BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR AT CAMP COURT SWAT

Service Appeal No. 5210/2021

Date of Institution ... 06.05.2021

Date of Decision ... 06.10.2022

Tawakal Khan S/O Panjarash Village Laspur District Upper Chitral.
... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary at Civil Secretariat Peshawar and three others.
... (Respondents)

MR. RAHIM ULLAH CHITRALI,
Advocate --- For appellant.

MR. MUHAMMAD RIAZ KHAN PAINDAKHEL,
Assistant Advocate General --- For respondents.

MR. SALAH-UD-DIN --- MEMBER (JUDICIAL)
MS. ROZINA REHMAN --- MEMBER (JUDICIAL)

CONSOLIDATED JUDGMENT:

SALAH-UD-DIN, MEMBER:- Through this single judgment, we intends to dispose of instant service appeal as well as connected Service Appeal bearing No. 5209/202 titled " Muhammad Zahir Khan Versus Government of Khyber Pakhtunkhwa through Chief Secretary at Civil Secretariat Peshawar and three others" as common question of law and facts are involved in both the appeals.

2. Precisely stated the facts as alleged by the appellants in their appeals are that they were appointed as Sepoy Border Police and had performed their duties with full devotion for the last 20 years, however on 27.11.2014, the respondents promoted 29 Levy personnel to various ranks

by superseding the appellants, while they were forcibly retired from service vide order dated 01.12.2014. The same was challenged by the appellants through filing of Writ Petition No. 608-M/2014 before honourable Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat, which was allowed vide order dated 07.02.2018 by directing the respondents to reinstate the appellants. The said order was challenged by the respondents through filing of Civil Petition No. 296-P of 2018 before the august Supreme Court of Pakistan, however the same was dismissed vide order dated 04.07.2018. The appellants were thus reinstated in service on 05.10.2018 and they are still working in the department but the respondents issued them retirement notice dated 04.12.2019. The respondents were not paying salaries to the appellants after their reinstatement, therefore, they submitted an application for release of their salaries, however the same was refused. The appellants being aggrieved from inaction of the respondents, invoked the jurisdiction of honourable Peshawar High Court through filing of Writ Petition, which was disposed of with the Observations that the appellants may pursue their remedy before the Provincial Services Tribunal, hence the instant service appeals.

3. Respondents contested both the appeals by way of submitting para-wise comments, wherein they refuted the assertions raised by the appellants in their appeals.

4. Learned counsel for the appellants has contended that in view of judgment dated 07.02.2018 passed by Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat in Writ Petition No. 608-M/2014, the appellants were entitled to their salaries as well as other back benefits upon

their reinstatement in service; that the appellants were reinstated, however they were not paid their salaries and a notice dated 04.12.2019 was issued to them by the competent Authority that they have crossed the age of superannuation and their pension papers have been prepared; that the appellants were actively performing their duties till 04.12.2019, therefore, they are entitled to their salaries with effect from 01.12.2014 till the retirement notice dated 04.12.2019; that the respondents have not treated the appellants in accordance with law, rules and policy on the subject, thereby causing them discrimination. Reliance was placed on 2001 SCMR 1320, 2011 PLC (C.S) 590, 2012 PLC (C.S) 708, 2017 SCMR 56, 2018 PLC (C.S) 1261 and 2018 SCMR 376.

5. On the other hand, learned Assistant Advocate General for the respondents has argued that the appellants had already crossed the age of superannuation during the pendency of their Writ Petition No. 608-M/2014 but they had deliberately concealed this fact from the august Peshawar High Court at the time of hearing in the Writ Petition; that the appellants were reinstated vide order dated 05.10.2018, whereby the intervening period during the retirement and rejoining of service was treated as leave without pay and the same has not been challenged by the appellants; that on production of the reinstatement order dated 05.10.2018 before honourable Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat during contempt of court proceedings, learned counsel for the appellants had stated that he was satisfied from the aforementioned order and COC Petition was thus disposed of accordingly; that as the appellants had already reached the age of superannuation, therefore, they were formally

reinstated and they have not performed any duty after their reinstatement.

6. Arguments have already been heard and record perused.

7. A perusal of the record would show that the appellants were retired from service vide order dated 01.12.2014 on completion of 25 years service as sepoy, which was challenged by the appellants through filing of Writ Petition No. 608-M/2014 before honourable Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat. The writ petition of the appellants was partially allowed vide judgment dated 07.02.2018. In para-8 of the judgment, honourable Peshawar High Court had observed as below:-

"This court in similar matter passed in W.P. No. 1251-P/2015 decided on 30.06.2015 has granted similar relief and the premature retirement was set-aside with the direction to allow the petitioners to complete their service tenure till attaining the age of superannuation and the intervening period during the retirement and rejoining of service was treated as leave without pay."

8. The judgment dated 07.02.2018 passed by honourable Peshawar High Court in Writ Petition No. 608-M/2014 was challenged by the respondents through filing of Civil Petition No. 296-P of 2018 before August Supreme Court of Pakistan, which was dismissed vide order dated 04.07.2018. The appellants had filed COC Petition for implementation of the judgment dated 07.02.2018 passed in Writ Petition No. 608-M/2014 and during the proceedings in the said COC Petition, the respondents produced office order bearing endorsement No. 205-6/DC/CMDT/CLC-20 dated 05.10.2018, whereby the appellants were reinstated in service by treating the intervening period during the retirement and reinstatement in service as leave without pay. Upon production of the aforementioned order dated 05.10.2018 before the honourable Peshawar High Court, learned

counsel for the appellants had stated at the bar that he was satisfied from the said order and had requested for disposal of the COC Petition without any further proceedings. The appellants did not raise any objection before the honourable Peshawar High Court regarding treating of the intervening period with effect from 01.12.2014 till the date of their reinstatement as leave without pay. They have, however now turned around and are seeking recovery of back benefits with effect from 01.12.2014 till 04.12.2019. It is worth mentioning here that the appellants had already reached the age of superannuation during the pendency of their Writ Petition No. 608-M/2014 but it appears that this fact was not brought in the knowledge of august Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat at the time of hearing. Moreover, the appellants had not filed separate departmental appeals as required under Rule-3 (2) of Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986, therefore, their service appeals are also not maintainable.

9. In view of the above discussion, the appeal in hand as well as connected Service Appeal bearing No. 5209/202 titled Muhammad Zahir Khan Versus Government of Khyber Pakhtunkhwa through Chief Secretary at Civil Secretariat Peshawar and three others", are dismissed being without merit. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
06.10.2022

(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT SWAT

(ROZINA REHMAN)
MEMBER (JUDICIAL)
CAMP COURT SWAT

ORDER
06.10.2022

Appellant alongwith his counsel present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present. Arguments have already been heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand as well as connected Service Appeal bearing No. 5209/202 titled Muhammad Zahir Khan Versus Government of Khyber Pakhtunkhwa through Chief Secretary at Civil Secretariat Peshawar and three others", are dismissed being without merit. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
06.10.2022

(Rozina Rehman)
Member (Judicial)
Camp Court Swat

(Salah-Ud-Din)
Member (Judicial)
Camp Court Swat

06.09.2022 Learned counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not prepared the brief of the instant appeal. Adjourned. To come up for arguments on 05.10.2022 before the D.B at Camp Court Swat.

(Mian Muhammad)
Member (Executive)
Camp Court Swat

(Salah-Ud-Din)
Member (Judicial)
Camp Court Swat

05.10.2022 Appellant alongwith his counsel present. Mr. Khushi Muhammad, Section Officer (Litigation) and Mr. Najam-ul-Hassan, Superintendent alongwith Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

Arguments heard. To come up for order on 06.10.2022 before the D.B at Camp Court Swat.

(Rozina Rehman)
Member (J)
Camp Court Swat

(Salah-Ud-Din)
Member (J)
Camp Court Swat

09.05.2022 Nemo for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for respondents present.

Written reply/comments have already been submitted through office, which are available on the record. Notice for prosecution of appeal be issued to the appellant as well as his counsel through registered post and to come up for rejoinder if any as well as arguments on 15 .07.2022 before the D.B.

(Mian Muhammad)
Member(E)

(Salah Ud Din)
Member(J)

15.07.2022 Junior of learned counsel for the appellant present. Mr. Najm-ul-Hassan, Superintendent alongwith Mr. Riaz Ahmad Paindakhel, Assistant Advocate General for the respondents present.

Junior of learned counsel for the appellant sought adjournment on the ground that learned counsel for the appellant is not available today. Adjourned. To come up for arguments on 04.08.2022 before the D.B.

(Rozina Rehman)
Member (J)

(Salah-ud-Din)
Member (J)

4.8.22 As per directions of the worthy Chairman this case is fixed at camp court Swat on 6-9-22 for the same as before.

16.11.2021 Appellant in person present. Mr. Kabirullah Khattak, Addl: AG for respondents present.

Written reply on behalf of respondents not submitted. Learned AAG seeks time to contact the respondents for submission of written reply/comments. Adjourned. To come up for written reply/comments on 12.01.2022 before S.B.

(Mian Muhammad)
Member(E)

13.01.2022 Nemo for the appellant Mr. Kabirullah Khattak, Addl. AG for respondents present.

Reply/comments on behalf respondents are still awaited. Learned Addl. AG sought time for submission of reply/comments. Last opportunity is granted to respondents to furnish reply/comments on or before next date, failing which their right to submit reply/comments shall be deemed as struck off by virtue of this order. To come up for arguments before the D.B on 09.05.2022.

(Atiq-Ur-Rehman Wazir)
Member (E)

M. Zahir Khan 5209/2021

05.07.2021 Counsel for the appellant present. Preliminary arguments heard.

The appellant through this appeal has sought/release of the salaries for a particular period with other benefits linked with his reinstatement in light of the judgment passed by the Hon'able Peshawar High Court, Mingora Bench. Lastly, when the petitioner was in pursuit against the departmental authority vide writ petitioner No. 745-M/2019 titled "Tawakal Khan alongwith 06 others-vs- Govt: of Khyber Pakhtunkhwa through Chief Secretary at Civil Secretariat Peshawar", the said Hon'able court vide judgment dated 09.04.2021 held that the petitioner may pursue the legal remedy before Service Tribunal within the statutory period of the limitation commencing from the date of issuance of certified copy of this judgment. According to note of the copying branch at last page of the judgment of Hon'able High Court copy of the judgment was delivered on 22.04.2021. There is an application marked as annexure-K at page-34 of the appeal whereby departmental redressal of the grievance was sought. The said application is dated 22.10.2018 was filed before filing of writ petition No. 745-M/2019 as disposed of by the above mentioned judgment by the Peshawar High Court, Mingora Bench. Similarly, the appellant did not file any departmental appeal maybe deeming the same as the departmental appeal. However, the same is subject to the objection by the respondents, if they are advised to file any objection in accordance with law for the determination of the Tribunal. As the appellant has been given liberty for pursuing

of his remedy before the Service Tribunal by Hon'able Peshawar High Court, therefore, this appeal is admitted to regular hearing, subject to all just and legal objections including limitation. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, the office shall submit the file with a report of non-compliance. File to come up for arguments on 16.11.2021 before the D.B.

Appellant Deposited
Security & Process Fee

Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 5210 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	21/05/2021	The appeal of Tawakal Khan resubmitted today by Mr. Rahimullah Chitrali, Advocate, may be entered in the Institution Register and put up to the Worthy Chairman for proper order please. REGISTRAR
2-	27/05/21	This case is entrusted to S. Bench for preliminary hearing to be put up there on 05/07/21 CHAIRMAN

The appeal of Mr. Tawakal Khan son of Panjarash village Laspur District upper Chitral received today i.e. on 06.05.2021 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1. Index of the appeal is not according to the rules which may be completed according to rules. Page of every annexure/documents may be numbered separately.

No. 792 /S.T,

Dt. 07/05 /2021

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Rahimullah Chitrali
Adv. High Court Pesh.

objection Removed Accordy to the directions.

Mr. Rahim ullah
chitrali.
Advocate
24/5/2021

Before the Hon'ble Chairman ServiceTribunal, KhyberPakhtunkhuwa Peshawar

Service Appeal No. 5210 */2021*

Tawakal Khan S/o Panjarash Village Luspur District Upper Chitral.

.....Appellant

VERSUS

Govt. of KP through Chief Secretary, and others.

.....Respondents

Index

S. No	Description of Documents	Annexure	Page No
1	Appeal With Certificate		1-5
2	Affidavit		6-7
3	Copy of Order Dated 01/12/2014	"A"	8-7
4	Judgment Dated 07/02/2018 & 04/07/2018	"B"	10-18
5	Memo of COC Application, order Dated 08/10/2018	"C"	20-22
6	Reinstatement order and letter Dated 07/02/2019, 29/05/2013	"D"	31
7	Applications Dated23/01/2019,18/06/2018, 22/10/2018 and20/09/2018	"E"	35-35
8	Retirement notice order 04/12/2019 and pay slips	"F"	39
9	Memo of Writ Petition 745 M 2019 and judgment Dated 09/04/2021	"G"	47-71
10	Copy of Vakalatnama		72

Appellant

Through

Advocate High Court

(1)

BEFORE THE HON'BLE CHAIRMAN SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA PESHAWAR 5210/21

Tawakal Khan son of Panjarash village Laspur District Upper Chitral.

..... Appellant

VERSUS

1. Govt Of Khyber Pakhtunkhwa through Chief Secretary ,at Civil Secretariat Peshawar.
2. Govt Of Khyber Pakhtunkhwa through Secretary , Home and Tribal Affairs ,at Peshawar.
3. The Secretary SAFRON Civil Secretariat Islamabad .
4. The Deputy Commissioner/ Commandant Chitral Levies Chitral

..... **Respondents**

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, FOR GRANTING BACK BENEFIT W .E. F SINCE DISMISSAL ORDER I.E 1-12-2014 TILL RETIREMENT NOTICE 4-12-2019, AGAINST THE REFUSAL ORDER OF THE RESPONDENTS THE PETITIONER FILED WRIT PETITION BEFORE HON,ABLE HIGH COURT DAR UL QAZA PESHAWAR AND THE SAME WAS DISPOSED OF WITH DIRECTION , TO APPROACH HON,ABLE PROVINCIAL SERVISE TRIBUNAL WITHIN THE STATUTORY PERIOD OF LIMITATION , HENCE THE INSTANT APPEAL.

Prayer in Appeal:

ON ACCEPTANCE OF THE INSTANT APPEAL THE RESPONDENTS MAY KINDLY BE DIRECTED TO GRANT/RELEASE THE SALARIES OF THE PETITIONER FROM 1-12-2014 TILL RETIREMENT NOTICE 4-12-2019, AND FURTHER BE DIRECTED TO GRANTING OTHERS BENEFIT OF THE PETITIONER WHICH HE HAS BEEN REINSTATED IN LIGHT OF THE

Filedto-day
Registrar
6/5/2021

Re-submitted to -day and filed.
Registrar
7/5/2021

JUDGMENTS PASSED BY THE HON,ABLE HIGH COURT PESHAWAR MINGORA BENCH .

ANY OTHER REMEDY WHICH DEEMS FIT BY HIS HON'BLE TRIBUNAL IN THE INTEREST OF JUSTICE, MAY ALSO BE GRANTED IN FAVOUR OF APPELLANT.

Respectfully Sheweth,

1) That the appellant is law abiding citizens of Islamic republic of Pakistan and the appellant is permanently residing at the address given in the title of this appeal.

2) That the appellant was initially appointed as a sepoy Border Police and his service were regulated and controlled by SAFRON in according with existing rule.

3) That the appellant was performing his duties with full devotion for the last twenty years continuously with respondents.

4) That on 27-11-2014 the respondents promoted 29 levy personal to the different Ranke superseding the appellant and lastly on 1-12-2014 forcibly retired him from his service and the said act being challenged through Writ No. 608 M/2014 before this Hon,able Court. **(Copy of order dated 1-12-2014 is attached as marked A)**

5) That the appellant and others colleague assailed the impugned order dated 1-12-2014 through Wp. No 608 M /14 , which was allowed vide order date 7-2-2018 and directed the respondents to reinstate the appellant .

6) That the order dated 7-2-2018 passed by this Hon,able court challenged before Hon,able Supreme Court by the respondents which was dismissed vide order dated 4-7-2018 and subsequently in

compliance with the judgment dated 7-2-2018 passed by this Hon,able Court, appellant was reinstated into service on 5-10-2018. (Copies of the judgments dated 7-2-2018, 4-7-2018, memo of COC ,order dated 8-10-2018,reinstatement order and letter dated 7-2-2019 are attached as annexure "B to G")

7) That the appellant was working / serving with the respondent department, for which appellant requested them time and again to release his salaries but in vain.

8) That the appellant through proper channel submitted an application for providing salaries of the appellant , but they refused. (Copies of letter dated 29-5-2013applications dated 23-1-2019,18-6-2018,22-10-2018,and 20-9-2018 are attached as annexure "H to L")

9) That the appellant still working under the command of the respondent department but during the pendency of the writ petition the respondents issued retirement notice dates on 4-12-2019 to the appellant .(copy of the retirement notice order 4-12-2019 and pay slips are attached as marked annuxer M to P)

10) That there is no ambiguity on the legal position that the appellant is entitled to the back benefit including salaries during the time they remained out of service on account of his dismissal which was termed as wrongful by this Hon,able Court in the aforesaid judgment.

11) That the appellant being aggrieved from the action & inaction of official respondents to refuse salary or others benefit , is arbitrary contrary to law, the appellate have filed constitution petition under article 199 of the constitution 1973, Islamic Republic of Pakistan before Peshawar High Dar ul Qaza which was disposed of with direction to approach hon,able provincial servise tribunal within the statutory period of limitation , hence the instant appeal on the

following ground. . .(copy of the memo of appeal and judgment 9-4-2021 is attached as marked annuxer Q to R)

GROUNDS:-

A) That his service was terminated without assigning any reason whatsoever ,which termination was found illegal by Hon,able court and apex Court , as having been made without any reason or justification and the appellant legally entitled to back benefit for the period intervening between the date of termination i.e 26-1-2011 and up to the date of his retirement notice.

B) That action& inaction of the respondents are violative of the constitution and the relevant laws lay down for the purpose hence needs interference of this august court.

C) That the official respondents have not treated with the petitioners in accordance with law, rule and policy in the subject and acted in violation existing law / policy, and unlawfully acted which is unjust, unfair, hence not sustainable in the eye of law.

D) That the appellant was performing his duties under the control of the respondents, but the respondents neither paid salaries nor granting retirement benefit , such action of the respondents which is not only denial of fundamental right of the appellant guaranteed under articles 4,11, 29 and 25 of the Constitution of Islamic Republic of Pakistan.

