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(41)

Bill No. 68

(A)

(B)

to provide for the maintenance of Khyber Pakhtunkhwa
Levies Force and to enable its transition
to Khyber Pakhtunkhwa Police

WHEREAS after Constitution (Twenty-fifth Amendment) Act, 2018 (Act No. XXXVII of 2018), the erstwhile Federally Administered Tribal Areas have been merged in the Province of the Khyber Pakhtunkhwa, and Federal Levies Force, established under the Federal Levies Force Regulation, 2012, working in the said areas, has lost its legal status for working in the merged districts and sub-divisions;

AND WHEREAS it is in the best public interest to allow the Federal Levies Force to continue its functions in the merged districts and sub-divisions and to regulate and maintain it under the administrative control of the Government of Khyber Pakhtunkhwa;

AND WHEREAS to achieve the objectives it is expedient to give legal status to the Federal Levies Force in the merged districts and sub-divisions and to re-visit its institutional structure and functional assignment for effective discipline, better performance and optimal utility;

It is hereby enacted as follows:

Agst: Levies Force
Govt of Khyber Pakhtunkhwa
Law Department

1. **Short title, application, extent and commencement.**—(1) This Act may be called the Khyber Pakhtunkhwa Levies Force Act, 2019.

(2) It shall apply to all the members of Levies Force.

(3) It shall extend to the districts and sub-divisions of the Province of Khyber Pakhtunkhwa as provided in the Schedule.

(4) It shall come into force at once.

2. **Definitions.**—In this Act, unless there is anything repugnant to the subject or context,

(a) "Code" means the Code of Criminal Procedure, 1898 (Act of V of 1898);

(b) "Commandant" means the Commandant of the Levies Force;

(c) "Department" means the Home and Tribal Affairs Department of the Government of Khyber Pakhtunkhwa;

(d) "Deputy Director General" means the Deputy Director General of

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Asstt. Legal Officer
Govt of Khyber Pakhtunkhwa
Law Enforcement Deptt.

- (g) "Levies Force" means the Federal Levies Force, established under the repealed regulation and re-constituted, regulated and maintained under this Act;
- (h) "Police" means the Khyber Pakhtunkhwa Police;
- (i) "prescribed" means prescribed by rules;
- (j) "Provincial Police Officer" means the Provincial Police Officer of Khyber Pakhtunkhwa Police;
- (k) "public agency" means any department of Government, attached department, public authority, commission or autonomous body, setup under any statutory instrument, or public sector company or body corporate, owned, controlled or financed by Government;
- (l) "repealed regulation" means the Federal Levies Force Regulation, 2012, repealed under section 15 of this Act;
- (m) "rules" mean rules made under this Act; and
- (n) "Schedule" means the Schedule appended to this Act.

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

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

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

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

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

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

Explanation: For the purpose of this section, Regional Police Officer and District Police Officer shall have the same meanings as are given to them respectively, in the Khyber Pakhtunkhwa Police Act, 2017 (Khyber Pakhtunkhwa Act No. 11 of 2017).

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5. Powers and duties of the Levies Force.--(1) Notwithstanding anything contained, in any other law for the time being in force, the Levies Force shall have the parallel policing powers as are assigned to the Police under the Code.

(2) Without prejudice to the generality of the forgoing policing powers under sub-section (1), the Levies Force shall perform such institutional or organizational functions and duties as provided under the Khyber Pakhtunkhwa Police Act, 2017 (Khyber Pakhtunkhwa Act No. 11 of 2017).

6. Liabilities of officers and members of the Levies Force.--(1) It shall be the duty of every member of the Levies Force to obey and execute all lawful orders and instructions, issued to him by the Commandant or any other officer authorized by him in this behalf to issue such orders and instructions.

(2) The Levies Force shall be an essential service and every member thereof shall be liable to serve whenever he is required to serve by the Director General.

7. Constitution of Selection and Promotion Committees.--Government shall notify the Selection and Promotion Committees for recruitment and promotion of employees of the Levies Force.

8. Postings, transfers and distribution of the Levies Force.--(1) The Commandant shall be competent to post and transfer members of the Levies Force within the district.

(2) The Director General shall be competent to post and transfer members of the Levies Force from one district to another.

(3) Subject to the decision of the Department, a sufficient number of members of the Levies Force shall be placed at the disposal of the District Administration in performing its legally mandated functions.

9. Absorption.--(1) Notwithstanding anything, contained in any other law for the time being in force, the members of the Levies Force may be absorbed in the Police, subject to the procedure as may be determined by Government.

(2) Until their absorption in the Police, the members of the Levies Force shall be governed by their existing terms and conditions of service under the Federal Levies Force (Amended) Service Rules, 2013.

10. Assistance and support to Government functionaries. On the requisition of the District Administration, the Commandant shall provide assistance and support to the District Administration and Heads of all public agencies in the District, required for performing their official duties.

11. Power to make rules.--Government may make rules for carrying out the purposes of this Act.

12. Act to override other laws.--The provisions of this Act shall be in force notwithstanding anything repugnant or contrary contained in any other law for the time being in force.

Asst. Dir. Levies Force
District Administration
Khyber Pakhtunkhwa

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difficulties.--If any difficulty arises in giving effect to any of the provisions of this Act, the Department may notify a committee to take a decision not to give effect to any of the provisions of this Act, as may appear to it to be necessary for the removal of the difficulty.

Savings.--(1) The Federal Levies Force Regulation, 2012 and the Federal Levies Force Ordinance, 2019 (Khyber Pakhtunkhwa Ordinance No. 1 of 2019) hereby repealed.

Notwithstanding the repeal of the Federal Levies Force Regulation, 2012, the Federal Levies Force (Amended) Service Rules, 2013 shall continue to be in force and the terms and conditions of service of all the members of the Force shall be governed thereunder until new rules are made under this Act.

Nothing done, action taken, rule made or notification or orders issued under the Federal Levies Force Ordinance, 2019 (Khyber Pakhtunkhwa Ordinance No. 1 of 2019), and the Federal Levies Force Regulation, 2012, shall be deemed to be invalid or shall not be called in question in any Court of law.

SCHEDULE
(see section-1(3))

Part-A

S.No.	District.
1.	Bajaur.
2.	Mohmand.
3.	Khyber.
4.	Orakzai.
5.	Kurram.

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~~SECRET~~

GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME AND PUBLIC RELATIONS DEPARTMENT

NOTIFICATION

24/9/2019

Peshawar, the 24th September, 2019

S.O(Police-11)/HD/SMY/419. In exercise of the powers conferred by section 13 of the Khyber Pakhtunkhwa Levies Force Act, 2019 (Khyber Pakhtunkhwa Act, No. XXXV of 2019), read with sub-section (1) of section 9 thereof, the Government of the Khyber Pakhtunkhwa is pleased to make the following rules, namely:

The Levies Force (Absorption in the Khyber Pakhtunkhwa Police) Rules, 2019.

1. Short title, application and commencement.---(1) These rules may be called the Levies Force (Absorption in the Khyber Pakhtunkhwa Police) Rules, 2019.

(2) These rules shall apply to all members of the Levies Force.

(3) These rules shall come into force at once.

2. Definitions.---In these rules, unless there is anything repugnant in the subject or context, the following expressions shall have the meanings hereby respectively assigned to them, it is to say:-

(a) "absorption" means the process of permanent induction of the members of the Levies Force into the Police, in accordance with these rules;

(b) "Act" means the Khyber Pakhtunkhwa Levies Force

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(1) The word "Schedule" means the Schedule appended to these rules.

(2) Words and expressions used, but not defined in these rules, shall have the same meanings as are respectively assigned to them in the Act.

3. Absorption of members of the Levies Force shall be permanently absorbed into the Khyber Pakhtunkhwa Police against vacancies to be newly created in the Police Department for the purpose in the following manner:

(a) A Selection Committee, headed by the Commandant, and having one member each from District Administration and District Account Officer of the district concerned, shall prepare the lists of all the members of the Levies Force after personal appearance and scrutiny of record for submission to the Provincial Police Officer;

(b) The lists, submitted to the Provincial Police Officer, under sub-rule (1), after perusal, shall be forwarded to Home and Tribal Affairs Department of Government with the recommendations for permanent absorption of members of the Levies Force in the Police into the respective ranks or cadres as per the Schedule; and

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5. Remuneration or incentives of the Levies Force, after absorption into the Police, shall be entitled to the same benefits, commutation and other incentives as are enjoyed by other members of the Police.

5. Training---Special training modules shall be designed by the Training Wing of the Police Department for imparting requisite police training so that the members of the Levies Force are fully conversant with all Police functions.

6. Seniority---Members of the Levies Force, who are absorbed into the Police, in accordance with Government orders and instructions, shall take seniority in the Police from the date of the initial appointment upon recruitment in the Levies Force.

Provided that the officer inducted in one batch, upon induction, shall retain their inter-se seniority as in the Levies Force.

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7. Repeal and savings---(1) All rules, orders or instructions including the Federal Levies Force Service Rules, in force in respect of the Levies Force, immediately before the commencement of these rules shall be deemed as repealed, in so far those rules, orders or instructions are inconsistent with these rules.

(2) Notwithstanding the repeal of all the rules, orders or instructions, including the Federal Levies Force Service Rules, under sub-rule (1)

(a) Effecting the seniority and promotion, if promotions done, seniority determined and orders made, shall be deemed to have been done, determined and made, in accordance with law. The repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed rules, order and instructions.

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(B) shall not constitute investigation or legal proceedings
in any court of law and shall be continued in its
same manner as if the Law and Rules have not been
repealed

8. Removing of difficulties---(1) If any difficulty arises in giving
effect to any provision of these rules and notification made thereunder, a
Technical Committee, comprising of three members of the Police
Department, to be notified by the Principal Police Officer, headed by an
Officer of Police, who shall not be below the rank of Deputy Inspector
General of Police and two other members of Police Department whose
ranks shall not be less than Senior Superintendent of Police, may
recommend to Government for giving effects to the provisions of these
rules.

(2) Government, after considering such recommendations,
submitted by the Technical Committee, under sub-rule (1), may, by
notification, make such orders, not inconsistent with the provisions of the
Act or these rules, as may appear to it to be necessary for the purpose of
removing such difficulty.

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S.No.	From rank in Levies.	To rank in Police.
1.	Scpoy.	Constable (BPS-07).
2.	Lance Naik.	Constable A-1 (BPS-07).
3.	Naik.	Constable B-1 (BPS-07).
4.	Hawaldar.	Head Constable (BPS-09).
5.	Naib Subedars.	Assistant Sub-Inspector (BPS-11).
6.	Subedar	Sub-Inspector (BPS-14).
7.	Subedar Major.	Inspector (BPS-16).



Secretary to Government of Khyber Pakhtunkhwa,
Home & Tribal Affairs Department

For info & date event
Copy of the above is forwarded for information to:

1. The Principal Secretary to Government, Khyber Pakhtunkhwa, Peshawar.
2. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa, Peshawar.
3. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
4. The Registrar, Peshawar High Court, Peshawar.
5. The Secretary to Government of Khyber Pakhtunkhwa, Law Parliamentary Affairs & Human Rights Department, Peshawar.
6. P.S.O to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
7. P.S. to Secretary Home, Khyber Pakhtunkhwa, Peshawar.
8. The Manager, Government Printing Press, Peshawar with the request that it may be published in the official gazette and 50 copies be furnished to this office.

Section Officer (Police-I)
Ph: 091-0210505
Fax: 091-0210201

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قیمت
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ایڈویکیٹ:

بار کونسل ایسوسی ایشن نمبر:

رابطہ نمبر:

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

صدر محترم خواہ سرس کمر لبریل

بعدالت جناب:

منجانب:

دعوی:

علت نمبر:

موضوع:

جرم:

تھانہ:

رصد زب بنام صرفہ و غیرہ

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باعت تحریر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دی کارروائی متعلقہ
آن مقام کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو
راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے جواب دعوی اقبال دعوی اور درخواست از ہر قسم کی تصدیق
ذریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری کی طرف سے یا اپیل کی برآمدگی اور منسوخی، نیز
داہر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب
مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا
دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے
باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

DESHAWAR BAR ASSOCIATION
KHYBER PAKHTUNKHWA

کے لیے منظور ہے۔

فی اللہ

مقام

نوٹ: اس وکالت نامہ کی فونو کالی یا قابل قبول ہوگی۔

Muhammad
Muhammad
Muhammad

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No.407/2020

Mr. Amir Nawab Subedar (BPS-13) Malakand LeviesAppellant

-----Versus-----

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. The Secretary Home & TA's Department, Khyber Pakhtunkhwa, Peshawar, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Deputy Commissioner/Commandant Malakand Levies, District Malakand.
4. Mr. Farid Ullah, Subedar Major (BPS-16), Malakand Levies at Malakand.

.....Respondents

APPLICATION FOR SUSPENSION OF THE OPERATION OF ORDER DATED 30-03-2020 TILL THE DISPOSAL OF THE INSTANT SERVICE APPEAL

Para Wise Comments on Behalf of Respondent No.3 is as under:-

Respectfully Sheweth:-

1. It is correct.
2. It is incorrect the appellant is an illiterate and cannot lead the force as evident from the remarks of DC/Commandant Malakand Levies vide letter No.8196/LC dated 13-11-2017 of Respondent No.3 being competent authority in response to comments asked in the appeal of appellant by the Secretary, Home & TA's Department, Khyber Pakhtunkhwa, Peshawar Respondent No.2 being appellant authority **(Copy enclosed as annexure-A)** the appellant authority dismissed/disposed-of the appeal of the applicant vide Home & TA's Department, Khyber Pakhtunkhwa, Peshawar letter No. SO(Police-II)/HD/6-194/018 dated 25/04/2018 **(Copy enclosed as annexure-B)**. Furthermore, the promotion order of Respondent No.4 was issued by the competent authority i.e. Secretary, Home & TA's Department, Khyber Pakhtunkhwa, Peshawar vide order No. SO (Police-II)HD/2-1/018 dated 28/11/2018, after proper Departmental Promotion Committee Meeting held on 26-10-2018 under the chairmanship of Secretary, Home & TA's Department Khyber Pakhtunkhwa ,Peshawar **(Copy of promotion order enclosed as annexure-C)**.

3. The applicant has filed an appeal before the Federal Service Tribunal, Islamabad, which was converted into departmental/service appeal at serial No.66 dated 04-12-2019 (Copy enclosed as annexure-D). In this regard, Home & TA's Department, Khyber Pakhtunkhwa, Peshawar summoned the applicant for personal hearing. After hearing and perusal of relevant record the applicant appeal was filled due to devoid of merit (Copy enclosed as annexure-E). More over no such stay in this regard was granted to the applicant by the Honorable court therefore as per Amended Levy Rules 2016 Schedule-III, the applicant was retired from service with effect from 31-03-2020 (AN) on completion of 35-years requisite service length (Copy of Amended Levy Rules 2016 Schedule-III enclosed as annexure-F).
4. In correct. All the three ingredients are in favor of the respondent.
5. No comment.

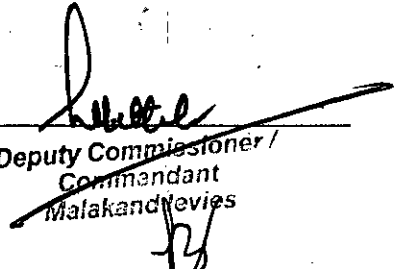
Pray:-

Keeping in view of above, it is requested that the application of the applicant may kindly be rejected, please.

Secretary
Home & TA's Department,
Khyber Pakhtunkhwa, Peshawar
Respondent No.2


Home Secretary
Khyber Pakhtunkhwa

DC/Commandant Malakand Levies
Respondent No.3


Deputy Commissioner /
Commandant
Malakand Levies

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

S.B

No.

Appeal No. 607 of 20 20

Mr. Amir Nawab Appellant/Petitioner

Versus

Through Chief Secy Peshawar Respondent
Respondent No. 3

Notice to: —

The Deputy Commissioner/
Commandant Malakand Levies Div.

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal on 30/6/2020 at 8.00 A.M. If you wish to urge anything against the appeal/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which is the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Application

Copy of appeal is attached. Copy of appeal has already been sent to you vide this

office Notice No. dated

Given under my hand and the seal of this Court, at Peshawar this 25/6/20

Day of June 20 20

Registrar,

Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted holidays.
2. Always quote Case No. While making any correspondence.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

C.M. NO. _____/2020

IN

APPEAL NO. _____/2019

GOVT: OF KP

VS

AMIR NAWAB

**APPLICATION FOR SUSPENSION OF THE OPERATION
OF ORDER 30.03.2020 TILL THE DISPOSAL OF THE
INSTANT SERVICE APPEAL**

R.SHEWETH:

1. That the appellant has filed the above titled service appeal before this Honorable Service Tribunal in which is fixed for hearing today on 18.06.2020.

2. That appellant filed the above mentioned service appeal against the impugned Notification dated 28.11.2018 whereby Junior to the appellant has been promoted to the Rank of Subedar Major (BPS-16) while the appellant has been ignored.

3. That during the pendency of the above mentioned service appeal the respondent Department issued order dated 30.03.2020 whereby the appellant has pre-maturely been retired from service. Copy of the order alongwith other record is attached as annexure.....A.

4. That all the three ingredients required for grant of stay are in favor of the appellant.

5. That any other ground would be taken at the time of arguments with prior permission of this Honorable Tribunal.

It is therefore, most humbly prayed that on acceptance of this application the retirement order dated 30.03.2020 may very kindly be suspended till the disposal of the instant service appeal.

APPELLANT

AMIR NAWAB

THROUGH:

NOOR MOHAMMAD KHATTAK

ADVOCATE,

With Court Doshwar

Annex "A"

Amir Nawab



OFFICE OF THE DC/COMMANDANT
MALAKAND LEVIES MALAKAND

NO. 8196 /LC
DATED MALAKAND THE 13-11-17

To,

The Section Officer (Police-II),
Home & Tribal Affairs Department,
Khyber Pakhtunkhwa,
Peshawar.

Subject:- APPLICATION
Memo:-

Reference your letter No. SO(Judl)/HD/6-194/017/AmirNawab dated 04-10-2017, on the subject noted above.

It is submitted that there is no regular Subedar Major posted in Malakand Levies as of now. In order to run daily affairs, additional charge has been given to Subedar Abdul Wahab.

Mr. Amir Nawab's application is not based on merit, because as per Levies Rules, most competent person will be appointed as Subedar Major considering the seniority. Moreover, as per recent Peshawar High Court, Mingora Bench, Dar-ul-Qaza Swat Judgment, at least Graduation is mandatory for the Subedar Major. But Amir Nawab is not educated, hence not fit to lead the force. He is also not well trained in the investigation as well. The application may be dismissed.

DC/COMMANDANT
MALAKAND LEVIES MALAKAND

Annexure B



GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT

No. SO (Police-II)/HD/6-194/018
Dated Peshawar the 25.04.2018

To,

The Deputy Commissioner /
Commandant Levies,
Malakand.

Subject: - APPLICATION.

Sir,

I am directed to refer to your letter No. 8169/LC dated 13.01.20 on the subject noted above and to state that the matter may be disposed on as per rules / regulations relevant to the case and as per decision of the August Supreme Court of Pakistan in letter & Spirit, please.

Yours Faithfully,

Encs as Above

Endst: No & date of even

Section Officer (Police-II)
PH No. 091-92 8030 1111

Copy forwarded to:-

- PS to Secretary Home & TA's Department.

LS

Annexure C

GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT

Dated Peshawar 28 November, 2018

NOTIFICATION

No. SO(POLICE-III/HD/2-1/018/ Consequent upon the recommendations of the Departmental Promotion Committee (DPC) in its meeting held on 26.10.2018, the competent authority (Home Secretary) is pleased to promote Subedar Farid Ullah of district Malakand Levies to the rank of Subedar Major and post him as Subedar Major Malakand Levies in District Malakand against the vacant post with immediate effect.

He shall remain on probation as per Rule-5 of the Federal Levies Force (Amended) Rules, 2013.

HOME SECRETARY
KHYBER PAKHTUNKHWA

Ends No. & dated of even.

Copy of the above is forwarded for information and necessary action to:-

1. The Secretary SAFRON Government of Pakistan Islamabad.
2. The Commissioner, Malakand Division, Saidu Sharif, Swat. --
3. The Deputy Commissioner / Commandant Levies, Malakand.
4. The District Account Officer, Malakand.
5. PS to Secretary Home & Tribal Affairs Department.
6. Officials.

SECTION OFFICER (POLICE)

LS

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Judgement Sheet
IN THE FEDERAL SERVICE TRIBUNAL, ISLAMABAD

BEFORE : Oazi Khalid Ali, Chairman and
Raja Hasan Abbas, Member

ANNEXORE-F

S. No.	Appeals No.	Appellants	Date of Institution
1.	87(P)CS/2019	Mr. Sher Gulab, Ex-Sepoy, S/o Bacha Syed, R/o Shandai Morh, Shandai, P.O. Khar, Tehsil Khar, District Bajaur	18.01.2019
2.	88(P)CS/2019	Najeeb Ullah, Ex-Sepoy, S/o Shina R/o Bara Laghary, P.O. Tarkho, Tehsil Mamund, District Bajaur	18.01.2019
3.	89(P)CS/2019	Saleem, Ex-Sepoy, S/o Saeed ur Rehman, R/o Meena Mamund P.O. Tarkho, Tehsil Mamund, District Bajaur Agency	18.01.2019
4.	1118(P)CS/2017	Bacha Muhammad, Ex-Sepoy S/o Gul Muhammad, R/o Gang, P.O. Khar, Tehsil Khar, District Bajaur Agency	10.10.2017
5.	1221(P)CS/2017	Muhammad Yar, Ex-Sepoy, R/o P.O. Raghagan, Odigerim, Salarzai, District Bajaur Agency.	12.2017
6.	862(P)CS/2018	Shireen, Havalidar, S/o Painda Khan R/o Pashat P.O. Khar, Tehsil Salarzai, District Bajaur Agency.	15.05.2018
7.	85(P)CS/2019	Saur Khan, Ex-Sepoy, S/o Chanini Khan, R/o Mano Dherai, P.O. Gharday Tehsil Utman Khel, District Bajaur Agency.	8.01.2019
8.	86(P)CS/2019	Jamel ud Din, Ex-Sepoy, S/o Manawar, R/o Odigram, P.O. Raghgan, Tehsil Salarzai, District Bajaur Agency.	8.01.2019
9.	93(P)CS/2019	Ummer Rehman S/o Wali Muhammad, Ex-Khasadar, R/o Lagha Post Office Annayat Kalay, Tehsil Memond, District Bajaur Agency.	07.02.2019
10.	94(P)CS/2019	Mudeer Khan S/o Muhammad Noor, Ex-Sepoy R/o Lagha Post Office Annayat Kalay, Tehsil Memond, District Bajaur Agency.	07.02.2019
11.	95(P)CS/2019	Abdul Azim Jan, Ex-Khasadar, Reg 1/3700, Bajaur Levies	07.02.2019
12.	264(P)CS/2019	Hayyat Khan S/o Minu Gul Jan Ex-Khasadar, R/o Gaga Post Office Tehsil Mamond, District Bajaur Agency.	21.03.2019
13.	1008(P)CS/2018	Haz Muhammad, Ex-Sepoy, S/o Sher Muhammad R/o Tarkho, P.O. Khar, Tehsil Barang, District Bajaur Agency.	08.06.2018
14.	1010(P)CS/2018	Muhammad Khan, Ex-Sepoy, S/o Muhammad Ahaz, R/o Tarkho, P.O. Khar, Tehsil Barang, Ex-Sepoy, District Bajaur Agency, District Bajaur Agency.	08.06.2018
15.	1011(P)CS/2018	Foz Khan, Ex-Sepoy, S/o Ahwan, R/o Kot Kot P.O. Tarkho Tehsil Barang, District Bajaur Agency.	08.06.2018
16.	1019(P)CS/2018	Abdul Rehman, Ex-Sepoy, S/o Nadir, R/o Bati Khar, District Bajaur Agency.	08.06.2018
17.	1022(P)CS/2018	Muhammad, Ex-Sepoy, S/o Murad Gul Tarkho P.O. Khar, Tehsil Barang, District Bajaur Agency.	08.06.2018

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18.	1023(P)CS/2018	Wazir Khan, Ex-Sepoy, S/o Khial Gul, R/o Tarkho P.O. Khar, Tehsil Barang, District Bajaur Agency.	08.06.2018
19.	1024(P)CS/2018	Faiz Khan, Ex-Sepoy, S/o Shehzada R/o Mandal Tehsil Khar, District Bajaur Agency.	08.06.2018
20.	1025(P)CS/2018	Abdul Hadi, Ex-Sepoy, S/o Muhammad Hassan, R/o Tarkho, P.O. Khar, Tehsil Barang, District Bajaur Agency.	08.06.2018
21.	1026(P)CS/2018	Shoukatullah, Ex-Sepoy, S/o Musafar R/o Kat Kot, P.O. Tarkho, District Bajaur Agency.	08.06.2018
22.	1028(P)CS/2018	Sultan Muhammad, Ex-Sepoy, S/o Abdul Ameen, R/o Khar, Tehsil Salarzai, District Bajaur Agency.	08.06.2018
23.	1030(P)CS/2018	Sardar Alami, Ex-Sepoy, S/o Muhammad Alam, R/o Tarkho, P.O. Khar, Tehsil Barang, District Bajaur Agency.	08.06.2018
24.	1031(P)CS/2018	Noor Sim, Ex-Sepoy, S/o Saz Noor, R/o Tarkho, P.O. Khar, Tehsil Barang, District Bajaur Agency.	08.06.2018
25.	1032(P)CS/2018	Waheed Ullah, Ex-Sepoy, S/o Lal Khan, R/o Tarkho, P.O. Khar, Tehsil Barang, District Bajaur Agency.	08.06.2018
26.	1033(P)CS/2018	Qadir Khan, Ex-Sepoy, S/o Hazrat Gul R/o Tarkho P.O. Khar, Tehsil Barang, District Bajaur Agency.	08.06.2018
27.	1035(P)CS/2018	Niaz Muhammad, Ex-Sepoy, S/o Taj Muhammad Said, R/o Tarkho P.O. Khar, Tehsil Barang, District Bajaur Agency.	08.06.2018
28.	1036(P)CS/2018	Gul Bar Gul, Ex-Sepoy, S/o Alami Khail R/o Tarkho, P.O. Khar, Tehsil Barang, District Bajaur Agency.	08.06.2018
29.	1037(P)CS/2018	Naeem Ex-Sepoy, S/o Belim Khan, R/o Dahar, Bursadin, P.O. Pashu Salarzai, District Bajaur Agency.	08.06.2018
30.	1038(P)CS/2018	Asmad Yar, Ex-Sepoy, S/o Syed Akbar Khan, R/o Tarkho P.O. Khar, Tehsil Barang, District Bajaur Agency.	08.06.2018
31.	1042(P)CS/2018	Noor Muhammad, Ex-Sepoy, S/o Niaz Muhammad, R/o Tarkho, P.O. Khar, Tehsil Barang, District Bajaur Agency.	08.06.2018
32.	1043(P)CS/2018	Naseeb Shah, Ex-Sepoy, S/o Gul Muhammad, R/o Tarkho, P.O. Khar, Tehsil Barang, District Bajaur Agency.	08.06.2018
33.	1044(P)CS/2018	Anwar Ex-Sepoy, S/o Chuman R/o Tarkho, P.O. Khar, Tehsil Barang, District Bajaur Agency.	08.06.2018
34.	1088(P)CS/2018	Fazal Ameen, Ex-Sepoy, S/o Musharaf, R/o Sadiq Abad Paktak, P.O. Khar, District Bajaur Agency.	10.07.2018
35.	1349(P)CS/2018	Siraj ud Din, Ex-Sepoy, S/o Malik Toor Khan, R/o P.O. Khar, Tehsil Salarzai, District Bajaur Agency.	16.08.2018
36.	1350(P)CS/2018	Muhammad Zada, Ex-Sepoy, S/o Lajbar, R/o Kher Kano, P.O. Khar, Tehsil Salarzai, District Bajaur Agency.	16.08.2018
37.	1351(P)CS/2018	Gul Zada, Ex-Sepoy, S/o Pachay, R/o Hayat e Skandaro, P. O Karooe, Tehsil Utmankhel, District Bajaur Agency.	16.08.2018
38.	377(P)CS/2019	Nisar Khan Ex-Sepoy, S/o Nadir Khan R/o	23.04.2019

