According to the comments of Accounts Officer at Flag A he commented that if is not possible at this stage that the applicant may be reverted to the BF cadre by allowing all the bach benefits while it is quite fersible that this post service of 6 years as BF clerk may be included for his seniority in the cadre of _ clerks submitted for order please.

5. The above ^{office} regard is in detail a worth perusal submitted or order please.

C.T.C.
M

(1) (26) Annexure (E) (24)

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.

W.P No:- 4005-P/2018

Arbab Hussain S/o Yousaf Hussain R/o Village Chuzan
Kurram Agency, Parachinar.

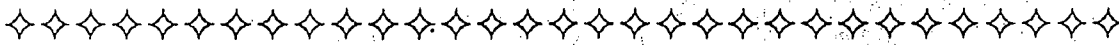


..... Petitioner

Versus

1. Additional Chief Secretary FATA, FATA Secretariat Warsak Road, Pehsawar.
2. Secretary Law & Order FATA, FATA Secretariat Warsak Road, Pehsawar.
3. Political Agent/Deputy Commissioner, Kurram Agency, Parachinar.
4. The Assistant Political Agent/Assistant Deputy Commissioner, Kurram Agency.

..... Respondents



WRIT PETITION UNDER ARTICLE 199 OF
THE CONSTITUTION OF ISLAMIC
REPUBLIC OF PAKISTAN, 1973.

Respectfully Sheweth:-

*The facts pertaining to this petition are as
under:-*

1. *That the petitioner was appointed as clerk out of benevolent fund on 27/12/1997 vide order No 8430 of respondent No 3. (Copy of order dated 27/12/1997 is attached as annexure "A")*

TESTED
PESHAWAR HIGH COURT

(2)

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E/1

2. That the service of the petitioner then converted by appointing him as Soldier Clerk in the office of respondent No 3 on the recommendation of departmental promotion committee dated 22/02/2006. (Copies of the DPC meeting and seniority list are attached as annexure "B" & "C" respectively).
3. That the petitioner has been working as a Soldier Clerk from the date of his appointment/conversion and was not considered for due promotion as a Junior Clerk till now despite of fact that he was a senior most clerk of his previous cadre. (Copy annexure "C").
4. That petitioner submitted mercy petition dated 25/02/2006 and 24/03/2011 to respondent No 3 for considering/including his previous service for the purpose of his seniority and next higher grade promotion as a junior clerk on the basis of specified cadre quota i.e. 33% but no action/proper order as yet been passed by the competent authority. (Copies of the mercy petitions are attached as annexure "D").
5. That prior to this Writ Petition, the petitioner had challenged the appointment order of one Farman Ullah,
WHO WAS APPOINTED AS SOLDIER CLERK IN THE OFFICE OF RESPONDENT NO 3

ATTESTED
EXAMINER
Peshawar High Court

(3) (27) (26)

(E/2)

through Writ Petition No 2853/2016 but the same was dismissed on its own merits, it is also brought to the knowledge of this Honourable Court that the locus standi and grounds taken in the instant petition are totally different from the grounds taken in the above said Writ Petition. (Copies of the Writ Petition and order dated 03/05/2018 are attached as annexure "E").

6. That presently two seats of Junior Clerks are vacant due to retirement of two officials, but respondents are not ready to observe the specified cadre quota of Ministerial Staff of the office of the respondent No 3, therefore, the petitioner is constrained to invoke the constitutional jurisdiction of this Honourable Court for getting his due/legal right of promotion on the following amongst other grounds:- (Copies of the retirement orders are attached as annexure "F").

Grounds:-

- A. That the above said act/action of the respondents is illegal arbitrary based on malafide and without legal authority thus liable to be declared null and void and is of no legal effect.