E) That the act of the respondents is without lawful authority based on misuse and exercise of power as such void ab-initio, and ineffective upon the rights of the appellant.

F) That if the appellant has not be given right of salaries along with all back benefits, he will suffer a lot and also be discouraged.

G) That stoppage of the salary is amounting to the force labor which is against the fundamental right of the appellant.

H) That the state is like a mother and the state / government functionaries are constitutionally bound to safeguard the rights of the citizen and provide all rights safeguard by the Constitution.

I) That the act of the respondents as not complying the judgment of this Hon,able court in its true spirit as highly discriminatory, and biased unlawful, lack backing of the law, void ab-initio.

J) That it is settled principle of law no one should be panelized by act of authorities.

K) That the appellant has poor financial background and serving the department, but the respondents did not observe the prescribed rules, regulations and denied the benefits in shape salary and others benefit to the appellant .

L) That the impugned action / inaction of the respondents is based on discrimination and malafide intentions for achieving their ulterior motives.

M) That although appellant and others person have been reinstated with benefit , but till now the appellant been deprived of his legal back benefit .

N) That further grounds, with leave of this Honorable Court, would be raised at the time of arguments before this Honorable Court.

PRAYER

it is therefore humbly prayed that on acceptance of the instant appeal the respondents may kindly be directed to grant/release the salaries of the appellant from 1-12-2014 till retirement notice 4-12-2019, and further be directed to granting others benefit of the petitioner which he has been reinstated in light of the judgments passed by the hon,able high court Peshawar Mingora Bench .

Appellant

Through

Rahim Ullah Chitrali
Advocate High Court

Certificate:-
It is certified that no such appeal is pending or decided by this Hon, able Court

Advocate High Court

List of Books:-

a. Service Laws

b. Case law according to need

Advocate High Court

7

BEFORE THE HON'BLE CHAIRMAN SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No...../2021

Tawakal Khan son of Panjarash village Laspur District Upper Chitral.

..... Appellant

VERSUS

Govt Of KP through Chief Secretary ,and other ..... **Respondents**

AFFIDAVIT

I, Tawakal Khan son of Panjarash village Laspur District Upper Chitral. , do hereby solemnly affirm and declare on oath that the contents of the above titled appeal are true and correct to the best of my knowledge and belief and nothinghas been kept concealed from this Honorable Court.

DEPONENT

KHADIMUL AKBAR
Advocate & Notary Public
Distt. Courts Chitral (U)
05/05/2021

ATTESTED

7-A

BEFORE THE HON'BLE CHAIRMAN SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA PESHAWAR

Tawakal Khan .....Appellant

VERSUS

Govt Of KP through Chief Secretary ,and others .....Respondents

ADDRESSES OF PARTIES

APPELLANT

Tawakal Khan son of Panjarash village Laspur District Upper Chitral.

RESPONDENTS

1. Govt Of Khyber Pakhtunkhwa through Chief Secretary ,at Civil Secretariat Peshawar.
2. Govt Of Khyber Pakhtunkhwa through Secretary , Home and Tribal Affairs ,at Peshawar.
3. The Secretary SAFRON Civil Secretariat Islamabad .
4. The Deputy Commissioner/ Commandant Chitral Levies Chitral

Appellant

Through

RAHIM ULLAH
Advocate High Court
Office: Rahim &Qazi Law Associates, 3rd d floor continental Plaza Swat
Cell No. 03439540004

Before the Hon'ble Chairman ServiceTribunal, KhyberPakhtunkhuwa Peshawar

Service Appeal No 1210 */2021*

Tawakal Khan S/o Panjarash Village Luspur District Upper Chitral.

.....Appellant

VERSUS

Govt. of KP through Chief Secretary, and others.

.....Respondents

Index

S. No	Description of Documents	Annexure	Page No
1	Appeal With Certificate		1-5
2	Affidavit		6-7
3	Copy of Order Dated 01/12/2014	"A"	8-7
4	Judgment Dated 07/02/2018 & 04/07/2018	"B"	10-18
5	Memo of COC Application, order Dated 08/10/2018	"C"	20-22
6	Reinstatement order and letter Dated 07/02/2019, 29/05/2013	"D"	31
7	Applications Dated23/01/2019,18/06/2018, 22/10/2018 and20/09/2018	"E"	33-35
8	Retirement notice order 04/12/2019 and pay slips	"F"	37-39
9	Memo of Writ Petition 745 M 2019 and judgment Dated 09/04/2021	"G"	47-71
10	Copy of Vakalatnama		72

Appellant

Through

Advocate High Court

(1)

BEFORE THE HON'BLE CHAIRMAN SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA PESHAWAR

Tawakal Khan son of Panjarash village Laspur District Upper Chitral.

..... Appellant

VERSUS

1. Govt Of Khyber Pakhtunkhwa through Chief Secretary ,at Civil Secretariat Peshawar.
2. Govt Of Khyber Pakhtunkhwa through Secretary , Home and Tribal Affairs ,at Peshawar.
3. The Secretary SAFRON Civil Secretariat Islamabad .
4. The Deputy Commissioner/ Commandant Chitral Levies Chitral

..... **Respondents**

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, FOR GRANTING BACK BENEFIT W .E. F SINCE DISMISSAL ORDER I.E 1-12-2014 TILL RETIREMENT NOTICE 4-12-2019, AGAINST THE REFUSAL ORDER OF THE RESPONDENTS THE PETITIONER FILED WRIT PETITION BEFORE HON,ABLE HIGH COURT DAR UL QAZA PESHAWAR AND THE SAME WAS DISPOSED OF WITH DIRECTION , TO APPROACH HON,ABLE PROVINCIAL SERVISE TRIBUNAL WITHIN THE STATUTORY PERIOD OF LIMITATION , HENCE THE INSTANT APPEAL.

Prayer in Appeal:

ON ACCEPTANCE OF THE INSTANT APPEAL THE RESPONDENTS MAY KINDLY BE DIRECTED TO GRANT/RELEASE THE SALARIES OF THE PETITIONER FROM 1-12-2014 TILL RETIREMENT NOTICE 4-12-2019, AND FURTHER BE DIRECTED TO GRANTING OTHERS BENEFIT OF THE PETITIONER WHICH HE HAS BEEN REINSTATED IN LIGHT OF THE

JUDGMENTS PASSED BY THE HON,ABLE HIGH COURT PESHAWAR MINGORA BENCH .

ANY OTHER REMEDY WHICH DEEMS FIT BY HIS HON'BLE TRIBUNAL IN THE INTEREST OF JUSTICE, MAY ALSO BE GRANTED IN FAVOUR OF APPELLANT.

Respectfully Sheweth,

1) That the appellant is law abiding citizens of Islamic republic of Pakistan and the appellant is permanently residing at the address given in the title of this appeal.
2) That the appellant was initially appointed as a sepoy Border Police and his service were regulated and controlled by SAFRON in according with existing rule.
3) That the appellant was performing his duties with full devotion for the last twenty years continuously with respondents.
4) That on 27-11-2014 the respondents promoted 29 levy personal to the different Ranke superseding the appellant and lastly on 1-12-2014 forcibly retired him from his service and the said act being challenged through Writ No. 608 M/2014 before this Hon,able Court. **(Copy of order dated 1-12-2014 is attached as marked A)**
5) That the appellant and others colleague assailed the impugned order dated 1-12-2014 through Wp. No 608 M /14 , which was allowed vide order date 7-2-2018 and directed the respondents to reinstate the appellant .
6) That the order dated 7-2-2018 passed by this Hon,able court challenged before Hon,able Supreme Court by the respondents which was dismissed vide order dated 4-7-2018 and subsequently in

compliance with the judgment dated 7-2-2018 passed by this Hon,able Court, appellant was reinstated into service on 5-10-2018. (Copies of the judgments dated 7-2-2018, 4-7-2018, memo of COC ,order dated 8-10-2018,reinstatement order and letter dated 7-2-2019 are attached as annexure "B to G")

7) That the appellant was working / serving with the respondent department, for which appellant requested them time and again to release his salaries but in vain.

8) That the appellant through proper channel submitted an application for providing salaries of the appellant , but they refused. (Copies of letter dated 29-5-2013applications dated 23-1-2019,18-6-2018,22-10-2018,and 20-9-2018 are attached as annexure "H to L")

9) That the appellant still working under the command of the respondent department but during the pendency of the writ petition the respondents issued retirement notice dates on 4-12-2019 to the appellant .(copy of the retirement notice order 4-12-2019 and pay slips are attached as marked annuxer M to P)

10) That there is no ambiguity on the legal position that the appellant is entitled to the back benefit including salaries during the time they remained out of service on account of his dismissal which was termed as wrongful by this Hon,able Court in the aforesaid judgment.

11) That the appellant being aggrieved from the action & inaction of official respondents to refuse salary or others benefit , is arbitrary contrary to law, the appellate have filed constitution petition under article 199 of the constitution 1973, Islamic Republic of Pakistan before Peshawar High Dar ul Qaza which was disposed of with direction to approach hon,able provincial servise tribunal within the statutory period of limitation , hence the instant appeal on the

following ground . .(copy of the memo of appeal and judgment 9-4-2021 is attached as marked annuxer Q to R)

GROUNDS:-

A) That his service was terminated without assigning any reason whatsoever ,which termination was found illegal by Hon,able court and apex Court , as having been made without any reason or justification and the appellant legally entitled to back benefit for the period intervening between the date of termination i.e 26-1-2011 and up to the date of his retirement notice.

B) That action& inaction of the respondents are violative of the constitution and the relevant laws lay down for the purpose hence needs interference of this august court.

C) That the official respondents have not treated with the petitioners in accordance with law, rule and policy in the subject and acted in violation existing law / policy, and unlawfully acted which is unjust, unfair, hence not sustainable in the eye of law.

D) That the appellant was performing his duties under the control of the respondents, but the respondents neither paid salaries nor granting retirement benefit , such action of the respondents which is not only denial of fundamental right of the appellant guaranteed under articles 4,11, 29 and 25 of the Constitution of Islamic Republic of Pakistan.

E) That the act of the respondents is without lawful authority based on misuse and exercise of power as such void ab-initio, and ineffective upon the rights of the appellant.

F) That if the appellant has not be given right of salaries along with all back benefits, he will suffer a lot and also be discouraged.

G) That stoppage of the salary is amounting to the force labor which is against the fundamental right of the appellant.

H) That the state is like a mother and the state / government functionaries are constitutionally bound to safeguard the rights of the citizen and provide all rights safeguard by the Constitution.

I) That the act of the respondents as not complying the judgment of this Hon,able court in its true spirit as highly discriminatory, and biased unlawful, lack backing of the law, void ab-initio.

J) That it is settled principle of law no one should be panelized by act of authorities.

K) That the appellant has poor financial background and serving the department, but the respondents did not observe the prescribed rules, regulations and denied the benefits in shape salary and others benefit to the appellant .

L) That the impugned action / inaction of the respondents is based on discrimination and malafide intentions for achieving their ulterior motives.

M) That although appellant and others person have been reinstated with benefit , but till now the appellant been deprived of his legal back benefit .

N) That further grounds, with leave of this Honorable Court, would be raised at the time of arguments before this Honorable Court.

PRAYER

it is therefore humbly prayed that on acceptance of the instant appeal the respondents may kindly be directed to grant/release the salaries of the appellant from 1-12-2014 till retirement notice 4-12-2019, and further be directed to granting others benefit of the petitioner which he has been reinstated in light of the judgments passed by the hon,able high court Peshawar Mingora Bench .

Appellant

Through

Rahim Ullah Chitrali
Advocate High Court

Certificate:-
It is certified that no such appeal is pending or decided by this Hon, able Court

Advocate High Court

List of Books:-

a. Service Laws

b. Case law according to need

Advocate High Court

7

BEFORE THE HON'BLE CHAIRMAN SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No...../2021

Tawakal Khan son of Panjarash village Laspur District Upper Chitral.

..... Appellant

VERSUS

Govt Of KP through Chief Secretary ,and other ..... **Respondents**

AFFIDAVIT

I, Tawakal Khan son of Panjarash village Laspur District Upper Chitral. , do hereby solemnly affirm and declare on oath that the contents of the above titled appeal are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Honorable Court.

DEPONENT

7-A

BEFORE THE HON'BLE CHAIRMAN SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA PESHAWAR

Tawakal Khan .....Appellant

VERSUS

Govt Of KP through Chief Secretary ,and others .....Respondents

ADDRESSES OF PARTIES

APPELLANT

Tawakal Khan son of Panjarash village Laspur District Upper Chitral.

RESPONDENTS

1. Govt Of Khyber Pakhtunkhwa through Chief Secretary ,at Civil Secretariat Peshawar.
2. Govt Of Khyber Pakhtunkhwa through Secretary , Home and Tribal Affairs ,at Peshawar.
3. The Secretary SAFRON Civil Secretariat Islamabad .
4. The Deputy Commissioner/ Commandant Chitral Levies Chitral

Appellant

Through

RAHIM ULLAH
Advocate High Court
Office: Rahim &Qazi Law Associates, 3rd d floor continental Plaza Swat
Cell No. 03439540004

8

Ann A

OFFICE OF THE DEPUTY COMMISSIONER /COMMANDANT CHITRAL LEVIES, CHITRAL

Dated Chitral the 1st December, 2014

ORDER:

No. 1098 /BPC-27. Having completed the required length of service for Sepoys (B-5) under Sub Rule 17 (Retirement), Schedule-III of the Federal Levies Service (Amended) Rule 2013 dated 12-12-2013, the following personnel of Chitral Levies, Chitral, are hereby retired from service with effect from 01/12/2014 (FN) on payment of pension as admissible under the rule:-

S #	EPN	Rank	Names of the Levy personnel	Date of Birth	Age	Date of Apt:	Service length		
							Y	M	D
1	00318651	Sepoy	Zarin Khan	21-Mar-55	59	15-Jun-82	32	5	13
2	00318916	Sepoy	Ahmad Nawaz	21-Mar-55	59	15-Jun-82	32	5	13
3	00318752	Sepoy	Faizuddin	12-Apr-55	59	3-Apr-78	36	7	25
4	00318395	Sepoy	Feroz Khan	1-Jul-55	59	19-Jun-84	30	5	9
5	00318841	Sepoy	Muhammad Azim Baig	27-Sep-55	59	15-Sep-83	31	2	13
6	00318566	Sepoy	Muhd Ibrahim Khan	1-Jul-56	58	1-Apr-83	31	7	27
7	00318552	Sepoy	Ghazluddin Khan	10-Sep-56	58	1-Feb-84	30	9	27
8	00318894	Sepoy	Nazurban Shah	31-Dec-56	58	15-Jun-81	33	5	13
9	00318928	Sepoy	Muhammad Ghazi	1-Feb-57	57	24-Nov-82	32	0	4
10	00318911	Sepoy	Shahi Noor	13-Apr-57	57	13-Apr-78	36	7	15
11	00318373	Sepoy	Gul Ahmad	1-May-57	57	15-Jun-81	33	5	13
12	00318658	Sepoy	Gulzar Khan	1-Jan-58	56	1-Mar-82	32	8	27
13	00337966	Sepoy	Abdur Rehman	1-Jan-58	56	1-Mar-82	32	8	27
14	00337947	Sepoy	Muhammad Zahir Khan	1-Jan-58	56	6-Jan-84	30	10	22
15	00318881	Sepoy	Khair Muhammad	1-May-58	56	15-Jun-81	33	5	13
16	00318575	Sepoy	Gulab Khan	15-Jun-58	56	15-Jun-82	32	5	13
17	00319039	Sepoy	Musa Wali Khan	31-Dec-58	56	15-Jun-81	33	5	13
18	00318834	Sepoy	Muhammad Akbar	1-Jan-59	55	2-Aug-82	32	3	26
19	00318745	Sepoy	Hakim Jan	21-Mar-59	55	15-Jun-82	32	5	13
20	00318840	Sepoy	Jahan Gul	8-Jan-60	54	1-Aug-83	31	3	27
21	00318409	Sepoy	Abad Khan	1-Jul-60	54	21-Sep-82	32	2	7
22	00318925	Sepoy	Muhammad Wali	1-Jul-60	54	19-Sep-84	30	2	9
23	00318825	Sepoy	Salamat Shah	15-Mar-61	53	15-Jun-82	32	5	13
24	00318830	Sepoy	Balan Khan	10-Mar-62	52	15-Jun-82	32	5	13
25	00318702	Sepoy	Ghulam Khan	15-Oct-62	52	15-Jun-82	32	5	13
26	00318560	Sepoy	Muhammad Zahir Shah	1-Jul-63	51	26-Feb-83	31	9	2
27	00318851	Sepoy	Muhammad Karim Shah	1-Jul-63	51	14-Nov-83	31	0	14
28	00318538	Sepoy	Gul Rahim	15-Mar-64	50	19-Apr-83	31	7	9
29	00319028	Sepoy	Burhanuddin	1-Jul-64	50	15-Jun-82	32	5	13
30	00318342	Sepoy	Sarfaraz Shah	1-Jul-64	50	21-May-83	31	6	7
31	00318546	Sepoy	Pati Muhammad	15-Oct-64	50	1-Feb-84	30	9	27
32	00318586	Sepoy	Tawakal Khan	1-Jul-57	57	6-May-85	29	6	22
33	00318645	Sepoy	Zahir Shah	1-Jul-57	57	5-Jun-85	29	5	23
34	00319053	Sepoy	Muhammad Azam	1-Jul-57	57	18-Jun-85	29	5	10
35	00318594	Sepoy	Panjabi Khan	1-Jul-60	54	20-Feb-85	29	9	8
36	00318451	Sepoy	Noor Hayat	1-Jul-60	54	5-Jun-85	29	5	23
37	00318415	Sepoy	Amir Muhammad	1-Jan-61	53	4-Jun-85	29	5	24
38	00318475	Sepoy	Muhammad Akbar Khan	1-Jan-61	53	9-Jun-86	28	5	19
39	00318527	Sepoy	Abdur Rehman	1-Jan-61	53	6-Feb-88	26	9	22
40	00339410	Sepoy	Patali Shah	1-Jul-61	53	20-Feb-85	29	9	8
41	00318788	Sepoy	Muhammad Noor	1-Jul-61	53	9-Aug-89	25	3	19

