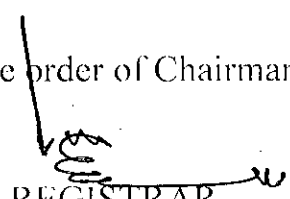


FORM OF ORDER SHEET

Court of _____

Case No. - 1960/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	27/12/2022	<p>The instant appeal presented today by Dr. Adnan Khan Advocate. It is fixed for preliminary hearing before touring Single Bench at Swat on _____. Notices be issued to appellant and his counsel for the date fixed.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR (CAMP COURT AT SWAT)**

Service Appeal No. 1960 of 2022

Said AhmadAppellant


VERSUS

Government of Khyber Pakhtunkhwa and another

.....Respondents

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S. No.	Description	Annexure	Pages No.
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4.	Copy of Appointment Order	A	9
5.	Copy of relevant text of Service Rules notified in February 2013	B	10-13
6.	Copy of amended Rules notified in December 2013	C	14-15
7.	Copy of amendments notified in July 2020	D	16-17
8.	Copy of amended Rules notified in March 2021	E	18-21
9.	Copy of representation	F	22-26
10.	Copy of retirement order	G	27-28
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14.	Wakalatnama		60

Appellant
Said Ahmad 
Identified by counsels


Dr. Adnan Khan Barrister-at-Law,
Advocate Supreme Court of Pakistan.

& 
Umar Sadiq Advocate High Court

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR (CAMP COURT AT SWAT)**

Service Appeal No. 1960 of 2022

Said Ahmad S/O Ahmad Khan R/ Heroshah, Tehsil Dargai District
Malakand. [Naik No.4343]

.....Appellant

VERSUS

- 1) Government of Khyber Pakhtunkhwa through Chief Secretary,
Civil Secretariat at Peshawar.
- 2) Government of Khyber through Secretary Home & Tribal Affairs
Department, Civil Secretariat at Peshawar.
- 3) Commandant Malakand Levies/Deputy Commissioner, District
Malakand at Batkhela.

.....Respondents

**APPEAL UNDER SECTION 4 OF
THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974.**

PRAYER:

On acceptance of this Appeal, Notifications No. SO(Police-II)HD/MKD/Levies/Misc./2020 dated 22-03-2021 & No. SO (Police-II)HD/1-3/Federal Levies 2021 dated 21-10-2021 and subsequent retirement orders issued by respondent No.2 may be declared as illegal and the same be set aside. Consequently, the appellant may be held entitled to complete his service till attaining 60 years age in light of Notification dated 14-07-2020.

Alternatively, the impugned notifications may be declared to be ineffective upon the rights of the appellant and he may be allowed to complete his service till attaining 60 years of age.

Respectfully Sheweth:

- 1) That the appellant has been serving as regular member of Levies Force having a considerable length of service at his credit (Copy of Appointment Order is Annexure "A").
- 2) That services of the appellant were initially regulated under the Federal Levies Force Rules, 1962, which were non-statutory.
- 3) That subsequently, the Governor Khyber Pakhtunkhwa, under the omitted Article 247(4) of the Constitution promulgated the PATA Levies Force Regulations, 2012. Consequently, the Provincial Government framed Service Rules for the Levies Force in 2013 (Copy of relevant text of Service Rules notified in February 2013 is Annexure "B").
- 4) That Schedule-III of the above mentioned Rules, which provided for length of service towards retirement had certain anomalies. Hence, the said Rules were amended in December 2013 and the above stated anomalies were removed to a larger extent (Copy of amended Rules notified in December 2013 are Annexure "C").
- 5) That the relevant Rules were further amended in July 2020. Regarding the length of service towards retirement, Rule 17 was amended to the effect that all Levies personnel shall retire from service on attaining the age of superannuation i.e Sixty Years. Furthermore, Schedule-III which provided for certain length of service, was deleted by virtue of the amendment (Copy of amendments notified in July 2020 are Annexure "D").
- 6) That the rules were further amended on 23-03-2021. Rule 17, which provided for retirement on reaching superannuation was again omitted and Schedule-III was revived with certain amendments. Consequently, the junior rank officials like the present appellant would retire after performing certain years of service or on reaching certain age. For instance Hawaldar

would retire on reaching 31 years of service or 51 years of age, Naik 29 years of service or 48 years of age, L/Naik 27 year of service or 45 years of age and Sepoy 25 years of service or 42 years of age, whichever is earlier (Copy of amended Rules notified in March 2021 are Annexure "E").