ATTESTED
EXAMINER
Peshawar High Court

(4)

(24)

E/3

- B. That the appointment of petitioner from cadre of benevolent fund clerk to the post of Soldier clerk by DPC (annexure "B") was actually the conversation of post from one cadre to another, but the respondents have wrongly and illegally interpreted the recommendations of the DPC and due to that the petitioner has been deprived from his due promotion to next higher post till date.
- C. That when the petitioner was appointed as Soldier Clerk from the cadre of benevolent fund clerk and at that time he was senior most official in his cadre, but that service of the petitioner was not included/considered and due to that he has been placed junior in the seniority list of Soldier clerks prepared for next higher grade promotion.
- D. That the posts of junior clerks have been filled in the office of respondents No 3 under the provincial recruitment policy and also in the light of judgment of Worthy Commissioner, Kohat dated 03/01/1998 the quota of Soldier Clerk cadre is 33%. (Copy of the judgment dated 03/01/1998 is attached as annexure "G").
- E. That many appointment have made by the respondents in the post of junior clerk from the cadre of Soldier Clerk according to their specified quota i.e. 33% and refusal to

ATTESTED
EXAMINER
Peshawar High Court

the petitioner by the respondents is clear cut discrimination and such act of respondents is illegal, without lawful authority and jurisdiction, thus liable to be declared null and void and is of no legal effect. (Copies of the appointment orders are attached as annexure "H").

- F. That the impugned act/actions of the respondents are illegal, arbitrary, based on malafide and without any legal justification, hence untenable under the law.
- G. That the respondents have not acted in accordance with law because they have not given any cogent reason and legal justification for not considering the petitioner to be promoted to the post of junior clerk despite of the fact that he was senior most clerk from benevolent fund cadre when he was converted/appointed as a Soldier clerk by DPC and if the previous service of the petitioner would added/included in the present post then he was senior most Soldier clerk in his cadre and was deserved to be promoted to the post of junior clerk under the principle of legitimate expectancy because of his good and satisfactory record.
- H. That the impugned act/action of respondents is also without legal justification and violation of law/principles settled by the apex court of the country and thus they have

ATTESTED
EXAMINER
Peshawar High Court

(6) (29) E/S

not exercised their power, authority and jurisdiction fairly and justly.

- I. That the act/action of respondents is also violation of fundamental rights guaranteed under Article 4, 8, 25 & 38 of the Constitution of Islamic Republic of Pakistan, 1973.
- J. That the Govt officials are duty bound to discharge their duties and functions in accordance with law but in the instant case the respondents No 3 & 4 who were the members of Departmental Promotion Committee have failed to perform/discharge their duties and functions fairly/properly which resulted to deprive the Petitioner from his legitimate legal right of his promotion under the law.
- K. That in the light of above submissions, the act/actions of the respondents is unwarranted under the law and liable to be declared illegal.
- L. That any other ground which has not been specifically taken in the instant Writ Petition may be argued at the time of arguments with permission of this Hon'ble Court.

ATTESTED
EXAMINER
Peshawar High Court

(7) 2/6 30

It is, therefore, humbly prayed that on acceptance of this Writ Petition, this Hon'ble Court may kindly be declared the act/actions of the respondents, illegal without lawful authority and is of no legal effect and the respondents be directed to include/consider the service of petitioner as clerk from Benevolent Fund in the present post from the date of his conversation i.e. 23/02/2006.

It is, further prayed that the petitioner may kindly be appointed as a Junior Clerk in the office of respondent No 3 being senior most official of his cadre under his legal specified quota of 33%.

Any other relief, which this Hon'ble Court deems appropriate in the circumstances of the case may also granted in favour of petitioner.

Dated:- 28/07/2018

Through:-

Petitioner

Asif Hameed Qureshi
Asif Hameed Qureshi
Advocate Supreme Court
of Pakistan

ATTESTED
EXAMINER
Peshawar High Court

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.

W.P No:- _____/2018

Arbab Hussain **Versus** Additional Chief Secretary
..... Petitioner FATA & others
..... Respondents

CERTIFICATE:-

It is certify that no such like Writ Petition has earlier been filed by the Petitioner in this Honourable Court. Further stated that being Writ Petition on the score that since there is no adequate and alternate legal remedy is available or previously avail or approach lower forum, thus this case may be fixed before the Worthy Division Bench (D.B) of this Honourable Court.

Advocate.

NOTE:-

As per Notification dated 18th March, 2017 issued by the Worthy Office of Registrar Peshawar High Court, Peshawar, the grounds of Writ Petition alongwith all appended annexures have been scanned in PDF format, while institution of this Writ Petition to avoid the certain requisitions of Scanning, this case may be treated accordingly.

[Signature]
Advocate.

LIST OF BOOKS:-

- 1. Constitution of Islamic Republic of Pakistan 1973.
- 2. Case Laws as per need

[Signature]
Advocate.