42	00318519	Sepoy	Muhammad Baig	1-Jan-62	52	1-Jan-88	26	10	27
43	00318994	Sepoy	Muhammad Hassan	1-Jul-62	52	3-Jun-85	29	5	25
44	00318897	Sepoy	Azizullah	1-Jul-62	52	5-Jun-85	29	5	23
45	00318847	Sepoy	Gul Fairooz Khan	1-Jul-63	51	5-Jun-85	29	5	23
46	00318378	Sepoy	Saeed Ahmad	1-Jul-64	50	17-Mar-85	29	8	11
47	00318599	Sepoy	Rehmat Ghazi Baig	1-Jul-64	50	9-Jul-85	29	4	19
48	00337964	Sepoy	Muhammad Ismail	1-Jan-65	49	9-Jun-88	26	5	19
49	00318641	Sepoy	Khan Shoaib	1-Jul-65	49	5-Jun-85	29	5	23
50	00318428	Sepoy	Jamaluddin	1-Jul-65	49	10-Feb-87	27	9	18
51	00318363	Sepoy	Attaullah	16-Jun-66	48	5-Jun-85	29	5	23
52	00318571	Sepoy	Dazoo Khan	1-Jul-66	48	3-Mar-85	29	8	25
53	00318470	Sepoy	Muhammad Ghaffar	1-Jul-66	48	25-Mar-85	29	8	3
54	00318403	Sepoy	Ghulam Farooq	1-Jul-66	48	5-Jun-85	29	5	23
55	00318511	Sepoy	Fazal Rabi	16-Mar-67	47	5-Jun-85	29	5	23
56	00318286	Sepoy	Abdul Hakim	1-Jul-67	47	27-Jul-85	29	4	1
57	00318769	Sepoy	Mujeebur Rehman	1-Jul-68	46	9-Sep-89	25	2	19
58	00318501	Sepoy	Sher Azam Khan	1-Jul-70	44	19-Oct-89	25	1	9
59	00337945	Sepoy	Sirajuddin	1-Jul-69	45	19-Oct-89	25	1	12

In pursuance of para (b) of Government of Pakistan, Finance Division Islamabad letter No. 1 (1) INP/83 dated 18-8-1983, and amended rule 18(A) (i) Sub Rule (2) *vide* Notification No. S.R.O 70 (KE)/2012 dated 29-08-2012 the personnel at *vice* No. **1 to 31** above are hereby allowed encashment of L.P.R for 365 days as provided under the Rule 25 of the Government of Pakistan, Finance Division Islamabad Civil Servant Revised Rules 1973 *Mutais Mutandis.*

Deputy Commissioner/
Commandant Chitral Levies,
Chitral

No. 1099-1159-/BPC-27

Copy forwarded to :-

1. The Secretary Government of Khyber Pakhtunkhwa Home & TAs Department Peshawar
2. The Secretary SAFRON Division, Islamabad
3. The Commissioner Malakand Division Saidu Sharif Swat
4. The District Accounts Officer, Chitral for information & necessary action please.
5. The Subedar Major Chitral Levies, Chitral for information.
6. The *Kothe* NCO Levies HQ Chitral with the direction to furnish "NOC" in favour of the personnel to this office to process their pension/commutation documents.
7. The Accountant Chitral Levies Chitral
8. The official concerned for information
9. GP Fund File (10) Pension File (11) Service Roll

Deputy Commissioner/
Commandant Chitral Levies,
Chitral

Judgment Sheet

(10)

Ann B

PESHAWAR HIGH COURT, MINGORA BENCH (DAR-UL-QAZA), SWAT.

JUDICIAL DEPARTMENT

W.P.No.608/2014

JUDGMENT

Date of hearing...07/02/2018.....

Petitioners (Zarin Khan & others) By M/s Mumtaz Ahmad & Subhanullah, Advocates.....

Ann B

Respondent No.1 By Mian Hussain Ali, DAG.....

Respondents No.2 to 4 By Mr.Rafique Ahmad, Asstt: A.G.....

MUHAMMAD NASIR MAHFOOZ, J:- Through the instant writ petition petitioners have prayed for the following relief:-

> ***'A. that on acceptance of the instant writ petition, this Hon'ble Court may be pleased to declare the impugned services rules, provincially administered Tribal Areas (PATA), Federal levies Force Services Rules 2013 null and void, illegal, unlawful, void ab initio, ultra vires and against of the petitioners and the petitioners may be treated according to the previous policy of retirement after the completion of 60 years of age.***
>
> ***B. This August Court may please to set aside the impugned notification dated 01.12.2014 by reinstating the petitioners with all back benefits by declaring the impugned notification dated 01.12.2014 as illegal, unjustified, unwarranted and against the rules'.***

2. Petitioners who are the residents of District Chitral were recruited as Sepoys as regular

employees of border police, Chitral which was established in the year 1895. It is mentioned in the writ petition that in 1950 regular police was introduced in Swat by Ex-Wali of Swat by conversion of the levies personnel and in Chitral the police force was recognized and separated from Swat police, while in the District of Dir and Malakand Agency they are still treated as Levies Force.. In the year 1962, for the first time service rules for the Malakand and Dir Levies were framed and future promotions were provided to different categories of the employees. On 27.11.2014 respondents promoted 29 levy personnel to different ranks superseding the present petitioners and on 1.12.2014 forcibly retired them from their services. The said act is being challenged as passed with mala fide intention, without lawful authority and against the rules, hence, the instant writ petition.

3. During proceedings in the instant writ petition. Except seven of the writ petitioners rest of the petitioners have been reinstated into service, so the said petitioners did not press their writ petitions and, therefore, to their extent it is dismissed as

withdrawn. Now the only seven aggrieved petitioners are at S.No.14, 24, 29, 32, 44, 49 and 53.

12

4. Respondents were put on notice who submitted their comments and denied the allegations of present petitioners and submitted that the petitioners have got no right to serve till retirement up to the age of superannuation and alleged that they have been removed on disciplinary grounds.

5. During pendency of the instant writ petition, one of the petitioner at S.No.57 Javed Ahmad, submitted an application for impleadment which was allowed on 03.11.2016 but during arguments of the main writ petition his case was in total conflict with the rights of the aggrieved petitioners as in case of acceptance of the writ petition of aggrieved petitioners he would suffer as he has been appointed on the post vacated by the petitioners.

We have heard arguments of learned counsel for the petitioners, learned counsel for the added petitioner, learned A.A.G as well as the learned DAG for the Government/respondents.

6. Though the relief prayed for in the writ petition is for declaring the rules promulgated

known as PATA Federal Levies Force Service Rules 2013 as null and void but during submissions in Court none of the petitioners or their counsels addressed the Court on this aspect of the matter. They simply urged their reinstatement like their other colleagues who were petitioners before and have been reinstated. The main grievance is declaring their forced/compulsory retirement as void and without jurisdiction. Therefore, the prayer regarding the declaration of the impugned rules as null and void is held to have been withdrawn and, therefore, dismissed to that extent only. So far as the claim of aggrieved petitioners for their reinstatement is concerned, a bare look at the perusal of the comments would show that no record whatsoever has been annexed therewith to show that the aggrieved petitioners were involved in any activities which entailed disciplinary proceedings and resultantly compulsory retirement.

7. The impugned office order dated 01.12.2014 bearing No.1098/BFC-27 reveals that the petitioners have been compulsorily retired on the sole ground that having completed the required length of service

for Sepoys (BPS-5) under sub-rule 17 (retirement), schedule-III of the Federal Levies Service (Amended) Rules, 2013 dated 12.12.2013. As mentioned above, some of the petitioners have been reinstated into service during the pendency of the instant writ petition, therefore, the case of only seven aggrieved petitioners needs to be considered. According to the Federal Levies Service Rules a Sepoy (BPS-5) is required to retire after serving for 25 years or on attaining the age of 60 years whichever is earlier. Rule 17 (retirement) (1) provides that all uniform levy personnel shall retire as per Schedule-III or they may opt for retirement after completion of 25 years of regular service and no extension in service beyond retirement shall be granted. This rule has been notified through notification dated 12.12.2013.

8. The case of aggrieved petitioners only requires consideration on the ground of discriminatory treatment vis-a-vis their other colleagues who have been reinstated in service during the pendency of the instant writ petition. No record whatsoever, has been annexed with the

comments to establish that either the petitioners are unable to perform their duties or they have committed any misconduct that requires disciplinary proceedings against them. The vague denial in the comments could be considered as their waiver to defend their allegations against the petitioners and would constitute acceptance of the allegations of the petitioners. We could not find any reason to refuse relief to the petitioners to the extent of declaring the impugned office order dated 01.12.2014 as without jurisdiction and without lawful authority as it suffers due to discriminatory treatment with the petitioners. The fundamental rights to be treated in accordance with law is invariably a substantial ground to grant them relief. In addition no show cause notice whatsoever has been issued to the petitioners before their compulsory retirement and, therefore, the principles of natural justice is also attracted to the case of petitioners. This Court in similar matter passed in W.P.No.1251-P/2015 decided on 30.06.2015 has granted similar relief and the pre-mature retirement was set aside with the direction to allow the petitioners therein to complete their

services tenure till attaining the age of superannuation and the intervening period during the retirement and rejoining of service was treated as leave without pay. Learned counsel for the petitioners relied on case titled **Muhammad Rafi and another Vs. Federation of Pakistan and others** reported as (2017 PLC (SC) 1270), para 7 is quoted below:-

16

> *"7. The ground that the process through which the person has passed in order to be awarded an appointment was not transparent, is not sufficient reason for the competent Authority to scrap the appointments of the Appellants who had passed through the proper recruitment process. The Service Regulations of the Civil Aviation Authority do not suggest that once the offer letter has been issued and accepted, the Civil Aviation Authority can scrap the process on the grounds that it was not transparent. There would have been some force in this contention of the Counsel for the Respondents (Civil Aviation Authority) if it was brought on record that persons who initiated the said process were also proceeded against departmentally for misconduct but there is nothing on record that suggests this, rather the Counsel when put to this question also concedes that no action has been taken by the competent Authority against the persons who were involved in the process of appointment of the Appellants".*

Therefore, we consider that this writ petition be partially allowed to the extent of declaring the impugned office order dated 01.12.2014 as null and void and the respondents are directed to reinstate the

petitioners in their service as they were before their retirement. The rest of the relief as prayed for is dismissed and similarly the relief to the added petitioner could not be granted in the instant writ petition who may file a separate writ petition, if so advised.

17

PESHAWAR HIGH COURT
MINGORA BENCH/DAR-UL-QAZA SWAT

JUDGE

JUDGE

Announced.
Dt.07/02/2018.

HON'BLE MR.JUSTICE ISHTIAQ IBRAHIM &
HON'BLE MR.JUSTICE MUHAMMAD NASIR MAHFOOZ.

(A.K.KHAN)

S.No. 92
Name of Applicant Bilal Ahmad
Date of Presentation of Application 10-3-18
Date of Preparation of Copies 10-3-18
No. of Pages 8
Urgent Fee
Fee Charged 16/-
Date of Delivery of Copies 10-3-18

Certified to be true copy

EXAMINER
Peshawar High Court, Mingora/Dar-ul-Qaza, Swat
Authorized Under Article 87 of the Qanun-e-Shahadat Order 1984

9/3/2

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

18
Ann C

PRESENT: MR. JUSTICE MIAN SAQIB NISAR, HCJ
MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE IJAZ UL AHSAN

CIVIL PETITION NO.296-P OF 2018
(Against the judgment dated 7.2.2018 of the Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat passed in W.P.No.608/2014)

Govt. of KPK through Secretary Home & Tribal Affairs Peshawar etc.
...Petitioner(s)

VERSUS

Muhammad Zahir Khan etc.
...Respondent(s)

For the petitioner(s): Mr. Zahid Yousaf Qureshi, Addl.P.G.

For the respondent(s): Not represented

Date of hearing: 4.7.2018

ORDER

MIAN SAQIB NISAR, CJ.- The respondents were not given any option of compulsory retirement, rather they were compelled without even giving an opportunity of hearing for retirement after completion of 25 years of service. This has been found to be illegal by the learned High Court and relief has been granted to the repsondents which we do not find to be against the law or principles of rules of equity. No case for interference has been made out. Dismissed accordingly.

Sd/-,HCJ
Sd/-,J
Sd/-,J

Certified to be True Copy

Court Associate
Supreme Court of Pakistan
Islamabad

SEAL OF THE SUPREME COURT OF PAKISTAN

Islamabad, the
4th of July, 2018
Not Approved For Reporting
Waqas Nasser/*

GR No: 12867/18
Date of Presentation: 21-7-18
No of Words: 220
No of Folios: 8
Requisition Fee Rs: 5.00
Copy Fee In: 1.80
Court Fee Stamps: 6.80
Date of Completion of Copy: 24/7/18
Date of delivery: 24-7-18
Compared
Received

Ann D

19

BEFORE THE PESHAWAR HIGH COURT, CIRCUIT BENCH (DAR UL QAZA) AT SWAT

C.O.C. No. 34M /2018
In
W.P No.608/2014

Burhan Ud Din and others.....**Petitioners**

Ann D

VERSUS

Irshad Ali Sodhar, Deputy Commissioner(Commandant Chitral Levy/[illegible]) Chitral at D.C Office Chitral

.....**Respondent**

INDEX

S.No	Description of Documents	Annex	Pages
1.	Opening sheet		A
2.	Application for contempt of court		1-3
3.	Affidavit		4
4.	Addresses of parties		5
5.	Copy of judgment dated 07.02.2018	A	6-13
6.	Copy of Application	B	14
7.	Wakalat Nama/Power of Attorney.		15-16

Petitioners

Through

Mumtaz Ahmad
Advocate High Court
Cell No.0333-9118161

Dated: 08.03.2018

FILED TODAY
19 MAR 2018
Additional Registrar

BEFORE THE PESHAWAR HIGH COURT, CIRCUIT BENCH (DAR UL QAZA) AT SWAT

(20)

C.O.C. No. 34-M /2018
In
W.P No.608/2014

1. Burhan Ud Din S/o Abdul Karim
2. Balan Khan S/o Jafail Khan
3. Muhammad Zahir Khan S/o Zarb Ullah Khan
4. Khan Shoaib S/o Abdullah Jan
5. Muhammad Noor S/o Tabaruk khan.
6. Ahmad Nawaz S/o Badshah
7. Tawakal Khan S/o Panjarash Khan

All Residents of District Chitral........................**Petitioners**
Drosh

VERSUS

Irshad Ali Sodhar, Deputy Commissioner(Commandant Chitral Levy/Scout) Chitral at D.C Office Chitral

..................**Respondent**

PETITION UNDER ARTICLE 204 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973 READ WITH SECTION 3/4 OF THE CONTEMPT OF COURT ACT, FOR INITIATING CONTEMPT OF COURT PROCEEDINGS AGAINST THE RESPONDENTS FOR NOT HONOURING JUDGMENT DATED 07.02.2018 IN W.P No.608/2014 PASSED BY THIS HONOURABLE COURT/BENCH.

Respectfully Sheweth:

Precisely, stating the facts of the case out of which the present petition arise are as under:

1. That above mentioned writ petition was allowed vide order dated 07.02.2018. (Copy of judgment dated 07.02.2018 is Annexure **"A"**).

FILED TODAY
19 MAR 2018

CTC

2. That this Hon'ble Court had directed the respondent to reinstate the petitioners as per judgment dated 07.02.2018.

21

3. That the petitioners submitted an application before respondent as per direction of this Hon'ble Court alongwith Court judgment on 07.02.2018, (Copy of the Application is attached as annexure "B").

4. That the respondent out rightly refused to honour the clear cut direction of this Hon'ble Court.

5. That the petitioners hence left with no choice but to file instant contempt of court petition , inter alia, on the following grounds:

GROUNDS:

A. That non-compliance of the aforesaid judgment dt.07.02.2018 of the Honourable Court by the respondent is illegal, without lawful authority, without jurisdiction, malafide and void ab-initio.

B. That the petitioners approached Respondent for the implementation of said judgment of this Hon'ble Court but uptil now the instant judgment remain non complied on behalf of the respondent.

C. That every government or Public functionary is under legal obligation to honour the orders of the court of competent jurisdiction, the respondent .by not

complying with the court orders, have not performed their duty in accordance with law.

D. That non-compliance of the order of the Honourable Court, speaks malafide on the part of respondent and to lower the position of the judiciary in the eye of public at large.

E. That from the facts and narrated above, it has become crystal clear that the respondent has wilfully committed contempt of court, hence needs to be proceeded under the contempt of court Act.

F. That the respondent despite application alongwith the court judgment avoiding to honour the court judgment hence needed to be proceeded /punished in accordance with contempt law.

It is, therefore, most humbly prayed that on acceptance of this application/petition, the contempt of court proceedings may please be initiated against the Respondent, they be summoned, proceeded against and be punished in accordance with law.

Petitioners

Through

Mumtaz Ahmad
Advocate High Court

Dated: 08.03.2018

Certificate:-

Certified that no other such Contempt of Court (C.O.C) is pending on the same Subject Matter.

FILED TODAY
19 MAR 2018

Additional Registrar

Annex. B

(23)

The Commandant
Chitral Levies

Subject: **APPLICATION FOR ARRIVAL AFTER RE-INSTATEMENT BY PESHAWAR HIGH COURT CIRCUIT BENCH DARUL-QAZA SWAT VIDE ORDER DATED 07-02-2018.**

Respected Sir;

1. That the applicants were Spoys in Chitral levies and were retired compulsorily by the then commandant vide office order dated01-12-2014.
2. That the applicants challenged the said order before Darul-Qaza Swat which was allowed and applicants were reinstated with all back benefits by declaring the order dated 01-12-2014 as illegal and un-warranted. **(Copy of the court Order/Judgment is attached)**
3. That the applicants now seeking their arrival to resume their duty in the light of the court order dated 07-02-2018.

It is, therefore, respectfully submitted that applicants may kindly be allowed to resume their duty by accepting the arrival report.

Applicants

1. *Balan Khan*
2. *Burhan ud Din*
3. *Muhammad Zahir Khan*
4. *Khan Shoaib*
5. *Noor Muhammad*
6. *Muhammad Nawaz*
7. *Tawakal Khan*

A.T.C 28/03/018

Dated: 20-02-2018

Cell No. 0342-9490522

Ann E

(24)

Ann E

PESHAWAR HIGH COURT, MINGORA BENCH
(DAR-UL-QAZA), SWAT

FORM OF ORDER SHEET

Court of .....

Case No..... *of*.....

Serial No. of order or proceeding	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge and that of parties or counsel where necessary.
1	2	3
	08.10.2018	***C.O.C 34-M/2018 in W.P 608/2014***

Present: Mr. Mumtaz Ahmad, Advocate for the Petitioners.

Muhammad Rahim Shah, A.A.G for the Respondents.

***

SYED ARSHAD ALI, J.- At the very outset, the learned A.A.G produced copy of the office order bearing endorsement No.205-6/DC/CMDT/CLC-20 dated 05.10.2018, whereby the petitioners have been reinstated in their service. After going through the above said office order, the learned counsel for the petitioners stated at the bar that he is satisfied and requested for disposal of this petition without any further proceedings. Since, this contempt of Court Petition has served its purpose, so, it is disposed of accordingly.