- 7) That the above mentioned Rules being extremely detrimental to him, the appellant filed representation before the concerned quarters for redressal of his grievances. The same has not been responded to as yet (Copy of representation is Annexure "F").
- 8) That the appellant alongwith other similarly placed personnel of the Levies Force got retired from service on reaching certain age/completion of certain length of service as prescribed by the above mentioned Rules (Copy of retirement order is attached as Annexure "G").
- 9) That the appellant along with other similarly placed persons invoked the Constitutional Jurisdiction of the Hon'ble Peshawar High Court by way of filing various constitutional Petitions, challenging vires of the above mentioned rules.
- 10) That during the pendency of the said petitions, the Provincial Government made further amendments in the Federal Levies Rules on 21-10-2021, whereby retirement age in respect of lower ranked members of the Force was enhanced by a few years (Copy of amended Levies Rules notified on 21-10-2021 are Annexure "H").
- 11) That the appellant filed another representation against the above mentioned further amendments in the relevant rules, which was never responded to. (Copy of memo of second representation is Annexure "I").
- 12) That against the above mentioned Rules framed by the Provincial Government, the appellant alongwith other similarly placed persons filed various other constitutional petitions (W.P No.469-M/2021, W.P No.470-M/2021, W.P No.337-M/2021,

W.P No.338-M/2021, W.P No.333-M/2021 and W.P No.335-M/2021) before the Hon'ble Peshawar High Court. However, because of jurisdictional issues, the matter was referred to a larger Bench.

- 13) That in light of the above mentioned Act, the appellant along with other similarly placed employees of the levies force filed a constitutional petition (WP No. 1281-M/2022) before the Hon'ble Peshawar High Court Mingora Bench to the extent of their re-instatement in light of the Provincial Assembly's Act. The petition was allowed by the Hon'ble High Court vide judgment dated 23-11-2022 whereby the respondents were directed to re-instate the then petitioners. It is worth mentioning that vires of the impugned rules were not challenged in the said petition, which are being impugned through the instant appeal.
- 14) That a larger Bench of the Hon'ble Peshawar High Court heard the connected petitions on 29-11-2022. Consequently, the Hon'ble High Court decided that personnel of the levies force are civil servants and their employment matters would be dealt with by this Hon'ble Tribunal (Copy of order dated 29-11-2022 is Annexure "J").
- 15) That being aggrieved with the impugned notifications and subsequent retirement order, the instant appeal is being filed before this Hon'ble Tribunal, *inter alia*, on the following grounds:

GROUND:

- A) That the impugned act of amending the relevant Service Rules to the detriment of the appellant and subsequent retirement is illegal and un-Constitutional. Hence, the same acts are liable to be declared as such.
- B) That it is a settled law that service rules cannot be amended to the detriment of public sector employees. Even, if they are so

amended, the same having prospective effect cannot be applied against the existing employees

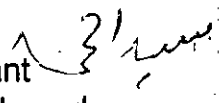
- C) That after the 25th Constitutional amendment, the new Constitutional regime demanded streamlining of the erstwhile Tribal Areas with the rest of the Province. So much so, Levies personnel serving in erstwhile FATA and Khasadar Force were accommodated to a larger extent where the Provincial Assembly passed an Act aimed at streamlining the service structure of Ex. FATA Levies Force. The Act not only provides uniform retirement age i.e 60 years for the whole Force but rather enjoins upon the Provincial Government to take steps towards absorption of the said Levies and Khasadars in regular police. Regrettably, the appellants have been treated in violation of the Constitutional spirit particularly after the 25th Constitutional amendment and subsequent orders.
- D) That further grounds, with leave of this Hon'ble Tribunal, would be raised at the time of oral submissions.