ATTESTED
EXAMINER
Peshawar High Court

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Arbab Hussain

9

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BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.

W.P No:- _____/2018

Arbab Hussain

Versus

Additional Chief Secretary

FATA & others

..... Petitioner

..... Respondents



AFFIDAVIT

I, Arbab Hussain S/o Yousaf Hussain R/o Village Shalozan Kurram Agency, Parachinar do hereby solemnly affirm and declare on oath that the contents of this accompanying Writ Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.

Identified by

Asif Hameed Qureshi
Advocate Supreme Court
of Pakistan

DEPONENT
CNIC No:-

ATTESTED
EXAMINER
Peshawar High Court

33

Amir
(F)

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT
PESHAWAR
JUDICIAL DEPARTMENT

Writ Petition No.4005-P of 2018

"Arbab Hussain
Vs.
Additional Chief Secretary, FATA
Secretariat, Peshawar etc"



JUDGMENT

Date of hearing 13.03.2019.
Petitioners (s) Mr. Asif Hameed
Qureshi, Advocate.
Respondent (s) Mr. Rab Nawaz Khan,
AAG.

IKRAMULLAH KHAN, J.- Through the
instant Writ Petition, under Article 199 of the
Constitution of Islamic Republic of Pakistan,
1973, petitioner has prayed for the following
relief: -

"It is, therefore, humbly prayed
that on acceptance of this Writ
Petition, this Hon'ble Court
may kindly be declared the
act/actions of the respondents,
illegal without lawful authority
and is of no legal effect and
the respondents be directed to
include/consider the service of
petitioner as clerk from
Benevolent Fund in the present
post from the date of his
conversation i.e. 23.02.2006.

It is, further prayed that the
petitioner may kindly be
appointed as a Junior Clerk in
the office of respondent No.3
being senior most official of

ATTESTED
EXAMINER
Peshawar High Court

(3M) (F1)

his cadre under his legal specified quota of 33 %. Any other relief, which this Hon'ble Court deems appropriate in the circumstances of the case may also be granted in favour of petitioner".

02. Prior to discuss merit of the case in hand, it would be pertinent to give reference to Writ Petition No.2853-P/2016, filed by the petitioner against the same respondents and one other, for the following relief:

"It is therefore, most humbly prayed that on acceptance of this writ petition the impugned order dated 30.11.2015 and inaction of the respondents by not promoting the petitioner to the post of Junior Clerk/Daftari may be declared as illegal, unconstitutional and ineffective upon the rights of petitioner. That the respondents may further please be directed to promote the petitioner on the post of Junior Clerk or Daftari being senior most employee of the respondent Department. Any other remedy which this august Court deems fit that may also be awarded in favor of the petitioner"

03. The relief asked by the petitioner in previously instituted Writ Petition No.2853-P/2016 and the one prayed in this Writ Petition are exactly one and the same.

ATTESTED
EXAMINER
Peshawar High Court

F/2

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04. Petitioner seeks direction by this Court to be issued to the respondents in order to promote him, therefrom Soldier Clerk to Junior Clerk.

05. In previous Writ Petition, decided by this Court on 03.05.2018, this Court had held as under:

"So far as the petitioner's plea for his promotion to the post of Junior Clerk if concerned, suffice it to say that his learned counsel could not cite any rule which could be pressed into service for promoting the petitioner as Junior Clerk. Promotion to a higher post is always ordered under the relevant rules and on the basis of seniority-cum-fitness and an official cannot be promoted on his desire or whims unless he makes out a case for his promotion in which the petitioner has failed".

06. The provisions contained in Section 11 CPC is applicable to constitutional petition and as such the issue under consideration had properly dealt with by this Court, while rendering its Judgment dated 03.05.2018 in Writ Petition No.2853-P/2016, while the instant Writ Petition is filed on 01.08.2018 after three months of decision of this Court i.e. 03.05.2018.

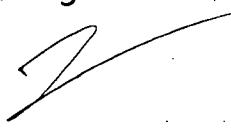
ATTESTED
EXAMINER
Peshawar High Court

P13

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354A

07. This Writ Petition on the face is not maintainable is dismissed accordingly. However, in light of Judgment rendered by this Court dated 01.03.2018 in Writ Petition No.354-P of 2017, all regular and permanent employees of Levy Force are declared to be civil servant. Therefore, petitioner, if so advised, may approach the Competent Authority in this regard, for redressal of his grievance.