Announced
08.10.2018

JUDGE

JUDGE

Sabz Ali/* (D.B) HON'BLE MR. JUSTICE MUHAMMAD GHAZANFAR KHAN
HON'BLE MR. JUSTICE SYED ARSHAD ALI

DEPUTY COMMISSIONER / COMMANDANT FEDERAL LEVIES FORCE, CHITRAL

LL: (0943) 412055 (Office) - 412519 (Res) – Fax: (0943) 412421

e-mail: deputycommissionerchitral@gmail.com | Follow@DC_Chitral | facebook.com/DCChitral

CHITRAL

25

No._____/DC/CMDT/CLC-20

Dated Chitral the __/__/2018

5-10-18

Ann F

ORDER:

On promulgation of the PATA Federal Levies Service (Amended) Rule 2013, to Chitral Levies which was circulated Home & TAs Department Khyber-Pakhtunkhwa *vide* No. SO(LEVIES)/HD/FED.LEVIES IN PATA/1-1/2013 DATED 14TH MARCH 2013. 102x personnel of Chitral Levy in various ranks came under Rule 17, (Schedule-III) and retired either in service / tenure in ranks or attaining required length of service as Sepoys i.e. 20 years.

Ann F

MEANWHILE, Home & Tribal Affairs Department Khyber Pakhtunkhwa had again amended Schedule-III of the *ibid* rule and re-notified the amended rule on 12/12/2013 amid the case of 102x personnel for reinstatement in service was under adjudication in the apex Peshawar High Court, Darul Qaza Swat and removed the condition of Service in Rank and required length of service from 20 years to 25 years in schedule-III of the *ibid* rule. In the light of the amendment and directives of Home & TAs Department circulated *vide* No. SO(Levies)/HD/CBP/2-5/2013/Vol-I (62620) dated 29.05.2014 the 102x personnel of Chitral Levies were not only called back for duties *vide* this office order No. 546/DCC dated 30.05.2014 but their liabilities were also been paid to them in the form of arrears and their absentia considered as on duty.

WHEREAS, the then DC/Commandant after calling back these personnel for duties, awarded promotion by superseding seniors *vide* No. 1031/BPC-20 dated 27.11.2014 and retired those who came under the amended Rule dated 12.12.2013. in the retirement order 59x personnel were retired instead of 69x *vide* order No. 1098/BPC-27 dated 1.12.2014.

CTC

WHEREAS, the senior most personnel who were not considered in promotion and retired from their services on 01.12.2014 felt aggrieved and filed writ petition # 608-M of 2014 in the Apex Court Darul Qaza Swat against the retirement order dated 1.12.2014 and promotion order dated 27.11.2014.

WHEREAS, the then DC/Commandant made an effected compromise amongst the 59x personnel in WP# 608-M of 2014 and appointed the sons / wards of the aggrieved personnel. The seven personnel namely (1) *Sep Ahmad Nawaz* (2) *Sep Balan Khan* (3) *Sep Burhan Uddin* (4) *Sep M. Zahir Shah* (5) *Sep Tawakal Khan* (6) *Sep Khan Shoaib* and (7) *Sep Muhammad Noor* did not compromised and opted to file their case in the court of law.

WHEREAS, the Apex court has taken final decision in the Writ Petition # 608 M of 2014 on 07.02.2018, as ***"therefore, we consider this writ petition be partially allowed to the extent of declaring the impugned office order dated 01.12.2014 as null and void and the respondents are directed to reinstate the petitioners in their service as they were before their retirement. The rest of the relief as prayed for is dismissed and similarly the relief to the added petitioner could not be granted in the instant writ petition who may file a separate writ petition, if so advises."***

SUBSEQUENTLY, the above 7 number litigants submitted their arrival report for duties on 20.02.2018 in the light of the decision of the apex court on 07.02.2018. Meanwhile, a CPLA has been filed through Home Department as the Law Department KP in a meeting held on 14.03.2018 decided that the case is fit for filing CPLA / appeal in the Supreme Court of Pakistan. CPLA # 295-P of 2018 was filed against the judgement dated 07.02.2018 of the Peshawar High Court Mingora Swat passed in W.P. No. 608-M /2014.

5-10-2018

26

WHEREAS, the Judgement of the Supreme Court of Pakistan in CPLA # 295-P of 2018 dated 04.07.2018 came in favour of the litigants that *"The respondents were not given any option of compulsory retirement, rather they were compelled without even giving any opportunity of hearing for retirement after completion of 25 years' service. This has been found to be illegal by the learned High Court and relief has been granted to the respondents which we do not find to be against the law or principles of rules of equity. No case for interreference has been made out. Dismissed accordingly."*

THEREFORE, I, *Khurshid Alam Mehsud*, Deputy Commissioner / Commandant Federal levy Force Chitral being competent authority under PATA Federal Levy Force (Amended) Rule 2013, and in compliance of the judgement of Supreme Court of Pakistan dated 04.07.2018 passed in CPLA # 295-P of 2018 in W.P. No. 608-M of 2014 hereby re-instate the following seven personnel of Chitral Levies ***in their service as they were before their retirement*** dated 01.12.2014 and the personnel shall resume their ranks as Sepoys with effect from the date of retirement i.e. 01.12.2014. Furthermore, the intervening period during the retirement and rejoining of service shall be treated as leave without pay per the judgment of the Hon'able High Court in WP# 608-M of 2014 dated 07.02.2018.

S#	Rank & Name of the Personnel	
1	Sepoy	Ahmad Nawaz
2	Sepoy	Balan Khan
3	Sepoy	Burhan Uddin
4	Sepoy	Muhammad Zahir Kl
5	Sepoy	Tawakal Khan
6	Sepoy	Khan Shoaib
7	Sepoy	Muhammad Noor

Deputy Commissioner /
Commandant Levies Force,
Chitral

No._____/DC/CMDT/CLC-20

Copy forwarded to the: -

1) Adl: P.G Supreme Court of Pakistan Islamabad for information with reference to the CPLA# 296-P of 2018 dated 04.07.2018, please.
2) Adl Advocate General Peshawar High Court Darul Qaza Mingora Bench Swat for information under W.P.# 608-M of 2014 CoC # 34-M of 2018, please.

Deputy Commissioner /
Commandant Levies Force,
Chitral

No._____/DC/CMDT/CLC-20

Copy forwarded to the: -

3) Secretary Government of Pakistan, SAFRON Division Islamabad
4) Secretary Government of Khyber Pakhtunkhwa Home and Tribal Affairs Deptt Peshawar
5) Secretary Government of Khyber Pakhtunkhwa Law and Parliamentary Affairs Deptt Peshawar
6) Commissioner Malakand Division Saidu Sharif Swat
7) Additional DC / Adl: Commandant Chitral Levies
8) Assistant Commissioner / Dy: Commandant Chitral Levies
9) District Accounts Officer, Chitral
10) Accountant Federal Levy Force Office Chitral

For information please.

DEPUTY COMMISSIONER / COMMANDANT LEVY FORCE, CHITRAL

No. 658 /DC/CLC 20

Dated Chitral the 07 [illegible]

The Section Officer (Courts),
Government of Khyber Pakhtunkhwa,
Home and Tribal Affairs Department Peshawar

Subject: **SEEKING ADVICE AND INTERPRETATION OF COURT ORDERS FROM LAW DEPARTMENT, KHYBER PAKHTUNKHWA IN A CASE CPLA NO. 295-P OF 2018 IN WRIT PETITION NO. 608-M OF 2014.**

Memo:

Please refer to your letter No. SO(Courts)HD/1-589/2018 dated 21.01.2019 on the subject cited above.

The following seven levy personnel retired by the then Commandant *vide* this office letter No. 1098/BPC-27 dated 01.12.2014, on attaining the required length of service as per Schedule-III of the Federal Levy Service (Amended) Rule 2013.

S #	rank	Name	DOB	DOA	Age as on 01.12.2014	Service Age as on 01.12.2014			Remarks
					Y	Y	M	D	
1	Sepoy	Ahmad Nawaz	21-Mar-55	15-Jun-82	59	32	5	13	[illegible]
2	Sepoy	Batun Khan	10-Mar-62	15-Jun-82	52	32	5	13	[illegible]
3	Sepoy	Sirbahuddin	1-Jul-64	15-Jun-82	50	32	5	13	[illegible]
4	Sepoy	Muhammad Zahir Khan	1-Jan-58	6-Jan-84	56	30	10	22	[illegible]
5	Sepoy	Tawakal Khan	1-Jul-57	6-May-85	57	29	6	24	[illegible]
6	Sepoy	Khan Sheraz	1-Jul-65	5-Jun-85	49	29	5	22	[illegible]
7	Sepoy	Muhammad Noor	1-Jul-61	9-Aug-89	53	25	3	22	[illegible]

Against the aforementioned retirement order the above seven sepoys filed a Writ 608-M of 2014 at the Darul Qaza Swat. The Apex court decided the Writ Petition # 608 M of 2014 on 07.02.2018, which is reproduced below:

"therefore, we consider this writ petition be partially allowed to the extent of declaring the impugned office order dated 01.12.2014 as null and void and the respondents are directed to reinstate the petitioners in their service as they were before their retirement. The rest of the relief as prayed for is dismissed and similarly the relief to the added petitioner could not be granted in the instant writ petition who may file a separate writ petition, if so advises." (Copy of the judgment already submitted vide this office letter No. 1507/DCC/Court dated 08.03.2018)

Subsequently, the above seven number litigants submitted their arrival report for duties [illegible] in the light of the decision of the apex court on 07.02.2018. Meanwhile, a CPLA [illegible] through Home Department as the Law Department KP in a meeting held on [illegible] the case is fit for filing CPLA / appeal in the Supreme Court of Pakistan. [illegible] 295-P of 2018 was filed against the judgment dated 07.02.2018 of the Peshawar [illegible] in W.P. No. 608-M /2014.

[illegible] Supreme Court of Pakistan CPLA # 295-P of 2018 dated [illegible] *The respondents were not given any option of compulsory [illegible] they were compelled without even giving any opportunity of hearing for [illegible] of 25 years service. This has been found to be illegal by the learned High [illegible] to the respondents which we do not find to be against the law [illegible] No case for interference has been made out. Dismissed accordingly." (Copy of the judgment already submitted vide this office letter No. 17/DC/Court dated* [illegible]

Better Copy

DEPUTY COMMISSIONER/ COMMANDANT LEVY FORCE CHITRAL

Sno. 659 /DCC/CLC-20 Dated Chitral 07 February 2019

28

To.

The Section officer (courts)

Govt Of Khyber Pakhtunkhwa through Secretary ,

Home and Tribal Affairs Deparment Peshawar.

Subject

SEEKING ADVICE AND INTERPRETATION OF COURT ORDER LAW DEPARMENTS , Khyber Pakhtunkhwa IN A CASE CPLA NO.295-P OF 2018 IN WRIT PETITION 608 M/2014

Memo;

Please refer to your letter no SO(Court) HD/1-589/2018 dated 23-1-2019 on the subject above.

The following seven levy personal retired by the then commandant vide this office letter no. 1098/BPC -271-12-2014, on attending the required length service as schedule III of the federal Service Amended rule 2013.

S n	rank	Name	DOB	DOA	Age as on 1-12-2014 Y	Service Age as on 1-12-2014 Y	M	D	Remarks
1	Sepoy	Ahmad Nawaz	21-3-55	15-jun-82	59	32	5	13	Under schedule III Length of Service Age, for Sepoy 25 Year Service at 60 year age
2	Sepoy	Balan Khan	10-3-62	15-jun-82	52	32	5	13	
3	Sepoy	Burhan Ud Din	1-7-64	15-jun-82	50	32	5	13	
4	Sepoy	M Zahir Khan	1-jan-58	6-jun-84	56	30	10	22	
5	Sepoy	Tawakal Khan	1-7-57	6-May-85	57	29	6	22	
6	Sepoy	Khan Shoaib	1-7-65	5-jun-85	49	29	5	23	
7	Sepoy	Muhammad Noor	1-7-61	9-Aug-89	53	25	3	19	

Against the aforesaid retirement order the above seven sepoy filed a writ petition 608 M/14 at Dar Ul Qaza Swat. The Apex Court Decided the writ petition 608 M/14 on 7-2-2018 which is reproduce below.

:Therefore we consider this writ petition be partially allowed to the extent of declaring the impugned office order 1-12-2014 as null and void and the respondents are directed to reinstate the petitioners in their service as they were before there reinstatement .The rest of the relief as prayed for is dismissed and similar relief to the added petitioner could not be granted in the instant writ petition who may file a separate wert petition if so advice.(**Copy of the judgment already submitted vide this office letter no.1607/DCC/ cmdt/dated 8-3-2018)**

Subsequently the above seven number litigant submitted their arrival report for duties on 20-2-2018 in the light decisions of the Apex court on 7-2-2018 . Meanwhile a CPLA has been filed through home department as the law Department KP in a meeting held 14-3-2018 decided case is fit for filling CPLA /appeal in the Supreme Court of Pakistan case CPLA 295-P of 2018as filed against the judgment dated 7-2-2018 of the Peshawar High Court Dar ul Qaza Swat passed in writ petition 608 M/14.

Whereas the judgment of the Supreme of Pakistan in CPLA No 295-P of 2018 dated 4-7-2018 came in favor of the litigant that: the respondents were not given any option of the compulsory retirement , rather they were compelled of 25 year service . This has been found to be illegal by the learned High Court and relief has been granted to the respondents which we don't find to be against the law or principles of rule of equity ..No case for interference has been made out. Dismissed accordingly. Copy of the Judgment already submitted vide this office letter dated no. 17/DC/ dated 17-3-2018.

29

Thereafter, the DC/Commandant Levy Force Chitral in compliance of the judgment of Supreme Court of Pakistan dated 04.07.2018 passed in CPLA # 295 P of 2018 in W.P. No. 608-M of 2014 and CoC No. 34-M of 2018 in WP# 608-M of 2014, had re-instated the above seven personnel of Chitral Levies *in their service as they were before their retirement* dated 01.12.2014 vide notification No. 207-21/DC/CMDT/CLC-20 dated 05.10.2018.

Now, the legal issues at hand are as follows:-

1. The following three personnel have attained the required length of service as Sepoy and the age of superannuation i.e. 60 years

S. #	rank	Name	DOB	DOA	Age as on Court Judgment dated 4.7.18			Service as on Court Judgment dated 4.7.18		
					Y	M	D	Y	M	D
1	Sepoy	Ahmad Nawaz	21-Mar-55	15-Jun-82	63	10	13	36	4	
2	Sepoy	Muhammad Zahir Khan	1-Jan-58	6-Jan-84	61	1	2	34	0	
3	Sepoy	Tawakal Khan	1-Jul-57	6-May-85	62	1	2	33	8	

2. The remaining four persons have served as Sepoy and also crossed the required length of service for Sepoy i.e. 25 Years.

S. #	rank	Name	DOB	DOA	Age as on Court Judgment dated 4.7.18			Service as on Court Judgment dated 4.7.18		
					Y	M	D	Y	M	D
4	Sepoy	Balan Khan	10-Mar-62	15-Jun-82	56	10	24	37	0	19
5	Sepoy	Burhanuddin	1-Jul-64	15-Jun-82	54	7	2	37	1	2
6	Sepoy	Khan Shoaib	1-Jul-65	5-Jun-85	53	7	2	34	0	2
7	Sepoy	Muhammad Noor	1-Jul-61	8-Aug-89	57	7	2	29	5	25

3. The Hon'able High Court has decided that the intervening period between their retirement and reinstatement is to be considered as leave without pay. The same was upheld by the Supreme Court (copies of both Judgments herewith annexed)

Therefore, the undersigned cannot extend any financial benefit to the restored seven personnel. Retaining them in the force will be against the prevailing service rule despite of the fact that the undersigned reinstated them as per Honorable Supreme Court judgment.

RECOMMENDATION:

Here is the possible situation in the instant case:

1. All the seven Sepoys of the Federal Levy Force Chitral may be retired, however, this may give arise to contempt of Court proceeding against the Government.
2. They may be retained in Levies Force but it will be against the prevailing service Rules 2013.

SUGGESTION:

It is suggested that if agreed, the seven personnel may be promoted to the next rank & retired them on the same date to close the matter.

Deputy Commissioner/
Commandant Levy Force,
Chitral

30

Better Copy

Thereafter the DC commandant levy Force Chital in compliance of the judgment of the supreme court of the Pakistan dated 4-7-2018 passed in CPLA 295-P of 2018 in Wp 608 M 2014 and CoC no, 34 M 2018 in WP 608 M/2014 had Re instated the above seven personal Chital Levis in their Service as they were before their retirement dated 1-12-2014 notification no 207/21DC /CMDT/CLC 20 dated 5-10-2018

Now the legal issues at hand as follow

1 the following three personal have attained there requirement length of the service as sepoy and the age of superannuation i.e 60 year.

S n	rank	Name	DOB	DOA	Age as on COURT JUDGMENT DATED 4-7-2018 Y Y D	Age as on COURT JUDGMENT DATED 4-7-2018 Y Y D
1	Sepoy	Ahmad Nawaz	21-3-55	15-jun-82	63 10 13	36 7
2	Sepoy	M Zahir Khan	1-jan-58	6-jun-84	61 1 2	35 0
3	Sepoy	Tawakal Khan	1-7-57	6-May-85	62 1 2	33 8

2) the remaining four personal have served as sepoy and also crossed the requirement length of their service for sepoy i.e 25 year

S n	rank	Name	DOB	DOA	Age as on COURT JUDGMENT DATED 4-7-2018 Y Y D	Age as on COURT JUDGMENT DATED 4-7-2018 Y Y D
1	Sepoy	Balan Khan	10-3-62	15-jun-82	56 10 24	37 0 19
2	Sepoy	Burhan Ud Din	1-7-64	15-jun-82	54 7 2	37 1 24
3	Sepoy	Khan Shoaib	1-7-65	5-jun-85	53 7 2	34 0 25
4	Sepoy	Muhammad Noor	1 jul 61	9 Aug 89	57 7 2	29 5 25

3 the Hon,able High Court has decided that the intervening between their retirement and reinstatement is to be considered as leave without pay . The same was up held by Supreme Court (Copy of the both judgment are herewith annexed)

Therefore the undersigned can't extend any financial benefit the restore seven personal. Remaining them in the force will be against prevailing service rule despite of the fact that the undersigned reinstated them as per Hon,able Supreme Court Judgment.

RECOMMENDATION

Here is possible situation in the instant case.

1) All seven Sepoys of the Federal Levy Force Chitral may be retired, however this may give arise to contempt of court proceeding against the government.
2) They may be reinstated in Levies force but it will be against the prevailing Service rule 2013 .