It is, therefore, humbly prayed that on acceptance of this appeal,

- (i) The impugned Notifications No. SO(Police-II)HD/MKD/Levies/Misc./2020 & No. SO (Police-II)HD/1-3/Federal Levies 2021 dated 21-10-2021 and subsequent retirement order issued by respondent No. 2 be declared as illegal, the same may be set aside. Consequently, the appellant may be held entitled to complete his service till attaining 60 years of age in light with Notification dated 14-07-2020.

Alternatively, the impugned notifications may be declared to be ineffective upon the rights of the appellant and the appellant be allowed to complete his service till attaining 60 years of age.

- ii) Any other remedy though may not specifically prayed for, but which circumstances of the case would demand in the interests of justice, may also be granted.

Appellant 
Said Ahmad
Identified by counsels



Dr. Adnan Khan Barrister-at-Law,
Advocate Supreme Court of Pakistan.
&


Umar Sadiq Advocate High Court

CERTIFICATE:

Certified that no such like appeal has earlier been filed before this Hon'ble Tribunal on the subject matter.

Appellant


Said Ahmad

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR (CAMP COURT AT SWAT)**

Service Appeal No. _____ of 2022

Said AhmadAppellant

VERSUS

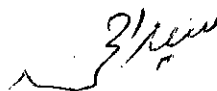
Government of Khyber Pakhtunkhwa and another

.....Respondents

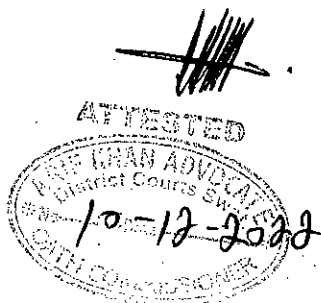
AFFIDAVIT

I, Said Ahmad (Appellant), do hereby solemnly affirm and declare that the contents of the above titled Appeal are true and correct to the best of my knowledge and belief. Furthermore, no such like appeal has earlier been filed before this Hon'able Tribunal or elsewhere on this subject matter

DEPONENT



Said Ahmad



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR (CAMP COURT AT SWAT)**

Service Appeal No. _____ of 2022

Said AhmadAppellant

VERSUS

Government of Khyber Pakhtunkhwa and another

.....Respondents

ADDRESSES OF THE PARTIES

APPELLANT:

Said Ahmad S/O Ahmad Khan R/ Heroshah, Tehsil Dargai District
Malakand. [Naik No.4343]

(NIC# _____) (Cell# _____)

RESPONDENTS:

- 1) Government of Khyber through Secretary Home & Tribal Affairs Department, Civil Secretariat at Peshawar.
- 2) Commandant Malakand Levies/Deputy Commissioner District Malakand at Batkhela.

Appellant

Said Ahmad
Identified by counsels

Dr. Adnan Khan Barrister-at-Law,
Advocate Supreme Court of Pakistan.

&
Umar Sadiq Advocate High Court

(9) = Amir A
Office of Commandant Malakand Levies / Deputy Commissioner
Malakand Levies.
ORDER

My said Ahmad son of Ahmad Khan of village Herodrah, Malakand Agency is hereby appointed as Sepoy in Malakand Levies in BPS No. 1 (Rs. 920-26 1310), subject to his medical fitness.

(S. ABUL WAKEEL SHAH)
Political Agent, Malakand.

No 2180 /XVI/15-E (10), dated the Malakand 27/4 1973.
Copy forwarded to the Subedar Major, Malakand Levies
Malakand for information and necessary action.

Political Agent, Malakand.

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KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, FRIDAY, 15TH FEBRUARY, 2013.

GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT

NOTIFICATION

Peshawar the 4th February 2013

SERVICE RULES FOR FEDERAL LEVIES FORCE IN PATA

In exercise of the powers conferred by Section 9 of the PATA Levies Force Regulation, 2013, the Provincial Government of Khyber Pakhtunkhwa is pleased to make the following rules, namely:-

1. **Short title and commencement.** - (1) These rules may be called **Government of Khyber Pakhtunkhwa Tribal Areas (PATA) Levies Force Service (Amended) Rules, 2013**.