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		Mano Dheri, P.O. Gardai, Tehsil Uman Khel, merged District Bajaur Agency	
39.	781(P)CS/2017 with MP	Abdullah Jan, Naib Subedar, R/o Reedo Shah Gai, Yusuf Abad, P.O. Khar, District Bajaur Agency	26.05.2017
40.	742(P)CS/2018	Abdullah Jan, Ex-Naib Subedar, S/o Bakhtiar, Reedo Shah Gai, Yusuf Abad, P.O. Khar Raado Shah Gai, Tehsil Khar, District Bajaur Agency	18.04.2018
41.	743(P)CS/2018	Munasib Khan, Ex-Naib Subedar, R/o Mir Afzal Labour Colony C/o Asar Khan S/o Mashoq Khan Quarter No. 10, District Mardan.	18.04.2018
42.	744(P)CS/2018	Jan Alam, Ex-Naib Subedar, R/o Mir Afzal Labour Colony C/o Asar Khan S/o Mashoq Khan Quarter No. 10, District Mardan	18.04.2018
43.	1441(P)CS/2018	Kehmat Gul, Ex-Subedar Major, S/o Hameed Gul R/o P/o Khar Shah Marai, Tehsil Khar District Bajaur Agency	19.10.2018
44.	527(P)CS/2016	Nasem Khan, Ex-Sepoy, S/o Akbar Khan R/o Muharram Ghundai, P.O. Khar, Tehsil Khar, District Bajaur Agency	11.08.2016
45.	546(P)CS/2016	Mohammad Younas, Ex-Sepoy R/o Mohallah Eid Gah, Tehsil Khar, District Bajaur Agency	26.08.2016
46.	857(P)CS/2018	Muhammad Shah, Ex-Sepoy, S/o Noor Zamin, R/o Ghar Shamoza Barkalby, P.o Qalangai Sher Bantai, Tehsil Barang, District Bajaur Agency	11.05.2018
47.	858(P)CS/2018	Saeed Gul, Ex-Sepoy S/o Ajab Gul, R/o Sher Bani, P.O. Qalangai, Tehsil Barang, District Bajaur Agency	11.05.2018
48.	974(P)CS/2018	Muhaminad, Ex-Sepoy, S/o Ithar Gul, R/o Tarkho, P.O. Khar, Tehsil Barang, District Bajaur Agency	25.05.2018
49.	975(P)CS/2018	Abdul Haq, Ex-Sepoy, S/o Rofat Khan R/o Muslim Bagh, P.O. Inayat Kalay, District Bajaur Agency	25.05.2018
50.	976(P)CS/2018	Waheed Ullah, Ex-Sepoy, S/o Gul Nazir, R/o Shah Saray P, O. Pashai Salarzai, District Bajaur Agency	25.05.2018
51.	980(P)CS/2018	Muhammad Jamshed, Ex-Sepoy, S/o Muhaminad Shah, R/o Garodi, P.O. Qazafi, District Bajaur Agency	25.05.2018
52.	1409(P)CS/2018	M. Farooq, Ex-Sepoy, R/o Ladaee Tarkho, Tehsil Mamond, District Bajour Agency	28.09.2018
53.	1410(P)CS/2018	Shah Hussain, Ex-Sepoy, Reg # 5155, District Bajour Agency	28.09.2018
54.	1411(P)CS/2018	Ikram S/o Syed. Ahinad, Ex-Sepoy, R/o Ladaee Tarkho, Tehsil Mamond District Bajour Agency	28.09.2018
55.	1412(P)CS/2018	Abdullah Ex-Sepoy, R/o Villa Shankia Tehsil Khar, District Bajour Agency	28.09.2018
56.	1411(P)CS/2018	Shahzad ur Rehman, Ex-Assistant/Reader, S/o Haji Rehmat Karim R/o Moh. Kass. P.O. Dir, Dii Town, Tehsil Dir, Upper Dir.	09.10.2018
57.	1503(P)CS/2018	Laiq Rehman, Ex-Levy Sepoy, R/o Village Kot Tehsil Bakhela District Mardan	14.11.2018
58.	877(P)CS/2017	Feroz S/o Muhaminad Shah, Ex-Sepoy R/o Hilal Khail Charamang, Tehsil Nawagai,	21.06.2017

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		Bajaur Agency.	
59.	878(P)CS/2017	Aziz Ullah S/o Gul Zaman, Sepoy, C/o Fazal Haq R/o Khar, Tehsil Khar, Bajaur Agency	21.06.2017
60.	879(P)CS/2017	Fazal Haq S/o Muhammad Hakeem, Sepoy, R/o Khar, Tehsil Khar Bajaur Agency.	21.06.2017
61.	880(P)CS/2017	Burhan S/o Gul Zaman, Sepoy, C/o Fazal Haq, R/o Khar, Tehsil Khar, Bajaur Agency.	21.06.2017
62.	263(P)CS/2019	Muhammad Ameen, Ex-Khasadar, R/o Gaga Post Office, Tehsil Mamond, District Bajaur Agency	21.03.2019
63.	91(P)CS/2019	Said Aziz, Sepoy, S/o Saeed Rahim Jan, P/o Aman Kot, District Tribal Bajaur.	04.02.2019
64.	178(P)CS/2019	Ishaqat Khan, Ex-Sepoy, s/o Abdullah R/o Dag Oila P.O. Raghbar Tehsil Salar, District Bajaur Agency	14.02.2019
65.	252(P)CS/2019	Habib Rasool, Ex-Sepoy, S/o Bahri Mulk, R/o Mohallah Boodha Daba Oach, Tehsil Alin Zai & District Dir Lower.	20.03.2019
66.	144(P)CS/2019 With MP	Ahmer Nawab, Subedar, Malakand Levies at Malakand.	03.04.2019
67.	831(P)CS/2019	Shafiqullah, Sepoy, R/o Anayat Kalay, Kakah Tehsil Mamond, District Bajaur Agency	08.11.2019
68.	832(P)CS/2019	Khan Alam, Sepoy, R/o P.O. Anayat Kalay, Kakah, Tehsil Mamond District Bajaur Agency.	08.11.2019
69.	833(P)CS/2019	Abdul Qayyum, Sepoy, R/o P.O. Anayat Kalay, Kakah, Tehsil Mamond District Bajaur Agency.	08.11.2019
70.	834(P)CS/2019	Alam Zeer, Sepoy, R/o P.O. Anayat Kalay, Kakah, Tehsil Mamond District Bajaur Agency.	08.11.2019
71.	835(P)CS/2019	Dilawar Khan, Sepoy, R/o P.O. Anayat Kalay, Kakah, Tehsil Mamond District Bajaur Agency.	08.11.2019
72.	13(P)CS/2017	Muhammad Ayaz, Moharrir/Sepoy No.5010, Malakand Levies, District Malakand.	11.01.2017
73.	777(P)CS/2019	Sajjad Ali, Sepoy, S/o Ghulam Jan, Village Kulala, P/o Gardai Tehsil utaman, Tribal Bajaur District	

Misc. Petition for Implementation

74.	MP No. 220/2018 1106(P)CS/2017	Nasir Khan S/o Fateh Mool Khan R/o Village Qazafi, Bandagai Marano Sha, Tehsil Utankhel, District Bajaur Agency	16.02.2018
75.	MP No. 221/2018 1116(P)CS/2017	Nawab Zada S/o Nadir Khan R/o Shilayat Utankhel, Tehsil Utankhel, District Bajaur Agency	16.02.2018
76.	MP No. 241/2018 591(P)CS/2015	Ismail S/o Imtiaz Jan, Ex-Sepoy, R/o Raddi Samar P.O. Inayat Kalay, District Bajaur Agency	28.12.2018
77.	MP No. 247/2018 33(P)CS/2016	Fazal Malik Ex-Sepoy S/o Ghulam Rabani, R/o Gaga Landi, Tehsil Mamond District Bajaur Agency	28.12.2018
78.	MP No. 2028/2018 19(P)CS/2014	Hameed Ullah S/o Muzammil Khan Ex-Sepoy, R/o Alizo Dag, Tehsil Khar, District Bajaur Agency	13.11.2018
79.	MP No. 2099/2018	Muhabat Khan, Ex-Sepoy, S/o Ishaqat	14.11.2018

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30	MR No. 342/2018	Fazal Wahid R/o Khar, Tehsil Nawaga, District Bajaur Agency	21.02.2018
31	MR No. 342/2018	Bacha Raahim S/o Abdul Saeed R/o Madli District Bajaur Agency	21.02.2018
32	MR No. 344/2018	Mansoor Ahmed S/o Said Munceer R/o Barani Kandari P.O. Khar Tehsil Khar, District Bajaur Agency	21.02.2018
33	MR No. 345/2018	Nisar Khan S/o Khan Bachai R/o Salazarai, Koi. P.O. Raghun Tehsil Khar, District Bajaur Agency	21.02.2018
34	MR No. 346/2018	Bacha Rehman s/o Muhammad Yousaf R/o Mandai Danga, P.O. Khar, Tehsil Khar, District Bajaur Agency	21.02.2018
35	MR No. 347/2018	Amno Ullah S/o Din Muhammad R/o Morand, Tehsil Salazarai, District Bajaur Agency	21.02.2018
36	MR No. 348/2018	Giab Khan S/o Kazi Khan, R/o Village Bajirm, Tehsil Salazarai, District Bajaur Agency	21.02.2018
37	MR No. 349/2018	Ali Khan S/o Sharif Khan R/o Village Siya Baran, Tehsil Barang, District Bajaur Agency	21.02.2018
38	MR No. 350/2018	Yar Muhammad S/o Ali Muhammad R/o Village Haryan Koi, Tehsil Barang, District Bajaur Agency	21.02.2018
39	MR No. 351/2018	Fazl Ullah S/o Zubair Khan R/o Village Khar, Tehsil Khar, District Bajaur Agency	21.02.2018
40	MR No. 352/2018	Amir Badshah S/o Shah Zaid Mir, R/o Village Takht Barang, Tehsil Khar, District Bajaur Agency	21.02.2018
41	MR No. 353/2018	Abdul Hakim S/o Ahmed Jan R/o Village Mano Dical, Tehsil Umanakhel, District Bajaur Agency	21.02.2018
42	MR No. 354/2018	Muhammad Zada S/o Ali Muhammad R/o Village Shinko, Tehsil Umanakhel, District Bajaur Agency	21.02.2018
43	MR No. 355/2018	Ahmad Yousaf S/o Abdul Wakeel Khan R/o R.O. Khar, Tehsil Khar, District Bajaur Agency	21.02.2018
44	MR No. 356/2018	Rizwan Ullah S/o Gul Nahr, R/o Ali Zai, Tehsil Khar, District Bajaur Agency	21.02.2018
45	MR No. 357/2018	Abdul Wakeel S/o Sultan Muhammad R/o Ali Zai, P.O. & Tehsil Khar, District Bajaur Agency	21.02.2018
46	MR No. 358/2018	Israr Khan S/o Nowsherwan R/o Shenky, Tehsil Khar, District Bajaur Agency	21.02.2018
47	MR No. 359/2018	Asmat Khan S/o Bakht Zareen R/o Sara Chena, Tehsil Khar, District Bajaur Agency	21.02.2018
48	MR No. 360/2018	Shoab S/o Gulab Karim, Ex-Sepo, Koi kay Tehsil Salazarai, District Bajaur Agency	04.11.2016
49	MR No. 362/2018	Giulam Qadir S/o Kalum Khan, Ex-Sepo, R/o Aday P.O. Raghun, Tehsil Salazarai, District Bajaur Agency	10.02.2017
100	MR No. 363/2018	Anwar Zeh S/o Said Karim, Ex-Sepo, R/o Omar Dag, Tehsil Khar, District Bajaur Agency	17.11.2014

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101.	MP No. 354/2017 312(PXCS/2014)	Sahib Zada S/o Madali Jan, Ex-Sepoy, R/o Islam Dahri, Utman Khil, District Bajaur Agency	0.02.2017
102.	MP No. 1017/2017 584(PXCS/2015)	Hussain Badahah, Ex-Sepoy, S/o Amir Nawab, R/o Dag Qila P.O Khar, District Bajaur Agency.	17.04.2017
103.	MP No. 915/2017 635(PXCS/2015)	Hafiz ur Rehman, Ex-Sepoy, S/o Shams ur Rehman R/o Khar P.O. Khar, District Bajaur Agency.	06.04.2017
104.	MP No. 916/2017 10(PXCS/2016)	Firdoos Khan, Ex-Sepoy, S/o Zar Muhammad, R/o Guman Kot, P.O. Khar, Tehsil Barang, District Bajaur Agency.	06.04.2017
105.	MP No. 927/2017 14(PXCS/2016)	Muhammad Sarwar Khan, Ex-Sepoy, S/o Naik Muhammad R/o Rod Soli Khar Tehsil Salarzai, District Bajaur Agency.	06.04.2017
106.	MP No. 914/2017 24(PXCS/2016)	Suleman Khan, Ex-Sepoy, S/o Muhammad Gul R/o Skandaro Tehsil Utman Khail District Bajaur Agency.	06.04.2017
107.	MP No. 918/2017 21(PXCS/2016)	Sarwar Ex-Sepoy, S/o Ameer Gul, R/o Quimber P.O: Khar, Tehsil Barang, District Bajaur Agency	06.04.2017
108.	MP No. 7118/2019 27(PXCS/2014)	Nawab Khan S/o Gul Qayum Ex-Sepoy, R/o Nogay Tehsil Khar, District Bajaur Agency	19.11.2018

Review Petitions:

109.	RP No. 78/2019 711(PXCS/2017)	Asghar Khan, Sepoy, Tehsil Khar, District Bajaur Agency.	19.06.2019
110.	RP No. 84/2019 720(PXCS/2017)	Umer Ayub, Sepoy, Tehsil Khar, District Bajaur Agency.	28.06.2019
111.	RP No. 85/2019 721(PXCS/2017)	Imran, Sepoy, Tehsil Khar, District Bajaur Agency.	28.06.2019
112.	RP No. 86/2019 722(PXCS/2017)	Nowasad, Sepoy, Tehsil Khar, District Bajaur Agency.	28.06.2019
113.	RP No. 87/2019 723(PXCS/2017)	Noor Zada, Sepoy, Tehsil Churn, Khar, District Bajaur Agency.	28.06.2019
114.	RP No. 88/2019 724(PXCS/2017)	Ghulam Younis, Sepoy, Sadiqabad, Tehsil Khar, District Bajaur Agency.	28.06.2019
115.	RP No. 89/2019 725(PXCS/2017)	Najeed Ullah, P.O. Sepoy Annayat Kalay, Katkoot Tehsil Momand, Bajaur Agency.	28.06.2019
116.	RP No. 90/2019 726(PXCS/2017)	Shams ur Rehman, Sepoy Annayat Kalay, Katkoot Tehsil Momand, Bajaur Agency.	28.06.2019
117.	RP No. 91/2019 760(PXCS/2017)	Saeed Habib Jan, R. No. 4322, Sepoy, Bajaur levies, Bajaur Agency Khar	28.06.2019
118.	RP No. 92/2019 761(PXCS/2017)	Abdullah R. No. 3413, Sepoy, Bajaur levies, Bajaur Agency Khar	28.06.2019
119.	RP No. 93/2019 762(PXCS/2017)	Mozamin, R. No. 4384, Sepoy, Bajaur levies, Bajaur Agency Khar	28.06.2019
120.	RP No. 94/2019 763(PXCS/2017)	Saeed Ullah, R. No. 4279, Sepoy, Bajaur levies, Bajaur Agency Khar	28.06.2019
121.	RP No. 95/2019 764(PXCS/2017)	Imran, R. No. 4769, Sepoy, Bajaur levies, Bajaur Agency Khar	28.06.2019
122.	RP No. 96/2019 766(PXCS/2017)	M. Ayub, R. No. 5806, Sepoy, Bajaur levies, Bajaur Agency Khar	28.06.2019
123.	RP No. 97/2019 767(PXCS/2017)	Faizullah R. No. 4366, Sepoy, Bajaur levies, Bajaur Agency Khar	28.06.2019
124.	RP No. 98/2019 768(PXCS/2017)	Imran Ullah, R. No. 4775, Sepoy, Bajaur levies, Bajaur Agency Khar	28.06.2019

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125.	RP No.99/2019 776(P)CS/2017	Tilla Muhammad, R. No. 4508, Sepoy, Bajaur levies, Bajaur Agency Khar	28.06.2019
126.	RP No.100/2019 777(P)CS/2017	Abdul Rahim, R. No. 5883, Sepoy, Bajaur levies, Bajaur Agency Khar, R/o P.O. Saime Sharif Khan Tehsil Nawagai, District Bajaur Agency.	28.06.2019
127.	RP No.101/2019 778(P)CS/2017	Kohul Amin, R. No.4293, Sepoy, Bajaur levies, Bajaur Agency Khar, R/o P.O. Saime Sharif Khan Tehsil Nawagai, District Bajaur Agency.	28.06.2019

Date of Hearing	:	28.11.2019
Date of Judgement	:	04.12.2019

VS:-

- RESPONDENTS
1. The Secretary, SAFRON, Islamabad.
 2. The Additional Chief Secretary, FATA Civil Secretariat (FATA), Warsak Road, Peshawar.
 3. The Political Agent/Commandant/Deputy Commissioner Bajaur Levies, District Bajaur at Khar.
 4. Mr. Fareed Ullah, Subedar Major (BS-16), Malakand Levies at Malakand.
 5. Mr. Muhammad Hussain, N/Subedar, Reg. No.3164, posted in the office of Political agent/Commandant/Deputy Commissioner, Bajaur Levies, District Bajaur at Khar.

PRESENT

Mr. Misbahullah Khan, Rana Samreen Akhtar, Noor Muhammad Khattak, Sardar Saleem Akhtar and Ameer Nasir Kundi, Advocates for the Appellants. Ch. Ishtiaq Meherban, Deputy Attorney General for the Federation, Mr. Siraj Haide, Legal Coordinator, M/o SAFRON, Mr. Nisar Khan, Asstt. Accounts Officer, District Accounts Office, Malakand and Mr. Sajjad Ahmad, Litigation Clerk, Deputy Commissioner's Office, Bajaur as DRs and Mian Gulzar Hussain, Advocate for Respondent No.4

JUDGEMENT

RAJA HASAN ABBAS, MEMBER:-

These appeals and petitions can be categorized into appeals, implementation petitions and review petitions.

2. Appellants are ex-employees of Federal Levies Force. The Competent authority imposed major penalty of dismissal from service in most of the cases on charge of misconduct, whereas in some other cases they were retired. Aggrieved by these orders instant appeals were filed before Federal Service Tribunal which are pending decision. Notices were issued to the respondents i.e. M/o SAFRON, FATA Secretariat through Additional Chief Secretary, FATA and the concerned Political Agent/Commandant.

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Comments/objections were received partially and in most of the cases notices were being issued for submission of the same. In the meantime, Federal Government through 25th Constitutional Amendment Act passed in May, 2018 paved the way for merger of FATA in the province of Khyber Pakhtunkhwa. As a result thereof Government of KPK issued Ordinance-1 of 2019 (later passed as an Act), in order to allow Federal Levies Force to continue their functions and to regulate and maintain them under the administrative control of Government of KPK. The force was renamed as Khyber Pakhtunkhwa Levies Force under Section 3 of the Act, comprising the Director General, the Deputy Director General, Commandant and all existing strength of members of the Levies Force, working in the merged Districts and Sub-divisions. Above mentioned Officers would be the Officers from Police. Section 9 of the Act provided for absorption of the members of Federal Levies in the Police. Section 9 (2) stipulates that "until their absorption in the police, the members of the Levies Force shall be governed by their existing terms and conditions of service under Federal Levies Force (Service) Rules, 2012.

3. It is important to refer to a letter from M/o SAFRON dated 24th April, 2019 addressed to Secretary Home & Tribal Area Department, Government of KPK on the subject pertaining to service matters regarding Levies/Khassadars, admitted in Federal Service Tribunal, Islamabad. It is imperative to reproduce para 2-3 of the letter:-

"2. It is stated that consequent to the 25th Constitutional Amendment, the erstwhile PATA and FATA have been merged into the province of Khyber Pakhtunkhwa. Furthermore, on 12th March, 2019 the Government of Khyber Pakhtunkhwa has promulgated two Ordinances whereby the Federal Levy Force and Khassadar Force, stand provincialized. We had already written to the concerned Registrars of Courts and Service Tribunals to delete the name of Secretary, SAFRON from the array of respondents.

3. It is requested that these along with future appeals in connection to the Federal Levy Force and Khassadar Force, may now be addressed at your end while ensuring that reports/comments are submitted to Honorable Federal Service Tribunal, Islamabad on the scheduled date of hearings.

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Stamp: REGISTRAR, FEDERAL SERVICE TRIBUNAL, ISLAMABAD

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Another Memorandum from M/o.SAFRON dated 18th March, 2019 addressed to Chief Secretary, KPK, Advocate General, KPK and Additional Chief Secretary, Merged Areas Secretariat states as under:-

"Now, therefore all the administrative, legal and ancillary matters, including service appeals, promotions and litigation in respect of both the forces i.e. Levies Force and Khasadar Force have been transferred to the Government of Khyber Pakhtunkhwa and its relevant forums from 17th March, 2019, the date of the issuance of above said Ordinance.

It is clarified that Ministry of States and Frontier Regions (SAFRON) has ceased to be the controlling authority in respect of Levies Force and Khasadar Force working in erstwhile FATA & PATA. All concerned commandants and others Forums may kindly be informed accordingly."

4. It was in this back drop that we had issued Notices to the learned Attorney General for Pakistan in accordance with Order 27 Rule 1 of CPC to assist the Tribunal with regard to the point of jurisdiction as well as 25th Constitutional Amendment including interpretation of Levies Amendment Rules, 2013. After hearing the learned Deputy Attorney General and counsels of the appellants on 30.07.2019 a detailed order was passed. Relevant portion is reproduced:-

"7. We have carefully considered the arguments. Notwithstanding, the submissions made by the learned counsels, fact of the matter is that Government of Pakistan Ministry of States and Frontier region has made a formal request for their deletion from the list of the respondents in all these appeals with a further request that these matters may now be addressed to Secretary, Home and Tribal Areas Department, Government of Khyber Pakhtunkhwa.

8. By operation of the Ordinance supra and 25th Constitutional Amendment, employees of the Federal Levies and Khassadar Force have become provincial Government employees. In several implementation petitions, which are pending at the moment before the Tribunal, provincial Home and Tribal Area Department have been issued notices of appearance, however, they have shown very lukewarm response. This is despite the fact that notices were served through Chief Secretary, KPK. We are cognizant of the fact that Constitutional and legal provisions allow continuation of proceedings before the Tribunal, however, we are concerned

ATTESTED

Registrar

Federal Service Tribunal
Islamabad

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about the practical aspects of the issue. Since the petitioners have become provincial Government employee so proceedings can move unless the respondent Provincial Government discharges its legal responsibilities.

9. It is therefore, imperative and prudent to direct Secretary Ministry of States and Frontier Region to depute an officer not below the rank of J.S to appear and assist the Tribunal in the matter.

10. Chief Secretary KPK Government is required to direct Secretary Home and Tribal Areas Department to depute an officer not below the rank of Additional Secretary (BS-19) to appear in the pending proceedings before the Tribunal.

11. Advocate General KPK is directed to depute a law officer to appear and assist the Tribunal in the matter on the next date.

5. Since then Provincial Government of KPK has been represented twice by learned Assistant Advocate General. He was not present today nor on 18.11.2019. We have not received any written statement on behalf of Government of KPK since 30.07.2019 despite clear direction vide order dated 18.11.2019.

6. Today we have heard learned Counsels of the appellants who are also present in large number. Learned Counsels of the appellants stated that the appellants are poor low paid employees. Since their dismissal in 2007-2008, they have been running from pillar to post for getting justice. The constitutional amendment and subsequent legislation is further complicated matters for them. However, the Tribunal is still vested with the jurisdiction as already determined vide order dated 30.07.2019 and the appeals may be decided on merits of each case.

7. We are conscious of the fact that the appellants are facing hardship on account of prolonged judicial proceedings. It is however, more dismaying that the respective provincial authorities are not paying due attention to these matters, pending before us. There is an attitude of indifference towards these proceedings. We are afraid even if the pending issues are decided on merit their implementation would be still more complicated as is the case even now. No meaningful proceedings can take place in the absence of a positive response from Government of Khyber Pakhtunkhwa.

ATTESTED

Registrar
Federal Service Tribunal
Islamabad

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8. We have apprised the learned Counsels of the practical aspects/difficulties and with their consent remand all the pending appeals to the respective competent authority to treat them as pending departmental appeals and decide them afresh after giving the appellants opportunity of personal hearing. These appeals are disposed of in the above terms.

Misc. Petition Nos. 320, 321, 2488, 2487, 2098, 2099/2018, 342 to 359/2017, 2144/2016, 352 to 354, 1017, 935 to 937, 934, 938/2017, 2118/2018

in
Appeal No. 1106, 1116(P)CS/2017, 591(P)CS/2015, 18(P)CS/2016, 19, 348(P)CS/2014, 1117, 1119, 1120 to 1123, 1125 to 1127(P)CS/2017, 340, 211, 304, 312(P)CS/2014, 584, 635, 10, 14, 24, 27(P)CS/2016 & 27(P)CS/2014

Above Misc. Petitions were filed seeking implementation of judgement dated 11.05.2015 and 30.10.2017. Whereas vide order dated 30.10.2017 direction were given for deciding pending departmental appeals, vide judgment dated 11.05.2015 directions were given for reinstatement of the appellants. However, for the question of back benefits it was directed to decide the same in accordance with instructions contained in Sl. No. 155 of ESTACODE (Edition 2007 Volume-II). The Petitioner have been reinstated however, through these petitions the issue of implementation of the order for determination of back benefits was raised. The respondents, despite repeated notices failed to respond and provide the latest status about implementation of the judgement.

10. These petitions are also remanded to the competent authority for implementation in the light of the direction of the Tribunal in Judgements dated 11.05.2015 and order dated 30.10.2017. A compliance report be furnished to the Registrar of the Federal Service Tribunal by first week of February, 2020. The petitions stand disposed of.