SUGGESTION

It is suggested that if agreed the seven personal may be promoted to the next rank and retired them on the same dated to close the matter.

DEPUTY COMMISSIONER/ COMMANDANT
LEVY FORCE CHITRAL

Ann H

31

GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT

F.No. SO (Levies)/HD/Fdr: Levies PATA/2013/1-3/(37269).

Dated Peshawar the, 29th May 2013

To

The Deputy Commissioner,
Chitral

Ann. H

Subject: - **RESTORATION OF 102 CHITRAL BORDER POLCIE PERSONNEL IN SERVICE**

I am directed to refer to the subject noted above and to state that 102 border police personnel who were retired from service under schedule-III of the amended levies rules 2013 and were contesting their case in the court of law have withdrawn their writ petition. The august High Court in another writ petition filed by in-service border police personnel has directed that: -

> **"Meanwhile services of the petitioners shall not affect the rights of the respondents".**

2. In light of withdrawal of Writ Petition by the litigants and short order of Peshawar High Court in the Writ Petition of in-service border police personnel there is no ambiguity to call them back for duty. Therefore it shall be ensured that this department notification is implemented in letter and spirit and without further delay under intimation to this department.

Yours faithfully,

SECTION OFFICER (LEVIES)
Phone: 091-9210238

Copy forwarded to the:

1. Commissioner Malakand Division at Saidu Sharif Swat.
2. P.S to Secretary Home & Tribal Affairs Dept. Khyber Pakhtunkhwa
3. Copy to Master File.

SECTION OFFICER (LEVIES)

Ann. 9

(32)

بخدمت جناب ڈپٹی کمشنر صاحب چترال

Supdtt (C.L)
For n/action as
per law.
23/1

Deputy Commissioner
Chitral

درخواست برائے [illegible] کی نقل لیٹر

جناب عالی!

گذارش ہے کہ ہم [illegible] کے بجالی/تنخواہ کے حوالے سے جناب ڈپٹی کمشنر صاحب چترال نے [illegible] ڈیپارٹمنٹ کو ایک لیٹر لکھا ہے۔ اس لیٹر کی نقل درکار ہے۔

لہذا جناب والا کی خدمت میں گذارش ہے کہ مذکورہ لیٹر کے نقل فراہم کرنے کا حکم صادر فرمائیں تاکہ وہاں جا کر ہم پیروی کر سکیں۔

جناب والا کی مہربانی ہوگی۔

dt: 23/1/019

فقط

عرض گذار (1) محمد [illegible] نائب صوبیدار [illegible] چترال

(2) توکل خان ولد [illegible]

33

Anni J

بخدمت جناب ... صاحب کمانڈنٹ چترال لیویز چترال

مضمون - درخواست برائے معافی بصورت ذیل

جناب عالی! - یہ کہ سائلان دفتر ہذا کے خلاف عدالت سے رجوع کیے تھے۔

(1) - یہ کہ سائلان بالترتیب سپریم کورٹ اور ہائی کورٹ سے فیصلے ہونے کے بعد سائلان ارباب سے درخواست کیے تھے۔

- یہ کہ ارباب نے کرم نوازش فرما کر ہمارا تقرری کر کے ہمیں Home اور Law ڈیپارٹمنٹ کو تحریر فرمایا تھا۔ لیکن ابھی تک کسی کوئی درعمل سامنے نہیں آیا۔ استدعا ہے۔ برائے کرم نقل ہذا عنایت فرما کر

(2) یہ کہ سال 2014ء میں ہمارا Personal 102 دفتر ہذا نے بحالی کا حکم دیدیا تھا۔ جس نقل کی بھی ضرورت ہے۔

استدعا ہے۔ برائے کرم نقول ہذا عنایت فرماویں

[signature]

18/06/2019

(1) صوبیدار برہان الدین (2) صوبیدار محمد ظاہر (3) حوالدار نواز گل خان
(4) حوالدار ملک نواز خان (5) حوالدار فضل شعیب
(6) سپاہی محمد نعمان (7) سپاہی احمد نواز ... چترال

34

Ann K

بخدمت جناب ڈپٹی کمشنر صاحب چترال

درخواست برائے عطائیگی بقایاجات ادائیگی

جناب عالی

مودبانہ گزارش ہے کہ جناب ہم سائلان کے انتہائی مشکور و ممنون ہیں کہ جناب عالی نے ہائی کورٹ اور سپریم کورٹ کے حکم / فیصلہ پر عمل درآمد کرتے ہوئے ہم سائلان کو ملازمت پر بحال کیا۔ اب ہم سائلان جناب سے مزید گزارش کرتے ہیں کہ جناب عالی ازراہ کرم ہم سائلان کو ہائی کورٹ کے حکم کے مطابق پروموشن / ترقی دے کر مشکور فرمائیں اور ہم سائلان میں سے جس کا ریٹائرمنٹ نزدیک ہے ہمارے 2014 سے 18 مدت تک کے بقایاجات ہم سائلان کو ادائیگی کا حکم صادر فرمائیں۔ ہم سائلان 2014 کو غیر قانونی پروموشن / ترقی کے خلاف عدالت سے رجوع کئے تھے اور عدالت عالیہ اور عدالت عظمیٰ نے ہم سائلان بحال کرنے کا حکم صادر فرمایا۔ ہم سائلان اپنے خاندان کے واحد کفیل ہیں اور ان چار سالوں میں ہم سائلان انتہائی مقروض ہو چکے ہیں

اسلئے جناب سے التماس ہے کہ جناب عالی مہربانی کر کے ہمارے ساتھ داد رسی فرما کر ثواب دارین حاصل کریں۔ ہم جناب کے تاحیات مشکور رہیں گے 2014 میں ترقی پانے والے برہان جمعدار محمد مختار جمعدار، بلبل خان حوالدار، نواز گل خان حوالدار، خان شیر حوالدار، نور سپاہی، محمد نواز سپاہی، محمد مختار حوالدار (مرحوم)

شکریہ

العارضان

تاریخ 22-10-2018

محمد نادر جمعدار، برہان جمعدار

بلبل خان حوالدار، نواز گل خان حوالدار

خان شیر حوالدار، نور سپاہی

معرفت ضلع چترال

(35)

Ann.-L

جناب چیف جسٹس آف پاکستان

جناب عالی!

گذارش ہے۔

عنوان:۔ آرڈر نمبر 17967/18 مطابق 21/7/18

پر عملدرآمد میں تاخیر۔

ہم سائلان تاحال حکم پر عملدرآمد میں تاخیر پر بہت پریشان ہیں۔ اس طرح ہمارے حقوق متاثر ہونے کا اندیشہ ہے۔

عالیجاہ:۔ عدالت عظمیٰ کے حکم پر عملدرآمد کو یقینی بنانے کے لیے ہم میں سے جنکی سروس اس دوران پوری ہو چکی ہے کے سروس میں 2019ء تک توسیع کی جائے۔ تاکہ وہ اپنے دستاویزات جو کہ سروس سے متعلق ہیں۔ کو مکمل کر سکیں۔

ہم تاحیات انتخاب کی ترقی اور عمر درازی کیلئے دعاگو رہینگے۔

20-9-2018

فقط عین نوازش ہوگی

فدوی تو مل خان، محمد ظاہر خان وغیرہ دیگر ان

Ann M

از دفتر ڈپٹی کمشنر/کمانڈنٹ چترال لیویز چترال

نمبر 1999-2000 (36)

مورخہ 4 دسمبر 2019

بجانب:

1۔ سپاہی احمد نواز، ارسون چترال
2۔ سپاہی محمد ظاہر خان، سانیک تحصیل لوکوہ چترال
3۔ سپاہی توکل خان، شاہی داس لاسپور چترال

مضمون: **پروانہ/نوٹس**

ہرگاہ آپ کو مطلع کیا جاتا ہے کہ اپ کی عمر مجوزہ عمر کی حد عبور ہو چکا ہے۔ اور آپ کے پینشن پیپر دفتر ہذا میں تیار پڑے ہیں۔ آپ سے گزارش ہے کہ اپنے پینشن پیپرز دفتر ہذا سے مکمل کروائیں۔ تاکہ آپ کے پینشن کی عمل میں مذید تاخیر نہ ہو۔

لہذا آپ کو بذریعہ پروانہ ہذا اطلاع دی جاتی ہے۔ اس نوٹس کے ملتے ہی دفتر ہذا سے رجوع کریں اور اپنے پینشن پیپرز دستخط کریں۔

ڈپٹی کمشنر/کمانڈنٹ چترال لیویز

(40) Ann Q

BEFORE THE PESHAWAR HIGH COURT MINGORA BENCH (DARUL QAZA) AT SWAT.

W.P No 745-M of 2019

1) Tawakal Khan son of Panjarash village Laspur District Upper Chital.
2) Burhan Ud Din son of Abdul Karim Village Urchon tehsil. Drosh District Chital.
3) Balan Khan son of Jafail Khan Village Berir tehsil Chital District Chital.
4) Muhammad Zahir Khan son of Zarbullah Khan village Sanik Lotkhow District Chitral.
5) Khan Shoaib son of Abdullah Jan Village Urchon tehsil Drosh District Chitral.
6) Muhammad Noor son of Tabaruk Khan Vilage Meragam No.1 Tehsil Mastuj Chitral.
7) Ahmad Nawaz Son of Badshah Village Urchon tehsil Drosh District Chital.

.....Petitioners

VERSUS

1. Govt Of Khyber Pakhtunkhwa through Chief Secretary ,at Civil Secretariat Peshawar.
2. Govt Of Khyber Pakhtunkhwa through Secretary , Home and Tribal Affairs ,at Peshawar.
3. The Secretary SAFRON Civil Secretariat Islamabad .
4. The Deputy Commissioner/ Commandant Chital Levies Chital

.....Respondents

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

ATTESTED
EXAMINER
Peshawar High Court

Respectfully Sheweth,

Brief facts giving rise to the instant writ petition are as under:-

1) That the petitioners are law abiding citizens of Islamic republic of Pakistan having the protection of all legal rights guaranteed under the constitution of Islamic republic of Pakistan of 1973, moreover the

(2) (41)

Petitioners are permanently residing at the address given in the title of this petition.

2) That the petitioners were initially appointed as a sepoy Border Police and their service were regulated and controlled by SAFRON in according with existing rule.

3) That the petitioners are performing their duties with full devotion for the last twenty years continuously with respondents.

4) That on 27-11-2014 the respondents promoted 29 levy personal to the different Ranke superseding the petitioners and lastly on 1-12-2014 forcibly retired them from their service and the said act being challenged through Writ No. 608 M/2014 before this Hon,able Court. (Copy of order dated 1-12-2014 is attached as marked A)

5) That the petitioners assailed the impugned order dated 1-12-2014 through Wp. No 608 M /14 , which was allowed vide order date 7-2-2018 and directed the respondents to reinstate the petitioners.

6) That the order dated 7-2-2018 passed by this Hon,able court challenged before Hon,able Supreme Court by the respondents which was dismissed vide order dated 4-7-2018 and subsequently in compliance with the judgment dated 7-2-2018 passed by this Hon,able Court, petitioners were reinstated into service on 5-10-2018. (Copies of the judgments dated 7-2-2018, 4-7-2018, memo of COC ,order dated 8-10-2018,reinstatement order and letter dated 7-2-2019 are attached as annexure "B to G")

7) That the petitioners were working / serving with the respondent department, for which petitioners requested them time and again to release their salaries but in vain.

ATTESTED
EXAMINER
Peshawar High Court

8) That the petitioners through proper channel submitted an application for providing salaries and also posting of the petitioners, but they refused. (Copies of application & others relevant documents are attached as annexure "H")

9) That the petitioner still working under the command of the respondent department and their salaries had not been released to them.

10) That there is no ambiguity on the legal position that the petitioners are entitled to the back benefit including salaries during the time they remained out of service on account of their dismissal which was termed as wrongful by this Hon,able Court in the aforesaid judgment

11) That the petitioners being aggrieved from the action & inaction of official respondents to refuse salary or posting of the petitioners is arbitrary contrary to law, the petitioners have got no any other adequate remedy except to file this constitution petition under article 199 of the constitution 1973, Islamic Republic of Pakistan for setting aside the same on the following grounds.

GROUNDS:-

A) That action& inaction of the respondents are violative of the constitution and the relevant laws lay down for the purpose hence needs interference of this august court.

B) That the official respondents have not treated with the petitioners in accordance with law, rule and policy in the subject and acted in violation existing law / policy, and unlawfully acted which is unjust, unfair, hence not sustainable in the eye of law.

C) That the petitioners were performing their duties under the control of the respondents, but the respondents neither paid salaries nor posting , such action of the respondents which is not only denial of fundamental right of the petitioners guaranteed under articles 4,11, 29 and 25 of the Constitution of Islamic Republic of Pakistan.

D) That the act of the respondents is without lawful authority based on misuse and exercise of power as such void ab-initio, and ineffective upon the rights of the petitioners.

E) That if the petitioners have not be given right of salaries along with all back benefits, they will suffer a lot and also be discouraged.

F) That stoppage of the salary is amounting to the force labor which is against the fundamental right of the petitioners.

G) That the state is like a mother and the state / government functionaries are constitutionally bound to safeguard the rights of the citizen and provide all rights safeguard by the Constitution.

H) That it is settled principle of law no one should be panelized by act of authorities.

I) That the petitioners have poor financial background and serving the department, but the respondents did not observe

I) That the petitioners have poor financial background and serving the department, but the respondents did not observe the prescribed rules, regulations and denied the benefits in shape of seniority as well as salary to the petitioners.

J) That although petitioners have been reinstated with benefit , but till now the petitioners been deprived of their legal back benefit , as salaries of the petitioners were stopped , but none of the said salaries till the dated of reinstatement have yet paid, and also seniority others benefits has not yet fixed by the departments.

K) That further grounds, with leave of this Honorable Court, would be raised at the time of arguments before this Honorable Court.

Prayer

It is therefore in view of aforementioned submission, most humbly prayed, that on acceptance of this writ petition this honorable court may kindly directed the respondents to release the salaries of the petitioners from 1-12-2014 to up to date, and further be directed to posting and granting others benefit of the petitioners which they have been reinstated in light of the judgments passed by this Hon,able Court.

Any other relief which this Honorable Court deems fit and proper in the circumstances of the case may also be granted.

INTERIM RELIEF:

By way of interim relief, directed the respondents to release salaries of the petitioners and further be directed that no adverse action shall be taken against the petitioners till the final disposal of the titled writ petition.

Petitioners
Through Counsel

RAHIMULLAH CHITRALI Advocate, High Court

LIST OF BOOKS IN CONCERNED WRIT

1. Constitution Islamic Republic of Pakistan, 1973.
2. Any other Law book as per need.

ATTESTED
EXAMINER
Peshawar High Court

Counsel

CERTIFICATE:

(As per directions of my clients) No such like Writ petition earlier has been filed by the petitioners on the subject matter before this Honorable Court.

(44)

BEFORE THE PESHAWAR HIGH COURT AT MINGORA BENCH (DARUL QAZA)
SWAT

Tawakal Khan & others.....Petitioners

VERSUS

Govt. of K.P and others .....Respondents

ADDRESSES OF THE PARTIES

PETITIONERS

1) Tawakal Khan son of Panjarash village Laspur District Upper Chital.
2) Burhan Ud Din son of Abdul Karim Village Urchon tehsil Drosh District Chital.
3) Balan Khan son of Jafail Khan Village Berir tehsil Chital District Chital.
4) Muhammad Zahir Khan son of Zarbullah Khan village Sanik. Lotkhow District Chitral.
5) Khan Shoaib son of Abdullah Jan Village Urchon tehsil Drosh District Chitral.
6) Muhammad Noor son of Tabaruk Khan Vilage Meragam No.1 Tehsil Mastuj Chitral.
7) Ahmad Nawaz Son of Badshah Village Urchon tehsil Drosh District Chital.

Through special attorney Tawakal Khan son of Panjarash
CNIC 15202-0831795-7 Cell NO 03344306990

RESPONDENTS

1. Govt Khyber Pakhtunkhwa through Chief Secretary ,at Civil Secretariat Peshawar.
2. Govt Khyber Pakhtunkhwa through Secretary , Home and Tribal Affairs ,at Peshawar.
3. The Secretary SAFRON Civil Secretariat Islamabad .
4. The Deputy Commissioner/ Commandant Chital Levies Chital

Petitioners
Through Counsel

Rahimullah Chitral

Advocate, High Court

ATTESTED
EXAMINER
Peshawar High Court

45

BEFORE THE PESHAWAR HIGH COURT AT MINGORA BENCH (DARUL QAZA) SWAT

W.P No 765 M of 2018

Tawakal Khan & others.....Petitioners

VERSUS

Govt. of K.P and others .....Respondents

AFFIDAVIT

I, Tawakal Khan son of Panjarash village Laspur Mastuj District Upper Chital(himself & attorney for other petitioners), do hereby solemnly affirm and declare on oath that the contents of the above titled Writ Petition are true and correct to the best of our knowledge and belief.

DEPONENT

Identified by

RAHIMULLAH CHITRALI

Advocate, High Court

ATTESTED TO BE TRUE COPY

Peshawar High Court, Peshawar
Authorized Under Article 87 of
the Qanun-e-Shahadat Order 1984

22 APR 2021

(46)

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT)

WP No. 745-M/2019

Tawakal Khan and others. Vs. Govt. of KP through Chief Secretary at Civil Secretariat, Peshawar and others.

SEAL OF HIGH COURT PESHAWAR

JUDGMENT.

Date of hearing: 24.03.2021.

Petitioner (s) By Mr. Rahimullah Chitrali, Advocate.

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

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

ANNOUNCED.
Dated: 09.04.2021

Senior Puisne Judge

Judge

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

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

(47)

Ann:- R

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT)

WP No. 528-M/2016

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

SEAL OF HIGH COURT PESHAWAR

JUDGMENT.

Date of hearing: 24.03.2021.

Petitioner (s) By Syed Abdul Haq, Advocate.

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

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

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

ATTESTED
EXAMINER
Peshawar High Court

48

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

Writ Petition No. 528-M/2016

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

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

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

99

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

Respondent No.1 has furnished his comments and opposed the contents of petition by stating that Provincial PATA Rules 2015 are effective from April, 2015, therefore, after issuance of these rules, seniority list from serial No. 153 onward has been prepared on the basis of first come first serve. The petitioners' request/plea with regard to preparation of seniority list if admitted will damage the whole structure of the Force.