(2) They shall come into force at once.

2. **Definitions.** - (1) In these Rules, unless the context otherwise require, the following expressions shall have the meaning hereby respectively assigned to them, namely:-

- (a) "Appointing Authority" means the appointing authority specified in rule-4;
- (b) "Commandant" means Commandant of the Force, who shall be the District Commissioner in their respective jurisdiction;
- (c) "Deputy Commandant (Operation)" means an Assistant Commissioner or any officer of the District designated as such by the provincial government who shall be Deputy Commandant (Operation) of the Force in PATA, to exercise in his respective jurisdiction such powers and perform such functions as may be prescribed; and who shall be responsible to the Commandant for operational matters of the Force in PATA.
- (d) "Deputy Commandant (Administration)" means Deputy Commandant (Administration) of the Force, who shall be an officer of the provincial government or any officer of the District designated as such by the provincial government to exercise in his respective jurisdiction such powers and perform such functions as may be prescribed and who shall be responsible to the Commandant for administration and establishment matters of the Force in PATA.
- (e) "Government" means the Government of Khyber Pakhtunkhwa;
- (f) "Home Department" means Provincial Home & Tribal Affairs Department;
- (g) "Initial recruitment" means appointment made other than by promotion or transfer;
- (h) "Schedule" means the Schedule appended to these rules;

Signature
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Signature

Signature

(11)

SCHEDULE - III
See Rule 17.

S.No.	Post/Rank	Length of service / Age
1	Subedar Major (BS-16)	38 years service or 03 years service as Subedar Major or 60 years age whichever is earlier
2	Subedar (BS-13)	35 years service or 03 years service as Subedar or 57 years age whichever is earlier
3	Naib Subedar (BS-11)	32 years service or 03 years service as Naib Subedar or 54 years age whichever is earlier
4	Havaldar (BS-8)	29 years service or 03 years service as Havaldar or 51 years age whichever is earlier
5	Naik (BS-7)	26 years service or 03 years service as Naik or 48 years age whichever is earlier
6	L/Naik (BS-6)	23 years service or 03 years service as L/Naik or 45 years age whichever is earlier
7	Naik (BS-5)	20 years service or 03 years service as Naik or 42 years age whichever is earlier

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GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT

NOTIFICATION
Peshawar the 4th February 2013

SERVICE RULES FOR FEDERAL LEVIES FORCE IN PATA

In exercise of the power conferred by Section 9 of the PATA Levies Force Regulation 2012, the Provincially Government of Khyber Pakhtunkhwa is pleased to make the following rules, namely:-

1. **Short title and commencement:-** (1) These rules may be called Provincially Administrated Tribal Areas (PATA) Federal Levies Force Service (Amended) Rules, 2013.

(2) They shall come into force at once.

2. **Definition:-** (1) In these Rules, unless the context otherwise require, the following expression shall have the meaning hereby respectively assigned to them, namely:-

- (a) "Appointing Authority" means the appointing authority specified in rule-4;
- (b) "Commandant" means Commandant of the Force, who shall be the Deputy Commissioner in their respective jurisdiction;
- (c) "Deputy Commandant (Operation)" means as Assistant Commissioner or any officer of the District designated as such by the provincial government who shall be Deputy Commandant (Operation) of the Force in PATA, to exercise in his respective jurisdiction such power and perform such functions as may be prescribed; and who shall be responsible to the Commandant for operational matters of the Force in PATA.
- (d) "Deputy Commandant (Administration)" means Deputy Commandant (Administration) of the Force, who shall be an officer of the provincial government or any officer of the District designated as such by the provincial government to exercise in his respective jurisdiction such powers and perform such functions as may be prescribed and who shall be responsible to the Commandant in administration and establishment matters of the Force in PATA.
- (e) "Government" means the Government of Khyber Pakhtunkhwa;
- (f) "Home Department" means Provincial Home & Tribunal Affairs Department;
- (g) "Initial recruitment" means appointment made other than by promotion or by transfer;
- (h) "Schedule" means the Schedule appended to these rules'