ATTESTED

Registrar
Federal Service Tribunal
Islamabad

[Signature]

[Signature]

ATTESTED



GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIR DEPARTMENT

No. SO (Police-II)/HD/6-268/019
Dated Peshawar the 14.01.2020

To

1. The Registrar,
Federal Service Tribunal, Islamabad.
2. The Deputy Commissioner/Commandant,
Malakand, Levies Malakand.

Subject: - APPLICATION FOR DECIDING SERVICE APPEAL OF THE
APPLICANT AS PER FEDERAL SERVICE TRIBUNAL DECISION
DATED 04-12-2019 WITHIN THE STATUTORY PERIOD OF 60 DAYS

Dear Sir,

I am directed to refer to the subject noted above and to state that the subject appellant namely Mr. Amir Nawab Subedar Malakand Levies was heard by person and it was decided that the subject appeal being devoid of merit, may be filed, please.

Yours Faithfully,

Section Officer (Police-II)
Ph No. 091-9210903 Fax No. 9210201

Encls as Above

Encls No & date of even
Copy forwarded to:-

1. PS to Secretary Home & TA's Department.
2. The appellant for information, please.

Amended "F"

17



Government of Khyber Pakhtunkhwa,
Home & Tribal Affairs Department

Dated: Peshawar, the 25.08.2016.

NOTIFICATION

No. So (Levies) HD/FLW/1-3/2013/Vol.1. Consequent upon approval of the recommendations of the anomaly committee by Secretary SAFRON received vide his letter No. F-10(5)-LK/2006-Pt dated 04.08.2016, the competent authority has been pleased to partially modify the earlier Notifications of even number dated 12.12.2013 & 17.03.2014 with the following amendments in the levies service rules with immediate effect:-

1. The service of Federal Levy Force rendered before 2012 in case of PATA, Khyber Pakhtunkhwa/Settled Districts shall be counted as pensionable.
2. As Federal Government Employees, Civil Pension Rules will be applicable for all Federal Levy Force serving in PATA/Settled Districts of Khyber Pakhtunkhwa.
3. Condonation of over stay exceeding the prescribed length of service or age limit shall be allowed on case to case basis with due approval of the competent authority i.e. Secretary, SAFRON after full implications are worked out and sent to SAFRON and subsequent approval by Finance Division as the over stay was not the fault of the levy personnel.
4. The tenure of Rank and Service may be included in the Schedule-III of Service Rules for PATA/Settled Districts of Khyber Pakhtunkhwa respectively with the following amendments:-

SCHEDULE - III

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

Secretary to Govt. of Khyber Pakhtunkhwa
Home & Tribal Affairs Department

Ends No. & dated of even.

Copy of the above is forwarded for information and further necessary action to:-

1. The Secretary to Government of Pakistan, Ministry of SAFRON, Islamabad with reference to letters No. F-10(5)-LK/2006/Pt dated 04.08.2016.
2. The Commissioner Hazara, Malakand, Kohat & Bannu for information.
3. The D.C./Commandant Levies, Malakand, Dir Upper, Dir Lower, Swat, Chitral, Hangu, Kohat, Karak, Lakki Marwat & Torghar.
4. Agency / District Account Officer, Malakand, Dir Upper, Dir Lower, Swat, Chitral, Hangu, Kohat, Karak, Lakki Marwat & Torghar.
5. Section Officer (Budget) Home Department.
6. Section Officer (Court) Home Department.
7. PS to Secretary Home & Tribal Affairs Department.
8. The Manager Government Printing Press, Peshawar for publication in the official gazette Peshawar as an extra ordinary copy.

AT THE
SECRETARY'S OFFICE

OFFICE OF THE DC/COMMANDANT
MALAKAND LEVIES MALAKAND

NO. 2280 /LC
DATED MALAKAND THE 30/03/2020

OFFICE ORDER

In pursuance of the Notification No. SO(Levies)/HD/FLW/1-
1/2013/Vol.1 dated 25-08-2016 Amended Service Rules 2016 Schedule III,
issued by Government of Khyber Pakhtunkhwa Home & Tribal Affairs
Department, Peshawar, No.3429 Subedar Amir Nawab of Malakand Levies,
is hereby retired from service w.e.f 31/03/2020(AN) with full pensionary
benefits on completion of 35-years requisite service length.

No. 2281-84 /LC

[Signature]
DC/COMMANDANT
MALAKAND LEVIES MALAKAND

Copy forwarded to the:-

1. Section Officer (Levies), Home & TA's Department Khyber Pakhtunkhwa,
Peshawar with reference to Notification referred above for information.
2. District Accounts Officer, Malakand.
3. Subedar Major Malakand Levies.
4. Official concerned.

For information & Necessary action.

[Signature]
DC/COMMANDANT
MALAKAND LEVIES MALAKAND



OFFICE OF THE DC/COMMANDANT
MALAKAND LEVIES MALAKAND

NO. 5079 /LC
DATED MALAKAND THE 16-07/2020

To,

The Secretary,
Home & TA's Department, Khyber Pakhtunkhwa,
Peshawar.

Subject:- DRAFT PARA WISE COMMENTS

R/Sir

Draft Para-wise comments in Writ Petition No.407/2020, duly vetted by
Additional Advocate General, Honorable Peshawar High Court, Peshawar is submitted
for signature as respondent No.2 please.


DC/COMMANDANT
MALAKAND LEVIES MALAKAND




3. The applicant has filed an appeal before the Federal Service Tribunal, Islamabad, which was converted into departmental/service appeal at serial No.66 dated 04-12-2019 (**Copy enclosed as annexure-D**). In this regard, Home & TA's Department, Khyber Pakhtunkhwa, Peshawar summoned the applicant for personal hearing. After hearing and perusal of relevant record the applicant appeal was filed due to devoid of merit (**Copy enclosed as annexure-E**). More over no such stay in this regard was granted to the applicant by the Honorable court therefore as per Amended Levy Rules 2016 Schedule-III, the applicant* was retired from service with effect from 31-03-2020 (AN) on completion of 35-years requisite service length (**Copy of Amended Levy Rules 2016 Schedule-III enclosed as annexure-F**).
4. In correct. All the three ingredients are in favor of the respondent.
5. No comment.

Pray:-

Keeping in view of above, it is requested that the application of the applicant may kindly be rejected, please.

Secretary
Home & TA's Department,
Khyber Pakhtunkhwa, Peshawar
Respondent No.2

DC/Commandant Malakand Levies
Respondent No.3


Deputy Commissioner./
Commandant
Malakand Levies


BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No.407/2020

Mr. Amir Nawab Subedar (BPS-13) Malakand LeviesAppellant

-----Versus-----

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. The Secretary Home & TA's Department, Khyber Pakhtunkhwa, Peshawar, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Deputy Commissioner/Commandant Malakand Levies, District Malakand.
4. Mr. Farid Ullah, Subedar Major (BPS-16), Malakand Levies at Malakand.

.....Respondents

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION DATED 28-11-2018 WHEREBY JUNIOR TO THE APPELLANT I.E. PRIVATE RESPONDENT NO.4 HAS BEEN PROMOTED TO THE RANK OF SUBEDAR MAJOR (BPS-16) WHILE THE APPELLANT HAS BEEN IGNORED INSPITE OF SENIORITY & FITNESS AND THE AGAINST THE APPELLATE ORDER DATED 14-01-2020 WHEREBY DEPARTMENTAL APPEAL FILED IN LIGHT OF FEDERAL SERVICE TRIBUNAL DECISION DATED 04-12-2019 OF THE APPELLANT HAS BEEN REGRETTEED ON NO GOOD GROUND

Para Wise Comments on Behalf of Respondent No. 2 & 3 are as under:-

Respectfully Sheweth:-

Preliminary objection:-

1. The petitioner has got no cause of action or locus standi to submit the instant petition.
2. The petitioner is not maintainable in its present form.
3. The petitioner has not come with clean hands to this Honorable Court.
4. Due to non-joinder/mis-joinder of necessary party their petition is liable to be dismissed.

Facts:-

1. It is incorrect that the appellant was appointed in BPS-05 rather he was appointed in BPS-01 in 1985 vide his appointment order No.2348/XVII/18(LC) dated 16-03-1985 (Copy enclosed as annexure-A).
2. Correct.
3. The appellant is an illiterate and cannot lead the force as evident from the remarks of DC/Commandant Malakand Levies vide letter No.8196/LC dated 13-11-2017 of Respondent No.3 being competent authority in response to comments asked in the appeal of appellant by the Secretary,

Home & TA's Department, Khyber Pakhtunkhwa, Peshawar Respondent No.2 being appellant authority (**Copy of letter No.8196/LC dated 13-11-2017 enclosed as annexure-B**) which was dismissed/disposed-of the appellant authority vide Home & TA's Department, Khyber Pakhtunkhwa, Peshawar letter No.SO(Police-II)/HD/6-194/018 dated 25/04/2018 (**Copy enclosed as annexure-C**). Furthermore, the promotion order of Respondent No.4 was issued by the competent authority i.e. Secretary, Home & TA's Department, Khyber Pakhtunkhwa, Peshawar vide order No. SO (Police-II)HD/2-1/018 dated 28/11/2018, after proper Departmental Promotion Committee Meeting held on 26-10-2018 under the chairmanship of Secretary, Home & TA's Department Khyber Pakhtunkhwa, Peshawar (**Copy of promotion order enclosed as annexure-D**).

4. As evident from seniority list, the Subedar from Serial No.1 to 5 are illiterate. While Respondent No.4 at Serial No.6 of the seniority list is educated/matriculate/well experience in the field of Investigation in criminal cases and also remained as Moharrir, IHC, Post Commander in various Levy Posts passed lower training course from PTC Hangu and as well Incharge of Headquarters Investigation Officer Malakand Levies (**Copies enclosed as annexure-E&F**).
5. This para is related to Respondent No.2 as competent authority and issued promotion order of the Respondent No.4 after proper Departmental Promotion Committee Meeting held on 26-10-2018.
6. Correct.
7. Correct.
8. Correct.

Grounds:-

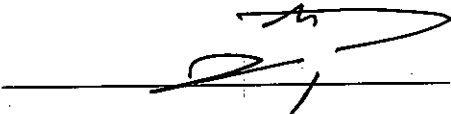
- a. It is incorrect. Respondent No.2 being competent authority convened proper Departmental Promotion Committee Meeting on 26-10-2018 and promoted Respondent No.4 as educated, well experience in Investigation Officer etc.
- b. It is incorrect. Action taken as per Rules and Regulation/Law
- c. It is incorrect. Action taken as per Rules and Regulation/Law
- d. It is incorrect. action taken as per Rules/Law.

- e. It is incorrect. Respondent No.2 being competent authority concerned proper Departmental Promotion Committee Meeting on 26-10-2018 and issued order of promotion of Respondent No.4.
- f. No comments.
- g. It is incorrect. action taken lawfully.
- h. As above.
- i. As above.
- j. No comments.

Pray:-

Keeping in view of above, it is requested that the appeal may kindly be dismissed, please.

**Secretary
Home & TA's Department,
Khyber Pakhtunkhwa, Peshawar
Respondent No.2**


**Home Secretary
Khyber Pakhtunkhwa**

**DC/Commandant Malakand Levies
Respondent No.3**


**Deputy Commissioner
Commandant
Malakand Levies**

17/7/20

①
**BEFORE THE PEHSWAR HIGH COURT DĀR UL QAZA BENCH AT
SWAT**

WRIT PETITION NO. 565-m/2020

Mr. Amir Nawab, Subedar (BPS-13), S/O Ghulam Akbar, r/o, Sakhatot, alfy Kaly
Malakand Levies at Malakand. District Malakand.

..... **PETITIONER**

VERSUS

- 1- The Govt. OF Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary Home and Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Deputy Commissioner/ Commandant Malakand Levies, District Malakand.
- 4- The District Accounts Officer, District Malakand.
- 5- DIG, MALAKAND DIVISION, MALAKAND...... **RESPONDENTS**

**WRIT PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF THE ISLAMIC REPUBLIC OF
PAKISTAN, 1973 AS AMENDED UP TO DATE**

PRAYER:

That on acceptance of this Writ petition the impugned order dated 30.3.2020 whereby the petitioner has prematurely been retired from service in light of already repealed Rules may kindly be declared as illegal, unconstitutional and ineffective upon the rights of petitioner. That the respondents may further please be directed to re-instated the petitioner into service with all back benefits including seniority. Any other remedy which this august Court deems fit that may also be awarded in favor of the petitioner.

R/SHWETH:

ON FACTS:

1. That initially the petitioner was appointed as Sepoy (BPS-5) in the respondent's Department on 1.4.1985. That later on the petitioner was promoted to the Ranks of Lance Naik, Naik, Havaldar and Subedar (BPS-13) vide orders mentioned in the seniority list prepared for the employees of Malakand Levies. Copy of the Seniority list showing the dates of appointment and promotions is attached as Annexure A.

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Additional Registrar

- ②
2. That the respondent Department Framed/formulated service structure for the Levies personnel vide Notification dated 4.2.2013 whereby the method for recruitment of Subedar Major (BPS-16) has been mentioned as 100% by promotion on the basis of seniority cum fitness from amongst Subedars (BPS-13). Copy of the Rules are attached as **annexure**..... **B.**
 3. That according to the seniority list already attached as **annexure-A** the petitioner being the senior most employee of the respondent Force has been Ranked at Serial No.1 of the Seniority list. That petitioner was quite hopeful for his promotion to the Rank of Subedar Major (BPS-16) due to his excellent record of service and having seniority cum fitness.
 4. That astonishingly vide Notification dated 28.11.2018 the private respondent who is at serial No.6 of the seniority list circulated for the employees of respondent Force has been promoted to the Rank of Subedar Major (BPS-16) while the petitioner being the senior most employee of the respondent Force has been ignored without any reason and rhyme. Copies of impugned Notification and charge report are attached as **Annexure** **C & D.**
 5. That feeling aggrieved from the impugned dated 28.11.2018 the petitioner preferred Departmental Appeal dated 19.12.2018 before the respondent No.2 followed service appeal before the august Federal Service Tribunal, Islamabad but during the pendency of the said service appeal the 25th Constitutional Amendment Act, 2018 was promulgated wherein FATA and PATA were merged into the Province of Khyber Pakhtunkhwa. Copy of the service appeal are attached as annexure **E.**
 6. That the said service appeal of the petitioner was disposed vide consolidated judgments dated 4.12.2019 with the directions to the respondents to decide the Departmental appeal of the petitioner. That the respondent no.2 vide appellate order dated 14.1.2020 rejected the Departmental appeal of the petitioner on no good grounds. Copies of the memo, judgment and rejection order are attached as annexure **F, G and H.**
 7. That in light of the said amendment Act, 2018 the then Federal Levies Force Regulation, 2012 had lost their legal status, for working in the merged Districts. That giving a legal cover to, and making the Levies Force operational, and to continue their functions in the Khyber Pakhtunkhwa, the Khyber Pakhtunkhwa Levies Act, 2019 was promulgated. Copy of the Act is attached as annexure **I.**
 8. That it is worth to mention here that under section 11 of the Khyber Pakhtunkhwa Levies Force Act, 2019 the Levies Force (Absorption in the Khyber Pakhtunkhwa Police) Rules, 2019 has

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Additional Registrar

been issued/framed and under Rule 3 of the ibid rules the Levies were absorbed in the Khyber Pakhtunkhwa Police and hence all the employees attained the status of Civil Servant of the Province of Khyber Pakhtunkhwa and as such the appellant filed service appeal before the Khyber Pakhtunkhwa service Tribunal, Peshawar against the promotion order dated 18.11.2018. Copy of the rules and service appeal are attached as annexure J & K.

9. That during the pendency of the said appeal the Deputy Commissioner/ Commandant Malakand Levies, Malakand i.e. respondent No.3 issued the impugned order dated 30.3.2020 whereby the appellant has prematurely been retired from service in light of the already repealed rules of 2016. Copy of the impugned order is attached as annexure L.

10. That it is also very pertinent to mention that the Principal Bench of this august Court has granted interim relief in similar cases and as such under the principle of consistency reported in 2009 SCMR 1 the petitioner is entitle for similar relief. Copies of the order sheets are attached as annexure M.

11. That appellant feeling highly aggrieved filed Departmental appeal followed by the instant writ petition on the following grounds amongst the others. Copy of the Departmental appeal is attached as annexure N.

GROUND:

A- That the impugned office order dated 30.3.2020 issued by the respondent No.3 is against the law, facts, norms of natural justice and materials on record hence not tenable and liable to be set aside.

B- That appellant has not been treated by respondent Department in accordance with law and rules on the subject noted above and as such the respondent No.3 violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.

C- That the impugned order dated 30.3.2020 is based on malafide and arbitrary intentions of the respondent No.3 hence not tenable in the eye of law and liable to be set aside.

D- That the impugned order dated 30.3.2020 issued by the respondent No.3 is not in accordance with section 13 of the Civil servant Act, 1973 wherein the age for retirement has been mentioned as superannuation i.e.60 years of age.

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E- That according to Article 38 (e) of the Constitution of Pakistan 1973 state is bound to reduce disparity in the income and earnings of individuals including persons in the services of Federation.

- 9
- F- That the impugned Notification dated 30.3.2020 is based on discrimination and as such not tenable in the eye of natural justice.
- G- That appellant has been retired from service by the respondent No.2 under the already repealed rules, therefore the impugned order dated 30.3.2020 is void ab initio in the eye of law.
- H- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the writ petition of the petitioner may be accepted as prayed for.

INTERIM RELIEF:

That the operation of the impugned order dated 30.3.2020 may very kindly be suspended till the final disposal of the instant writ petition.

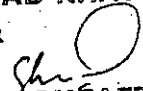
PETITIONER


AMIR NAWAB

THROUGH:

NOOR MUHAMMAD KHATTAK

&


SHAHZULLAH YOUSAFZAI
ADVOCATES

VERIFICATION:

It is verified that no other earlier writ petition was filed between the parties.


LIST OF BOOKS:

1. CONSTITUTION OF PAKISTAN.
2. SERVICES LAWS BOOK.
3. ANY OTHER CASE LAW AS PER NEED.

DEPONENT 

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23 APR 2020

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**BEFORE THE PESHAWAR HIGH COURT MINGORA BENCH,
DARUL QAZA SWAT**

WRIT PETITION NO. 565-M/2020

AMIR NAWAB

V/S

GOVT. OF KPK
& OTHERS.

AFFIDAVIT

I Amir Nawab ^{Khan} s/o Ghulam Akbar r/o alfay kalay, Sakha Kot,
District Malakand (Petitioner) do hereby solemnly affirm that the
contents of this writ petition are true and correct to the best of my
knowledge and belief and nothing has been concealed from this
Honorable Court.

Amir
AMIR NAWAB
(PETITIONER)
CNIC NO. 15401-0705504-1
Cell No. 0346-9330225

IDENTIFIED BY:
NOOR MOHAMMAD KHATTAK
ADVOCATE, HIGH COURT,
PESHAWAR

S.No. 1738
Certified that the above was verified on Solemn
affirmation before me on this 23rd day
of APR 2020 by Amir Nawab Khan
s/o Ghulam Akbar r/o Malakand
was identified by Noor Muhammed Khattak
Advocate who is personally known to me.

[Signature]
ADDL. REGISTRAR
Peshawar High Court
Mingora Bench Darul Qaza, Swat.

FILED TODAY

23 APR 2020

Additional Registrar

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**BEFORE THE PEHSWAR HIGH COURT DAR UL QAZA BENCH
AT SWAT**

WRIT PETITION NO. 565-M/2020

AMIR NAWAB VS GOVT OF: KP & OTHERS

ADDRESSES OF PARTIES

Mr. Amir Nawab, Subedar (BPS-13), S/o Ghulam Akbar, H/o Alfiz Kaly, Malakand,
Malakand Levies at Malakand, CNIC, 15401-6705504-1, 0346-9330225
H/o Alfiz Kaly, Sakhakot, District Malakand. **PETITIONER**
VERSUS

- 1- The Govt. OF Khyber Pakhtunkhwa through Chief Secretary,
Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary Home and Tribal Affairs Department, Khyber
Pakhtunkhwa, Peshawar.
- 3- The Deputy Commissioner/ Commandant Malakand Levies,
District Malakand.
- 4- The District Accounts Officer, District Malakand.
- 5- **DIG, MALAKAND DIVISION, MALAKAND. RESPONDENTS**

PETITIONER

**THROUGH:
NOOR MOHAMMAD KHATTAK
ADVOCATE**

FILED TODAY

23 APR 2020

Additional Registrar

**IN THE PESHAWAR HIGH COURT MINGORA BENCH DAR-U
OPENING SHEET FOR WRIT BRANCH**

Date of Filing: _____
District: _____

CASE TYPE: WRIT PETITION **NATURE OF ORIGINAL PROCEEDING**

Category Code:

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Review/Contempt of Court in respect of: _____

Writ of:

Habeas Corpus	Prohibition	Mandamus	<input checked="" type="checkbox"/>	Quo Warranto	Certiorari
---------------	-------------	----------	-------------------------------------	--------------	------------

If Certiorari: Forum	Date	(I)nterlocutory/ (F)inal Order	Case Pertains to <input type="checkbox"/> SB <input checked="" type="checkbox"/> DB

Petitioner Name	Amir nawab S/O GHULAM AKBAR.
Mobile No.	0346-9330225
Address	ALIFAY KALI, SAKHAKOT, TEH: DARGAI, DISTRICT MALAKAND
CNIC No.	15401-0705504-1
Email Address	

Counsel for Petitioner (s)	NOOR MOHAMMAD KHATTAK
Mobile No.	0345-9383141
Address	Flat#: 13, 14 upper floor New Islamia Club Building, Khyber Bazar Peshawar City
CNIC No.	15401-0705985-5
Email Address	noor.advocate.nm@gmail.com

Respondents	GOVT: OF KP & others
Address	As mentioned in Memo of the address

Original Order/Action./Inaction Complained of : _____

PRAYER:
That on acceptance of this Writ petition the impugned order dated 30.3.2020 whereby the petitioner has prematurely been retired from service in light of already repealed Rules may kindly be declared as illegal, unconstitutional and ineffective upon the rights of petitioner. That the respondents may further please be directed to re-instated the petitioner into service with all back benefits including seniority. Any other remedy which this august Court deems fit that may also be awarded in favor of the petitioner.

Law/Rues/Governing the original proceedings/action/Inaction
Writ petition under Article 199 of the constitution of Islamic Republic of Pakistan 1973.

FILED TODAY
23 APR 2020
Additional Registrar

Signature: _____

BEFORE THE PESHAWAR HIGH COURT PESHAWAR

WRIT PETITION NO. 565-M/2020

AMIR NAWAB

VS

GOVT: OF KP & OTHERS

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S. NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of writ petition	1-4.
2.	Affidavit	5.
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4.	Seniority list	A	7.
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PETITIONER

THROUGH:
NOOR MOHAMMAD KHATTAK
ADVOCATE

FILED TODAY

23 APR 2020

Additional Registrar

Re-Filed Today

23 APR 2020

Additional Registrar

54379	پشاور بار ایسوسی ایشن، خیبر پختونخواہ
ایڈوکیٹ: Zia-ur-Rahman (Cham)	پشاور بار ایسوسی ایشن نمبر:
رابطہ نمبر: 0341-8176061	پشاور بار ایسوسی ایشن نمبر:

بعدالت جناب: ضریحہ مختار سروسز لٹریچر

مخانب: Respondent No(4)	دعویٰ: Civil Appeal
امر لواب بنام حکومت	علت نمبر:
	مورخہ:
	جرم:
	تھانہ:

باعت تحریر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ

آن مقام پشاور کیلئے ضیاء الرحمن صاحب لٹریچر کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم: 23/7/2020

العبد گواہ شد العبد

مقام _____ کے لیے منظور ہے۔

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

Accepted
Zia-ur-Rahman
Cham

مقام پشاور
ضیاء الرحمن صاحب

لہذا تہ جناب چیرمین سروس ٹریبونل خیر محبتوں کو

درخواست جلد دیکھ لی امدودہ تادم سٹی

بیک ۶۵۷۶ سال ۲۰۲۰

جناب عالی! - درخواست ہے کہ سائلک حسب ذیل عم فی دس سالہ

۱) یہ کہ حکم جلا میں سائلک کا امدودہ عدالت حقوق

میں تادم سٹی مقدم ہے

۲) یہ کہ سائلک دوران ڈیوٹی و جائی مدد و دانی

میں مبتلا ہو کر سائلک کا ردفا ٹیسٹ جائیوں آر

آر سائلک نے اپنے ایکو کو دنا ٹن کیا ہے

۳) یہ کہ سائلک کا ٹیسٹ نا حال جائیوں ہے و جائی

آر ج سے سائلک امدودہ تادم سٹی بدھا ہر س

ہو سکتا ہے

لہذا وہ امدودہ ہوں کہ سائلک کا امدودہ تادم سٹی

تہا بل ر کا حکم صادر فرمادہ

ردفا ٹیسٹ کی کا بیان میں امدودہ لوٹس عدالت

کا لکھیے عم لکھیے

سائل فرمایا اللہ ہو پیداد بھی ملا لکھیے

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

S.B

No.

Appeal No. 607 of 20 20

Mr. Amir Nawab Appellant/Petitioner

Reed

Versus

Through Chief Secy Peshawar Respondent

Respondent No. 4

Notice to:

Mr. Farid ullah Subedar Major
(BPS-16) Malakand Levies at Malakand.

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 30/6/2020 at 8.00 A.M. If you wish to urge anything against the appellants/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

~~Copy of appeal is attached. Copy of appeal has already been sent to you vide this~~

office Notice No.....dated.....

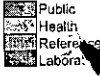
Given under my hand and the seal of this Court, at Peshawar this 25/6/20

Day of June 20 20



Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

- Note:
1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
 2. Always quote Case No. While making any correspondence.



Public Health Reference Lab

Public Health Reference Lab, Peshawar, Khyber Medical University, Phase-V, Hayatabad,
Peshawar,
Contact:0919217838

MR #:	205-200619-1129	Visit No:	205-190620-114
Ref-No:	3437		1
Patient Name:	Mr. Farid Ullah	Order No:	2052066094
Age Gender:	55 Y Male	Booking:	Jun 19, 2020
Ref.Consultant:	Dr Usman Malakand	CNIC:	1540214058211

Molecular Biology | **Real-Time PCR for Corona Virus (SARS-CoV-2)**

Result

Detected

Booking: Jun 19, 18:41 **Result Processed:** Jun 20, 06:31 **Verified:** Jun 20, 06:41

Method:

The test was performed after RNA extraction (Qiagen Viral RNA Mini Kit) on ABI 7500 Real Time RT-PCR detection system with internal and external positive controls, using the SARS-CoV-2 protocol.

Page 1 / 1

Report has been electronically verified, pathologist signatures not required.

Dr. Yasir Mehmood
Yousafzai

MBBS , PGDIP , PhD (Haem)
Consultant Haematologist

Dr. Asif Ali

MBBS , PGDIP , MHPE , PhD
(Pathology)
Pathologist

Dr. Jawad Ahmed

MBBS , MSc , Ph.D Microbiology
Microbiologist

Dr. Tayyab Ur Rehman

MBBS , Ph.D Microbiology
Microbiologist

Dr. Hafsah Muhammad

Ph.D , M.Phil , DPH
Clinical Scientist (Bio-safety Office
BSO)



ISLAMABAD DIAGNOSTIC CENTRE

IMAGING & LAB SERVICES (PVT) LTD.