ANNOUNCED.
13.03.2019.

JUDGE

JUDGE

DB



Hon'ble Mr. Justice Ikramullah Khan
 Hon'ble Mr. Justice Muhammad Ibrahim Khan

Himayat

CERTIFIED TO BE TRUE COPY

EXAMINER
 Peshawar High Court, Peshawar
 Authorized Under Article 8.7 of
 The Qanun-e-Shahadat Order 1984

19 MAR 2019

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No.

Date of Presentation of Application 14/3/19

No of Pages 13

Copying Fee

Urgent Fee

Total 500

Date of Delivery of 14/3/19

Received By [Signature]

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- (k) "public agency" means any department of Government, its attached department, public authority, commission or autonomous body set up under any statutory instrument or public sector company or body corporate, owned, controlled or financed by Government;
- (l) "repealed regulation" means the Federal Levies Force Regulation, 2012, repealed under section 15 of this Ordinance;
- (m) "rules" mean rules made under this Ordinance; and
- (n) "Schedule" means the Schedule appended to this Ordinance.

3. Reconstitution and maintenance of Levies Force.---(1) On promulgation of this Ordinance, the Levies Force shall be re-constituted and maintained by the Government in accordance with the provisions of this Ordinance and shall be known as the Khyber Pakhtunkhwa Levies Force, consisting of-

- (a) the Director General;
- (b) the Deputy Director General;
- (c) Commandant; and
- (d) all existing strength of members, of the Levies Force, working in the merged districts and sub-divisions.

(2) The Director General, Deputy Director General and the Commandant shall be the officers of the Police.

(3) The District Police Officer shall be assigned the additional charge of the Commandant in the same District.

(4) The Regional Police Officer shall be assigned the additional charge of the Deputy Director General in their Police Region.

(5) The Deputy Director General who shall be appointed by Government, in Consultation with Provincial Police Officer, in such manner and on such terms and conditions as may be prescribed.

Explanation: For the purpose of this section Regional Police Officer and District Police Officer shall have the same meanings as are given to them, respectively, in the Khyber Pakhtunkhwa Police Act, 2017 (Khyber Pakhtunkhwa Act No. II of 2017).

4. Superintendence, administration and control of the Levies Force.---(1) The overall power of superintendence of the Levies Force shall vest in the Government.

(2) The general administration and operational control of the Levies Force shall vest with the Director General to be exercised by him either directly or through the Commandant in the District.

C. C.
aj

Grounds:-

- A. That the appointment of appellant from cadre of benevolent fund clerk to the post of Soldier clerk by DPC (annexure "B") was actually the conversation of post from one cadre to another, but the Worthy the then Political Agent has wrongly and illegally interpreted the recommendations of the DPC and due to that the appellant has been deprived from his due promotion to next higher post till date.
- B. That when the appellant was appointed as Soldier Clerk form the cadre of benevolent fund clerk and at that time he was senior most official in his cadre, but that service of the appellant was not included/considered and due to that he has been placed junior in the seniority list of Soldier clerks prepared for next higher grade promotion. It is also pertinent to mention here that the report of learned APA/Account Officer Upper Kurram dated 27/02/2013 (Annexure "D/6") is of worth perusal, which clearly supports the contention/claim of the appellant.
- C. That the impugned act/actions of the appointing competent authority is illegal, arbitrary, based on malafide and

(48)
(47)

Amendme I

**JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT**

Writ Petition No.354-P of 2017

**"Gul Munir Vs. The Govt. of Pakistan through
Secretary, Ministry of States and Frontier Regions
(SAFRON), Islamabad & others"**

JUDGMENT

Date of hearing **01.03.2018**

Petitioner by: _____

Respondent(s) by: _____

IKRAMULLAH KHAN, J.- Through this single judgment, we intend to decide the instant Writ Petition as well connected *Writ Petition No. 369-P/2017 titled "Munasib Khan Vs. Commandant Bajawar Levies"*, *Writ Petition No.2581-P/2017 titled "Munasib Khan Vs. The Secretary, SAFRON, Islamabad"*, *WP. No.2570-P/2017 titled "Abdullah Jan Vs. The Secretary, SAFRON, Islamabad"* and *WP No.2055-P/2017 titled "Muhammad Ayaz Khan Vs. Federation of Pakistan through Secretary, SAFRON, Islamabad & others"* as identical questions of law and facts are involved in all these petitions.