Writ Petition No. 900-M/2017

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

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

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

ATTESTED
EXAMINER
Peshawar High Court

50

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

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

Writ Petition No. 192-M/2018

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

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

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

51

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

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

Writ Petition No. 303-M/2018

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

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

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

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

ATTESTED
EXAMINER
Peshawar High Court

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

Writ Petition No. 350-M/2018

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

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

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

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

ATTESTED
EXAMINER
Peshawar High Court

53

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

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

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

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

Writ Petition No. 398-M/2018

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

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

ATTESTED
EXAMINER
Peshawar High Court

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

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

Writ Petition No. 595-M/2018

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

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

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

55

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

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

Writ Petition No. 596-M/2018

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

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

ATTESTED
EXAMINER
Peshawar High Court

56

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

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

Writ Petition No. 740-M/2018

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

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

ATTESTED
EXAMINER
Peshawar High Court

57

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

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

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

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

ATTESTED
EXAMINER
Peshawar High Court

58

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

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

Writ Petition No. 387-M/2019

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

ATTESTED
EXAMINER
Peshawar High Court

59

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

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

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

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

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

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

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

ATTESTED
EXAMINER
Peshawar High Court

160

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

Writ Petition No. 745-M/2019

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

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

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

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

ATTESTED
EXAMINER
Peshawar High Court

61

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

Writ Petition No. 1008-M/2019

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

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

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

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

ATTESTED
EXAMINER
Peshawar High Court

62

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

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

17. Heard.

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

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

ATTESTED
EXAMINER
Peshawar High Court

63

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

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

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

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

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

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

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

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

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

ATTESTED
EXAMINER
Peshawar High Court

64

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ATTESTED
EXAMINER
Peshawar High Court

65

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

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

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

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

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

ATTESTED
EXAMINER
Peshawar High Court

66

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

Whereas Article 240 of the Constitution envisages that:-

> *"240. Subject to the Constitution, the appointments to and the conditions of service of persons in the service of Pakistan shall be determined –*
>
> *(a) ……*
> *(b) in the case of the services of a Province and posts in connection with the affairs of a Province, by or under Act of the Provincial Assembly.*
>
> *Explanation.- In this Article, "All-Pakistan Service" means a service common to the Federation and the Provinces, which was in existence immediately before the commencing day or which may be created by Act of [Majlis-e-Shoora (Parliament)]".*

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

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

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

ATTESTED
EXAMINER
Peshawar High Court

(67)

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

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

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

ATTESTED
EXAMINER
Peshawar High Court

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

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

ATTESTED
EXAMINER
Peshawar High Court

69

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

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

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

ATTESTED
EXAMINER
Peshawar High Court

78

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

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

ATTESTED
EXAMINER
Peshawar High Court

71

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

29. All the petitions stands disposed of accordingly.

ANNOUNCED.
Dated: 09.04.2021

Senior Puisne Judge

Judge

No. 34192
Date of Presentation of Application 22/4/21
No of Pages 32
Copying fee
Total 128
Date of Preparation of Copy 22/4/21
Date of Delivery of Copy 22/4/21
Received By Tawakal Khan

CERTIFIED TO BE TRUE COPY
22 APR 2021

72

WAKALATNAMA

(POWER OF ATTORNEY)

BEFORE THE HON'BLE CHAIRMAN SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA PESHAWAR

Appeal No 2021

Tawakal Khan .... Appellant

VERSUS

Govt Of KP through Chief Secretary , and others .....Respondents

KNOW ALL to whom these presents shall come that I/We, the undersigned the hereby appoint and authorize **MR. RAHIM ULLAH CHITRALI ADVOCATE HIGH COURT** , to be the Advocate for the **Appellant** in the above mentioned cause, to do all the following acts, deeds, and things or any of them that is to say:

1. To act, appear, and plead in the above mentioned cause in this Court.

2. To present pleadings, cross-objections and inter-locutory, miscellaneous applications, and to withdraw, compromise and to deposit, or withdraw documents or money in or from the Court as may be deemed necessary or advisable for the prosecution of the said cause.

3. To withdraw or compromise the cause or submit or arbitration any difference or dispute that shall arise touching or in any manner relating to the said cause.

4. To employ/appoint//nominate any other advocate/pleader or substitute on his/their behalf authorizing him to exercise the same powers and authorities hereby conferred on the Advocates, they may thing fit to do so.

And I/We hereby agree to ratify whatever Advocates or his/their substitute shall do in premises.

And We hereby agree not to hold the Advocates of his/their substituted responsible for the result of the said cause in consequence of his/their absence from the Court when the said cause is called up for hearing.

Appellant

Tawakal Khan

CNIC No: Cell No:

Attested & accepted by

MR. RAHIM ULLAH CHITRALI ADVOCATE

RAHIM & QAZI LAW ASSOCIATES
ADVOCATES HIGH COURT
Office: 3rd FLOOR CONTINENTAL PLAZA MAKAN BAGH SWAT
Cell No. 03452928648-

MOST IMMEDIATE

GOVERNMENT OF KHYBER PAKHTUNKHWA,
HOME & TRIBAL AFFAIRS DEPARTMENT.
PHONE: 091-9210032 FAX # 9210201.

No.SO (Courts)/HD/1-589/2019
Dated Peshawar, the 12th January,2022

To

The Deputy Commissioner/Commandant Levies,
Lower Chitral.

Subject: - **APPEAL NO. 5209 & 5210 OF 2021 TITLED MUHAMMAD ZAHIR KHAN & TAWAKAL KHAN VS GOVT OF KHYBER PAKHTUNKHWA THROUGH SECRETARY HOME AND OTHERS**

Dear Sir,

I am directed to refer to your letter No. 267/DC/cmdt dated 27-12-2021, on the subject noted above and to returned herewith comments in **(Original)** duly signed by the Secretary Home for further course of action please.

Encl: As above.

Yours faithfully

Section Officer (Courts)

Copy to.
PS to Secretary Home, Khyber Pakhtunkhwa.

Section Officer (Courts)

THE DEPUTY COMMISSIONER LOWER CHITRAL
COMMANDANT LEVIES

Tel: (0943) 412055, Fax: (0943) 412421 | FB: -Twitter-Instagram: @DCLowerChitral

Dated Chitral the 10 January, 2022

Authority Letter:

No: 280 /BPC-20 Mr. Muhammad Najam Ul Hassan, Superintendent o/o the Deputy Commissioner / Commandant Chitral Levies Chitral is hereby authorized to submit the parawise comments in Service Tribunal Khyber Pakhtunkhwa Peshawar in Appeal No. 5209 and No. 5210 in appeal title Muhammad Zahir Khan & Tawakal Khan Vs. Home Secretary Government of Khyber Pakhtunkhwa and Others on behalf of the Deputy Commissioner, Lower Chitral.

Hasanabid
DEPUTY COMMISSIONER
COMMANDANT

No:_____/BPC-20

Copy forwarded for information to the:

1. The Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar with reference to letter No. Nil dated 12.11.2021.

Hasanabid
DEPUTY COMMISSIONER
COMMANDANT

BEFORE THE HON'ABLE CHAIRMAN SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Subject: **Appeal# 5210 of 2021**

3) **Tawakal Khan** S/o Panjarash Khan r/o Village Laspur District Chitral Upper.

.....**Petitioner**

VERSUS

9) Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa Peshawar
10) Government of Khyber Pakhtunkhwa through Secretary Home & TAs Department
11) Secretary SAFRON Government of Pakistan Islamabad
12) Deputy Commissioner / Commandant Chitral Levies Chitral Lower

.....**Respondents**

AFFIDAVIT

I, **Muhammad Najmul Hassan,** Superintendent office of the Deputy Commissioner / Commandant Chitral Levies, Chitral do hereby solemnly affirm and state on oath that the whole contents of this comments are true and correct to the best of my knowledge and belief and nothing has been concealed from this august court.

Muhammad Najmul Hassan
DC Office Chitral

ATTESTED
Taimoor Khan Advocate
Public
Peshawar

(1)

BEFORE THE HON'ABLE CHAIRMAN SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Subject: **Appeal# 5210 of 2021**

1) **Tawakal Khan** S/o Panjarash Khan r/o Village Laspur District Chitral Upper.

.....**Petitioner**

VERSUS

1) Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa Peshawar
2) Government of Khyber Pakhtunkhwa through Secretary Home & TAs Department
3) Secretary SAFRON Government of Pakistan Islamabad
4) Deputy Commissioner / Commandant Chitral Levies Chitral Lower

.....**Respondents**

PARAWISE COMMENTS.

PRELIMINARY OBLIGATIONS:

1. The Petitioners have no cause of action.
2. The Petition is not maintainable in the present form
3. The petitioners have not come to the court within clean hands.

FACTS:

1. Correct, related to personal matter / information of the appellant.
2. Correct
3. Correct
4. Correct to the extent that the appellant having completed the required length of service under Sub Rule 17 (Retirement), Schedule-III of the Federal Levies Service (Amended) Rule 2013 dated 12.12.2013, hence retired vide this office order No. 1098/BPC-27 dated 1.12.2014. The appellant filed a writ petition # 608M of 2014 before the Apex Darul Qaza Swat against the retirement order. Copy of Amended Rule annexed as ***Annexure-A*** and final decision on WP#608-M of 2014 is annexed as ***Annexure-B*** and retirement Order as ***Annexure-C.***
5. Correct, at the time of the judgment the appellant has crossed 60 years, hence, cannot be reinstated.
6. Correct, pertains to the Court record.

7. Denied as laid, the Appellant was retired vide No. 1098/BPC-27 dated 1.12.2014, how is it possible to release the salaries of a retired person.

8. Pertains to office records, as no financial benefit was granted to them by the hon'able Court.

9. Denied as laid, at the time of court judgment the age of the appellant was 62 years, 1 month and 2 days.

10. Denied as laid, as the Court has ordered in WP# 608 dated 07.02.2018 ***"therefore, we consider that this writ petition allowed to the extent of declaring the impugned office order dated 01.12.2014 as null and void and the respondents are directed to reinstate the petitioners in their service as they were before retirement. The rest of the relief as prayed for is dismissed and similarly the relief to the added petitioner could not be granted in the instant writ petitioner who may file a separate writ petition, if so advised."***

11. Denied as laid, no violation of any law/rule has been committed by the respondent.

GROUNDS:

A) Incorrect, as the Home Department has repealed the Rule and forwarded to the Districts for implementation, and was implemented throughout Khyber Pakhtunkhwa. The Hon'able Court has decided that the intervening period between their retirement and reinstatement is to be considered as leave without pay, the same was upheld by the Apex Supreme Court of Pakistan. Therefore, no financial benefit was granted to the restored personnel.

B) Incorrect

C) Incorrect

D) Incorrect, denied as laid, as this office has restored and retained them in the force will be against prevailing service rule despite of the fact that the Commandant Levies Force has reinstated them as per Hon'able Supreme Court Judgment.

E) Incorrect

F) Incorrect

G) incorrect

H) Correct

I) Incorrect as the respondents have completely followed the orders / rules, no discrimination has been made what so ever.

J) Correct

K) In-correct, the respondents being responsible Government servants and law abiding citizens observed all the prescribed Rules and regulations.

L) incorrect

M) Incorrect, the court has not granted back benefits to the appellants and the intervening period was considered as leave without pay.

N) Pertains to the court.

It is humbly prayed that the appeal having no legal footings / justifications may be dismissed with costs.

11/1/2017

Secretary
Home & Tribal Affairs Department
Khyber Pakhtunkhwa
Home Secretary,
Khyber Pakhtunkhwa

Hasan Abid

Deputy Commissioner /
Commandant
Levies Lower Chitral

(4)

BEFORE THE HON'ABLE CHAIRMAN SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Subject: **Appeal# 5210 of 2021**

2) **Tawakal Khan** S/o Panjarash Khan r/o Village Laspur District Chitral Upper.

.....**Petitioner**

VERSUS

5) Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa Peshawar
6) Government of Khyber Pakhtunkhwa through Secretary Home & TAs Department
7) Secretary SAFRON Government of Pakistan Islamabad
8) Deputy Commissioner / Commandant Chitral Levies Chitral Lower

.....**Respondents**

INDEX

S#	Description of Documents	Annexure	Pages
1	Parawise Comments + Appeal		1-14
2	Copy of amended Rule / Notification	A	14-15
3	WP#608-M of 2014	B	15-30
4	Copy retirement Order	C	31-32

Deponent

Hasanabid
Deputy Commissioner/
Commandant Chitral Levies,
Chitral
(Respondent)

(5)

Before the Hon'ble Chairman ServiceTribunal,
KhyberPakhtunkhuwa Peshawar

5210

Service Appeal No...../2021

Tawakal Khan S/o Panjarash Village Luspur District Upper Chitral.

.....Appellant

VERSUS

Govt. of KP through Chief Secretary, and others.

.....Respondents

Index

S. No	Description of Documents	Annexure	Page No
1	Appeal With Certificate		1-5
2	Affidavit		6-7
3	Copy of Order Dated 01/12/2014	"A"	8-7
4	Judgment Dated 07/02/2018 & 04/07/2018	"B"	10-18
5	Memo of COC Application, order Dated 08/10/2018	"C"	20-22
6	Reinstatement order and letter Dated 07/02/2019, 29/05/2013	"D"	31
7	Applications Dated23/01/2019,18/06/2018, 22/10/2018 and20/09/2018	"E"	33-35
8	Retirement notice order 04/12/2019 and pay slips	"F"	37-39
9	Memo of Writ Petition 745 M 2019 and judgment Dated 09/04/2021	"G"	47-71
10	Copy of Vakalatnama		72

Appellant

Through

Advocate High Court

(6)

(1)

BEFORE THE HON'BLE CHAIRMAN SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA PESHAWAR

Tawakal Khan son of Panjarash village Laspur District Upper Chitral.

..... Appellant

VERSUS

1. Govt Of Khyber Pakhtunkhwa through Chief Secretary ,at Civil Secretariat Peshawar.
2. Govt Of Khyber Pakhtunkhwa through Secretary , Home and Tribal Affairs ,at Peshawar.
3. The Secretary SAFRON Civil Secretariat Islamabad .
4. The Deputy Commissioner/ Commandant Chitral Levies Chitral

..... **Respondents**

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, FOR GRANTING BACK BENEFIT W .E. F SINCE DISMISSAL ORDER I.E 1-12-2014 TILL RETIREMENT NOTICE 4-12-2019, AGAINST THE REFUSAL ORDER OF THE RESPONDENTS THE PETITIONER FILED WRIT PETITION BEFORE HON,ABLE HIGH COURT DAR UL QAZA PESHAWAR AND THE SAME WAS DISPOSED OF WITH DIRECTION , TO APPROACH HON,ABLE PROVINCIAL SERVISE TRIBUNAL WITHIN THE STATUTORY PERIOD OF LIMITATION , HENCE THE INSTANT APPEAL.

Prayer in Appeal:

ON ACCEPTANCE OF THE INSTANT APPEAL THE RESPONDENTS MAY KINDLY BE DIRECTED TO GRANT/RELEASE THE SALARIES OF THE PETITIONER FROM 1-12-2014 TILL RETIREMENT NOTICE 4-12-2019, AND FURTHER BE DIRECTED TO GRANTING OTHERS BENEFIT OF THE PETITIONER WHICH HE HAS BEEN REINSTATED IN LIGHT OF THE

JUDGMENTS PASSED BY THE HON,ABLE HIGH COURT PESHAWAR MINGORA BENCH .

ANY OTHER REMEDY WHICH DEEMS FIT BY HIS HON'BLE TRIBUNAL IN THE INTEREST OF JUSTICE, MAY ALSO BE GRANTED IN FAVOUR OF APPELLANT.

Respectfully Sheweth,

1) That the appellant is law abiding citizens of Islamic republic of Pakistan and the appellant is permanently residing at the address given in the title of this appeal.

2) That the appellant was initially appointed as a sepoy Border Police and his service were regulated and controlled by SAFRON in according with existing rule.

3) That the appellant was performing his duties with full devotion for the last twenty years continuously with respondents.

4) That on 27-11-2014 the respondents promoted 29 levy personal to the different Ranke superseding the appellant and lastly on 1-12-2014 forcibly retired him from his service and the said act being challenged through Writ No. 608 M/2014 before this Hon,able Court. (**Copy of order dated 1-12-2014 is attached as marked A)**

5) That the appellant and others colleague assailed the impugned order dated 1-12-2014 through Wp. No 608 M /14 , which was allowed vide order date 7-2-2018 and directed the respondents to reinstate the appellant .

6) That the order dated 7-2-2018 passed by this Hon,able court challenged before Hon,able Supreme Court by the respondents which was dismissed vide order dated 4-7-2018 and subsequently in

compliance with the judgment dated 7-2-2018 passed by this Hon,able Court, appellant was reinstated into service on 5-10-2018. (Copies of the judgments dated 7-2-2018, 4-7-2018, memo of COC ,order dated 8-10-2018,reinstatement order and letter dated 7-2-2019 are attached as annexure "B to G")

7) That the appellant was working / serving with the respondent department, for which appellant requested them time and again to release his salaries but in vain.

8) That the appellant through proper channel submitted an application for providing salaries of the appellant , but they refused. (Copies of letter dated 29-5-2013applications dated 23-1-2019,18-6-2018,22-10-2018,and 20-9-2018 are attached as annexure "H to L")

9) That the appellant still working under the command of the respondent department but during the pendency of the writ petition the respondents issued retirement notice dates on 4-12-2019 to the appellant .(copy of the retirement notice order 4-12-2019 and pay slips are attached as marked annuxer M to P)

10) That there is no ambiguity on the legal position that the appellant is entitled to the back benefit including salaries during the time they remained out of service on account of his dismissal which was termed as wrongful by this Hon,able Court in the aforesaid judgment.

11) That the appellant being aggrieved from the action & inaction of official respondents to refuse salary or others benefit , is arbitrary contrary to law, the appellate have filed constitution petition under article 199 of the constitution 1973, Islamic Republic of Pakistan before Peshawar High Dar ul Qaza which was disposed of with direction to approach hon,able provincial servise tribunal within the statutory period of limitation , hence the instant appeal on the

following ground . .(copy of the memo of appeal and judgment 9-4-2021 is attached as marked annuxer Q to R)

[redacted]UNDS:-

A) That his service was terminated without assigning any reason whatsoever ,which termination was found illegal by Hon,able court and apex Court , as having been made without any reason or justification and the appellant legally entitled to back benefit for the period intervening between the date of termination i.e 26-1-2011 and up to the date of his retirement notice.

B) That action& inaction of the respondents are violative of the constitution and the relevant laws lay down for the purpose hence needs interference of this august court.

C) That the official respondents have not treated with the petitioners in accordance with law, rule and policy in the subject and acted in violation existing law / policy, and unlawfully acted which is unjust, unfair, hence not sustainable in the eye of law.