3-A, Kohistan Road, F-8 Markaz, Islamabad. Tel: 051-2251212, 2263939,
2263737 Fax: 051-2281313 UAN: (051)-111 000 432



Name: Mr. Farid Ullah 2118
Age/Gender: 55 yr(s) / M
Ref. By:
Ref. No: BUTKHELA

Visit Date: 03-Jun-2020 1:50 am

Final Report

Report Date: 04-Jun-2020 3:26 am

Test Name	Results	*Last Available Results	Unit	Reference Ranges
-----------	---------	-------------------------	------	------------------

Molecular Biology

03-Jun-2020

Corona Virus-RNA PCR Detected

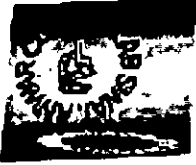
SARS-Co-V2 (Novel coronavirus)

Comments

- The test for SARS- Co-V2 (Novel Corona virus) is performed by Real Time RT-PCR method on Nasopharyngeal / Oropharyngeal swabs, sputum and bronchial washings.
- The negative result must be interpreted along with clinical observations, patients history and epidemiological information. A single result might not exclude possibility of corona virus infection; repeat test might be required between 24-48 hours if symptoms persist. The patient should consider himself/herself as suspected case for corona virus and should remain under self quarantine and maintain social distancing.
- In case of positive result, it is strongly advised that the patient should stay at home under self quarantine and maintain social distancing. Additional tests required for timely decision of treatment are Blood CP with absolute lymphocyte count, Serum Ferritin, LDH, D. Dimer, CPK, Troponins, CRP and X. Ray chest PA view.
- In case patient develops shortness of breath, he/she should immediately seek medical advice.
- A single negative result of already known positive patients or patients in quarantine would require re-confirmation with fresh sample in 24-48 hours.



This is a digitally verified report
and does not require manual signatures



ANWAR CLINICAL LABORATORY SWAT

PH #0946-729013, 0946-724848
Email, alpcr2020@gmail.com

Name	FARID ULLAH
Address	MALAKAND
Lab ID	B- 3088B
Referred by	NA
Specimen	Nasopharyngeal swab.
Investigation required	Real Time PCR for SARS-CoV-2
Date of specimen receipt	23-06-20
Date of lab report	23-06-20
Contact Histry/ Travel abroad/	Nil

Test	Result
Real Time PCR for SARS-CoV-2	POSITIVE

Extraction and amplification is being done on the following systems,
Extraction.....Zinextsautomation, m 2000 sp Abbott automation.
Amplification.....Sacace Sa-cycler, Cepheid smart cycler, Abbott m 2000 rt.

Note;

1. A negative result does not ensure immunity against the virus and all preventive measures are to be followed as per health department guidelines.
2. In case of positive result you should quarantine yourself at home and in case of difficulty in breathing you should report to the nearby hospital..
3. Positive test in asymptomatic patient have to quarantine themselves as well.

Authorized signature

OFFICE OF THE DC/COMMANDANT
MALAKAND LEVIES MALAKAND

NO. 2280 /LC
DATED MALAKAND THE 30/03/2020

OFFICE ORDER

In pursuance of the Notification No. SO(Levies)/HD/FLW/1-1/2013/Vol.1 dated 25-08-2016 Amended Service Rules 2016 Schedule III, issued by Government of Khyber Pakhtunkhwa Home & Tribal Affairs Department, Peshawar, No.3429 Subedar Amir Nawab of Malakand Levies, is hereby retired from service w.e.f 31/03/2020(AN) with full pensionary benefits on completion of 35-years requisite service length.

No. 2281-84 /LC


DC/COMMANDANT
MALAKAND LEVIES MALAKAND


Copy forwarded to the:-

1. Section Officer (Levies), Home & TA's Department Khyber Pakhtunkhwa, Peshawar with reference to Notification referred above for information.
2. District Accounts Officer, Malakand.
3. Subedar Major Malakand Levies.
4. Official concerned.

For information & Necessary action.


DC/COMMANDANT
MALAKAND LEVIES MALAKAND


BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 407 /2020

Amir Nawab.....Appellant

VERSUS

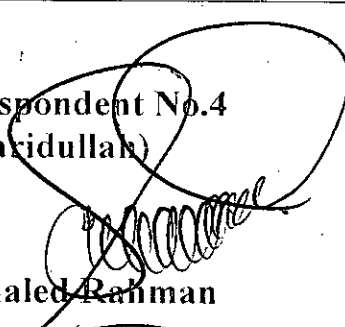
The Govt. of KPK and others.....Respondents

INDEX

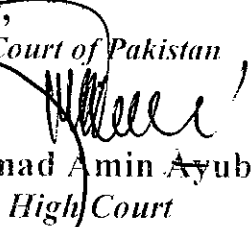
S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Reply with Affidavit			1-5
2.	Retirement order of appellant	30.03.2020	Reply/1	6
3.	Writ Petition No.565-M/ 2020		Reply/2	7-10
4.	Representation		Reply/3	11
5.	Letter/Comments of DC/Commandant FC	13.11.2017	Reply/4	12
6.	Office order regarding penalty of stoppage of promotion of the appellant	15.08.2012	Reply/5	13
7.	Retirement orders of other Subedars	29.05.2020	Reply/6	14-16
8.	Promotion order of Amin-ul-Haq against the post vacated by appellant	28.04.2020	Reply/7	17
9.	Promotion orders of other Naib Subedars to the post of Subedars	25.06.2020	Reply/8	18
10.	Judgment in W.P. 587-P/2012	14.02.2017	Reply/9	19-35
11.	Letter showing the qualification and experience & Lower School Course Certificate of the Answering Respondent No.4		Reply/10	36-37
12.	Letter	20.03.2018	Reply/11	38

Respondent No.4
(Faridullah)

Through


Khaled Rahman
Advocate,
Supreme Court of Pakistan

&


Muhammad Amin Ayub
Advocate, High Court

4-B, Haroon Mansion
Khyber Bazar, Peshawar
Off: Tel: 091-2592458
Cell # 0345-9337312

Dated: 27 /07/2020

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 407 /2020

Amir Nawab Appellant

VERSUS

The Govt. of KPK and others..... Respondents

REPLY ON BEHALF OF RESPONDENT NO.4 (FARIDULLAH).

Respectfully Sheweth,

Preliminary objections.

- I. That the appellant stood retired from service vide office order dated 30.03.2020 (*Annex:-Reply/1*) by the DC/Commandant Malakand Levies, Malakand which has been called in question by the appellant in the Hon'ble Peshawar High Court, Mingora Bench in Writ Petition No.565-M/2020(*Annex:-Reply/2*), which is still pending adjudication. In such scenario, the instant Service Appeal has become infructuous and thus liable to be dismissed summarily.

- II. That post of Subedar Major became vacant as a result of retirement of Subedar Major Gul Roz on 26.08.2016. Appellant thus filed a Representation (*Annex:-Reply/3*) for his promotion to the said post before the Secretary, Government of Khyber Pakhtunkhwa Home & Tribal Affairs, who called the comments from the DC/Commandant FC Malakand Levies vide letter dated 04.10.2017 who submitted the same vide letter dated 13.11.2017 (*Annex:-Reply/4*) where-after the Representation was rejected being devoid of force vide letter dated 25.04.2018 (*Annexed with the Reply of official Respondents as Annexure-C*) after providing opportunity of personal hearing to the appellant. The appellant failed to challenge the aforesaid order before any forum and thus the issue has become final and cannot be agitated at subsequent stage the appellant cannot re-agitate the same issue and create a fresh cause of action after the

promotion of the Answering Respondent vide order dated 28.11.2018. In this view of the matter the appeal in hand is not maintainable and liable to be dismissed under the doctrine of past and closed transaction.

- III. That as per Section-22(2) of KP Civil Servants Act 1973 read with Section-4(b)(i) of the KP Service Tribunals Act, 1974 no representation shall lie on matters relating to the determination of fitness of a person to hold a particular post or to be promoted to a higher post or grade. Thus the instant appeal is barred under the law and liable to be dismissed.
- IV. That appellant was earlier proceeded against departmentally and was imposed upon the major penalty of demotion from the rank of Naib Subedar to Havildar. Subsequently, the punishment was converted into stoppage of annual increments with further directions that the appellant would not be granted promotion to the rank of Subedar till the date of his retirement vide office order dated 15.08.2012 (*Annex:-Reply/5*). The appellant did not challenge the order which has also become past and close transaction and thus the instant appeal is not sustainable in view of the order *ibid*.
- V. That the instant appeal is not maintainable in its present form and shape.
- VI. That the appellant has concealed material facts from the Hon'ble Tribunal and has not approached the Hon'ble Tribunal with clean hands, therefore, the instant appeal merits outright rejection.
- VII. That the appeal is badly time barred.
- VIII. That the appellant is estopped by his own conduct to file the instant appeal.

Reply to Facts:

1. Correct to the extent of initial appointment and subsequent promotions, however, the appellant is now retired from service on 31.03.2020 and thus no more in service. Moreover, his other colleague Subedars junior to him namely Muhammad Jalil, Aminullah, Ghafoor Khan and Faiz Hussain have

also been retired from service vide orders dated 29.05.2020 (*Annex:-Reply/6*) who had never challenged the promotion of the Answering Respondent. Moreover, the resulted vacancy of the appellant after his retirement was filled up through Naib Subedar namely Amin-ul-Haq vide order dated 28.04.2020 (*Annex:-Reply/7*) whereas that of others as mentioned above were filled up through promotion of other Naib Subedars vide office order dated 25.06.2020 (*Annex:-Reply/8*). Thus the appellant at the moment cannot be restored to his previous position due to change of the circumstances rendering the instant appeal as infructuous.

2. Correct to the extent of the Recruitment Rules, however, seniority alone is not the sole factor for promotion to the next higher grade rather seniority-cum-fitness is to be considered by the Department for promotion to the next higher grade. As already stated that appellant was earlier punished and debarred from promotion to the next higher grade. Similarly, the Departmental Promotion Committee did not find him fit for the service in view of his incompetency, illiteracy and directions of the Hon'ble Peshawar High Court, Mingora Bench vide Judgment dated 14.02.2017 (*Annex:-Reply/9*). Even otherwise promotion is not a vested right of the civil servant.
3. Vehemently denied. The appellant could not be promoted to a higher grade due to his non-suitability for the post. Seniority is not the sole criteria for promotion.
4. Misconceived hence not admitted. As per the direction of the Hon'ble High Court as well as nature of duties of the post of Subedar Major being the second highest rank in the Levies Force, a qualified and experienced persons is to be promoted to it whereas appellant was lacking such credentials, therefore, was not considered for promotion to the subject post. On the other hand the answering Respondent No.4 was considered by the Departmental Promotion Committee and found fit for the post in view of the following factors
 - (i) Matric qualification.
 - (ii) Having qualified Lower School Course from PTC Hangu.
 - (iii) Remained Moharrir.

- (iv) Remained Investigation Officer;
- (v) Naib Court.
- (vi) Post Commander in various Levy Posts.
- (vii) Subedar Major (Investigation) at Levy Headquarter

(Annex:-Reply/10)

5. Misconceived. As per Section-22 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, no Representation shall lie on matters relating to the determination of fitness of a person to hold a particular post or to be promoted to a higher post or grade. Similarly, the jurisdiction of the Tribunal is barred in matters of fitness for promotion under Section-4(1)(b) of the Khyber Pakhtunkhwa Service Tribunals Act, 1974.
6. Correct to the extent of 25th Constitutional amendment, however, the instant appeal is not maintainable in view of the barring provisions as mentioned hereinabove.
7. Correct to the extent of rejection of the departmental appeal after providing opportunity of personal hearing to the appellant being devoid of merit.
8. Incorrect. The detailed reply has already been given in the preceding paras.

Reply to Grounds:

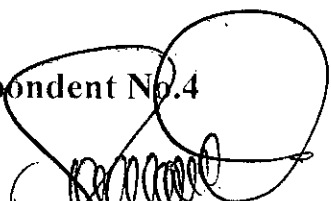
- A. Incorrect hence not admitted. Answering Respondent No.4 being experienced, qualified and trained in the field was rightly promoted to the subject post while appellant is/was lacking the requirements of the post.
- B. Appellant was treated in accordance with law and Rules rather he has concealed the important material regarding his earlier Representations which were rejected by the Respondent Department for his promotion to the subject post which were not challenged before any appropriate forum, thus the same has attained finality and could not be revived by preferring a second Representation which is debarred under the Rules.
- C. Incorrect. After considering the Departmental Representations of appellant the Respondent Department rightly rejected the same.

- D. Not admitted as submitted by the appellant. As averred in the preceding paras that seniority is not the sole factor for promotion rather there are other essential requirements for promotion to the next higher grade. Moreover, by virtue of office order dated 15.08.2012 he was disqualified for promotion to the rank of Subedar and posting as Post Commander etc.
- E&F. Incorrect hence denied. The detailed reply has already been given in the preceding paras. However, it is added that no violation of Article-38(e) of the Constitution of the Islamic Republic of Pakistan, 1973 has been made.
- G. Incorrect. No discrimination was meted out to Petitioner rather he was dealt in accordance with law and Rules.
- H&I. Incorrect. The detailed reply has already been given in the preceding paras.
- J. That answering Respondent No.4 will also submit additional arguments after adverting the stance of the appellant.

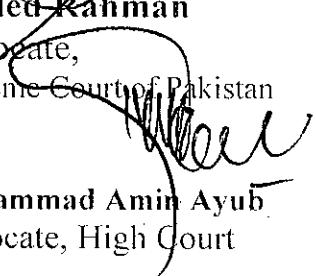
It is, therefore, humbly prayed that on acceptance of this reply, the appeal of appellant may graciously be dismissed with costs.

Through

Respondent No.4


Khaled Rahman
Advocate,
Supreme Court of Pakistan

&


Muhammad Amin Ayub
Advocate, High Court

Dated: 27 /07/2020

Counter Affidavit

I, Faridullah, Subedar Major, Malakand Levies at Malakand, do hereby affirm and declare on oath that the contents of this reply are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.

ATTESTED




Deponent

28-07-2020

-6-

Amir Nawab

OFFICE OF THE DC/COMMANDANT
MALAKAND LEVIES MALAKAND

NO. /LC
DATED MALAKAND THE 30/03/2020 ✓

OFFICE ORDER

In pursuance of the Notification No. SO(Levies)/HD/FLW/1-1/2013/Vol.1 dated 25-08-2016 Amended Service Rules 2016 Schedule III, issued by Government of Khyber Pakhtunkhwa Home & Tribal Affairs Department, Peshawar, No.3429 Subedar Amir Nawab of Malakand Levies, is hereby retired from service w.e.f 31/03/2020(AN) with full pensionary benefits on completion of 35-years requisite service length.

2281-84
No. /LC

DC/COMMANDANT
MALAKAND LEVIES MALAKAND

Copy forwarded to the:-

1. Section Officer (Levies), Home & TA's Department Khyber Pakhtunkhwa, Peshawar with reference to Notification referred above for information.
 2. District Accounts Officer, Malakand.
 3. Subedar Major Malakand Levies.
 - ✓ 4. Official concerned.
- For information & Necessary action.

[Signature]
DC/COMMANDANT
MALAKAND LEVIES MALAKAND

[Handwritten mark]

R/1

①

**BEFORE THE PEHSWAR HIGH COURT DĀR UL QAZA BENCH AT
SWAT**

WRIT PETITION NO. 565-m/2020

Mr. Amir Nawab, Subedar (BPS-13), S/O Ghulam Akbar, r/o, Sakhatkot, Malakand
Malakand Levies at Malakand. District Malakand.

- 7 -
Amir Nawab / 2
Sakhatkot, Malakand

..... PETITIONER

VERSUS

- 1- The Govt. OF Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary Home and Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Deputy Commissioner/ Commandant Malakand Levies, District Malakand.
- 4- The District Accounts Officer, District Malakand.
- 5- DIG, MALAKAND DIVISION, MALAKAND.

..... RESPONDENTS

**WRIT PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF THE ISLAMIC REPUBLIC OF
PAKISTAN, 1973 AS AMENDED UP TO DATE**

PRAYER:

That on acceptance of this Writ petition the impugned order dated 30.3.2020 whereby the petitioner has prematurely been retired from service in light of already repealed Rules may kindly be declared as illegal, unconstitutional and ineffective upon the rights of petitioner. That the respondents may further please be directed to re-instated the petitioner into service with all back benefits including seniority. Any other remedy which this august Court deems fit that may also be awarded in favor of the petitioner.

R/SHWETH:

ON FACTS:

1. That initially the petitioner was appointed as Sepoy (BPS-5) in the respondent's Department on 1.4.1985. That later on the petitioner was promoted to the Ranks of Lance Naik, Naik, Havaldar and Subedar (BPS-13) vide orders mentioned in the seniority list prepared for the employees of Malakand Levies. Copy of the Seniority list showing the dates of appointment and promotions is attached as Annexure A.

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Additional Registrar



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2. That the respondent Department Framed/formulated service structure for the Levies personnel vide Notification dated 4.2.2013 whereby the method for recruitment of Subedar Major (BPS-16) has been mentioned as 100% by promotion on the basis of seniority cum fitness from amongst Subedars (BPS-13). Copy of the Rules are attached as **annexure..... B.**
3. That according to the seniority list already attached as **annexure-A** the petitioner being the senior most employee of the respondent Force has been Ranked at Serial No.1 of the Seniority list. That petitioner was quite hopeful for his promotion to the Rank of Subedar Major (BPS-16) due to his excellent record of service and having seniority cum fitness.
4. That astonishingly vide Notification dated 28.11.2018 the private respondent who is at serial No.6 of the seniority list circulated for the employees of respondent Force has been promoted to the Rank of Subedar Major (BPS-16) while the petitioner being the senior most employee of the respondent Force has been ignored without any reason and rhyme. Copies of impugned Notification and charge report are attached as **Annexure C & D.**
5. That feeling aggrieved from the impugned dated 28.11.2018 the petitioner preferred Departmental Appeal dated 19.12.2018 before the respondent No.2 followed service appeal before the august Federal Service Tribunal, Islamabad but during the pendency of the said service appeal the 25th Constitutional Amendment Act, 2018 was promulgated wherein FATA and PATA were merged into the Province of Khyber Pakhtunkhwa. Copy of the service appeal are attached as annexure **E.**
6. That the said service appeal of the petitioner was disposed vide consolidated judgments dated 4.12.2019 with the directions to the respondents to decide the Departmental appeal of the petitioner. That the respondent no.2 vide appellate order dated 14.1.2020 rejected the Departmental appeal of the petitioner on no good grounds. Copies of the memo, judgment and rejection order are attached as annexure **F, G and H.**
7. That in light of the said amendment Act, 2018 the then Federal Levies Force Regulation, 2012 had lost their legal status, for working in the merged Districts. That giving a legal cover to, and making the Levies Force operational, and to continue their functions in the Khyber Pakhtunkhwa, the Khyber Pakhtunkhwa Levies Act, 2019 was promulgated. Copy of the Act is attached as annexure **I.**
8. That it is worth to mention here that under section 11 of the Khyber Pakhtunkhwa Levies Force Act, 2019 the Levies Force (Absorption in the Khyber Pakhtunkhwa Police) Rules, 2019 has

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been issued/framed and under Rule 3 of the ibid rules the Levies were absorbed in the Khyber Pakhtunkhwa Police and hence all the employees attained the status of Civil Servant of the Province of Khyber Pakhtunkhwa and as such the appellant filed service appeal before the Khyber Pakhtunkhwa service Tribunal, Peshawar against the promotion order dated 18.11.2018. Copy of the rules and service appeal are attached as annexure J & K.

9. That during the pendency of the said appeal the Deputy Commissioner/ Commandant Malakand, Levies, Malakand i.e. respondent No.3 issued the impugned order dated 30.3.2020 whereby the appellant has prematurely been retired from service in light of the already repealed rules of 2016. Copy of the impugned order is attached as annexure L.
10. That it is also very pertinent to mention that the Principal Bench of this august Court has granted interim relief in similar cases and as such under the principle of consistency reported in 2009 SCMR 1 the petitioner is entitled for similar relief. Copies of the order sheets are attached as annexure M.
11. That appellant feeling highly aggrieved filed Departmental appeal followed by the instant writ petition on the following grounds amongst the others. Copy of the Departmental appeal is attached as annexure N.

GROUND:

- A- That the impugned office order dated 30.3.2020 issued by the respondent No.3 is against the law, facts, norms of natural justice and materials on record hence not tenable and liable to be set aside.
- B- That appellant has not been treated by respondent Department in accordance with law and rules on the subject noted above and as such the respondent No.3 violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the impugned order dated 30.3.2020 is based on malafide and arbitrary intentions of the respondent No.3 hence not tenable in the eye of law and liable to be set aside.


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Additional Registrar

D- That the impugned order dated 30.3.2020 issued by the respondent No.3 is not in accordance with section 13 of the Civil servant Act, 1973 wherein the age for retirement has been mentioned as superannuation i.e.60 years of age.

E- That according to Article 38 (e) of the Constitution of Pakistan 1973 state is bound to reduce disparity in the income and earnings of individuals including persons in the services of Federation.



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- F- That the impugned Notification dated 30.3.2020 is based on discrimination and as such not tenable in the eye of natural justice.
- G- That appellant has been retired from service by the respondent No.2 under the already repealed rules, therefore the impugned order dated 30.3.2020 is void ab initio in the eye of law.
- H- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the writ petition of the petitioner may be accepted as prayed for.

INTERIM RELIEF:

That the operation of the impugned order dated 30.3.2020 may very kindly be suspended till the final disposal of the instant writ petition.

PETITIONER

(Signature)

AMIR NAWAB

THROUGH:

NOOR MUHAMMAD KHATTAK

&

(Signature)
SHAHZULLAH YOUSAFZAI
ADVOCATES

VERIFICATION:

It is verified that no other earlier writ petition was filed between the parties.

LIST OF BOOKS:

1. CONSTITUTION OF PAKISTAN.
2. SERVICES LAWS BOOK.
3. ANY OTHER CASE LAW AS PER NEED.

DEPONENT

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دعا کرتا ہوں

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Muhammad Raza/3

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3- یہ سب سے پہلے لیونز سے منسلک ہے

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OFFICE OF THE DC/COMMANDANT
MALAKAND LEVIES MALAKAND

NO. 8169 /LC
DATED MALAKAND THE 13/11/17

To,

The Section Officer (Police-II),
Home & Tribal Affairs Department,
Khyber Pakhtunkhwa,
Peshawar.

-12- R E

Subject:- APPLICATION
Memo:-

Amir Nawab

Reference your letter No.SO(Judl)/HD/6-194/017/AmirNawab dated
04-10-2017, on the subject noted above.

It is submitted that there is no regular Subedar Major posted in
Malakand Levies as of now. In order to run daily affairs, additional charge has been
given to Subedar Abdul Wahab.

Mr. Amir Nawab's application is not based on merit, because as per
Levies Rules, most competent person will be appointed as Subedar Major
considering the seniority. Moreover, as per recent Peshawar High Court, Mingora
Bench, Dar-ul-Qaza Swat Judgment, at least Graduation is mandatory for the
Subedar Major. But Amir Nawab is not educated, hence not fit to lead the force. He
is also not well trained in the investigation as well, the application may be dismissed.

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DC/COMMANDANT
MALAKAND LEVIES MALAKAND

W/O

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OFFICE OF THE
DCO/COMMANDANT MALAKAND LEVIES
MALAKAND

Dated: 15/08/2012

13-

OFFICE ORDER

Answer Reply/5

No. 7792 /LC. In suppression of this office order No.3517/LC dated 01/08/2012, wherein No.3429 Naib Subedar Amir Nawab of Malakand Levies, was demoted from the rank of Naib Subedar to the rank of Havildar is hereby withdrawn. Whereas stoppage of annual increments will intact with non-accumulative effect. Moreover, further promotion to the rank of Subedar, and posting as Post Commander etc responsibility like this would not be shouldered by him till his retirement. The intervening period from the date of suspension to the date of re-instatement may be treated as duty.

DCO/Commandant Malakand Levies
MALAKAND

No. 7793-95 LC dated 15/08/2012.
Copy forwarded to the:-

1. Sub Divisional Magistrate Dargai & Batkhela.
2. District Accounts Officer, Malakand.
3. Subedar Major, Malakand Levies, Malakand. for information & necessary action in continuation of this office endorsement No.3518-20/LC dated 01/08/2012.

DCO/Commandant Malakand Levies
MALAKAND

(Handwritten signature)

R/S



-14-

ANNEX Reply/6

OFFICE OF THE DC/COMMANDANT
MALAKAND LEVIES MALAKAND

NO. 3099 /LC
DATED MALAKAND THE 29/05 2020

OFFICE ORDER

In pursuance of the Notification No.SO(Levies)/HD/FLW/1-1/2013/Vol.I dated 25-08-2016 Amended Service Rules 2016 Schedule III, issued by Government of Khyber Pakhtunkhwa Home & Tribal Affairs Department, Peshawar, No.3438 Subedar Muhammad Jalil of Malakand Levies, who has completed the requisite 35-Years service is hereby retired from service w.e.f. 31-05-2020 (AN) as Subedar/S.I with full pensionary benefits.

DC/COMMANDANT
MALAKAND LEVIES MALAKAND

NO. 3/00-93 /LC

Copy with forwarded to the:-

1. Section Officer (Levies), Home & TA's Department Khyber Pakhtunkhwa Peshawar with reference to Notification referred above for information.
2. District Account Officer, Malakand.
3. Subedar Major Malakand Levies.
4. Official Concerned.

For information & necessary action.

Jumri to official

DC/COMMANDANT
MALAKAND LEVIES MALAKAND



-15-

OFFICE OF THE DC/COMMANDANT
MALAKAND LEVIES MALAKAND

NO. 3/06 /LC
DATED MALAKAND THE 29/05 /2020

OFFICE ORDER

In pursuance of the Notification No.SO(Levies)/HD/FLW/1-1/2013/Vol.I dated 25-08-2016 Amended Service Rules 2016 Schedule III, issued by Government of Khyber Pakhtunkhwa Home & Tribal Affairs Department, Peshawar, No.3440 Subedar Aminullah of Malakand Levies, who has completed the requisite 35-Years service is hereby retired from service w.e.f. 31-05-2020 (AN) as Subedar/S.I with full pensionary benefits.

DC/COMMANDANT
MALAKAND LEVIES MALAKAND

NO. 3/05-08 /LC

Copy with forwarded to the:-

1. Section Officer (Levies), Home & TA's Department Khyber Pakhtunkhwa Peshawar with reference to Notification referred above for information.
2. District Account Officer, Malakand.
3. Subedar Major Malakand Levies.
- ✓ 4. Official Concerned.

For information & necessary action.