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SCHEDULE-III
See Rule 17

S.#	Post/Rank	Length of service/Age
1	Subedar Major (BS-16)	38 years service or 03 years service as Subedar Major or 60 years age whichever is earlier
2	Subedar (BS-13)	35 years service or 03 years service as Subedar or 57 years age whichever is earlier
3	Naib Subedar (BS-11)	32 years service or 03 years service as Naib Subedar or 54 years age whichever is earlier
4	Havaldar (BS-8)	29 years service or 03 years service as Havaldar or 51 years age whichever is earlier
5	Naik (BS-7)	26 years service or 03 years service as Naik or 48 years age whichever is earlier
6	L/Naik (BS-6)	23 years service or 03 years service as L/Naik or 45 years age whichever is earlier
7	Sepoy (BS-5)	20 years service or 42 years age whichever is earlier

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NOTIFICATION

No. Sol/Secy/HD/FLW/14/2015/61. The competent authority has been pleased to make further amendments in Schedule-I of Rule-4(2) and Schedule-III of Rules-17 under Part-II of the Regulation for PATA Levy Force, 2012 & Rule-24 of the Provincially Administered Areas (PATA) Federal Levy Force Service (Amended) Rules, 2013 as under:-

Rule-4(2) Schedule-I

SCHEDULE-I
See Rule 4 (2)

S.No	Post/ Rank	Eligibility for promotion	Promotion Quota	Direct Quota	Qualification
	Subedar Major (SS-1)	One year service as Subedar	100%		
	Subedar (SS-13)	One year service as Naib Subedar	100%		
	Naib Subedar (BS-11)	One year service as Hawaldar	100%		
	Hawaldar (BS-8)	One year service as Naik	100%		
	Naik (BS-7)	One year service as Lance Naik	100%		
	Lance Naik (BS-6)	Five years' service as Sepoy	100%		
	Sepoy (BS-5)			100%	Middle Metric
	Head Armorer (BPS-5)	Five years' service as Assistant Armorer	100%		Middle Metric v of Armo
	Assistant Armorer (BPS-1)			100%	Middle Metric v of Armo

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

SCHEDULE-III

Rule-17 Retirement

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

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Government of Kyber Pakhtunkhwa,
Home & Tribal Affairs Department
Dated Peshawar the 12th December, 2013

NOTIFICATION

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

SCHEDULE-I
See Rule 4(2)

Uniformed Force

S.No	Post/Rank	Eligibility for promotion	Promotion Quota	Direct Quota	Qualification
1.	Subedar Major (BS-16)	One year service as Subedar	100%		
2.	Subedar (BS-13)	One year service as Naib Subedar	100%		
3.	Naib Subedar (BS-11)	One year service as Hawaldar	100%		
4.	Hawaldar (BS-8)	One year service as Naik	100%		
5.	Naik (BS-7)	One year service as Lance Naik	100%		
6.	Lance Naik (BS-6)	One year service as Sepoy	100%		
7.	Sepoy (BS-5)			100%	Middle Pass/Matric
8.	Head Armorer (BS-5)	One year service as Assistant Armorer	100%		Middle Pass/Matric
9.	Assistant Armorer (BS-1)			100%	Middle Pass/Matric

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

SCHEDULE -III
Rule -17 (Retirement)

S.No	Post/Rank	Length of service/age for retirement
1.	Subedar Major (BS-16)	37 years' of service or 60 years of age whichever is earlier
2.	Subedar (BS-13)	35 years' of service or 60 years of age whichever is earlier
3.	Naib Subedar (BS-11)	33 years' of service or 60 years of age whichever is earlier
4.	Hawaldar (BS-8)	31 years' of service or 60 years of age whichever is earlier
5.	Naik (BS-7)	29 years' of service or 60 years of age whichever is earlier
6.	Lance Naik (BS-6)	28 years' of service or 60 years of age whichever is earlier
7.	Sepoy (BS-5)	25 years' of service or 60 years of age whichever is earlier

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Amendment

14-07-2020

In the said rules:-

- (a) For rule 17, the following shall be substituted, namely:
 - "17. Retirement— All Levies Personnel shall retire from service on attaining their age of superannuation i.e. sixty (60) years or they may opt for retirement after completion of twenty-five (25) years regular service." and
- (b) Schedule-III shall be deleted.