D) That the appellant was performing his duties under the control of the respondents, but the respondents neither paid salaries nor granting retirement benefit , such action of the respondents which is not only denial of fundamental right of the appellant guaranteed under articles 4,11, 29 and 25 of the Constitution of Islamic Republic of Pakistan.

E) That the act of the respondents is without lawful authority based on misuse and exercise of power as such void ab-initio, and ineffective upon the rights of the appellant.

F) That if the appellant has not be given right of salaries along with all back benefits, he will suffer a lot and also be discouraged.

G) That stoppage of the salary is amounting to the force labor which is against the fundamental right of the appellant.

H) That the state is like a mother and the state / government functionaries are constitutionally bound to safeguard the rights of the citizen and provide all rights safeguard by the Constitution.

I) That the act of the respondents as not complying the judgment of this Hon,able court in its true spirit as highly discriminatory, and biased unlawful, lack backing of the law, void ab-initio.

J) That it is settled principle of law no one should be panelized by act of authorities.

K) That the appellant has poor financial background and serving the department, but the respondents did not observe the prescribed rules, regulations and denied the benefits in shape salary and others benefit to the appellant .

L) That the impugned action / inaction of the respondents is based on discrimination and malafide intentions for achieving their ulterior motives.

M) That although appellant and others person have been reinstated with benefit , but till now the appellant been deprived of his legal back benefit .

N) That further grounds, with leave of this Honorable Court, would be raised at the time of arguments before this Honorable Court.

PRAYER

it is therefore humbly prayed that on acceptance of the instant appeal the respondents may kindly be directed to grant/release the salaries of the appellant from 1-12-2014 till retirement notice 4-12-2019, and further be directed to granting others benefit of the petitioner which he has been reinstated in light of the judgments passed by the hon,able high court Peshawar Mingora Bench .

Appellant

Through

Rahim Ullah Chitrali
Advocate High Court

Certificate:-
It is certified that no such appeal is pending or decided by this Hon, able Court

Advocate High Court

List of Books:-

a. Service Laws

b. Case law according to need

Advocate High Court

12

BEFORE THE HON'BLE CHAIRMAN SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No...../2021

Tawakal Khan son of Panjarash village Laspur District Upper Chitral.

..... Appellant

VERSUS

Govt Of KP through Chief Secretary ,and other ..... **Respondents**

AFFIDAVIT

I, Tawakal Khan son of Panjarash village Laspur District Upper Chitral. , do hereby solemnly affirm and declare on oath that the contents of the above titled appeal are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Honorable Court.

DEPONENT

(7-A)

(12)

BEFORE THE HON'BLE CHAIRMAN SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA PESHAWAR

Tawakal Khan .....Appellant

VERSUS

Govt Of KP through Chief Secretary ,and others .....Respondents

ADDRESSES OF PARTIES

APPELLANT

Tawakal Khan son of Panjarash village Laspur District Upper Chitral.

RESPONDENTS

1. Govt Of Khyber Pakhtunkhwa through Chief Secretary ,at Civil Secretariat Peshawar.
2. Govt Of Khyber Pakhtunkhwa through Secretary , Home and Tribal Affairs ,at Peshawar.
3. The Secretary SAFRON Civil Secretariat Islamabad .
4. The Deputy Commissioner/ Commandant Chitral Levies Chitral

Appellant

Through

RAHIM ULLAH
Advocate High Court
Office: Rahim &Qazi Law Associates, 3rd d floor continental Plaza Swat
Cell No. 03439540004

Government of Khyber Pakhtunkhwa,
Home & Tribal Affairs Department
Dated Peshawar the 22th December, 2013

(14)

(11)

NOTIFICATION

No.So(Levies)HD/FLW/1-1/2013/Vol.1. The competent authority has been pleased to approve further amendments in Schedule-I of Rule-4(2) and Schedule-III of Rules-17 under Para-10 of the Regulation for PATA Levies Force, 2012 & Rule-24 of the Provincially Administered Tribal Areas (PATA) Federal Levies Force Service (Amended) Rules, 2013 as under:-

Rule-4(2) Schedule-I

SCHEDULE-I
See Rule 4 (2)

A. Uniformed Force

S.No	Post/ Rank	Eligibility for promotion	Promotion Quota	Direct Quota	Qualification
1	Subedar Major (BS-16)	One year service as Subedr	100%	-	-
2	Subedar (BS-13)	One year service as Naib Subedar	100%	-	-
3	Naib Subedar (BS-11)	One year service as Hawaldar	100%	-	-
4	Hawaldar (BS-8)	One year service as Naik	100%	-	-
5	Naik (BS-7	One year service as Lance Naik	100%	-	-
6	Lance Naik (BS-6)	Five years' service as Sepoy	100%	-	-
7	Sepoy (BS-5)	-	-	100%	Middle pass preferaoly Matric
8	Head Armorer (BPS-5)	Five years' service as Assistant Armorer	100%	-	Middle pass preferably Matric with Certificate of Armorer
9	Assistant Armorer (BPS-1)	-	-	100%	Middle pass preferably Matric with Certificate of Armorer

Rule-17 (Retirement). (1) All uniform levy personnel shall retire as per Schedule-III or they may opt for retirement after completion of 25 years of regular service and no extension in service beyond retirement shall be granted.

SCHEDULE-III
Rule-17(Retirement)

S.No	Post/ Rank	Length of service / age for retirement.
1	Subedar Major(BS-16)	37 years' service or 60 years of age whichever is earlier.
2	Subedar BS-13	35 years' service or 60 years of age whichever earlier.
3	Naib Subedar(BS-11)	33 years' service or 60 years of age whichever earlier.
4	Hawaldar(BS-8	31 years' service or 60 years of age whichever earlier.
5	Naik(BS-7)	29 years' service or 60 years of age whichever earlier.
6	Lance Naik(BS-6	27 years' service or 60 years of age whichever earlier.
7	Sepoy(BS-5)	25 years' service or 60 years of age whichever earlier.

P.T.O

[illegible] personnel shall retire from service on [illegible] [illegible] for the retirement after completion of [illegible] [illegible] beyond retirement shall be granted.

Secretary to Government of Khyber Pakhtunkhwa
Home & Tribal Affair Department

[illegible]

[illegible] is forwarded for information and further necessary action to

1. The Secretary to Government of Pakistan, Ministry of SAFRON, Islamabad with reference to his Notification No.F.10 (5)-LK/2006 dated 05-12-2013.
2. The Commissioner, Malakand Division, Malakand.
3. The Deputy Commissioner/Commandant, Malakand Levies, Malakand.
4. The Deputy Commissioner/Commandant Levies, Chitral.
5. The Deputy Commissioner/Commandant Levies, Dir [illegible]
6. The Deputy Commissioner/Commandant Levies, Dir Lower.
7. The Deputy Commissioner/Commandant Levies, Swat.
8. PS to Secretary to Governor to Khyber Pakhtunkhwa.
9. PS to Chief Secretary, Khyber Pakhtunkhwa.
10. PS to A.C.S (FATA) Secretariat Peshawar.
11. PS to Secretary Home & Tribal Affairs Department.
12. The Manager Government Printing Press, Peshawar for publication in the official gazette Peshawar as an extra ordinary copy.

Section Officer (Levies)

Judgment Sheet

(10) (16) Ann B

PESHAWAR HIGH COURT, MINGORA BENCH (DAR-UL-QAZA), SWAT.

JUDICIAL DEPARTMENT

W.P.No.608/2014

JUDGMENT

Date of hearing...07/02/2018.....

Petitioners (Zarin Khan & others) By M/s Mumtaz Ahmad & Subhanullah, Advocates.....

Ann B

Respondent No.1 By Mian Hussain Ali, DAG.....

Respondents No.2 to 4 By Mr.Rafique Ahmad, Asstt: A.G.....

MUHAMMAD NASIR MAHFOOZ, J:- Through the instant writ petition petitioners have prayed for the following relief:-

> *'A. that on acceptance of the instant writ petition, this Hon'ble Court may be pleased to declare the impugned services rules, provincially administered Tribal Areas (PATA), Federal levies Force Services Rules 2013 null and void, illegal, unlawful, void ab initio, ultra vires and against of the petitioners and the petitioners may be treated according to the previous policy of retirement after the completion of 60 years of age.*
>
> *B. This August Court may please to set aside the impugned notification dated 01.12.2014 by reinstating the petitioners with all back benefits by declaring the impugned notification dated 01.12.2014 as illegal, unjustified, unwarranted and against the rules'.*

2. Petitioners who are the residents of District Chitral were recruited as Sepoys as regular

employees of border police, Chitral which was established in the year 1895. It is mentioned in the writ petition that in 1950 regular police was introduced in Swat by Ex-Wali of Swat by conversion of the levies personnel and in Chitral the police force was recognized and separated from Swat police, while in the District of Dir and Malakand Agency they are still treated as Levies Force. In the year 1962, for the first time service rules for the Malakand and Dir Levies were framed and future promotions were provided to different categories of the employees. On 27.11.2014 respondents promoted 29 levy personnel to different ranks superseding the present petitioners and on 1.12.2014 forcibly retired them from their services. The said act is being challenged as passed with mala fide intention, without lawful authority and against the rules, hence, the instant writ petition.

3. During proceedings in the instant writ petition. Except seven of the writ petitioners rest of the petitioners have been reinstated into service, so the said petitioners did not press their writ petitions and, therefore, to their extent it is dismissed as

withdrawn. Now the only seven aggrieved petitioners are at S.No.14, 24, 29, 32, 44, 49 and 53.

4. Respondents were put on notice who submitted their comments and denied the allegations of present petitioners and submitted that the petitioners have got no right to serve till retirement up to the age of superannuation and alleged that they have been removed on disciplinary grounds.

5. During pendency of the instant writ petition, one of the petitioner at S.No.57 Javed Ahmad, submitted an application for impleadment which was allowed on 03.11.2016 but during arguments of the main writ petition his case was in total conflict with the rights of the aggrieved petitioners as in case of acceptance of the writ petition of aggrieved petitioners he would suffer as he has been appointed on the post vacated by the petitioners.

We have heard arguments of learned counsel for the petitioners, learned counsel for the added petitioner, learned A.A.G as well as the learned DAG for the Government/respondents.

6. Though the relief prayed for in the writ petition is for declaring the rules promulgated

known as PATA Federal Levies Force Service Rules 2013 as null and void but during submissions in Court none of the petitioners or their counsels addressed the Court on this aspect of the matter. They simply urged their reinstatement like their other colleagues who were petitioners before and have been reinstated. The main grievance is declaring their forcec/compulsory retirement as void and without jurisdiction. Therefore, the prayer regarding the declaration of the impugned rules as null and void is held to have been withdrawn and, therefore, dismissed to that extent only. So far as the claim of aggrieved petitioners for their reinstatement is concerned, a bare look at the perusal of the comments would show that no record whatsoever has been annexed therewith to show that the aggrieved petitioners were involved in any activities which entailed disciplinary proceedings and resultantly compulsory retirement.

7. The impugned office order dated 01.12.2014 bearing No.1098/BFC-27 reveals that the petitioners have been compulsorily retired on the sole ground that having completed the required length of service

for Sepoys (BPS-5) under sub-rule 17 (retirement), schedule-III of the Federal Levies Service (Amended) Rules, 2013 dated 12.12.2013. As mentioned above, some of the petitioners have been reinstated into service during the pendency of the instant writ petition, therefore, the case of only seven aggrieved petitioners needs to be considered. According to the Federal Levies Service Rules a Sepoy (BPS-5) is required to retire after serving for 25 years or on attaining the age of 60 years whichever is earlier. Rule 17 (retirement) (1) provides that all uniform levy personnel shall retire as per Schedule-III or they may opt for retirement after completion of 25 years of regular service and no extension in service beyond retirement shall be granted. This rule has been notified through notification dated 12.12.2013.

8. The case of aggrieved petitioners only requires consideration on the ground of discriminatory treatment vis-a-vis their other colleagues who have been reinstated in service during the pendency of the instant writ petition. No record whatsoever, has been annexed with the

comments to establish that either the petitioners are unable to perform their duties or they have committed any misconduct that requires disciplinary proceedings against them. The vague denial in the comments could be considered as their waiver to defend their allegations against the petitioners and would constitute acceptance of the allegations of the petitioners. We could not find any reason to refuse relief to the petitioners to the extent of declaring the impugned office order dated 01.12.2014 as without jurisdiction and without lawful authority as it suffers due to discriminatory treatment with the petitioners. The fundamental rights to be treated in accordance with law is invariably a substantial ground to grant them relief. In addition no show cause notice whatsoever has been issued to the petitioners before their compulsory retirement and, therefore, the principles of natural justice is also attracted to the case of petitioners. This Court in similar matter passed in W.P.No.1251-P/2015 decided on 30.06.2015 has granted similar relief and the pre-mature retirement was set aside with the direction to allow the petitioners therein to complete their

services tenure till attaining the age of superannuation and the intervening period during the retirement and rejoining of service was treated as leave without pay. Learned counsel for the petitioners relied on case titled **Muhammad Rafi and another Vs. Federation of Pakistan and others** reported as (2017 PLC (SC) 1270), para 7 is quoted below:-

> *"7. The ground that the process through which the person has passed in order to be awarded an appointment was not transparent, is not sufficient reason for the competent Authority to scrap the appointments of the Appellants who had passed through the proper recruitment process. The Service Regulations of the Civil Aviation Authority do not suggest that once the offer letter has been issued and accepted, the Civil Aviation Authority can scrap the process on the grounds that it was not transparent. There would have been some force in this contention of the Counsel for the Respondents (Civil Aviation Authority) if it was brought on record that persons who initiated the said process were also proceeded against departmentally for misconduct but there is nothing on record that suggests this, rather the Counsel when put to this question also concedes that no action has been taken by the competent Authority against the persons who were involved in the process of appointment of the Appellants".*

Therefore, we consider that this writ petition be partially allowed to the extent of declaring the impugned office order dated 01.12.2014 as null and void and the respondents are directed to reinstate the

(23)

petitioners in their service as they were before their retirement. The rest of the relief as prayed for is dismissed and similarly the relief to the added petitioner could not be granted in the instant writ petition who may file a separate writ petition, if so advised.

(17)

PESHAWAR HIGH COURT MINGORA BENCH DAR-UL-QAZA SWAT

JUDGE

JUDGE

Announced.
Dt.07/02/2018.

HON'BLE MR.JUSTICE ISHTIAQ IBRAHIM &
HON'BLE MR.JUSTICE MUHAMMAD NASIR MAHFOOZ.

(A.K.KHAN)

S.No. 92
Name of Applicant Bilal Ahmad
Date of Presentation of Application 10.3.18
Date of Preparation of Copies
No of Pages 8
Urgent
Fee Charged 16/-
Date of Delivery of Copies 10.3.18

Certified to be true copy

EXAMINER
Peshawar High Court, Mingora/Dar-ul-Qaza, Swat
Authorized Under Article 87 of the Qanun-e-Shahadat Order 1984

9/3/2

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

(24) (18) Ann C

PRESENT: MR. JUSTICE MIAN SAQIB NISAR, HCJ
MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE IJAZ UL AHSAN

CIVIL PETITION NO.296-P OF 2018
(Against the judgment dated 7.2.2018 of the Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat passed in W.P.No.608/2014)

Govt. of KPK through Secretary Home & Tribal Affairs Peshawar etc.
...Petitioner(s)

VERSUS

Muhammad Zahir Khan etc.
...Respondent(s)

For the petitioner(s): Mr. Zahid Yousaf Qureshi, Addl.P.G.

For the respondent(s): Not represented

Date of hearing: 4.7.2018

ORDER

MIAN SAQIB NISAR, CJ.- The respondents were not given any option of compulsory retirement, rather they were compelled without even giving an opportunity of hearing for retirement after completion of 25 years of service. This has been found to be illegal by the learned High Court and relief has been granted to the repsondents which we do not find to be against the law or principles of rules of equity. No case for interference has been made out. Dismissed accordingly.

Sd/-,HCJ
Sd/-,J
Sd/-,J

Certified to be True Copy

Court Associate
Supreme Court of Pakistan
Islamabad

SEAL OF THE SUPREME COURT OF PAKISTAN

Islamabad, the
4th of July, 2018
Not Approved For Reporting
Waqas Nasser/*

GR No: 17867/18
Date of Presentation: 21-7-18
No of Words: 320
No of Folios: 8
Requisition Fee Rs: 5.00
Copy Fee in: 16
Court Fee Stamps: 6.8
Date of Completion of Copy: 21/7/18
Date of delivery: 21-7-18
Compared by:
Received by:

Ann D

19

BEFORE THE PESHAWAR HIGH COURT, CIRCUIT BENCH (DAR UL QAZA) AT SWAT

C.O.C. No. 34M /2018
In
W.P No.608/2014

Burhan Ud Din and others.....Petitioners

Ann D

VERSUS

Irshad Ali Sodhar, Deputy Commissioner(Commandant Chitral Levy/[illegible]) Chitral at D.C Office Chitral

.....Respondent

INDEX

S.No	Description of Documents	Annex	Pages
1.	Opening sheet		A
2.	Application for contempt of court		1-3
3.	Affidavit		4
4.	Addresses of parties		5
5.	Copy of judgment dated 07.02.2018	A	6-13
6.	Copy of Application	B	14
7.	Wakalat Nama/Power of Attorney.		15-16

Petitioners

Through

Mumtaz Ahmad
Advocate High Court
Cell No.0333-9118161

Dated: 08.03.2018

FILED TODAY
19 MAR 2018
Additional Registrar

BEFORE THE PESHAWAR HIGH COURT, CIRCUIT BENCH (DAR UL QAZA) AT SWAT

C.O.C. No. 34-M /2018
In
W.P No.608/2014

1. Burhan Ud Din S/o Abdul Karim
2. Balan Khan S/o Jafail Khan
3. Muhammad Zahir Khan S/o Zarb Ullah Khan
4. Khan Shoaib S/o Abdullah Jan
5. Muhammad Noor S/o Tabaruk khan.
6. Ahmad Nawaz S/o Badshah
7. Tawakal Khan S/o Panjarash Khan

All Residents of District Chitral........................**Petitioners**
Drosh

VERSUS

Irshad Ali Sodhar, Deputy Commissioner(Commandant Chitral Levy/Scout) Chitral at D.C Office Chitral

..................**Respondent**

PETITION UNDER ARTICLE 204 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973 READ WITH SECTION 3/4 OF THE CONTEMPT OF COURT ACT, FOR INITIATING CONTEMPT OF COURT PROCEEDINGS AGAINST THE RESPONDENTS FOR NOT HONOURING JUDGMENT DATED 07.02.2018 IN W.P No.608/2014 PASSED BY THIS HONOURABLE COURT/BENCH.