Given to appellant

DC/COMMANDANT
MALAKAND LEVIES MALAKAND



-16-

OFFICE OF THE DC/COMMANDANT
MALAKAND LEVIES MALAKAND

NO. 1 /LC
DATED MALAKAND THE 10/6 /2020

OFFICE ORDER

In pursuance of the Notification No.SO(Levies)/HD/FLW/1-1/2013/Vol.I dated 25-08-2016 Amended Service Rules 2016 Schedule III, issued by Government of Khyber Pakhtunkhwa Home & Tribal Affairs Department, Peshawar, No.3443 Subedar Ghafoor Khan of Malakand Levies, who has completed the requisite 35-Years service is hereby retired from service w.e.f. 10-06-2020 (AN) as Subedar/S.I with full pensionary benefits.

3382-85
NO. 3382-85 /LC

DC/COMMANDANT
MALAKAND LEVIES MALAKAND

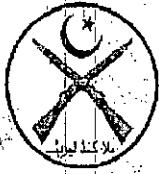
Copy with forwarded to the:-

1. Section Officer (Levies), Home & TAs Department Khyber Pakhtunkhwa Peshawar with reference to Notification referred above for information.
2. District Account Officer, Malakand.
3. Subedar Major Malakand Levies.
- ✓ 4. Official Concerned.

For information & necessary action.

Just to proceed

DC/COMMANDANT
MALAKAND LEVIES MALAKAND
7/6



OFFICE OF THE DC/COMMANDANT
MALAKAND LEVIES MALAKAND

NO. /LC
DATED MALAKAND THE 22/4 /2020

OFFICE ORDER

Consequent upon the recommendation of Departmental Promotion Committee held on 23-04-2020 in the office of undersigned, the following Levy personnel are hereby promoted to their next higher rank noted against each on the basis of seniority- cum- fitness with immediate effect:-

*17-
NAIVE COPY/7*

S.No	Name of Levy personnel	From	To
①	No.3585 Amin-ul-Haq	Naib Subedar/ASI	Subedar/Sub inspector
2.	No.4214 Bashir Hussain	Havildar/Head Constable	Naib Subedar/ASI
3.	No.4320 Muhammad Razzaq	Naik/Constable B-I.LHC	Havildar/Head Constable
4.	No.4396 Farid Ullah	Lance Naik/ Constable A-I	Naik/Constable B-I.LHC
5.	No.4397 Saeed Khan	Lance Naik/ Constable A-I	Naik/Constable B-I.LHC
6.	No.4509 Zia Ullah	Sepoy/Constable	Lance Naik/Constable A-I
7.	No.4510 Muhammad Zahir	Sepoy/Constable	Lance Naik/Constable A-I

*جو کوسٹ قابل صواب استیفاء
کے سبب اس میں کمی ہو رہی ہے*

DC/COMMANDANT
MALAKAND LEVIES MALAKAND

NO. 2675-78 /LC

Copy forwarded to the:-

1. Secretary, Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar for information please.
2. District Accounts Officer, Malakand.
3. Subedar Major Malakand Levies.
4. Official concerned.

For information and necessary action.

Office

For information

DC/COMMANDANT
MALAKAND LEVIES MALAKAND

*Subedar Major
Malakand Levies
22/04/2020*

[Signature]

[Signature]
DC/COMMANDANT
MALAKAND LEVIES MALAKAND



OFFICE OF THE DC/COMMANDANT
MALAKAND LEVIES MALAKAND

NO. _____ /LC
DATED MALAKAND THE 25/6 2020

OFFICE ORDER

Reply/B - 18-

Consequent upon the recommendation of Departmental Promotion Committee meeting held on 23-06-2020 in the office of undersigned, the following Levy personnel are hereby promoted to their next higher rank noted against each on the basis of seniority- cum- fitness with immediate effect:-

S.No	Name of Levy personnel	From	To
1.	No.3636 Sami Ullah	Naib Subedar/ASI	Subedar/Sub Inspector
2.	No.3689 Muhammad Ikram	Naib Subedar/ASI	Subedar/Sub Inspector
3.	No.3783 Amir Zaman	Naib Subedar/ASI	Subedar/Sub Inspector
4.	No.4215 Khalil-ur-Rehman	Havildar/Head Constable	Naib Subedar/ASI
5.	No.4216 Gran Bacha	Havildar/Head Constable	Naib Subedar/ASI
6.	No.4217 Mian Said Ali	Havildar/Head Constable	Naib Subedar/ASI
7.	No.4323 Muhammad Jan	Naik/Constable B-I.LHC	Havildar/Head Constable
8.	No.4324 Noor Hadi	Naik/Constable B-I.LHC	Havildar/Head Constable
9.	No.4326 Inam-ul-Haq	Naik/Constable B-I.LHC	Havildar/Head Constable
10.	No.4398 Muhammad Khan	Lance Naik/ Constable A-I	Naik/Constable B-I.LHC
11.	No.4399 Bakht Moon	Lance Naik/ Constable A-I	Naik/Constable B-I.LHC
12.	No.4400 Wasi Ullah	Lance Naik/ Constable A-I	Naik/Constable B-I.LHC
13.	No.4511 Ali Rehmat	Sepoy/Constable	Lance Naik/Constable A-I
14.	No.4512 Zaib Ali Khan	Sepoy/Constable	Lance Naik/Constable A-I
15.	No.4513 Dera Wadan	Sepoy/Constable	Lance Naik/Constable A-I

Consequent promotion

NO. 3833-36 /LC

DC/COMMANDANT
MALAKAND LEVIES MALAKAND

Copy forwarded to the:-

1. Secretary, Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar for information please.
2. District Accounts Officer, Malakand.
3. Subedar Major Malakand Levies.
4. Official concerned.

For information and necessary action.

2/8

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

W.P.No. S&7-m2012

Subedar Major Muhammad Humayoon Khan
Malakand Levies at Malakand.....

Petitioner

Versus

(1) Subedar Gul Roz Khan
Malakand Levies at Malakand, KPK

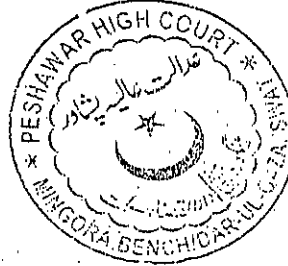
(2) Secretary Home & Tribal Affairs,
Civil Secretariat, Peshawar

(3) District Coordination Officer/ Commandant
Levies at Malakand

4) Govt. of Khyber Pakhtunkhwa Khwa, through
Secretary Home & Tribal Affairs, Civil Secretariat Peshawar

5) Federal Govt. through Secretary Saifron Pak,
Civil Secretariat, Islamabad.

6) Secretary Saifron, Pak, Civil Secretariat, Islamabad



.....Respondents

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

Respectfully Sheweth;

Petitioner humbly submits as under:

1. That petitioner is serving as Subedar Major, Malakand Levies and performing his duties efficiently, diligently and received Commendation Certificates from the authorities and is maintaining good liaison and coordination with the Pak Army in the Malakand Agency.

FILED TODAY

Additional Registrar

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JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

W.P. No. 587-M/2012

Subedar Major Mithummad Hamayun Khan
(Petitioner)

Versus:

Subedar Gul Roz Khan and 5 others
(Respondents)

Present:

Barrister Dr. Adnan Khan, Advocate for
the petitioner.

M/S Siter Muhammad Iqbal and
Aziz-ur-Rehman, Advocates
for respondent No.1.

Mr. Sabir Shah, Additional Advocate
General for respondents No. 3, 3 & 4.

Mian Hussain Ali, Deputy Attorney
General for respondents No. 5 & 6.



Date of hearing: 26.01.2017

Date of announcement: 14.02.2017

JUDGMENT

MUSSARAT HILALI, J.- Through this writ petition, the petitioner has prayed this Court for declaring the orders dated 19.10.2012 and 21.11.2012 passed by respondents No.2 & 6 respectively as, without lawful authority and jurisdiction and against the service rules for Provincially Administered Tribal Areas (PATA) Levies Force, 2012 with further prayer to restore the order dated 25.04.2012 of the respondent No.3 and the petitioner be

Page No. 10

W.P. No. 587-M of 2012 Subedar Major M. Hamayun Khan Vs. Subedar Gul Roz Khan and others

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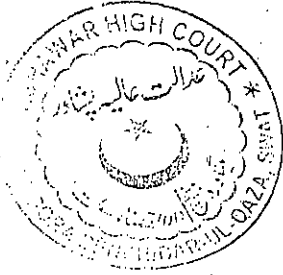
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allowed to continue his service till attaining the age of 60 years.

2. Brief facts of the case forming background of the instant writ petition are that petitioner was serving as Subedar Major, Malakand Levies. His service was extended by Commandant Malakand Levies (Respondent No.3) vide order dated 25.04.2012. The relevant para of the order is reproduced herein below for ready reference.

"Since, he has neither completed 30-years service nor attained the age of 50-years, hence in exercise of the powers conferred upon the undersigned vide Para-2 sub-Para (iii) of Malakand Levies Rules, 1962, he is allowed to continue his work as Subedar Major of Malakand Levies with effect from 01.06.2012 to 31.05.2013".

The above order was challenged by respondent No.1 Gul Roz Khan, through a departmental appeal which was accepted by Secretary Home and Tribal Affairs, Civil Secretariat, Peshawar (Respondent No.2) vide order dated 19.10.2012, resultantly the order dated 25.04.2012 of the Commandant Malakand Levies/D.C.O Malakand was set



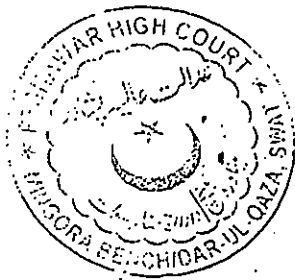
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aside. The concluding Para of the order is as follows:-

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"5. In light of the above facts, the departmental appeal of Subedar Gul Roz Khan of Malakand Levies is accepted and the extension order of Subedar Major Hamayun granted by DCO Malakand dated 25.04.2012 is hereby cancelled and his retirement be notified from 31.05.2012. DPC meeting for the promotion of the appellant be convened within a week time."

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Being aggrieved, petitioner filed appeal against the order dated 19.10.2012 before Secretary SAFRON, Civil Secretariat, Islamabad (Respondent No.6) which was dismissed vide order dated 21.11.2012. The relevant para of the order is as under:

"(ii) the case file was perused and arguments were heard. The main argument which is pivotal for just decision of this case is whether on the date of extension (25.04.2012) D.C.O Malakand was empowered or not. It has been proved that once the post of Subedar Major was upgraded from BPS-7 to BPS-16. The D.C.O had no power to promote or to give extension to any officer in BPS-16. An order with no legal authority is null and void in eyes of law".

The petitioner, through this petition, has challenged the above concurrent

Tajam/PS* I.P. No. 567-M of 2012 Subedar Major M. Hamayun Khan Vs. Subedar Gul Roz Khan

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orders i.e dated 19.10.2012 and 21.11.2012
passed by the respondents No.2 and 6,
respectively. It is noteworthy that prior to
institution of this writ petition, petitioner had
filed W.P No. 252/2012 before this Bench
wherein he had challenged the request of
Chief Coordinator of Private Minister
Secretariat for assignment of charge to
Subedar Gul Roz Khan despite that the service
of the petitioner had been extended by D.C.O
Malakand vide order dated 25.04.2012. The
said writ petition was dismissed by this Court
vide judgment dated 28.06.2012

3. Barrister Dr. Adnan Khan
Advocate, learned counsel appearing on behalf
of petitioner contended that petitioner is the
senior most in the Levies Force Malakand and
was promoted to the rank of Subedar Major on
01.06.2008 for a period of 4 years under Dir
and Malakand Levies Rules, 1962, as such, his
tenure of service on the same rank was upto
01.06.2012. Learned counsel further
contended that vide order dated 25.04.2012,
Commandant Malakand Levies/D.C.O, being



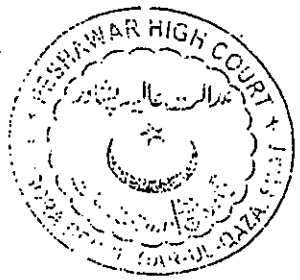
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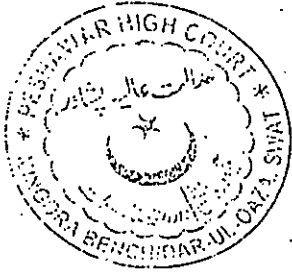
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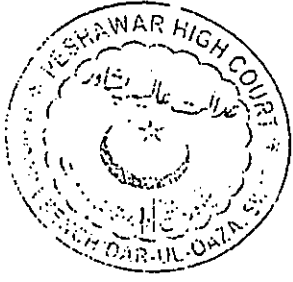
competent authority, granted one year extension to the petitioner under the Rules *ibid*. Learned counsel was of the view that under the former Rules of 1962, a levy personnel was to be retired on completion of 30-year service or attaining the age of 50 years which was not the case of the petitioner, even on promulgation of Provincially Administered Tribal Areas (PATA) Levies Force (Service) Rules, 2012 (statutory Rules) on 13th September, 2012, the petitioner was below 50 years of age whereas the age of superannuation was fixed as 60 years under the statutory Rules. Learned counsel added that the statutory rules should have been extended to the petitioner especially when his extension order was in the field. Learned counsel was of the view that petitioner was to be retired on 30.05.2013 after expiry of the extension period under Dir and Malakand Levies Rules, 1962, however, the petitioner was retired on 05.11.2012 effective from 31.05.2012 pursuant to order dated 19.10.2012 of Secretary Home, Khyber Pakhtunkhwa

-25-



while accepting departmental appeal of the respondent Gul Roz Khan. Regarding jurisdiction of this Court, learned counsel argued that being not civil servants, levy officials cannot approach Service Tribunal for redressal of their grievances, as such, they can invoke the extraordinary jurisdiction of the High Court. While summing up his arguments, learned counsel prayed that orders dated 21.11.2012 and 19.10.2012 of Secretary SAFRON and Secretary, Home and Tribal Affairs, KPK be set aside and by giving extension to petitioner on restoration of order dated 25.04.2012 of the D.C.O, Malakand, the petitioner may be permitted to continue service till attaining the age of 60 years. Reliance was placed on 2016 SCMR 2146, 2015 PLC (C.S) Baluchistan 393, PLD 2016 Peshawar 35.

4. Sher Muhammad Khan and Aziz-ur-Rehman, learned counsels appearing on behalf of respondent No.1 Gul Roz Khan, argued that the respondent had already challenged the extension order of the



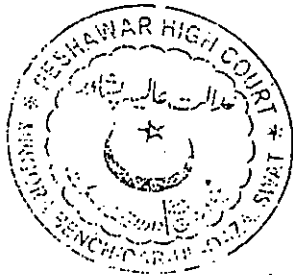
petitioner through departmental appeal which was allowed. The said order was challenged by the petitioner before this Court through a writ petition, which was dismissed while the august Supreme Court dismissed the petition of respondent No.1 on the ground of maintainability whereas his departmental appeal was accepted by Secretary Home, Khyber Pakhtunkhwa vide order dated 19.10.2012, consequently, retirement of the petitioner was ordered w.e.f 31.05.2012. Learned counsels concluded that promotion to the higher rank is the right of respondent No.1 which cannot be taken away from him through illegal and invalid orders. Reliance was placed on 2015 SCMR 43, PLD 1969 Supreme Court 187, PLD 2016 Supreme Court 995, 2013 SCMR 314, 2005 SCMR 1785, 2016 SCMR 816, 2016 SCMR 108 and 2015 PTD (Lahore) 2368.

5. Mr. Sabir Shah, learned Additional Advocate General representing the official respondents of the Provincial Government argued that petitioner has

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completed his tenure under the existing Rules, and he was retired in accordance with law. Learned A.A.G. submitted that there is no force in plea of the petitioner for setting aside the impugned order dated 19.10.2012 passed by Secretary Home Department, Khyber Pakhtunkhwa as the same is in accordance with law and the relevant Rules. In support of his arguments, learned A.A.G. placed reliance on 2016 SCMR 69, 2013 PLC (C.S) 1223, 2016 SCMR 2098, PLD 2007 High Court (AJ&K) 01, 2016 SCMR 2146 and 2015 SCMR 739.

27-



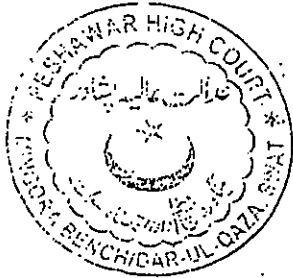
6. We have heard arguments of learned counsel for the parties and have gone through the record in light of their valuable assistance.

7. First of all we would like to dispose of C.M No. 1010/2013, C.M No. 340/2014 and C.M No. 385/2015 in the instant writ petition.

Through C.M No. 1010/2013, applicant Subedar Badshah Rehman seeks his

impleadment as petitioner in the instant writ petition. Contention of the applicant is that he has the identical case and is senior most after respondent No.1. He has attached seniority list with his application which shows that respondent No.1 Gul Roz Khan is at Serial No.9 of the list of Subedars whereas the applicant is at Serial No. 5 of the list of Naib Subedars, hence, nine other levy officials are intervening between the respondent No.1 and the applicant which fact negates the contention of the applicant of being senior, most after respondent No.1. Therefore, the applicant has no identical case as petitioner, hence, C.M No. 1010/2013 is dismissed.

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Through C.M No. 385-M/2015, the applicant Elum Khan seeks his impleadment in the instant writ petition as necessary party. In the seniority list attached by applicant Subedar Badshah Rehman with his C.M, the applicant Elum Khan is senior to respondent No.1 Gul Roz Khan and his case is identical to respondent No.1, therefore, this C.M is

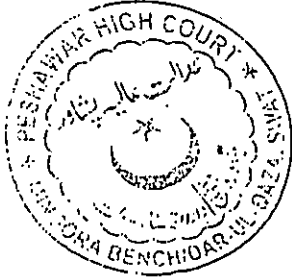
Team UPS

WP No. 507-M of 2012 Subedar, Magh M. Hameed Khan Vs. Subedar G. Hameed Khan

allowed and the applicant Elum Khan is impleaded as respondent in the writ petition.

8. The levies force was established in Malakand area during British rule. The levies personnel performed their duties and functions similar to those of police, however, it comes under the administrative control of SAFRON division Government of Pakistan. The Subedar Major is the second highest ranking officer after Deputy Commissioner who is also the commandant.

29-

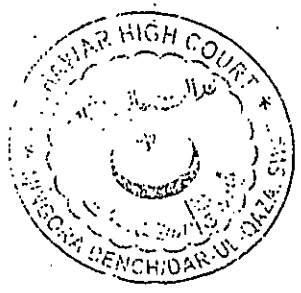


The facts giving rise to this writ petition lie in a very narrow compass. The petitioner was recruited in Malakand Levies as Sepoy under the Rules of Service for Malakand and Dir Levies 1962. Under Rule 3(i) of the said rules, criteria for length of service was provided as under.

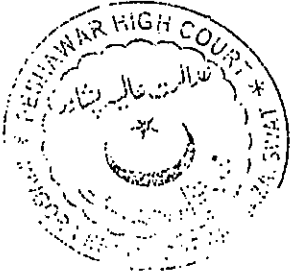
- Rule 3 (i)--- all sepoy will retire after 18 years of service.
- (ii) All non-commissioned officers will retire after 25 years of service.
- (iii) All other will retire on attaining the age of 50 years or completion of service whichever is earlier.

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30-



The case of petitioner is that he was promoted as Subedar Major on 01.06.2008. Under Rule 2 sub-rule (iii), the length of term of Subedar Major was provided as 4 years which was extendable for further one year by local administration. The petitioner completed his term as Subedar Major, however, he was given one year further extension by D.C.O on 25.04.2012. Aggrieved of the order dated 25.04.2012, respondent No.1 (Gul Roz) filed a departmental appeal which was allowed and the order dated 25.04.2012 was set aside by Secretary Home and Tribal Affairs (respondent No.2) vide order dated 19.10.2012. The appeal filed thereagainst was also dismissed by Secretary SAFRON (respondent No.6) on 21.11.2012. Both these orders have been impugned before this Court on the ground that under rule 16 of the new rules promulgated on 13.09.2012, the force personnel shall retire from service on attaining the age of superannuation i.e 60 years or he may opt for retirement after



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completing 25 years of regular service. The contention of learned counsel for the petitioner is that the new rules were promulgated during the period when he was in service vide order dated 25.04.2012 and thus was entitled to extension in retirement age. The argument of learned counsel for the petitioner has no force in it as the post of Subedar Major has been upgraded from BPS-7 to BPS-16 in 2010 vide notification F.4(5)-LK/2009 dated 20.02.2010 by the Federal Government and thereafter the SAFRON division declared the Secretary Home and Tribal Affairs as Chairman for the promotion of the Subedar to Subedar Major. Under the said rule the D.C.O was neither competent to promote Subedar to Subedar Major nor to grant extension to him, hence, the extension order dated 25.04.2012 was made contrary to the rules. Such an order would be treated as nullity whenever, wherever and for whatever purpose it is sought to be used or relied on as a valid order. Thus, for the said illegality committed by D.C.O Malakand, the petitioner cannot be

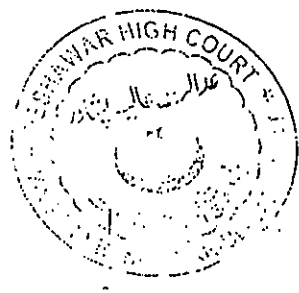
32-



deemed to be in service after 31.05.2012 as his tenure as Subedar Major has already come to an end on the said date and, as such, by operation of law the extended period of service of the petitioner had expired on 31.05.2012. Now this court cannot issue a writ of mandamus for treating the petitioner to be in service at the time of promulgation of new rules as a writ of the nature prayed for can be granted only to enforce a legal right of an aggrieved person and shall not be issued to perpetuate illegality. The judgments relied upon by learned counsel for the petitioner have no relevance to the facts and law in the instant writ petition.

9. In addition to above, this writ petition is not maintainable on the ground that earlier W.P. No. 252/2012 filed by the petitioner before this Court was dismissed by this Court on 28.06.2012, however, the said judgment was allowed by the august Supreme Court on 02.10.2012. The august Supreme in its judgment delivered on 02.10.2012, held that the employees of Malakand and Dir

Levies Force are not employees of statutory body, therefore the writ filed by them before the High Court was not maintainable. When confronted with the judgment of the august Supreme Court, learned counsel for the petitioner cited a judgment of the august Supreme Court delivered on 24.08.2016 in case titled "*Muhammud Rafi and another Vs. Federation of Pakistan and others*" (2016 SCMR 2146) wherein it was held that.



"Aggrieved person could invoke the constitutional jurisdiction of the High Court against a public authority if he is satisfied that the act of the authority was violative of the service regulations even if they were non-statutory".

10. Under Article 189 of the Constitution of Islamic Republic of Pakistan, any decision of Supreme Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all the Courts in Pakistan. Undoubtedly, the judgment of Supreme Court deciding the question of law would be binding.

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on similar subsequent cases, however, it does not re-open already decided cases.

11. Considering the facts mentioned above in its entirety and the proposition of law, this Writ Petition is dismissed on merits as well as on maintainability. At this juncture, this Court feel agonized to note that the rules regulating the service and promotion of levies personnel have been time and again subjected to various amendments and repeals besides, the same do not prescribe any specific qualification for the post of Subedar Major though the same is the second highest rank in the levies force. The repeated changes in the criteria for promotion to the rank of Subedar Major qua the age and tenure of levies personnel have not only created ambiguity but also a sense of insecurity amongst the force relating to their service and promotion in future. Therefore, a clear and uniform policy is required to be made by the Provincial Government in order to remove the existing ambiguity in the present rules as well as to prescribe academic qualification not below



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graduation for the post of Subedar Major. The Provincial Government is directed to make an unequivocal policy of promotion for levies force as early as possible preferably within three months. C.O.C No. 12/2013, C.O.C No. 02.2016, C.M No.560/2015, C.M No. 24/2017 are also dismissed for having become infructuous.



Sd. Musarat Hilali-J
Sd. Mohammad Ibrahim Khan-J

Announced
14.02.2017

Certified to be

[Handwritten Signature]
EXAMINER
Peshawar High Court, Faislaabad
Authorized Under Article 67 of Constitution

HT-6
24/4

27/4/17

[Handwritten Signature]

-36-

To,

The Section Officer (Judicial),
Home & Tribal Affairs Department,
Khyber Pakhtunkhwa,
Peshawar.

Reply/10

Subject:- APPLICATION OF SUBEDARS FARID ULLAH AND SHERZADA
FOR PROMOTION TO THE RANK OF SUBEDAR MAJOR


Memo:-

Reference your letter No.SO(Police)/HD/2-1/Vol-IV/018 dated 02-07-2018, on the subject noted above.

The requisite views/information is as under:-

Mr. Farid Ullah Subedar is of 6th in serial number as per seniority list of Subedars. The record of this office shows that from S.No.1 to 5 are illiterate, while Mr. Farid Ullah is a Matric and remained Moharrir, Investigation Officer, Naib Court and Post Commander in various Levy Posts. Presently, he is performing his duty as Subedar Major (Investigation) at Levy Headquarter.

Furthermore, Mr. Sher Zada Subedar is at serial No.9 of the seniority list. He is a Matric and remained as Post Commander in various Levy Posts. The Serial No.7 & 8 are also illiterate. A fresh copy of seniority list of Subedars of Malakand Levies is enclosed as desired.


DC/COMMANDANT
MALAKAND LEVIES MALAKAND



R/10

MC Hangu
Lower School
Camp



37-

College
POLICE TRAINING SCHOOL,
HANGU

TERM ENDING 30/3/1993

Certificate of Proficiency
Lower Class

Certified that Mr. Faridullah No 3463

of Malakand - Levies

has passed the prescribed Examination and is qualified for promotion
to the rank of Head Constable.

Order of merit 27/171

Law: 508

Drill: 185

Total: 693
HANGU

Deputy Commissioner
Principal
Police Training School
Hangu.

.....30.3..... 1993.



REGISTERED

OFFICE OF THE DC/COMMANDANT
MALAKAND LEVIES MALAKAND

NO. 2117 /LC
DATED MALAKAND THE 20/3/18

To,

The Incharge,
Chief Minister's Complaint Cell,
Mardan.

Reply/11

-38-

Subject:- COMPLAINT OF AMEER NAWAB

Memo:-

Reference your letter No.379/2018/CM/C.C(M) dated 15-02-2018, on the subject noted above.

It is submitted that there is no regular Subedar Major posted in Malakand Levies as of now. In order to run daily affairs, additional charge has been given to Subedar Abdul Wahab.

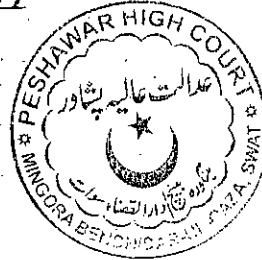
Mr. Amir Nawab's complaint is not based on merit, because as per Levies Rules, most competent person will be appointed as Subedar Major considering the seniority. Moreover, as per recent Peshawar High Court, Mingora Bench, Dar-ul-Qaza Swat Judgment, at least Graduation is mandatory for the Subedar Major. But Amir Nawab is not educated, hence not fit to lead the force. He is also not well trained in the investigation as well. Furthermore, the complainant had also filed an appeal before the appellant authority i.e. Secretary, Home & TA's Department, Khyber Pakhtunkhwa, Peshawar, in which view/comments was sought from this office, which was furnished vide this office letter No.6169/LC dated 13-11-2017 (Copy enclosed).