02. Petitioners have challenged the newly amended Rules, 2016, called as Federal Levies Force (Services) Rules, 2016, as by promulgation of the impugned Rules, 2016, the terms and conditions of

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their services were altered adversely, which have effected their length of services, resultantly have compulsorily retired petitioners.

03. In essence, petitioners were employees of Federal Levies Force, which was re-organized by the Federal Levies Force Regulation, 2012.

04. In order to regulate the services of employees of Federal Levies, the Federal Government was conferred with the power to frame Rules for the purpose in term of Section 10 of the Regulation, 2012.

05. The Federal Government vide Notification No. SRO 954(1)/2012 dated 03.08.2012 in exercise of its powers under Section 10 of the Regulation framed the respective Rules called Federal Levies Force (Services) Rules, 2012 but the same were amended vide Notification No.SRO 580(1)/2013 dated 18.06.2013. The Rules, 2012 were further amended by Notification No.936(1)/2016 dated 04.10.2016 whereby the following amendments were introduced in Schedule-III & IV of Section 4 (2)(B) and Rule 17(1): -

SCHEDULE III & IV

S	Post/Rank	For	To be read as
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No.			
1	Subedar Major (BS-16)	37 years service or 60 years of age whichever is earlier	37 years service or 03 years service as Subedar Major or 60 years of age whichever is earlier.
2	Subedar (BS-13)	35 years service or 60 years of age whichever is earlier.	35 years or 05 years service as Subedar or 60 years of age whichever is earlier.
	Naib Subedar (BS-11)	33 years service or 60 years of age whichever is earlier	33 years service or 07 years service as Naib Subedar or 60 years of age whichever is earlier

06. All the petitioners herein, who were serving on different posts of Subedar Major, Subedar and Naib Subedar being aggrieved of the impugned Rules, 2016 constrained to file these writ petitions.

07. At the very outset of the arguments, learned counsel on behalf of respondents, raised preliminary objection over the maintainability of these writ petitions for want of jurisdiction in light of recent judgment of the Apex Court rendered in Civil Appeal Nos. 521/2015, 2387. 2388, 2552, 2553 of 2016 and others decided on 29.01.2018 wherein the employees of Frontier Constabulary Force is held to be civil servants

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and as such this Court in term of Article 212 of the Constitution of Islamic Republic of Pakistan has got no jurisdiction to determine terms and conditions of a civil servant, which is the exclusive jurisdiction of Federal Service Commission.

08. On the other hand, learned counsel for the petitioners invited the attention of this Court generally towards various judgments rendered by this Court particularly to the judgments rendered in Writ Petitions Nos. 529-M/2016, No.593-M/2016, No.4039-P/2016, No.280-M/2017, No.281-M/2017 dated 23.05.2017 and argued that this Court has ample jurisdiction to decide the instant Writ Petitions.

09. We have heard learned counsel for the parties on question of jurisdiction in light of the recent judgment of the Apex Court dated 29.01.2018.

10. No doubt that Frontier Constabulary Force had been established under the Khyber Pakhtunkhwa Constabulary Act, 1915 and the

Rules made thereunder, but keeping in view the yardstick determined by the Apex Court while elaborating and construing the meaning of civil servant, assigned to it under Section 2(1) (b) of the Civil Servant Act, 1973, no exception could be taken in this regard, insofar as the duty, responsibility and function of Federal Levies Force is concerned.

11. Section 2(1)(b) of the Civil Servant Act, 1973 reads as:

"2(1)(b): "civil servant" means a person who is a member of an All-Pakistan Service or of a civil service of the Federation, or who holds a civil post in connection with the affairs of the Federation, including any such post connected with defence, but does not include".