Respectfully Sheweth:

Precisely, stating the facts of the case out of which the present petition arise are as under:

1. That above mentioned writ petition was allowed vide order dated 07.02.2018. (Copy of judgment dated 07.02.2018 is Annexure "A").

FILED TODAY
19 MAR 2018

CTC

2. That this Hon'ble Court had directed the respondent to reinstate the petitioners as per judgment dated 07.02.2018.

3. That the petitioners submitted an application before respondent as per direction of this Hon'ble Court alongwith Court judgment on 07.02.2018, (Copy of the Application is attached as annexure "B").

4. That the respondent out rightly refused to honour the clear cut direction of this Hon'ble Court.

5. That the petitioners hence left with no choice but to file instant contempt of court petition , inter alia, on the following grounds:

GROUNDS:

A. That non-compliance of the aforesaid judgment dt.07.02.2018 of the Honourable Court by the respondent is illegal, without lawful authority, without jurisdiction, malafide and void ab-initio.

B. That the petitioners approached Respondent for the implementation of said judgment of this Hon'ble Court but uptil now the instant judgment remain non complied on behalf of the respondent.

C. That every government or Public functionary is under legal obligation to honour the orders of the court of competent jurisdiction, the respondent by not

FILED TODAY

19 MAR 2018

complying with the court orders, have not performed their duty in accordance with law.

D. That non-compliance of the order of the Honourable Court, speaks malafide on the part of respondent and to lower the position of the judiciary in the eye of public at large.

E. That from the facts and narrated above, it has become crystal clear that the respondent has wilfully committed contempt of court, hence needs to be proceeded under the contempt of court Act.

F. That the respondent despite application alongwith the court judgment avoiding to honour the court judgment hence needed to be proceeded /punished in accordance with contempt law.

It is, therefore, most humbly prayed that on acceptance of this application/petition, the contempt of court proceedings may please be initiated against the Respondent, they be summoned, proceeded against and be punished in accordance with law.

Petitioners

Through

Mumtaz Ahmad
Advocate High Court

Dated: 08.03.2018

Certificate:-

Certified that no other such Contempt of Court (C.O.C) is pending on the same Subject Matter.

FILED TODAY
19 MAR 2018

Additional Registrar

The Commandant
Chitral Levies

29 23

Subject: APPLICATION FOR ARRIVAL AFTER RE-INSTATEMENT BY PESHAWAR HIGH COURT CIRCUIT BENCH DARUL-QAZA SWAT VIDE ORDER DATED 07-02-2018.

Respected Sir;

1. That the applicants were Spoys in Chitral levies and were retired compulsorily by the then commandant vide office order dated01-12-2014.
2. That the applicants challenged the said order before Darul-Qaza Swat which was allowed and applicants were reinstated with all back benefits by declaring the order dated 01-12-2014 as illegal and un-warranted. **(Copy of the court Order/Judgment is attached)**
3. That the applicants now seeking their arrival to resume their duty in the light of the court order dated 07-02-2018.

It is, therefore, respectfully submitted that applicants may kindly be allowed to resume their duty by accepting the arrival report.

Applicants

1. *Balan Khan*
2. *Burhan ud Din*
3. *Muhammad Zahir Khan*
4. *Khan Shoaib*
5. *Noor Muhammad*
6. *Muhammad Nawaz*
7. *Tawakal Khan*

A.T.C 8/03/018

Dated: 20-02-2018

Cell No. 0342-9490522

Ann E (29)

(24)

Ann E

PESHAWAR HIGH COURT, MINGORA BENCH
(DAR-UL-QAZA), SWAT

FORM OF ORDER SHEET

Court of .....

Case No. ..... of .....

Serial No. of order or proceeding	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge and that of parties or counsel where necessary.
1	2	3
	08.10.2018	C.O.C 34-M/2018 in W.P 608/2014 Present: Mr. Mumtaz Ahmad, Advocate for the Petitioners. Muhammad Rahim Shah, A.A.G for the Respondents. *** SYED ARSHAD ALI, J.- At the very outset, the learned A.A.G produced copy of the office order bearing endorsement No.205-6/DC/CMDT/CLC-20 dated 05.10.2018, whereby the petitioners have been reinstated in their service. After going through the above said office order, the learned counsel for the petitioners stated at the bar that he is satisfied and requested for disposal of this petition without any further proceedings. Since, this contempt of Court Petition has served its purpose, so, it is disposed of accordingly. Announced 08.10.2018 JUDGE JUDGE

Sabz Ali/* (D.B) HON'BLE MR. JUSTICE MUHAMMAD GHAZANFAR KHAN
HON'BLE MR. JUSTICE SYED ARSHAD ALI

(8) Ann A (37)

OFFICE OF THE DEPUTY COMMISSIONER /COMMANDANT CHITRAL LEVIES, CHITRAL

Dated Chitral the 1st December, 2014

ORDER:

No. 1098 /BPC-27. Having completed the required length of service for Sepoys (B-5) under Sub Rule 17 (Retirement), Schedule-III of the Federal Levies Service (Amended) Rule 2013 dated 12-12-2013, the following personnel of Chitral Levies, Chitral, are hereby retired from service with effect from 01/12/2014 (FN) on payment of pension as admissible under the rule:-

S #	EPN	Rank	Names of the Levy personnel	Date of Birth	Age	Date of Apt:	Service length		
							Y	M	D
1	00318651	Sepoy	Zarin Khan	21-Mar-55	59	15-Jun-82	32	5	13
2	00318916	Sepoy	Ahmad Nawaz	21-Mar-55	59	15-Jun-82	32	5	13
3	00318752	Sepoy	Faizuddin	12-Apr-55	59	3-Apr-78	36	7	25
4	00318395	Sepoy	Feroz Khan	1-Jul-55	59	19-Jun-84	30	5	9
5	00318841	Sepoy	Muhammad Azim Baig	27-Sep-55	59	15-Sep-83	31	2	13
6	00318566	Sepoy	Muhd Ibrahim Khan	1-Jul-56	58	1-Apr-83	31	7	27
7	00318552	Sepoy	Ghaziuddin Khan	10-Sep-56	58	1-Feb-84	30	9	27
8	00318894	Sepoy	Nazurban Shah	31-Dec-56	58	15-Jun-81	33	5	13
9	00318928	Sepoy	Muhammad Ghazi	1-Feb-57	57	24-Nov-82	32	0	4
10	00318911	Sepoy	Shahi Noor	13-Apr-57	57	13-Apr-78	36	7	15
11	00318373	Sepoy	Gul Ahmad	1-May-57	57	15-Jun-81	33	5	13
12	00318658	Sepoy	Gulzar Khan	1-Jan-58	56	1-Mar-82	32	8	27
13	00337966	Sepoy	Abdur Rehman	1-Jan-58	56	1-Mar-82	32	8	27
14	00337947	Sepoy	Muhammad Zahir Khan	1-Jan-58	56	6-Jan-84	30	10	22
15	00318881	Sepoy	Khair Muhammad	1-May-58	56	15-Jun-81	33	5	13
16	00318575	Sepoy	Gulab Khan	15-Jun-58	56	15-Jun-82	32	5	13
17	00319039	Sepoy	Musa Wali Khan	31-Dec-58	56	15-Jun-81	33	5	13
18	00318834	Sepoy	Muhammad Akbar	1-Jan-59	55	2-Aug-82	32	3	25
19	00318745	Sepoy	Hakim Jan	21-Mar-59	55	15-Jun-82	32	5	10
20	00318840	Sepoy	Jahan Gul	8-Jan-60	54	1-Aug-83	31	3	27
21	00318409	Sepoy	Abad Khan	1-Jul-60	54	27-Sep-82	32	2	7
22	00318925	Sepoy	Muhammad Wali	1-Jul-60	54	19-Sep-84	30	2	9
23	00318825	Sepoy	Salamat Shah	15-Mar-61	53	15-Jun-82	32	5	13
24	00318830	Sepoy	Balan Khan	10-Mar-62	52	15-Jun-82	32	5	13
25	00318702	Sepoy	Ghulam Khan	15-Oct-62	52	15-Jun-82	32	5	13
26	00318580	Sepoy	Muhammad Zahir Shah	1-Jul-63	51	25-Feb-83	31	9	7
27	00318651	Sepoy	Muhammad Karim Shah	1-Jul-63	51	14-Nov-83	31	0	14
28	00318538	Sepoy	Gul Rahim	15-Mar-64	50	19-Apr-83	31	7	9
29	00319028	Sepoy	Burhanuddin	1-Jul-64	50	15-Jun-82	32	5	13
30	00318342	Sepoy	Sarfaraz Shah	1-Jul-64	50	21-May-83	31	6	-
31	00318546	Sepoy	Pati Muhammad	15-Oct-64	50	1-Feb-84	30	9	27
32	00318586	Sepoy	Tawakal Khan	1-Jul 57	57	6-May-85	29	6	22
33	00318645	Sepoy	Zahir Shah	1-Jul-57	57	5-Jun-85	29	5	23
34	00319053	Sepoy	Muhammad Azam	1-Jul-57	57	18-Jun-85	29	5	10
35	00318594	Sepoy	Panjabi Khan	1-Jul-60	54	20-Feb-85	29	9	8
36	00318451	Sepoy	Noor Hayat	1-Jul-60	54	5-Jun-85	29	5	23
37	00318415	Sepoy	Amir Muhammad	1-Jan-61	53	4-Jun-85	29	5	24
38	00318475	Sepoy	Muhammad Akbar Khan	1-Jan-61	53	9-Jun-86	28	5	19
39	00318527	Sepoy	Abdur Rehman	1-Jan-61	53	6-Feb-88	26	9	22
40	00339410	Sepoy	Patali Shah	1-Jul-61	53	20-Feb-85	29	9	8
41	00318788	Sepoy	Muhammad Noor	1-Jul-61	53	9-Aug-89	25	3	19

42	00318519	Sepoy	Muhammad Baig	1-Jan-62	52	1-Jan-88	26	10	27
43	00318994	Sepoy	Muhammad Hassan	1-Jul-62	52	3-Jun-85	29	5	25
44	00318897	Sepoy	Azizullah	1-Jul-62	52	5-Jun-85	29	5	23
45	00318847	Sepoy	Gul Farooz Khan	1-Jul-63	51	5-Jun-85	29	5	23
46	00318378	Sepoy	Saeed Ahmad	1-Jul-64	50	17-Mar-85	29	8	11
47	00318599	Sepoy	Rehmat Ghazi Baig	1-Jul-64	50	9-Jul-85	29	4	19
48	00337964	Sepoy	Muhammad Ismail	1-Jan-65	49	9-Jun-88	26	5	19
49	00318641	Sepoy	Khan Shoaib	1-Jul-65	49	5-Jun-85	29	5	23
50	00318428	Sepoy	Jamaluddin	1-Jul-65	49	10-Feb-87	27	9	18
51	00318363	Sepoy	Attaullah	16-Jun-66	48	5-Jun-85	29	5	23
52	00318571	Sepoy	Darzoo Khan	1-Jul-66	48	3-Mar-85	29	8	25
53	00318470	Sepoy	Muhammad Ghaffar	1-Jul-66	48	25-Mar-85	29	8	3
54	00318403	Sepoy	Ghulam Farooq	1-Jul-66	48	5-Jun-85	29	5	23
55	00318511	Sepoy	Fazal Rabi	16-Mar-67	47	5-Jun-85	29	5	23
56	00318286	Sepoy	Abdul Hakim	1-Jul-67	47	27-Jul-85	29	4	1
57	00318769	Sepoy	Mujeebur Rehman	1-Jul-68	46	9-Sep-89	25	2	19
58	00318501	Sepoy	Sher Azam Khan	1-Jul-70	44	19-Oct-89	25	1	9
59	00337945	Sepoy	Sirajuddin	1-Jul-69	45	19-Oct-89	25	1	12

In pursuance of para (b) of Government of Pakistan, Finance Division Islamabad letter No. 1 (1) INP/83 dated 18-8-1983, and amended rule 18(A) (i) Sub Rule (2) *vide* Notification No. S.R.O 70 (KE)/2012 dated 29-08-2012 the personnel at *vice* No. 1 to 31 above are hereby allowed encashment of L.P.R for 365 days as provided under the Rule 25 of the Government of Pakistan, Finance Division Islamabad Civil Servant Revised Rules 1973 *Mutais Mutandis*.

Deputy Commissioner/
Commandant Chitral Levies,
Chitral

No. 1099-1159-/BPC-27

Copy forwarded to :-

1. The Secretary Government of Khyber Pakhtunkhwa Home & TAs Department Peshawar
2. The Secretary SAFRON Division, Islamabad
3. The Commissioner Malakand Division Saidu Sharif Swat
4. The District Accounts Officer, Chitral for information & necessary action please.
5. The Subedar Major Chitral Levies, Chitral for information.
6. The *Kothe* NCO Levies HQ Chitral with the direction to furnish "NOC" in favour of the personnel to this office to process their pension/commutation documents.
7. The Accountant Chitral Levies Chitral
8. The official concerned for information
9. GP Fund File (10) Pension File (11) Service Roll

Deputy Commissioner/
Commandant Chitral Levies,
Chitral

BEFORE THE HON'ABLE CHAIRMAN SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Subject: **Appeal# 5210 of 2021**

1) **Tawakal Khan** S/o Panjarash Khan r/o Village Laspur District Chitral Upper.

.....**Petitioner**

VERSUS

1) Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa Peshawar
2) Government of Khyber Pakhtunkhwa through Secretary Home & TAs Department
3) Secretary SAFRON Government of Pakistan Islamabad
4) Deputy Commissioner / Commandant Chitral Levies Chitral Lower

.....**Respondents**

PARAWISE COMMENTS.

PRELIMINARY OBLIGATIONS:

1. The Petitioners have no cause of action.
2. The Petition is not maintainable in the present form
3. The petitioners have not come to the court within clean hands.

FACTS:

1. Correct ~~and~~ related ~~fordom~~ to personal matter/information of appellant
2. Correct .
3. Correct .
4. Correct to the extent that the appellant having completed the required length of service under Sub Rule 17 (Retirement), Schedule-III of the Federal Levies Service (Amended) Rule 2013 dated 12.12.2013, hence retired vide this office order No. 1098/BPC-27 dated 1.12.2014. The appellant filed a writ petition # 608M of 2014 before the Apex Darul Qaza Swat against the retirement order. (The ibid rules be annexed and copy of w.p be also attached.
5. Correct, but at the time of the judgment the appellant has crossed 60 years, hence, cannot be reinstated.
6. Correct, pertains to the Court record.

7. Denied as laid, the Appellant was retired vide No. 1098/BPC-27 dated 1.12.2014, how is it possible to release the salaries of a retired person.

8. Pertains to office records, as no financial benefit was granted to them by the hon'able Court.

9. Denied as laid, at the time of court judgment the age of the appellant was 62 years, 1 month and 2 days.

10. Denied as laid, as the Court has ordered in WP# 608 dated 07.02.2018 ***"therefore, we consider that this writ petition allowed to the extent of declaring the impugned office order dated 01.12.2014 as null and void and the respondents are directed to reinstate the petitioners in their service as they were before retirement. The rest of the relief as prayed for is dismissed and similarly the relief to the added petitioner could not be granted in the instant writ petitioner who may file a separate writ petition, if so advised."***

11. Denied as laid, no violation of any law/rule has been committed by the respondent.

GROUNDS:

A) Incorrect, as the Home Department has repealed the Rule and forwarded to the Districts for implementation, and was implemented throughout Khyber Pakhtunkhwa. The Hon'able Court has decided that the intervening period between their retirement and reinstatement is to be considered as leave without pay, the same was upheld by the Apex Supreme Court of Pakistan. Therefore, no financial benefit was granted to the restored personnel.

B) Incorrect

C) Incorrect

D) Incorrect, denied as laid, as this office has restored and retained them in the force will be against prevailing service rule despite of the fact that the Commandant Levies Force has reinstated them as per Hon'able Supreme Court Judgment.

E) Incorrect

F) Incorrect

G) incorrect

H) Correct.

I) Incorrect as the respondents have completely followed the orders / rules, no discrimination has been made what so ever.

J) Correct

K) Incorrect. The respondents being responsible govt: Servants and Law abiding person observe all the prescribed rules and regulation.

L) incorrect.

M) Incorrect, the court has not granted back benefits to the appellants and the intervening period was considered as leave without pay.

N) Pertains to the court.

It is humbly prayed that the appeal having no legal footings / justifications may be dismissed with costs.

Secretary
Home & Tribal Affairs Department
Khyber Pakhtunkhwa

Hasan Abid
Deputy Commissioner /
Commandant
Levies Lower Chitral

Submmitted for vetting.
6/1/2022

Vetted subject to necessary Corrections, addition and annex all relevant documents/Record and also prepare Proper index.

Assistant Advocate General
Khyber Pakhtunkhwa
Peshawar
6-1-2022

Before the Honble Chairman KP. Service Tribunal
Peshawar.

Service Appeal No. 15010 of 2021.

TAWAKAL Khan V/S Govt.

Application for Grant Permission to deposit
-the Security Fee.

Allowed
08/11/2021

Sir,

1. That the titled case is pending before this Honble tribunal and is fixed for 16-11-21.

2. That due to illness of Appellant and Covid-19 -the security fee could not deposit with in time

It is therefore may kindly be granted Permission to the applant to Deposit the Requisit security fee.

5-10-21

Applicant
-through:
Waqas Ahmad baig
Advocate.
Peshawar.

Put up to the Worthy Chairman with relevant appeal.

5/10/2021.

Ready

Before The Hon,ble chairman K.P.K SERVICE TRIBUNAL

Put up to the worthy chairman with relevant approval.

Khyber Pakhtukhwa Service Tribunal
Diary No. 709
Dated 15/7/22

ZAHIR Khan v/s D.C. Chitral & others
25/7/22.

Reader TAWAKAL Khan v/s DC. Chitral etc.

Application for transfer of case. No. 5209. Titled ZAHIR Khan v/s Govt of K.PK and Case No. 52010. titled TawakAL khan v/s Govt of K.P.K. be Fixed. for 4.8.22. and is scheduled to fixed at SWat. i-e first week of August. as the tribunal Bench ~~Peshawar~~.

~~As Already SA 1065/22~~

Sheweth:

1. That the titled service appeal is pending in this tribunal at which the date of hearing is fixed for. 4.8.22.

2. That it would be in the best interest of Justice of the titled is fixed and disposed off earlier.

It is there for humbly prayed that the titled appeal may please be transferred prayed for. Thanks.

Applicant.

Thr. Waqar Ahmad Bacha ADV.cate

Mob. 0311-0400098

Order: Pending Swat court. Camp Court be there as prayed. Be fixed with the connected appeal before camp court Swat for the said date.

28/7/22