DC/COMMANDANT
MALAKAND LEVIES MALAKAND

R/11

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

C. M No. 599 2019
In
W.P No. 1156-M/2018



Amir Nawab _____ Petitioner
Versus
Govt of KP & others _____ Respondents

APPLICATION FOR WITHDRAWAL

Respectfully Sheweth:

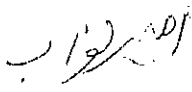
1. That the above titled case is pending adjudication before this Honorable court which is fixed for 30/04/2019.
2. That petitioner wants to approach federal service tribunal for his redressal, therefore wants to withdraw the instant writ petition.

In view of the above, it is therefore, humbly prayed that on acceptance of this application, the captioned writ petition may kindly be allowed to be withdrawn.

ATTESTED
Examiner
Peshawar High Court Bench
Mingora Dar-ul-Qaza, Swat

Petitioner

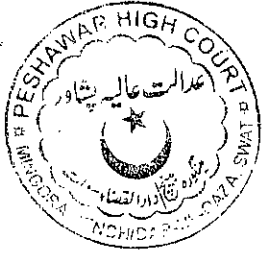
FILED TODAY
11/04/2019
MINGORA BENCH
PESHAWAR HIGH COURT


AMIR NAWAB

CNIC: 15401-0705504-1

(3)

- C. That the vide impugned notification issued by respondent No. 2, essence of insecurity of service and frustration has been created in other officials senior to the respondent No. 5.
- D. That the impugned notification is ultra constitutional by way of Article 04 and 27 of the Constitution of Islamic Republic of Pakistan 1973, as well as, is violative of the judgments of this Honorable Court, on the subject.
- E. That other grounds will be advanced during course of arguments by the prior permission of this Honorable Court.



It is therefore, most humbly prayed that on acceptance of the instant writ petition,

- i. The impugned notification of promotion of respondent No. 5, dated 28-11-2018, may kindly be set aside, declared illegal and violative of law on the subject and
- ii. The respondent No. 2 may kindly be directed to promote the petitioner to the post of Subedar Major, being senior most in seniority list of Subedars.
- iii. Any other writ /order/direction deemed proper and just in the circumstances of the case may also be issued/order/given.


ATTESTED
Examiner
Peshawar High Court Bench
Mingora Dar-ul-Qaza, Swat

FILED TODAY

03 DEC 2018

Additional Registrar

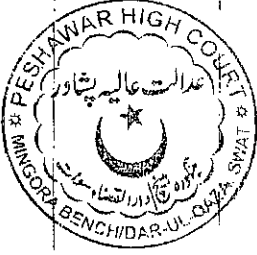
Petitioner
Through Counsel


SABIR SHAH
Advocate High Court

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

FORM OF ORDER SHEET

Court of
 Case No. of



Serial No. of order or proceedings	Date of order or proceedings	Title or other Proceedings with designation of Judge and that of parties or counsel where necessary
	16.04.2019	<p><u>C.M 599-M/2019 in W.P 1156-M/2018</u></p> <p>Present: Mr. Sabir Shah, Advocate alongwith Petitioner in person. ***</p> <p><u>FOOH-UL-AMIN KHAN, J.-</u> This C.M has been moved by the petitioner for withdrawal of the main writ petition on the ground that he wants to approach the proper forum i.e. Federal Service Tribunal.</p> <p>2 In view of the above, this C.M is allowed. Resultantly, the main Writ Petition bearing No.1156- M/2018 is dismissed as withdrawn.</p> <p><i>Announced</i> 16.04.2019</p> <p align="right"><i>[Signature]</i> <u>JUDGE</u></p> <p>S.No. <u>04</u> Name of Applicant <u>Alamgir</u> Date of Presentation of Applicant <u>02-03-2021</u> Date of Completion of Copies <u>04</u> No of Copies <u>05</u> Urgent Fee <u>20/-</u> Fee Charged <u>20/-</u> Date of Delivery of Copies <u>02-03-2021</u></p> <p align="right"><i>[Signature]</i> <u>JUDGE</u></p>

Certified to be true copy

Subscribed by: (10) HON'BLE MR. JUSTICE FOOH-UL-AMIN KHAN
 HON'BLE MR. JUSTICE SYD. ARSHAD ALI

[Signature]
EXAMINER 02-03-2021
 Peshawar High Court, Mingora/Dar-ul-Qaza, Swat
 Authorized Under Article 17 of Qanoon-e-Shahadat Order 1947

Office
 20/4



2017 P L C (C.S.) 864

[Sindh High Court (Hyderabad Bench)]

Appellant

Before Syed Hassan Azhar Rizvi and Salahuddin Panhwar, JJ

MIR HASSAN

Versus

PROVINCE OF SINDH through Secretary and 3 others

Const. Petition No.D-294 of 2011, decided on 22nd September, 2015.

(a) Sindh Civil Servants (Appointment, Promotion and Transfer) Rules. 1974---

---R. 11-A---Notification No.SORI(SGA&CD)2-3/92 dated 17-07-2007
---Appointment of one of the children of deceased civil servant---Procedure---Vested right---Scope---Petitioner moved application for his appointment on deceased quota but same was declined---Validity---Vested right could be taken away retrospectively only through an enactment passed by an Authority or Parliament but not through subordinate legislation i.e. through issuance of notification by executive---Change in R.11-A of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 had been brought through a notification which could only have prospective effect---Notification issued on 17-07-2009 should become applicable from 17-07-2009 onwards only---If a right of employment had already accrued to any of the children of a deceased or invalid or incapacitated civil servant then he/she could not be deprived of the benefit accrued through a subsequent notification---Department was directed to issue appointment order in favour of petitioner on any post for which he qualified within a period of two months---When application for appointment was moved the Authority did not decide the same at its own and summary(ies) were submitted to Chief Minister or other high-ups for approval to fill-up post(s) under R.11-A of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974---Said Rule did not insist for any such procedure and sending summary was not within object of the same---Authority was directed not to resort such procedure in future---Summaries, if any, moved by the department(s)' either to Chief Minister or any other superior authority be considered to have never been sent/moved and department should decide the fate of such applications within prescribed period---Benefit of R.11-A of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 was applicable to all civil servants, therefore, Chief Secretary (Sindh) was directed by the High Court to circulate a directive to all the head of the departments that in future the department should intimate families of all such civil servants with regard to their right to apply and deserving ones be given their due right---Such procedure be completed within a period of three months and if applicant of family of such civil servant qualified the requirement then same should be given job---Chief Secretary (Sindh) should also frame a policy whereby son-quota/deceased-quota was not exploited by the Authority rather merit was considered in

such recruitment---Constitutional petition was allowed in circumstances.

(b) Notification---

----Notification would operate only prospectively.

(c) Administration of justice---

----Things should be done strictly in the manner provided for doing so or not otherwise.

(d) Vested right---

----Vested right could be taken away retrospectively only through an enactment passed by an assembly or parliament but not through subordinate legislation i.e. through issuance of notification by executive.

Ahsan Gul Dahri for Petitioner.

Allah Bachayo Soomro, Addl. A.G.

Date of hearing: 22nd September, 2015.

ORDER

SALAHUDDIN PANHWAR, J.--- Through instant petition, petitioner Mir Hassan has sought following relief(s):-

(a) That this Honourable Court may please to direct the above respondents to appoint (appoint) the petitioner against the suitable job as clear vacancies are existing in each category from BPS-1 to 10;

(b) To award cost to the petitioner;

(c) Any other relief which this Honourable Court deems fit proper under the circumstances may also be granted to the petitioner.

2. The facts, describing necessary back-ground, are that petitioner is real son of Sain Bux Chakrani, who was serving as Tapedar in Revenue Department and died during service on 18.10.2001. The petitioner after death of his father approached to respondent No.4 by moving proper application for his appointment on deceased quota as provided in Rule 11A of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, which was forwarded to respondent No.2. The respondent No.2 directed to inform the respondent No.4 that application of petitioner is not covered by new policy dated 17th July, 2009.

3. It is further case of the petitioner, that in similar circumstances sons of some of deceased employees of same department approached to this Court by filing C.P. No.D-353 of 2007, which was disposed of vide order dated 14.5.2009, directing the

respondents to decide the cases of those petitioners for appointment under Rule 11-A ibid within one month. Some of those candidates were appointed by respondents, whereas the petitioner was refused.

4. In response to notice(s), the respondent No.3 has filed comments disputing the claim of the petitioner with reference to new policy dated 17.7.2009 and that of cut-off date per Notification No.SORI (SGA&CD)2-3/92 dated 17th July, 2007.

5. Mr. Allah Bachayo Soomro, learned Addl. Advocate General, on being confronted with order of this Court (Sukkur Bench) passed in C.P. No.D-614/ 2012, conceded to the relief claimed by petitioner. The operative part of such order reads :-

'... however, it is stated that the cut off date for the appointment against son quota was within two years of the death of the petitioner's father. Even in Constitution Petition No.D-611 of 2009 re: Irrigation and Power Employees Union SCARP Project, Khairpur v. Province of Sindh and others, the Division Bench of this Court held as under:

'It is by now well settled that notification operate only prospectively. A vested right can be taken away retrospectively only through an enactment passed by an assembly or parliament but no through sub-ordinate legislation i.e. through issuance of notifications by executive. In the present case, as the change in Rule 11-A of Sindh Civil Services (Appointment, Promotion and Transfer) Rules, 1974 has been brought about through a notification, it can only have prospective effect. Therefore, the notification issued on 17.7.2009 shall become applicable from 17.7.2009 onwards only. Prior to this date, if a right of employment has already accrued to any of the children of a deceased or invalid or incapacitated Civil servant then the former cannot be deprived of the benefit accrued to him under notification dated 11.3.2008 through a subsequent notification issued on 17.7.2009. These petitions are therefore allowed to the extent stated above. Office to issue copy of this order to the learned AAG'.

6. Consequently, instant petition is allowed. The respondents are directed to issue appointment order to the petitioner on any post, for which he qualifies, within a period of two months after receipt of this order and submit compliance report through Additional Registrar of this Court.

7. However, while parting, we cannot ignore a regretting fact that despite clear language of Rule-11-A the members of a deceased's family have to run from pillar to post and even to seek intervention of this Court for a relief which otherwise appears to be assured by use of the -word 'shall' in the Rule-11-A. Let's have a look at the Rule 11-A which reads as:--

'Where a civil servant dies while in service or is declared invalidated or incapacitated for further service one of his children shall be provided job on any of the basic pay scales Nos.1 to 15 in the Department where the deceased

declared in validated or incapacitated civil servant was working without observing the prescribed formalities if such child is otherwise eligible for the post in accordance with the recruitment rules.'

The object and purpose of use of phrase "one of his children" in said rule prima facie appear to be nothing but an assurance of job as a 'help' to the family of such civil servant. However, such mandatory assurance (help) has been subject to 'applying within a period of two years of death or declaration of invalidity or incapacity of civil servant'.

8. The earlier portion of the said rule appears to be addressing the 'Authority' whereby bringing it under a mandatory obligation (by use of word shall) to provide a job to any of the unemployed children of such civil servant but by later portion such has been made subject to activation of such family itself but without any mechanism to first inform the family of such condition which may result in costing it (family) the benefit of such 'rule' even. Let it be clear that said 'rule' addresses the family of such a civil servant and even the later portion concludes to a result that it is not necessary for applying such right that there must have been publication of jobs which usually is not advertised on falling of a single vacancy. Thus, reading of the above 'rule' as a whole would result that if such move (applying under this rule) is not within a period of two years the family shall stand deprived of benefit of rule which in all senses shall mean a penal one which should not happen without an opportunity. Therefore, if the 'Authority' does not intimate to family of such civil servant before expiry of due date the object of such insertion/ amendment cannot be said to have served its purpose and object but we regretfully note that we have not experienced a single case where department itself activated to serve the object of the said rule.

9. It has also been noticed that normally when such application is moved the 'Authority' does not decide the fate of such application at its own though legally required rather summary(ies) are submitted to Chief Minister or other high-ups for approval to fill-up post(s) under said 'rule' although the 'rule' nowhere insists for any such procedure rather it insists upon appointment subject to two qualifications (s) only i.e.:

- (i) application for such benefit should be within two years from death, invalidation or incapacitation of civil servant;
- (ii) fulfillment of formalities as required in the recruitment rules and holding interview;

10. Thus, mechanism of sending summary is not within object of said rule. This prima facie means adopting a way not permitted by the law itself. If this is allowed to continue holding the field it shall frustrate the settled principle 'things should be done strictly in the manner provided for doing so or not otherwise. Therefore, in future the 'authority' should not resort to such procedure which otherwise does not find place in the picture (rule). The 'department', referred in said 'rule' shall mean competent 'Authority to make appointment from BPS-1 to 15, as referred in said 'rule'. Thus,

summaries, if any, moved by 'department(s)' either to Chief Minister or any other superior authority, be considered to have never been sent/ moved and the departments shall decide the fate of such applications within guidelines, so provided in number of judgments of this Court and that of Apex Court.

11. Since the benefit of said rule is applicable to all civil servants, therefore, the Chief Secretary, Government of Sindh is hereby instructed to circulate a directive to all the head of the departments that in future the department shall intimate families of all such civil servant (falling within rule-11A) about their right to apply and deserving be given their due without allowing anything to increase the agony of family of such civil servants. This procedure be completed within a period of three (03) months and if applying person of family of such civil servant qualifies the requirements, should be given job.

12. The Chief Secretary, Government of Sindh shall also frame a policy whereby mechanizing that son-quota/deceased-quota is not exploited by 'authority' rather merit is considered in such recruitment (son-quota/deceased quota) which (merit) is order of the death or invalidation of civil servant. The policy shall also address the issue of cut-off date within guidelines, provided in the judgments of this Court or Honourable Supreme Court.

13. These are the detailed reasons of short order dated 22.9.2015, whereby instant petition was allowed.

14. Office shall communicate this order to all concerned as well learned AG, Sindh for compliance.

ZC/M-112/Sindh

Petition allowed.

2016 P L C (C.S.) 601

[Supreme Court (AJ&K)]

Appellant

Present: Mohammad Azam Khan, C.J., Ch. Muhammad Ibrahim Zia and Raja Saeed Akram Khan, JJ

Civil Appeal No.106 of 2014

Sardar MUHAMMAD RAZZAQ

Versus

CHAIRMAN EHTESAB BUREAU OF AZAD JAMMU AND KASHMIR, MUZAFFARABAD and 4 others

(On appeal from the judgment of the High Court dated 15.01.2004 in Writ Petitions Nos.1425 and 1426 of 2012].

Civil Appeal No.107 of 2014

Sardar ZIA HAMEED KHAN

Versus

CHAIRMAN EHTESAB BUREAU OF AZAD JAMMU AND KASHMIR and 3 others

(On appeal from the judgment of the High Court dated 15.01.2014 in Writ Petitions Nos.1425 and 1426 of 2012).

Civil Appeals Nos.106 and 107 of 2014, decided 17th August, 2015.

(a) Azad Jammu and Kashmir Ehtesab Bureau Service (Composition, Terms and Conditions of Service) Rules, 2009---

----Azad Jammu and Kashmir Ehtesab Act, 2001, Ss. 5, 6, 32 & 42---Azad Jammu and Kashmir Interim Constitution Act (VIII of 1974), S.44---Writ petition before High Court---Maintainability---Civil service---Employees of Ehtesab Bureau---Termination of employees by the Chairman Ehtesab Bureau---Ehtesab Bureau---Necessary party---Contention of employees was that Chairman Ehtesab Bureau had no power to terminate their services as appointing authority was the President---Writ petitions filed by the employee were dismissed by the High Court---Validity---Any order passed by the Chairman would be deemed to be the order of Ehtesab Bureau---Powers for

appointment against the posts of officers and staff in the Ehtesab Bureau were exercise-able by the Ehtesab Bureau---Such powers would vest in the Chairman who should exercise the same and might delegate such powers to any of the officers---Chairman Ehtesab Bureau passed the termination order and he had been arrayed as party in the line of respondent---Ehtesab Bureau was not a juristic person and it was not necessary to array the same as respondent---Chairman Ehtesab Bureau was the necessary party but not the Ehtesab Bureau---Appointment orders of the employees were made by the President with the condition that same would be temporary in nature---Temporary appointment did not confer any right for permanent induction---President was to make Azad Jammu and Kashmir Ehtesab Bureau Service (Composition, Terms and Conditions of Service) Rules, 2009 in consultation with the Chief Justice of the High Court and were to be consistent with the Azad Jammu and Kashmir Ehtesab Act, 2001---Azad Jammu and Kashmir Ehtesab Bureau Service (Composition, Terms and Conditions of Service) Rules, 2009 had not been made by the President with the consultation of the Chief Justice of High Court which were not valid having no legal value---President had no power to frame Azad Jammu and Kashmir Ehtesab Bureau Service (Composition, Terms and Conditions of Service) Rules, 2009 without the consultation of Chief Justice of High Court---Said Rules, were not a statutory provision and had no legal force---Chairman Ehtesab Bureau had powers only to appoint the officers and staff in the Ehtesab Bureau when petitioners were appointed---President had no power on the relevant date to appoint a person in the Ehtesab Bureau---Person who had not come in the court with clean hands had no right to maintain a writ petition---Appointment order of employees being an ill-gotten gain, writ could not be issued for retention of ill-gotten gain---Writ petitions of employees before the High Court were liable to be dismissed on the said sole ground---Appeals were dismissed by the Supreme Court.

Raja Nasim and 2 others v. Ehtesab Bureau AJ&K 2004 YLR 2292 and Ehtesab Bureau v. Rashid Ahmed Katal and 4 others 2011 SCR 512 ref.

Ehtesab Bureau Azad Jammu and Kashmir through Chief Prosecutor, Muzaffarabad v. Ch. Abdul Razzaq and 15 others 2004 YLR 1446; Ehtesab Bureau Azad Jammu and Kashmir v. Ch. Muhammad Hanif 2004 YLR 2278; Muhammad Younas Tahir and another v. Shaukat Aziz, Advocate, Muzaffarabad and others PLD 2012 SC (AJ&K) 48; Habibullah v. D.I.G. Police and 3 others 2004 SCR 378; Al-Jehad Trust through Raeesul Mujahideen Habib-ul-Wahabb-ul-Khairi and others v. Federation of Pakistan and others PLD 1996 SC 324; Messrs Qureshi Vegetable Ghee Mills v. Dy. Collector Excise and Taxation, Mirpur and others 1994 SCR 123; AJ&K Government and 4 others v. Mohi-ud-Din Islamic University and 2 others 2014 SCR 382; Custodian of Evacuee Property and 7 others v. Tariq Mahmood Butt 2001 YLR 3139 and Nawab Syed Raunaq Ali and others v. Chief Settlement Commissioner and others PLD 1973 SC 236 rel.

(b) Azad Jammu and Kashmir Interim Constitution Act (VIII of 1974)---

---S: 44---Writ jurisdiction---Scope---Extraordinary remedy by way of writ jurisdiction was an equitable remedy which could not be exercised for retention of ill-gotten gains.

(c) Civil service---

---Temporary appointment---Scope---Temporary appointment did not confer any right for permanent induction.

(d) Administration of justice---

---When a thing was provided to be done in a particular manner then it had to be done in same manner or not at all.

(e) Interpretation of statutes---

---When a temporary statute repealed the permanent statute or its provision, such deletion would remain in force or operative till the existence of temporary statute.

(f) Interpretation of statutes---

---Legislature had power to apply an Act with retrospective effect and retrospective effect should not affect any right accrued to a party.

(g) Words and phrases---

---"Necessary party"---Meaning---Necessary party was one in whose absence no effective order or decree could be passed.

(h) Words and phrases---

---"Consultation"---Meaning.

Sheikh Masood Iqbal for Appellant (in Civil Appeals Nos.106 and 107 of 2014).

Mir Khalid Mehmood, Chief Prosecutor, Ehtesab Bureau for Respondents (in Civil Appeals Nos.106 and 107 of 2014).

Date of hearing: 17th June, 2015.

JUDGMENT

MOHAMMAD AZAM KHAN, C.J.--- The above titled appeals by leave of the Court arise out of a consolidated judgment of the High Court dated 15th January, 2014, whereby the writ petitions filed by the appellants, herein, have been dismissed. Since both the appeals arise out of the same judgment, these are being decided through

the consolidated judgment.

2. The appellant, Sardar Muhammad Razzaq filed Writ Petition No.1426/2012 in the Azad Jammu and Kashmir High Court, stating therein, that he was appointed as Deputy Director Legal (B-19) vide notification dated 18th February, 2009 and later on this notification was corrected vide notification dated 12th June, 2009. His services were terminated by the Chairman Ehtesab Bureau on 6th June 2012 and through notification dated 3rd July, 2012 respondent No.4 was appointed as Deputy Director (Legal) by deputation. He further alleged that he moved an application to the President of the Azad Jammu and Kashmir, who ordered for restoration of his services on 11th June, 2012. He requested for setting aside the notifications dated 6th June, 2012 and 3rd July, 2012 and for issuance of a direction for implementation of the order passed by the President on 11th June, 2012.

3. The appellant, Sardar Zia Hameed Khan filed Writ Petition No.1425/2012 in the Azad Jammu and Kashmir High Court, alleging therein, that he was appointed as Technical Expert Banking (B-19) in the Ehtesab Bureau on 12th June, 2009. His services were terminated by the Chairman Ehtesab Bureau on 6th June, 2012. He prayed that the order of termination passed by the Chairman Ehtesab Bureau on 6th June, 2012 be set aside.

4. After necessary proceedings, the learned High Court through a consolidated judgment dated 15th January, 2014 dismissed both the writ petitions, filed by the appellants, herein.

5. The counsel for the appellants in both the appeals, submitted that the appellants were appointed on temporary basis through order dated 12th June, 2009 till the promulgation of the Rules. The Rules were promulgated on 22nd June, 2009. The learned counsel submitted that in the light of new Rules, the case of the appellant, Sardar Muhammad Razzaq was sent to Selection Board No.1, but due to over-age his case was deferred. The appellant applied for obtaining relaxation in upper-age limit but before the grant of relaxation the Chairman Ehtesab Bureau terminated his services. The learned counsel submitted that the Chairman Ehtesab Bureau has no power to terminate the services of the appellants because the appointing authority is the President and not the Chairman Ehtesab Bureau. The learned counsel submitted that the President has ordered for restoration of the services of the appellant, Sardar Muhammad Razzaq. He further argued that the case of Sardar Zia Hameed Khan was not sent to the relevant Selection Board in the light of newly promulgated Rules. The learned counsel argued that the High Court has dismissed the writ petitions on the ground that the persons who have been appointed against the posts, have not been arrayed as party in the line of the respondents and their appointment orders have not been challenged. He referred to the record and submitted that in the prayer clause of the writ petitions the appointment orders of the incumbents who have been appointed by deputation have categorically been challenged and a prayer has been made for setting aside the said appointment orders. Lastly, the learned counsel argued that the Ehtesab Bureau is not a necessary

party. The termination order has been issued by the Chairman Ehtesab Bureau. It is only the Chairman Ehtesab Bureau who is necessary party. The judgment on this score is not maintainable. He referred to the cases reported as 2004 YLR 1446, 2004 YLR 2292, 2004 YLR 2278 and [2011 SCR 512].

In the case reported as Ehtesab Bureau Azad Jammu and Kashmir through Chief Prosecutor, Muzaffarabad v. Ch. Abdul Razzaq and 15 others 2004 YLR 1446 this Court observed that the Ehtesab Bureau being neither a natural nor a juristic person, was not competent to maintain any sort of legal proceedings including the appeal in the High Court or Supreme Court. The appeal filed by Ehtesab Bureau was thus, incompetent.

In the case reported as Raja Nasim and 2 others v. Ehtesab Bureau AJ&K 2004 YLR 2292 it has been observed by this Court that the Ehtesab Bureau is a special institution of the Law Department and special institutions have exclusive jurisdiction in the sphere of their functions assigned to them under law but they cannot indulge in the matters outside the sphere of the relevant law without the sanction of the Government. The litigation in any matter in any Court is an extraneous matter. The Ehtesab Bureau cannot indulge in litigation before the superior forums, like the High Court and the Supreme Court in any matter having penal consequences without sanction of the Government.

In the case reported as Ehtesab Bureau Azad Jammu and Kashmir v. Ch. Muhammad Hanif 2004 YLR 2278 it was observed by this Court that petition was filed in this Court without the prior sanction of the Government by the Ehtesab Bureau. It is not properly constituted and is liable to be dismissed on this ground.

In the case reported as Ehtesab Bureau v. Rashid Ahmed Katal and 4 others [2011 SCR 512], it was observed by this Court that under section 47 of the Azad Jammu and Kashmir Ehtesab Bureau Act, 2001, read with Rules of Business, 1985, the Ehtesab Bureau is a special institution. The Government is the authority to grant sanction for filing appeals. The Ehtesab Bureau on its own cannot file appeal in the High Court or the Supreme Court.

6. While controverting the arguments, Mir Khalid Mehmood, Chief Prosecutor, Ehtesab Bureau, argued that the judgment of the High Court is perfectly legal. There is no illegality in the judgment of the High Court. The orders have been passed by the Chairman of the Ehtesab Bureau. The Ehtesab Bureau is a necessary party and without arraying Ehtesab Bureau as party in the line of the respondents, the writ petitions were not maintainable. He submitted that neither the persons who have been appointed by deputation, have been arrayed as party in the line of the respondents nor their appointment orders have been challenged, therefore, the writ petitions were not maintainable. The High Court has correctly dismissed the same. The learned Chief Prosecutor submitted that the appellants along with others were appointed on temporary basis subject to regular appointment after advertising the posts. He argued that the

appointment orders clearly provide that the appointments are temporary in nature and does not create any right for permanent induction in service and the incumbents shall hold the posts till promulgation of new Rules. He further submitted that new Rules i.e. The Azad Jammu and Kashmir Ehtesab Bureau Service (Composition, Terms and Conditions of Service) Rules, 2009 were promulgated on 22nd June, 2009. The appellants had no right to remain in service after promulgation of new Rules. Under law they were not qualified to be appointed. The learned Chief Prosecutor further submitted that the appellant, Sardar Muhammad Razzaq has crossed the upper age-limit and overage. He could not be appointed against the said post, therefore, he has no right to file the writ petition, whereas, the appellant, Sardar Zia Hameed Khan, at one side was not qualified to be appointed against the post of Technical Expert Banking, moreover, the appointment against the post of Technical Expert is made by transfer of suitable persons or on contract basis through selection on merit and suitability as per column 6 of the Schedule-A of the above mentioned Rules. The appellants have no right to maintain the writ petitions. They illegally remained in service for a period of around three years. The learned Chief Prosecutor lastly argued that no order has been passed by the President for restoration of the services of the appellant, Sardar Muhammad Razzaq. He requested for dismissal of both the appeals.

7. We have heard the learned counsel for the appellants as well as the learned Chief Prosecutor and perused the record with utmost care.

8. The termination orders have been passed by the Chairman Ehtesab Bureau in the light of the provisions contained in the Ehtesab Bureau Act, 2001. Any order under the Act, 2001, passed by the Chairman is deemed the order of the Ehtesab Bureau. The Ehtesab Bureau is the creation of section 5 of the Azad Jammu and Kashmir Ehtesab Bureau Act, 2001. The same is reproduced as under:-

"5. **Ehtesab Bureau.**--- (1) There shall be constituted an Ehtesab Bureau for the whole of Azad Jammu and Kashmir.