12. The Apex Court in paragraph 6 of the judgment *ibid*, has defined the character of a civil servant, which reads as: -

"Three broad tests for establishing the status and character of a civil servant emerge from the Constitutional mandate of the afore-going Articles. Firstly, under Article 240(a) of the Constitution, appointments to and the terms and conditions of service of the persons in the "service of Pakistan" are be determined by or under Act of Parliament. Secondly, by virtue of Article 260 of the

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Constitution, 'service of Pakistan' means any service, post or office in connection with the affairs of the Federation. Thirdly, under Article 212(1)(a) of the Constitution, the exclusive jurisdiction to adjudicate disputes relating to the terms and conditions of persons, who are in the service of Pakistan vests in an Administrative Tribunal, namely, the Federal Service Tribunal. These tests are mentioned in the Muhammad Mubeen-us-Salam case ibid (at pp.686-689 of the law report). The definition of the term 'civil servant' in the Act adopts the Constitutional criteria given in Article 260 noted above to reiterate that a person who, inter alia, holds a civil post "in connection with the affairs of the Federation" including any such post connected with defence, to be a civil servant. The larger Bench has in this respect taken the logical step to incorporate the requirements under Articles 240(a) and 260 of the Constitution as the definitional criteria of the term "civil servant" (at p.682 of the law report)".

13. The Federal Levies Force was established by the President of Pakistan through promulgation of Federal Levies Force Regulation, 2012, paragraph 3 of the Regulation, 2012 empower the Federal Government to constitute and maintain a force to be called the Federal Levies Force for performing the following functions: -

- (a) ensuring security of roads in PATA;

- (b) ensuring security and manning of piquets;
- (c) guarding Government institutions and installations;
- (d) ensuring security of jail quards and arrested criminals;
- (e) generally maintaining law and order and providing mobile escort to very important persons;
- (f) anti-smuggling activities;
- (g) destruction of illicit crops;
- (h) serving of summons or procedures;
- (i) policing, investigation and prosecution in certain areas as notified by the Provincial Government;
- (j) raid and ambush; and
- (k) such other functions as the Provincial Government may, by notification in the official Gazette, require the Force to perform.

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

14. Paragraph 4 of the Regulation, 2012 authorizes the Federal Government to appoint a Commander and other officers and members who will receive such pay, pension, allowances and other remunerations and shall enjoy such leave and other privileges as may be prescribed by the rules from time to time.

15. Paragraph 5 invest the Commander with the power to administer the force in accordance with the provisions of the Regulation, 2012, rules and such orders and instructions as

لعدالت جناب خیر بخشوں خواہ سرورس ٹریڈینگی لکھی ہو

ارباب حسین نبام بیور اسکیریٹری و سرکار

درواست عمر ادنیدلی تا تاریخ پیشی بوجہ بلدیاتی
ایلیشن قیتر ۱۱۔

جناب عالی:۔ شان حسد بنگل عرفین پیشی کرتا ہے۔

۱۱۔ کہ مقدمہ عنوان مالا آجی ناصر عدالت میں برائے
استدائی بحث از سرخو نیویو۔

۱۲۔ کہ سائل کے وکیل آصف حمید قریشی بوجہ
ایلیشن مصروفیات اپنے آجی علاقہ منٹو
ایسیٹ ماہ وارڈ یوٹھ میں اور آجی ناصر
عدالت میں برائے بحث کا ٹریننگ ہو سکتی ہے۔

گنہ استعدائی کے مزبورہ مالا تراشیا

۱۳۔ اورشن میں تاریخ تبدیل کر کے

موسم کا تاریخ مقرر فرمائی جائے

سائل (ایپیلٹ) بزرگ محلہ دارہ
3103
3102
3101

لجرات جناب Pk ۱۲ کروٹ ٹریبونل مقام لہور

ارباب سنی بنام بیوس سیکرٹری فیسز

درخواست برآمد میں تاریخ پستی

جناب عالی :-

سائل حسب ذیل عرض میں آ رہا ہے :-

۱۔ ایک قدم عنوان بالا آج حاضر عدالت میں برائے تاریخ پستی مقرر ہے۔

۲۔ یہ سائل کوٹلی آفیسر عید قرسی رتد و کٹ کر یہی رشتہ دار کی فونٹگی پر دعا کے لئے گاؤں کوٹلیک ضلع ایبٹ آباد گئے ہوئے ہیں۔

۳۔ یہ سائل کوٹلی مذکورہ بالا وجوہات کی بناء پر آج حاضر عدالت میں برائے وقت حاضر نہیں ہو سکتے۔

السید استمداد علیہ عن ظہوری درخواست صذا مقدم

عنوان بالا کوٹلی روٹری موزوں تاریخ کے لئے مقرر فرمایا

گاہ۔

المقوم 06/07/21

ساجد ایبلانڈ بزرگ محمد عظیم شہوانی