(2) Powers exercise-able by the Ehtesab Bureau shall vest in the Chairman who may delegate any of his powers by a special or general order

(3)

(4)

(5)

(6)

(7)
.....

(8)
....."

The Chairman Ehtesab Bureau is appointed under section 6 of the Ehtesab Bureau Act, 2001. The same is reproduced as under:-

"6. Chairman of the Ehtesab Bureau.--- (1) There may be a Chairman of the Ehtesab Bureau to be appointed by the President on such terms and conditions as may be prescribed.

(2)
.....

(3)
.....

Appointments of officers and staff in the Ehtesab Bureau are provided under section 32 of the Azad Jammu and Kashmir Ehtesab Bureau Act, 2001, which is reproduced as under:-

"32. Appointment of Officers and Staff in the Ehtesab Bureau.--- (1) The Chairman or an officer duly authorized by him may appoint such officer and staff as he may consider necessary for the efficient performance of his functions and exercise of powers under this Act.

(2)
.....

(3)
.....

(4)
.....

(5)
....."

A combined reading of sections 5, 6 and 32 of the Azad Jammu and Kashmir Ehtesab Bureau Act, 2001, shows that the powers for appointment against the posts of officers and staff in the Ehtesab Bureau are exercise-able by the Ehtesab Bureau and vest in the Chairman who shall exercise the same and may delegate the same to any of the officers.

The Chairman passed the termination order, he has been arrayed as party in the line of the respondents. The necessary party is such a party in whose absence no effective order or decree can be passed. This Court in the case reported as Ehtesab Bureau Azad Jammu and Kashmir through Chief Prosecutor, Muzaffarabad v. Ch. Abdul Razzaq and 15 others 2004 YLR 1446, observed as under:--

"... The Ehtesab Bureau being neither a natural nor a juristic person, was not competent to maintain any sort of legal proceedings including the appeal in the High Court or Supreme Court. The appeal filed by Ehtesab Bureau was thus, incompetent."

It was further observed by this Court in the case reported as Raja Nasim and 2 others v. Ehtesab Bureau AJ&K 2004 YLR 2292 as under:---

"The Ehtesab Bureau is a special institution of the Law Department and special institutions have exclusive jurisdiction in the sphere of their functions assigned to them under law but they cannot indulge in the matters outside the sphere of the relevant law without the sanction of the Government. The litigation in any matter in any Court is an extraneous matter. The Ehtesab Bureau cannot indulge in litigation before the superior forums, like the High Court and the Supreme Court in any matter having penal consequences without sanction of the Government."

The Ehtesab Bureau is not a juristic person. It was not necessary to array the Ehtesab Bureau as party in the line of the respondents. Thus, we draw the conclusion that the Chairman Ehtesab Bureau is a necessary party. The Ehtesab Bureau is not a necessary party.

9. Both the appellants challenged the order dated 6th June, 2012, through which their services were terminated, by way of separate writ petitions. They prayed in their writ petitions for setting aside the appointment orders of the persons, who have been appointed against the posts of Deputy Director Legal and Technical Expert Banking on deputations. The appointment orders of the appellants were made by the President, Azad Jammu and Kashmir on 12th June, 2009 in the light of the provisions contained in sections 32 and 42 of the Ehtesab Bureau Act, 2001 with the condition that the appointment orders are purely temporary in nature. These do not confer any right for permanent induction and continue till the rules are enforced under section 32 of the Azad Jammu and Kashmir Ehtesab Bureau Act, 2001. It is necessary to reproduce the appointment order of the appellants which is reproduced as under:

10. The Azad Jammu and Kashmir Ehtesab Bureau Service (Composition, Terms and Conditions of Service) Rules, 2009, were made by the President on 22nd June, 2009. The Rules making powers under section 42 of the Azad Jammu and Kashmir Ehtesab Bureau Act, 2001 vest in the President with consultation of the Chief Justice of the High Court. Rule 42 is reproduced as under:-

"42. Powers to Make Rules.--- The President, in consultation with the Chief Justice of the High Court, may make Rules for carrying out the purposes of this Act."

The provision in an unambiguous term provides that the President may make the Rules in consultation with the Chief Justice of the High Court. The authority which is vested with the powers to make the Rules, may frame the Rules consistent with the Act. The Rules making power vested in the President in consultation with the Chief Justice of the High Court. A perusal of the notification dated 22nd June, 2009, reveals that "the President has been pleased to make Rules in the light of section 42 read with section 32 of the Azad Jammu and Kashmir Ehtesab Bureau, Act, 2001." It appears that these Rules have not been made by the President with the consultation of the Chief Justice, High Court. It is a celebrated principle of interpretation of statutes that if a thing is provided to be done in a particular manner it has to be done in same manner or not at all. This Court in the case reported as Muhammad Younas Tahir and another v. Shaukat Aziz, Advocate, Muzaffarabad and others PLD 2012 SC (AJ&K) 48 has observed as under:--

"26. It is celebrated principle of law that when a particular method for performance of an act is prescribed under an Act or Rules, then such act must be performed according to that particular method or not at all. ..."

In another case reported as Habibullah v. D.I.G. Police and 3 others [2004 SCR 378] it observed by this Court as under:--

".... It is a settled proposition of law that when a particular method of performance of an act is prescribed under an Act or Rule then such act must be performed according to the prescribed method along or not at all."

The codal provisions vest the Rule making powers in the President with the consultation of the Chief Justice of the Azad Jammu and Kashmir High Court. The Rules were framed by the President on 22nd June, 2009 without consultation with the Chief Justice. After going through the above referred notification we summoned the original file of Rules from the Law, Justice, Human Rights and Parliamentary Affairs Department. The process for making of Rules was initiated by the President on 13th June, 2009 and Rules were notified on 22nd June, 2009. The Chief Justice of the Azad Jammu and Kashmir High Court was not consulted before framing of the Rules. Section 42 makes it clear that the President has no power to frame the Rules without consultation of the Chief Justice, Azad Jammu and Kashmir High Court. The word "consultation" has been defined in the case reported as Al-Jehad Trust through Raeesul Mujahideen Habib-ul-Wahabb-ul-Khairi and others v. Federation of Pakistan and others [PLD 1996 SC 324] which is reproduced as under:-

"47. The word "consultation" used in the Constitutional provisions relating to

the Judiciary is to be interpreted in the light of the exalted position of the Judiciary as envisaged in Islam as stated above, and also in the light of the several provisions in the Constitution which relate to the Judiciary guaranteeing its independence"

Thus, the Rules made without consultation of the Chief Justice Azad Jammu and Kashmir High Court are not valid Rules and have no legal value.

11. The Ehtesab Bureau Act was promulgated in year 2001. Section 32 of the original Act deals with the appointment of officers and staff in the Ehtesab Bureau. A perusal of above referred section makes it abundantly clear that all the powers of appointment of officers and staff vest in the Chairman.

12. The Ehtesab Bureau Act, 2001 was amended through Ordinance No.XII of 2008, on 11th June, 2008. Through this Ordinance sections 32 and 42 were substituted which are reproduced as under:--

"32. Appointment of Officers and Staff in the Ehtesab Bureau.-- (1) Appointment to the post of officers and staff in Ehtesab Bureau shall be made in the prescribed manner.

(2)

(3)

(4)

(5)

"42. Power to Make Rules.--- The President may make rules for carrying out the purposes of this Act."

After expiry of the Ordinance No.XII of 2008, the same was re-enacted on 1st November, 2008 with effect from 11th October, 2008. This Ordinance expired on 7th February, 2008 and was re-enacted on 14th February, 2009 with effect from 7th February, 2008. The Ehtesab Bureau Act, 2001 was amended through Act No.V of 2010 on 11th March, 2010 with effect from 13th June, 2009. Section 42 was again substituted which is reproduced as under:-

"42. Power to Make Rules.--- The Government may make rules for carrying out the purposes of this Act."

The amended section 42 which has been given effect from 13th June, 2009, provides that Government may make the Rules for carrying out the purposes of this Act. The Rules were framed by the President on 22nd June, 2009. Section 42 was substituted through successive Ordinance issued on 11th June, 2008 and remained in force till 7th June, 2009. The Rules were framed by the President on 22nd June 2009 when the Ordinance had elapsed after completing its life. It is celebrated principal of law that when a temporary statute repeals the permanent statute or its any provision, such deletion shall remain in force or operative till the existence of temporary statute. On expiry of the life of the temporary statute, the permanent statute or its provision shall stand automatically revived. It was observed by this Court in the case reported as Messrs Qureshi Vegetable Ghee Mills v. Dy. Collector Excise and Taxation, Mirpur and others [1994 SCR 123] as under:-

"... There is a ring of authorities on the point that if temporary legislation repeals a permanent legislation the permanent legislation revive when the life of temporary legislation, i.e., an Ordinance, comes to an end or the same is otherwise repealed. Reference may be made to Crown v. Ghulam Muhammad (PLD 1950 Lah. 479), Arbab Muhammad Hasham Khan v. The Crown (PLD 1953 Pesh. 72), Abdur Rashid v. The State (PLD 1957 Lah. 400), The Sargodha-Bhera Bus Service v. The Province of West Pakistan (PLD 1958 Lah. 77), The State v. Muhammad Sharif (PLD 1960 Lah. 236) and Messrs Nau-Asio Trading Co. Ltd. v. Sh. Saeed Ahmed, Civil Judge, III Class (PLD 1966 Lah. 269)."

The power to frame Rules under the original section 42 vested in the President with the consultation of the Chief Justice of the Azad Jammu and Kashmir High Court. Through amendment the President was empowered to frame Rules without the consultation of the Chief Justice on 11th June 2008. This power remained vested in the President up to 7th June, 2009. The Rules were framed by the President on 22nd June 2009. On the said date, the Rules can only be framed by the President with the consultation of the Chief Justice of the High Court. The Rules were not made according to the statutory provisions, have no legal force.

13. The appellants claimed their right on the basis of order of appointment made by the President on 12th June, 2009. As has been discussed above that on 12th June 2009, it was only the Chairman Ehtesab Bureau, who had powers to appoint the officers and staff in the Ehtesab Bureau. Under section 32 of the Ehtesab Bureau Act, 2001, the President had no powers on the said date to appoint a person in the Ehtesab Bureau. The extra ordinary remedy by way of writ petition under section 44 of the Azad Jammu and Kashmir Interim Constitution Act, 1974, is an equitable remedy. A person who has not come in the Court with clean hands has no right to maintain a writ petition under section 44 of the Azad Jammu and Kashmir Interim Constitution Act, 1974. The appointment order of the appellants dated 12th June, 2009 is an ill-gotten gain. The law is settled on the point since long that writ cannot be issued for retention of the ill-gotten-gains. This Court in the case reported as AJ&K Government and 4 others v. Mohi-ud-Din Islamic

University and 2 others [2014 SCR 382] while relying upon the cases reported as Nawab Syed Raunnaq Ali etc. v. Chief Settlement Commissioner and others [PLD 1973 SC 236], Bashir Ahmed Khan v. Custodian and another [1992 SCR 149] and Custodian of Evacuee Property and 7 others v. Tariq Mahmood Butt [2001 YLR 3139] observed as under:-

"14. Now we advert to the argument advanced by the learned counsel for the appellants that the writ jurisdiction cannot be invoked to protect the ill-gotten-gain. As we have observed in the preceding para that MOU/agreement dated 14.9.2006 was not executed in accordance with law, therefore, the benefits derived by the respondents under this agreement cannot be termed as ill-gotten-gains. It is now settled that the writ jurisdiction of the High Court cannot be invoiced to protect the ill-gotten-gains. Our this view finds support from a case reported as Bashir Ahmed Khan v. Custodian and another [1992 SCR 149], wherein it was held by this Court as under:--

"Even if it is assumed that the delay in filing the revision petition before the Custodian was not rightly condoned, the fact remains that the writ jurisdiction cannot be exercised in aid of perpetuation of injustice or to protect an ill-gotten-gain by a person. If a party seeks relief by invoking writ jurisdiction, it must show that it has come with clean hands: it has a tangible right, if not a purely legal right, which has been violated. The possession of Noor Ahmed over the suit land was an illegal possession which was not approved by the Custodian or the Rehabilitation Authorities. Therefore, the allotment of the appellant having been made in contravention of law cannot be protected by assailing the order of the Custodian by invoking writ jurisdiction of the High Court. Even if it is found that the Custodian was not justified in condoning the delay in filing the revision petition before him, his order cannot be disturbed in exercise of writ jurisdiction..."

In another case reported as Custodian of Evacuee Property and 7 others v. Tariq Mahmood Butt [2001 YLR 3139] while resolving the same point it has been held as under:-

"6. There is yet another important aspect of the matter. It may be observed that an aggrieved person is not permitted to invoke the writ jurisdiction for the perpetuation of injustice or to save his ill-gotten-gains. Thus, the respondent, after having got the land at his own instance in lieu of the land allotted to him, cannot turn round and say that he was still entitled to receive the compensation of the evacuee land which was allotted to him"

Similarly in a case reported as Nawab Syed Raunnaq Ali etc. v. Chief Settlement Commissioner and others [PLD 1973 SC 236], it was observed as under:-

"An order in the nature of a writ of certiorari or mandamus is a discretionary

order. Its object is to foster justice and right a wrong. Therefore, before a person can be permitted to invoke this discretionary power of a Court, it must be shown that the order sought to be set aside had occasioned some injustice to the parties. If it does not work any injustice to any party, rather it cures a manifest illegality, then the extraordinary jurisdiction ought not to be allowed to be invoked."

The writ petitions filed by the appellants were liable to be dismissed on the above stated sole ground as well.

14. Through amending Act No.V of 2010, section 32 has been amended with effect from 13th June, 2009. Subsection (1) of section 32 provides that appointments on the posts of officers and staff in the Ehtesab Bureau shall be made in the prescribed manner and prescribed means "prescribed by rules made under this Act". As has been observed above that the Rules framed by the President on 22nd June, 2009, have no legal force because at the said date the President had no powers to frame the Rules. The amending Act has been given effect from 13th June, 2009. The legislature has power to apply an Act with retrospective effect and retrospective effect shall not affect any right accrued to a party. No Rules were framed by the Government between 18th June, 2010, when the Act was promulgated and 13th June, 2009 from the date the Act was given effect. It is manifest that no Rules were framed by the Government during this period and practically till to date no Rules have been framed by the Government. In the absence of any Rule, there is no mode for appointment in the light of provisions contained in section 32 of the Ehtesab Bureau Act, 2001.

15. Here we may observe that the Ehtesab Bureau is an important institution of the State. Under section 32 of the Act, 2001, all the appointments in the Ehtesab Bureau have to be made in a prescribed manner. Clause (qq) of section 4 of the Ehtesab Bureau Act, was added through amending Act No.V of 2010, which says that "prescribed means prescribed by rules made under this Act" The amendment was introduced in the Act, 2010 with effect from 13th June, 2009. It is the duty of the Government to provide a mode for appointment of the officers and staff in the Ehtesab Bureau while framing the Rules. Non-framing of Rules is a serious violation of the Act and it creates hardships for the appointment of officers and staff in the Ehtesab Bureau. It is desirable that Government shall frame the Rules under section 32 of the Ehtesab Bureau, Act, 2001, forthwith.

The result of the above discussion is that finding no force in these appeals, these are hereby dismissed with no order as to costs.

ZC/11/SC(AJ&K)

Appeal dismissed.



OFFICE OF THE DC MALAKAND/
COMMANDANT MALAKAND LEVIES

NO. _____/LC

DATED MALAKAND THE 25/02/2022

Phone: 0932-452080 Fax: 0932-450557

OFFICE ORDER

In pursuance of Section Officer (Police-II), Home & TA's Department, Khyber Pakhtunkhwa, Peshawar vide endorsement No.SO(Police-II)/HD/2-1/Malakand dated 14-02-2022, the competent authority i.e. Secretary Home issued retirement order of No.3463 Farid Ullah Subedar Major, Malakand Levies from service on completion of the requisite three (03) years tenure as Subedar Major with full pensionary benefits with effect from 27-11-2021 (FN) as per Amended Levy Rules 2021. Furthermore, the period spent under suspension may be treated as on duty.

DC MALAKAND/COMMANDANT
MALAKAND LEVIES MALAKAND

NO. 1850-53/LC

Copy forwarded to the:-

1. Section Officer (Police-II), Home & TA's Department, Khyber Pakhtunkhwa, Peshawar, for information with reference to his letter referred above.
2. District Accounts Officer, Malakand.
3. Subedar Major Malakand Levies.
- ✓ 4. Official concerned.

For information and necessary action.

DC MALAKAND/COMMANDANT
MALAKAND LEVIES MALAKAND

(For Private Respondent)

No appeal against determination of fitness.

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Service Appeal No. 12449/2020

Date of Institution ... 21.10.2020

Date of Decision ... 25.02.2021

Kilaytullah, Tehsildar, Peshawar, ... (Appellant)

VERSUS

The Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others, ... (Respondents)

Present:

MR. KHALID REHMAN, --- For Appellant.
Advocate

MR. MUHAMMAD RASHIED, --- For respondents.
Deputy District Attorney

MR. MIAN MUHAMMAD --- MEMBER (Executive)
MR. HAMID FAROOQ DURRANI, --- CHAIRMAN

JUDGEMENT.

MIAN MUHAMMAD, MEMBER(E):- The instant service appeal has been instituted under Section-4 of the Khyber Pakhtunkhwa Services Tribunal Act, 1974, against the impugned notification dated 02.07.2020 whereby the appellant stands deferred for promotion to PMS (BS-17) and the impugned appellate order dated 22.09.2020 vide which departmental appeal of the appellant was turned down.

FACTS..

02. Brief facts leading to the service appeal are that the appellant was initially appointed as Naib Tehsildar (BS-14) through Public Service Commission in 2009 who was then promoted to the post of Tehsildar (BS-16) on 17.1.2019. The

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Provincial Selection Board. In its meeting dated 09.06.2020, deferred the promotion case of the appellant on the ground that CPLA of the respondent department was pending in the Apex court and his promotion will be decided after outcome of the CPLA. The appellant feeling aggrieved with the notification dated 02.07.2020, preferred departmental appeal which was rejected by the competent authority on 22.09.2020, hence, the instant service appeal before the Services Tribunal on 21.10.2020.

03. We have heard the arguments of learned counsel for the appellant as well as Deputy District Attorney for respondents and perused the record thoroughly.

ARGUMENTS

04. Learned counsel for the appellant contended that Provincial Selection Board has made CPLA as basis for deferment of the appellant's promotion to higher post in BS-17 (PMS). Background of the CPLA is that the appellant had been removed from service on disciplinary proceedings and the Khyber Pakhtunkhwa Services Tribunal reinstated him in service through its judgment dated 20.11.2015 in service appeal No. 1099/2014 against which the respondent-department subsequently filed CPLA in the august Supreme Court of Pakistan and which is still pending there. It was further argued that the PSB could not convene its scheduled meeting on 20.02.2020 when the appellant was on the panel of officers for consideration to be promoted to BS-17 in Provincial Management Service. It was therefore not his fault and as such was eligible for promotion from that date due to availability of vacancy falling in quota reserved for promotion at that very point of time. As a result of not convening meeting of the PSB, 123 direct recruitees in BS-17 (PMS) recommended by the Public Service Commission were notified on 29.05.2020 rendering the

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appellant to become junior to them. He pleaded that as per principle, vacancy in a cadre or service group will have to be filled from promotion quota first and then in direct or initially quota. He quoted Section-9 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Section-7(3) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules 1989, as well para-V(a) of the Promotion Policy and submitted that deferment is recommended when inter-se seniority is disputed/subjudice, disciplinary/departmental proceedings are pending or PER dossier of an officer is incomplete. The appellant was not hit by any of the category of deficiency and as such he was by all means eligible for promotion to BS-17. More so even in subsequent PSB meeting held on 09.06.2020 he was deferred on the ground that CPLA was pending in the Apex court and his earlier promotion as Tehsildar on 17.01.2019 was also conditional subject to the said CPLA. This is again an illegal and illogical ground and the appellant has been condemned unheard because no case of litigation could be held as a Bar to deprive him of promotion which is a vested right of the appellant. He quoted some other officers such as Fazal Hussain, Ghulam Habib, Atta Ur Rehman and Habib Arif etc. who were recommended by the PSB despite the fact that their CPLA was pending before the Apex court at relevant point of time. To strengthen his arguments the learned counsel for the appellant placed reliance on order No. XX of Supreme Court Rules 1980, 1993 SCMR 2258, 2003 PLC (CS)503, 2006 SCMR 1938 and 2010 PLC (C.S) 760.

05. Learned Deputy District Attorney, contrary to the arguments of learned counsel for the appellant, raised preliminary objection on maintainability of the appeal under Section-4 (b)(i) and contended that determining the suitability of an officer for a particular post falls in the domain of DPC/PSB and as such the Services

Tribunal has no jurisdiction on such issues to be adjudicated upon. It was further argued that the appellant has been promoted even to BS-16 as Tehsildar on 27.01.2019 on conditional basis because of pending CBLA in the august Supreme Court of Pakistan and second conditional promotion to BS-17 is not only unreasonable but also not covered under the relevant law, rules and promotion policy. He also raised objection on the contention of learned counsel for appellant with regard to the notification of direct recruits dated 29.05.2020 mainly on the ground that it has neither been assailed nor impugned in the present memo of appeal. Similarly, 123 private respondents in notification dated 29.05.2020 have not been made party for the purpose of joinder and non-joinder and the service appeal has inner defects and liable to be dismissed even on ground of merits. Reliance was placed on case law reported as 2005 SCMR 1742, PLD 2008 Supreme Court 769.

CONCLUSION.

06. Without touching the facts, circumstances and merits of the case the question of jurisdiction comes in the way of adjudication under Section-4 (b)(i) which stipulates that:-

(b) "no appeal shall lie to a Tribunal against an order or decision of a departmental authority determining--
(i) the fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher post or grade.

We understand that the Provincial Selection Board met on 09.06.2020 to determine the fitness or otherwise of the officers on penal for consideration to be promoted to next higher scale i.e from BS-16 to BS-17 and scrutiny of the documents/service record was the prime and sole criteria before the PSB which the forum did take into consideration before making its recommendations to the competent Authority for approval. As this Tribunal is hit by the above mentioned provision of law, the

service Appeal in hand is therefore dismissed. Parties are left to bear their respective costs. File be consigned to the record room.

ANNOUNCED
25.02.2021

(MIAN MUHAMMAD)
MEMBER(E)

(HAMID FAROOQ DURRANI)
CHAIRMAN

2022 S C M R 550

[Supreme Court of Pakistan]

Present: Gulzar Ahmed, C.J. and Ijaz ul Ahsan, J

ABDUL SATTAR JATOI---Appellant

Versus

CHIEF MINISTER SINDH through Principal Secretary, Chief Minister Secretariat, Karachi and others---Respondents

Civil Appeal No. 1167 of 2020, decided on 10th January, 2022.

(Against the judgment dated 22.09.2020, passed by the Sindh Service Tribunal, Karachi in Appeal No.1009 of 2019)

(a) Sindh Service Tribunals Act (XV of 1973)---

---S. 4, proviso (b)---Appeal to Tribunal---Jurisdiction of Tribunal---Scope---Proviso (b) of S. 4 of the Sindh Service Tribunals Act, 1973 ('Act of 1973'), bars filing of a service appeal before the Tribunal against an order or a decision of a departmental authority determining the fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher post or grade---Said provision deals with a situation that the departmental authority has dealt with the matter of promotions of all the employees eligible for promotion to a post and having found a certain employee to be fit for promotion, promoted him---Remaining civil servants whose case for promotion was considered but found not fit to be promoted, such civil servants' service appeals before the Tribunal would not lie.

Proviso (b) of section 4 of the Sindh Service Tribunals Act, 1973 ('Act of 1973'), bars filing of a service appeal before the Tribunal against an order or a decision of a departmental authority determining the fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher post or grade. This provision deals with a situation that the departmental authority has dealt with the matter of promotions of all the employees eligible for promotion to a post and having found a certain employee to be fit for promotion, promoted him. The remaining civil servants whose case for promotion was considered but found not fit to be promoted, such civil servants' service appeals before the Tribunal would not lie. In the present case, no such order or decision, determining the fitness or otherwise of a person to be appointed, has either been made by the departmental authority nor the question of fitness of the appellant to be promoted has at all been raised. The grievance, in the service appeal filed by the respondent before the Tribunal was that the departmental authority did not at all consider the case of the appellant's own batch-mates including the respondent who were working in the post of BPS-19 in the Health Department for promotion to the post of BPS-20, in that, only the appellant was picked up by the departmental authority for grant of promotion to him in BPS-20 and the senior batch-mates of the appellant have altogether not been considered for granting of promotion to the post of BPS-20. Had the departmental authority considered the case of promotion of all the batch-mates of the appellant working in BPS-19 in the Health Department and the respondent having been found not fit for promotion to the post of BPS-20 by the departmental authority, the service appeal on such question would have been barred before the Tribunal, but such is not the case in hand before the Court. Thus, the Tribunal had jurisdiction to entertain the service appeal filed by the respondent.

Shafi Muhammad Mughal v. Secretary Establishment Division and others 2001 SCMR 1446; Zafar Iqbal v. M.G.O. M.G.O. Branch, GHQ Rawalpindi and 3 others 1995 SCMR 881 and Miss Zubaida Khatoon v. Mrs. Tehmina Sajid Sheikh and others 2011 PLC (C.S.) 596 distinguished.

(b) Civil service---

---Promotion---Merit---Competent authority is bound to consider all eligible candidates for promotion on merit---In the matter of civil service, there should not at all be any instance where the competent authority is found to be accommodating any one civil servant for grant of promotion by not considering or ignoring all other equals and even seniors.

Competent authority while considering grant of promotion is duty bound and obliged under the law to consider merit of all the eligible candidates and after due deliberations, to grant promotion to such eligible candidates who are found to be most meritorious among them. The law does not permit the competent authority to just pick one specific person and amend the rules for him and then

create a post and oblige and grant promotion to that one person. Competent authority is bound to consider all eligible candidates for promotion on merit.

Right to promotion is not an illusory nor a perfunctory right which could be ignored casually. Non-considering of an officer being equally eligible for promotion is a serious matter and not only undermines discipline but creates serious bad blood and heart burning amongst the rank and file of civil service. In the matter of civil service, there should not at all be any instance where the competent authority is found to be accommodating any one civil servant for grant of promotion and availing of better service benefits leaving all other equals and even seniors abandoned.

(c) Civil service---

---Person specific post, creation of---Illegal.

Creation of a specific post for the benefit of one specific civil servant was illegal.

Secretary Agriculture, Government of the Punjab, Lahore v. Muhammad Akram 2018 SCMR 349; In the matter of Contempt of Court Proceedings against Chief Secretary, Sindh and others 2013 SCMR 1752 and Baz Muhammad Kakar and others v. Federation of Pakistan and others PLD 2012 SC 870 ref.

M. M. Aqil Awan, Senior Advocate Supreme Court for Appellant.

Syed M. Saqat Rizvi, Additional Advocate General, Sindh (via video link from Karachi) for Respondents Nos.1 - 4.

Respondent No. 5 in person.

Date of hearing: 20th April, 2021.

JUDGMENT

GULZAR AHMED, C.J.---This civil appeal is by leave of the Court vide order dated 03.12.2020.

2. Facts of the matter are that Respondent No.5-Ali Abbas (the respondent) and appellant Abdul Sattar Jatoi were appointed on 16.03.1992 as Planning Officers (BPS-17) in the Health Department, Government of Sindh on the recommendation of the Sindh Public Service Commission, which contained the merit list, where the name of Respondent No.5 was mentioned at Serial No.5, while the name of the appellant was mentioned at Serial No.9. Both the respondent and the appellant were promoted as Deputy District Officer (P&D) (BPS-18) vide Notification dated 11.10.2004, wherein the name of the respondent was mentioned at Serial No.3, while that of the appellant at Serial No.5. Seven Deputy District Officers (P&D) (BPS-18) were promoted as District Officer (Administration, Accounts and Development) (BPS-19) and one as Additional Director Development by the Provincial Selection Board No.II held on 27.01.2010, wherein name of respondent is mentioned at Serial No.2, while the appellant at Serial No.5.

3. It seems that the post of District Officer (Administration, Accounts and Development) (BPS-19) was abolished. Vide Notification dated 07.11.2012, the appellant, an officer in BPS-19 in the Health Department, was declared surplus with immediate effect and under Rule 9-A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 (the Rule of 1974), his service was placed at the disposal of the surplus-pool of Services, General Administration and Coordination Department (SGA&CD), Government of Sindh. Through a further Notification dated 10.01.2013, the appellant was absorbed/inducted in the Provincial Secretariat Service cadre against an equivalent post of BPS-19 with immediate effect. Through further Notification dated 02.07.2013, the absorption of the appellant in the Provincial Secretariat Service was withdrawn. The appellant made an application dated 25.07.2013 addressed to the Chief Secretary, Government of Sindh requesting that he may be posted/absorbed back against non-cadre position at Liaquat University Hospital Hyderabad/Jamshoro by re-designating post of BPS-19, as Director (Administration, Accounts and Development). The summary dated 12.12.2013 for the approval of the Chief Minister, Sindh was initiated recommending re-designation of one post on non-clinical side as Director (Administration, Accounts and Development) (BPS-19) for absorption of the appellant. Vide Notification dated 09.01.2014, the appellant was posted as a Project Director, Project Management and Implementation Unit (PMIU), Education and Literacy Department. Through the order of the Health Department, Government of Sindh dated 09.11.2016, one post of Additional Medical Superintendent (BPS-19), Liaquat University Hospital, Hyderabad was sanctioned and re-designated as Director (Administration, Accounts and Development) (BPS-19) on non-clinical side

for absorption of the appellant. Through Notification dated 25.11.2016, the appellant was absorbed as Director (Administration, Accounts and Development) (BPS-19), Liaquat University Hospital, Hyderabad. Through further Notification dated 06.03.2018, rules for appointment were amended and a person specific post of Director (Administration, Accounts and Development) in BPS-20 was created for the appellant in the Health Department, Government of Sindh. Through further Notification dated 01.06.2018, the appellant was promoted to the post of Director (Administration, Accounts and Development) in BPS-20 on regular basis with immediate effect. The respondent was aggrieved of this last mentioned Notification and thus, submitted a departmental appeal. The respondent did not receive response to the departmental appeal, therefore, he filed Service Appeal No.993 of 2018 in the Sindh Service Tribunal, Karachi (the Tribunal). He made the appellant as Respondent No.4 in the said service appeal and prayed that the promotion of the appellant as Director (Administration, Accounts and Development) in BPS-20 be cancelled and withdrawn, and the said post be filled up amongst the most senior officers on the basis of seniority-cum-fitness and in accordance with law. This service appeal of the respondent was dismissed as premature vide order dated 30.08.2019 and he was allowed to file departmental appeal and then to file service appeal within 90 days of filing of the departmental appeal. The respondent seems to have filed departmental review appeal/petition and getting no response on the same, again filed a service appeal in the Sindh Service Tribunal. The appellant was impleaded as Respondent No.5 in this service appeal. After hearing the learned counsel for the parties, the Tribunal through its impugned judgment dated 22.09.2020, disposed of the appeal by noting, inter alia, as follows:-

"17. It was told to us that currently the respondent No.05 has been relieved of the charge of the post of BS-20 Liaquat University Hospital, Hyderabad/Jamshoro and he has reported to Health Department. He is therefore to stay there and be treated and posted in BS-19 like his batch-mates obeying the judgment of the Hon'ble Supreme Court in letter and spirit. His promotion to BS-20 is set aside."

As noted above, the Tribunal has set aside the promotion of the appellant as an Officer of BPS-20.

4. Learned counsel for the appellant has contended that the very service appeal filed by the respondent before the Tribunal was not maintainable and in this regard made reference to section 4(b) of the Sindh Service Tribunals Act, 1973. He further contended that the officers of the Health Department were considered for promotion by the Provincial Selection Board No.II held on 27.1.2010 and the appellant so also the respondent and other five officials were granted promotion from the post of Deputy District Officer (Planning and Development) (BPS-18) to the post of District Officer (Administration, Accounts and Development) (BPS-19) and one as Additional Director Development. He further contended that through the Sindh (Repeal of the Sindh Local Government Ordinance, 2001 and Revival of the Sindh Local Government Ordinance, 1979) Act, 2011 (the Act of 2011), the Sindh Local Government Ordinance, 2001 was repealed and the Sindh Local Government Ordinance, 1979 was revived, and further on promulgation of the Act of 2011, the posts held by the appellant and the respondent were abolished and while the appellant was placed in the surplus-pool, the respondent continued to work in the Health Department in BPS-19. He contended that under Rule 9-A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, the SGA&CD being parent Department was competent to post the appellant in any other department and could also be re-designated. He further contended that having been posted as Additional Medical Superintendent (BPS-19) in Liaquat University Hospital, Hyderabad and re-designated as Director (Administration, Accounts and Development) (BPS-19) on non-clinical side, and the said Hospital being attached department of the Health Department, in terms of the recruitment rules, the post of Director (Administration, Accounts and Development) (BPS-20) was created and the appellant was promoted to the said post. He contended that there was no illegality in the promotion of the appellant and in this respect relied upon the cases of Shafi Muhammad Mughal v. Secretary, Establishment Division and others (2001 SCMR 1446), Zafar Iqbal v. M.G.O., M.G.O. Branch, GHQ Rawalpindi and 3 others (1995 SCMR 881), Miss Zubaida Khatoon v. Mrs. Tehmina Sajid Sheikh and others (2011 PLC (C.S.) 596), Messrs Associated Cement Companies Ltd. v. Pakistan through the Commissioner o Income-Tax, Lahore Range, Lahore and 7 others (PLD 1978 SC 151), Dr. Ehsan-ul-Haq v. The Province of Punjab and others (1980 SCMR 972), Abdul Sattar v. Federation of Pakistan and others (2013 SCMR 911), Anwarul Haq v. Federation of Pakistan through Secretary, Establishment Division, Islamabad and 13 others (1995 SCMR 1505), The Chairman, P.I.A.C. and others v. Nasim Malik (PLD 1990 SC 951), M.A. Ghafoor, Senior Mechanical Officer, Headquarters Office, Pakistan Railways, Lahore v. Islamic Republic of Pakistan through Secretary Establishment Division, Government of Pakistan, Islamabad and 24 others (2002 PLC (C.S.) 1641) and Government of Balochistan through Secretary, Services

and General Administration Department and another v. Khawaja Muhammad Naseer (2009 PLC (C.S.) 513).

5. The learned Additional Advocate General, Sindh appearing for the official respondents did not oppose the contentions of the learned counsel for the appellant.

6. The respondent appeared in person and argued his case himself. He has supported the impugned judgment and contended that the appellant was junior to him since the initial appointment and at no point of time the appellant was ever made senior to him. He contended that a person specific post of Director (Administration, Accounts and Development) in BPS-20 was created for the appellant and on the desire of the appellant, he was also promoted to such post. He further contended that all along special rules have been made for the appellant and he has been favoured by the official respondents and in doing so, the official respondents committed grave illegality, for that, he being senior to the appellant in BPS-19 in the Health Department, his case for promotion was not considered for the post of BPS-20.

7. The learned counsel for the appellant in the end has contended that the very service appeal filed by the respondent before the Tribunal was time barred.

8. We have considered the submissions made by the learned counsel for the appellant as well as the learned Additional Advocate General, Sindh and the respondent who appeared in person, and have also gone through the record of the case.

9. We will take up the question of limitation of filing of service appeal by the respondent before the Tribunal in the first place. From the impugned judgment, we note that there is no discussion by the Tribunal on the point of limitation of the service appeal filed by the respondent before it but as the question of limitation being also a question of law, we would like to address the same. The appellant in the very memo of his service appeal before the Tribunal has raised grievance against the order dated 01.06.2018 of promotion of his junior/batch-mate i.e. the appellant from BPS-19 to BPS-20 and has alleged that he has filed appeal in the Office of the Secretary Health through proper channel with an advance copy in the Office of the Worthy Chief Minister and Secretary, SGA&CD but as no response was received, he filed Service Appeal No.993 of 2018, in the Tribunal, which was decided by the Tribunal vide its order dated 30.08.2019, which is as follows:-

"Learned Additional Advocate General present for the respondents. He files statement whereby the respondents Nos.1 and 3 have adopted the written statement filed by the respondent No.02. The same is taken on record, copy supplied to the appellant. When pointed out to the appellant that the preliminary objections have been raised by the respondents that his departmental appeal has been filed before wrong forum and also the appellant did not file the service appeal immediately within the period of 30 days after the lapse of 90 days of his departmental appeal. Therefore he is supposed to wait for the final decision in the departmental appeal.

After getting apprised of those objections, the appellant request for passing any appropriate order. The appeal being premature is dismissed. The appellant shall be at liberty to correct his steps under law and file appeal/review before the competent authority to decide it. He shall be at liberty to file appeal before this Tribunal in case his proper petition/review/appeal is not disposed of within 90 days of the institution thereof. Appellant has expressed his apprehension that his fresh review/petition may not be received by the competent authority on that the learned Additional Advocate General, Sindh assures that when the petition/review/appeal is ready for the presentation he shall get it received by the concerned authority."

10. Pursuant to the order of the Tribunal, the respondent appears to have filed a review appeal/petition for cancellation of promotion order of the appellant and having received no response, again filed the service appeal before the Tribunal with the prayer seeking, inter alia, that promotion of the appellant as Director (Administration, Accounts and Development) (BPS-20) vide Notification dated 01.06.2018 may be cancelled/withdrawn and promotion be made amongst the senior most officers, including the respondent on seniority-cum-fitness basis. The contention of the learned counsel for the appellant is that the limitation has to be counted from 01.06.2018, on which date the Notification of promotion to the post of BPS-20 of the appellant was issued. He has contended that review appeal was filed by the respondent on 13.09.2019, was barred by one year, three months and 12 days. Though such a submission has been made by the learned counsel for the appellant but has not taken into consideration that earlier too the respondent had filed Service Appeal No.993 of 2018 and the Tribunal vide its order dated 30.08.2019 dismissed the same as premature and allowed the respondent to file appeal/review before the competent authority and then

he was at liberty to file the appeal before the Tribunal within 90 days of filing of the appeal/review. It is apparent from the document available at page-91 of the paper book that the respondent has submitted the review appeal/petition and the same was forwarded by the Medical Superintendent, Peoples Medical College Hospital, Nawabshah (Shaheed Benazir Abad) under his covering letter dated 13.09.2019 to the Secretary, Government of Sindh, Health Department, Karachi. Going through the order of the Tribunal dated 30.08.2019, in which the appellant was duly represented but he did not challenge the same, the respondent having submitted the review appeal/petition in terms of the order of the Tribunal and then filed the service appeal before the Tribunal on 24.12.2019, we are unable to find the service appeal to be time barred as claimed by the learned counsel for the appellant.

11. The submission of the learned counsel for the appellant that the Tribunal had no jurisdiction to entertain the service appeal filed by the respondent revolves around section 4(b) of the Sindh Service Tribunals Act, 1973 (the Act of 1973), which provides that no appeal shall lie to a Tribunal against an order or a decision of a departmental authority determining the fitness or otherwise of a person, to be appointed to or hold a particular post or, to be promoted to a higher post or grade. The respondent in his service appeal before the Tribunal has made the following prayer:

"Under the circumstances it is humbly prayed in the interest of justice.

- i. The promotion of Mr. Abdul Sattar Jatui as Director Administration Accounts and Development BPS-20 be cancelled immediately from 01.6.2018 and the same may be filled by the way of promotion from amongst the seniors including appellant on the basis of fitness cum seniority in accordance with law by modification of rules of promotion.
- ii. The post of Director Administration Accounts and Development/Director Development and Evaluation BPS-20 may be created in any of similar institution viz Civil Hospital Karachi/PMC Hospital Nawabshah/CMC Hospital Larkana/ Directorate General Health Services Sindh, Hyderabad as created at LMC Hyderabad for promotion of Seniors with financial benefits of same date (01.06.2018) including appellant based on fitness cum seniority in accordance with law.
- iii. Any other relief may be awarded as deemed just and proper."

The above prayer shows that the respondent has challenged the promotion of the appellant as Director (Administration, Accounts and Development) (BPS-20) and has sought cancellation of notification dated 01.06.2018 by which the appellant was promoted. The respondent has also prayed that the post of Director (Administration, Accounts and Development) (BPS-20) be filled up by way of promotion from amongst the seniors including the respondent on the basis of seniority-cum-fitness and in accordance with law by modification of rules for promotion. The respondent has also prayed that the post of Director (Administration, Accounts and Development/Director Development and Evaluation (BPS-20) may be created in any of the similar institutions viz Civil Hospital Karachi/PMC Hospital Nawabshah/CMC Hospital, Larkana/ Directorate General Health Services Sindh, Hyderabad, as is created in LMC Hyderabad.

12. It is to be noted that proviso (b) of section 4 of the Act

of 1973, as noted above, bars filing of a service appeal before the Tribunal against an order or a decision of a departmental authority determining the fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher post or grade. This provision deals with a situation that the departmental authority has dealt with the matter of promotions of all the employees eligible for promotion to a post and having found a certain employee to be fit for promotion, promoted him the remaining civil servants whose case for promotion was considered but found not fit to be promoted, such civil servants' service appeals before the Tribunal were not lie. In the present case, no such order or decision, determining the fitness or otherwise of a person to be appointed, has either been made by the departmental authority nor the question of fitness of the appellant to be promoted has at all been raised. The grievance in the service appeal filed by the respondent before the Tribunal was that the departmental authority did not at all consider the case of the appellant's own batch-mates including the respondent who were working in the post of BPS-19 in the Health Department for promotion to the post of BPS-20, in that, only the appellant was picked up by the departmental authority for grant of promotion to him in BPS-20 and the senior batch-mates of the appellant have altogether not been considered for granting of promotion to the post of BPS-20. Had the departmental authority considered the case of promotion of all the batch-mates of the appellant working in BPS-19 in the Health Department and the respondent having been found not fit for promotion to the post of BPS-20 by the departmental authority, the service appeal

on such question would have been barred before the Tribunal, such is not the case in hand before the Court.

13. The next submission of the learned counsel for the appellant is that on repeal of the Act of 2011, the post of District Officer Planning and Development (BPS-19) in the Health Department was abolished and the appellant was justifiably placed in surplus-pool and being available in the surplus-pool, SGA&CD was competent to post the appellant in any other department and on any other post.

14. We note that although the Act of 2011 was repealed but the Health Department continued to operate, in that, as contended by the learned counsel for the appellant himself, the respondent continued to serve the said department. It seems that out of all the District Officers (Administration, Accounts and Development) (BPS-19) only the appellant's name appears to have been put in surplus-pool, upon which the wish list of the appellant started and through notification dated 02.07.2013, the competent authority eagerly complied with such wish of the appellant by inducting him in the Provincial Secretariat Service cadre in the equivalent post of BPS-19 by notification dated 10.01.2013. Such absorption/induction of the appellant was withdrawn on 02.07.2013, upon which the appellant himself made an application dated 25.07.2013 to the Chief Secretary, Government of Sindh requesting that he may be posted/absorbed back against non-cadre position at Liaquat University Hospital, Hyderabad/Jamshoro by re-designating his existing post of BPS-19 as Director (Administration, Accounts and Development). On this request of the appellant, summary dated 12.12.2013 was floated for the approval of the Chief Minister, Sindh, recommending that one post of Additional Medical Superintendent (BPS-19) in Liaquat University Hospital, Hyderabad may be re-designated on non-clinical side as Director (Administration, Accounts and Development) (BPS-19) and the appellant be absorbed against such post. Vide notification dated 09.01.2014, the appellant was posted as Project Director, Project Management and Implementation Unit (PMIU), Education and Literacy Department. This notification was cancelled/withdrawn vide notification dated 20.08.2014 and the appellant was asked to report to his parent department as District Officer (Administration, Accounts and Development) (BPS-19). Through an order dated 09.11.2016, one post of Additional Medical Superintendent (BPS-19), Liaquat University Hospital, Hyderabad was sanctioned and re-designated as Director (Administration, Accounts and Development) (BPS-19) on non-clinical side for specific absorption of the appellant. Through notification dated 25.11.2016, the appellant was absorbed as Director (Administration, Accounts and Development) (BPS-19) in the Liaquat University Hospital, Hyderabad. The wish list of the appellant did not end there and the departmental authority continued to be too eager to accommodate him to the post of appellant's own desire. For doing so, through notification dated 06.03.2018, the rules were amended, so that the appellant could be appointed to the post of Director (Administration, Accounts and Development) in BPS-20 in the Health Department. This amendment in the rules was made person specific to accommodate the appellant alone and the appellant, out of so many other batch-mates in BPS-19 in the Health Department, was granted promotion vide notification dated 01.06.2018 from BPS-19 to BPS-20 and the post of Director (Administration, Accounts and Development) was shown to be the post of BPS-20.

15. The law regarding grant of promotion by the competent authority is well settled that the competent authority while considering grant of promotion is duty bound and obliged under the law to consider merit of all the eligible candidates and after due deliberations, to grant promotion to such eligible candidates who are found to be most meritorious among them. The law does not permit to the competent authority to just pick one specific person and amend the rules for him and then create a post and oblige and grant promotion to that one person. The rule is that the competent authority is bound to consider all eligible candidates for promotion on merit. This is the requirement of Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973, which lays down as a command that to enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, whoever he may be. Further Article 25 of the Constitution as a Fundamental Right, prohibits discrimination and requires that all citizens are equal before law and are entitled to equal protection of law.

16. As noted above, the respondent and the appellant were appointed on 16.03.1992 as Planning Officers (BPS-17) in the Health Department, Government of Sindh on the recommendation of the Sindh Public Service Commission, which contain the merit list where the name of the respondent was mentioned at Serial No.5, while the name of the appellant was mentioned at Serial No.9. They were promoted together as Deputy District Officers (P&D) (BPS-18) vide notification dated 11.10.2004, in which the name of the respondent was at Serial No.3, while that of the appellant was at Serial No.5. The respondent and the appellant were again promoted together as District Officers (Administration, Accounts and Development) (BPS-19) by the Provincial Selection Board No.II on

27.10.201.0, wherein the name of the respondent was at Serial No.2, while the appellant was at Serial No. 5. They continued to remain in BPS-19 while through the impugned notification dated 01.06.2018, only the appellant was granted promotion to the post of BPS-20 and that too by making specific amendment in the rules and creating a post of Director (Administration, Accounts and Development) in BPS-20.

17. It is an admitted fact that both the respondent and the appellant belong to one and the same cadre in the Health Department, Government of Sindh and at the time when the appellant was promoted to the post of BPS-20, the other batch-mates of the appellant in BPS-19 in the Health Department who were even senior to him from the very beginning of their service career, were ignored, in that, their cases of promotion were not put up before the competent authority for determination of their merit for promotion to the post in BPS-20. It was not at all argued before us that the respondent was not eligible to be considered for promotion to the post of BPS-20 when the appellant was granted promotion to the post of BPS-20. Right to promotion is not an illusionary nor a perfunctory right which could be ignored casually. Non-considering of an officer being equally eligible for promotion is a serious matter and not only undermines discipline but creates serious bad blood and heart burning among the rank and file of civil service. In the matter of civil service, there should not at all be any instance where the competent authority is found to be accommodating any one civil servant for grant of promotion and availing of better service benefits leaving all other equals and even seniors abandoned.

18. This Court in the case of Secretary Agriculture, Government of the Punjab, Lahore v. Muhammad Akram (2018 SCMR 349) has specifically held that the creation of a specific post for the benefit of one specific civil servant was illegal. In the matter of Contempt of Court Proceedings against Chief Secretary, Sindh and others (2013 SCMR 1752) this Court has held that "the impugned legislation on absorption is persons/class specific as it extends favours to specific persons infringing the rights guaranteed to all the civil servants under the service structure provided under Articles 240 and 242 of the Constitution. ... In the case in hand the impugned legislation, prima facie, has been made to protect, promote and select specific persons who are close to centre of power, and has altered the terms and conditions of service of the civil servants to their disadvantage in violation of Article 25 of the Constitution". It was also held that "no civil servant of a non-cadre post can be transferred out of cadre to be absorbed to a cadre post which is meant for recruitment through competitive process". In the case of Baz Muhammad Kakar and others v. Federation of Pakistan and others (PLD 2012 SC 870) this Court observed as follows:

"The legislature cannot promulgate laws which are persons/ class specific as such legislation instead of promoting the administration of justice caused injustice in the society amongst the citizens, who were being governed under the Constitution."

19. In the famous case of Tariq Aziz-ud-Din and others (2010 SCMR 1301) leading with the question of promotion to civil servants, this Court has observed as follows:

"27. ... It is a settled principle of law that object of good governance cannot be achieved by exercising discretionary powers unreasonably or arbitrarily and without application of mind but objective can be achieved by following the rules of justness, fairness and openness in consonance with the command of the Constitution enshrined in different articles including Articles 4 and 25. Once it is accepted that the Constitution is the supreme law of the country, no room is left to allow any authority to make departure from any of its provisions or the law and the rules made thereunder."

It was further observed as under:

"It is the duty and obligation of the competent authority to consider the merit of all the eligible candidates while putting them in juxtaposition to find out the meritorious amongst them otherwise is one of the organs of the State i.e. Executive could not survive as an independent organ which is the command of the Constitution. Expression merit' includes limitations prescribed under the law. Discretion is to be exercised according to rational reasons which means that; (a) there be finding of primary facts based on good evidence; and (b) decisions about facts be made, for reasons which serve the purposes of statute in an intelligible and reasonable manner. Actions which do not meet these threshold requirements are considered arbitrary and misuse of power ...".

20. We have also gone through the case law cited by the learned counsel for the appellant and note that in Shafi Muhammad Mughal's case (supra) the DPC has considered the case of promotion of the petitioner therein along with respondent No.6 therein and while he was superseded,

respondent No.6 was granted promotion to the rank of Superintendent of Police (BPS-18), and while referring to the case of Muhammad Anis and others v. Abdul Haseeb (PLD 1994 SC 539), the Court held as follows:

"13. Thus, it would seem that the expression "eligibility" and "fitness" are distinct and are for different purposes. The Legislature in its wisdom has left the issue of fitness at the discretion of the competent authority for the obvious reason that the authority looking background and the performance would be in a better position to determine the issue of fitness than the Tribunal or the Court. In this particular case, as is evident from the report, referred to earlier, it is clear that general reputation of the petitioner in the past was not satisfactory, rather it was poor. Nothing material has also been brought on record to substantiate the plea that said Vigilance Report was false."

In Zafar Iqbal's case (supra) the petitioner was denied promotion by the Departmental Promotion Committee on the ground that he was not found fit for promotion, against which he filed a service appeal before the Service Tribunal with the prayer of granting him promotion on the basis of seniority. The Service Tribunal dismissed his service appeal, which order of the Tribunal was maintained and leave was refused by this Court. In Miss Zubaida Khatoon's case (supra) the Selection Board considered the case of promotion of the respondent therein and found her unfit for promotion, whereas the Selection Board promoted the appellant therein. The respondent challenged the non-promotion by the Selection Board by filing of a writ petition in the High Court which was allowed and the notification issued by the Selection Board was set aside. Leave to appeal was granted in the matter and after elaborate consideration, this Court observed as follows:

"18. Learned counsel was specifically confronted with the service profile of the respondent, reproduced in paragraph 17 of the impugned judgment and the comparative service record of both the parties as given in paragraph 25 of the impugned judgment. He could neither controvert the factual aspect of the said comparative chart nor could he join issue with the observations made by the court which have been reproduced in the preceding para. He mainly reiterated the argument that the learned High Court could not have embarked upon factual inquiry as the same was neither tenable under Article 199 of the Constitution nor permissible in view of the specific bar contained in Article 212 of the Constitution. The argument of bar of jurisdiction has already been repelled in above paragraphs. So far as the contention that the learned High Court could not undertake a factual inquiry is concerned, the same is misplaced, first because the High Court was not recording any new evidence but was proceeding on the basis of the admitted facts and second, if having examined the admitted facts, it had come to the conclusion that the authority had passed the order in colourable exercise of powers conferred on it, or an authority having power to promote or appoint to a particular post had done so against the law or without jurisdiction or while doing so as for mala fide reasons had not taken into consideration the relevant record, it could come in aid of person aggrieved to redress the wrong. The impugned judgment on that score is unexceptionable. However, we find that after annulling the notification which had been impugned before the learned High Court, the court could not have directed promotion of respondent No. 1 and instead should have left the matter to be decided by the Promotion Committee afresh as the said authority was competent to pass appropriate order after de novo exercise.

19. For what has been discussed above, this appeal is partly allowed and while upholding the impugned judgment insofar as it annulled the notification dated 13-8-2001, we direct the concerned Promotion Committee to decide the matter afresh within two months of the receipt of this judgment."

The cited cases on the question of jurisdiction of the Tribunal are distinguishable on the sole ground that neither the case of respondent was placed before Departmental Promotion Committee nor did it consider the case of promotion of the respondent, who was eligible for being considered for promotion along with the appellant to the post of BPS-20. No fitness for promotion of the respondent was at all determined.

21. Messrs Associated Cement Companies Ltd's case (supra) and Dr. Ehsan-ul-Haq's case (supra) have been relied upon by the learned counsel for the appellant to contend that the respondent was not an aggrieved and his terms and conditions of service were not adversely effected. We may note that the very non-consideration of the respondent for grant of promotion to the post of BPS-20 along with his batch-mates, which included the appellant, whose case only out of the total number of his batch-mates was considered for promotion and also granted promotion by making

amendments in the rules and creating the post specifically for him, did make the respondent an aggrieved person for that his right to be considered for promotion along with his batch-mates was at all not dealt with by the competent authority. The rule laid down in the two cited judgments, therefore, does not apply to the case in hand.

22. Abdul Sattar's case (supra), Anwarul Haq's case (supra), the Chairman, PIAC's case (supra), M.A. Ghafoor's case (supra) and Government of Balochistan's case (supra) are all relied upon on the point of limitation of the service appeal filed by the respondent. Such aspect of the matter has already been dealt with hereinabove and apparently, the cited judgments have no application to the case in hand.

23. For what has been discussed above, we find no illegality in the impugned judgment of the Tribunal and are not persuaded to interfere with the same. The appeal is, therefore, dismissed.

MWA/A-3/SC Appeal dismissed.