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
HOMI DEPARTMENT

Copy forwarded to the:-

1. Principal Secretary to Government, Secretariat, Khyber Pakhtunkhwa, Peshawar.
 2. Principal Secretary to Chief Minister's Secretariat, Khyber Pakhtunkhwa, Peshawar.
 3. All Administrative Secretaries to Government of Khyber Pakhtunkhwa.
 4. Registrar Peshawar High Court, Peshawar.
 5. All Commissioners, Khyber Pakhtunkhwa.
 6. All Deputy Commissioners, Khyber Pakhtunkhwa.
 7. Provincial Election Commissioner, Khyber Pakhtunkhwa.
 8. Provincial Police Officer, Khyber Pakhtunkhwa.
 9. All Heads of Attached Departments in Khyber Pakhtunkhwa.
 10. PSC to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
 11. Accountant General of Khyber Pakhtunkhwa.
 12. Director Information Khyber Pakhtunkhwa, Peshawar.
 13. The Manager Government Printing & Stationery Department, Khyber Pakhtunkhwa.
- It is requested to publish the above amendments in the official gazette of Khyber Pakhtunkhwa and supply 50 Copies (Printed) of the same to the Home Department.

Section Officer

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PERSONAL COPY RETURNED TO
OFFICE

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HOME DEPARTMENT
NOTIFICATION

Dated Peshawar the 14-07-2020

17

No. SO (Police-IDHD/1-3: In exercise of the power conferred by Section 9 of the Provincially Administered Tribal Areas Levies Force Regulation 2012, the Government of the Khyber Pakhtunkhwa is pleased to direct that in the Provincially Administered Tribal Areas (PATA) Federal Levies Force Service (Amended) Rules, 2013, the following further amendments shall be made, namely:

Amendments

In the said rules:-

a) Fro rule 17, the following shall be substituted, namely:

"17, Retirement.--- All Levies Personal shall retire from service on attaining then age of superannuation i.e sixty (60) years or they may opt for retirement after completion of twenty-five (25) years regular service, and

b) Schedule-III shall be deleted.

SECRETARY TO
GOVT: OF KHYBER PAKHTUNKHWA
HOME DEPARTMENT

Copy forwarded to the:-

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**GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME AND TRIBAL AFFAIRS DEPARTMENT**

NOTIFICATION

Number: 22-1-2022

In exercise of the powers conferred by Section 8 of the PATA Lewis Force Regulation, 2012, the Provincial Government of Khyber Pakhtunkhwa is pleased to direct that in the PATA Federal Lewis Force Service (Awarded) Rules, 2013, the following further amendments shall be made, namely:-

Amendments

In the said rules:-

- In rule 4, sub-rule (1), the following shall be substituted, namely:
 - Commandant shall be the appointing authority for initial recruitment and promotion up to the rank of Subedar; provided that the appointing authority for purpose of promotion to the posts of Subedar Major and Superintendants shall be Secretary, Home Department.
- For rule 77, the following shall be substituted, namely:

"77. Withdrawal: All Levy personnel shall retire as per Schedule-III and no extension of service shall be granted."
- For Schedule-III, the following shall be substituted, namely:

"Schedule-III
(For rule 77)

S. No.	Name of the Post / Rank	Conditions for Promotion	Length of Service / Age
	Subedar Major (22-10)	On the basis of Seniority from amongst the Subedars having intermediate qualification.	Three Seven Years or Three Years Service as Subedar Major or Sixty Years of age whichever is earlier.
1	Subedar (22-12)	By promotion, on the basis of Seniority from amongst the following: <ol style="list-style-type: none"> Subedar (22-12) from amongst the Subedars having intermediate qualification; and Subedar (22-12) from amongst the Subedars having Secondary School Certificate. 	Three Two Years service or Four Years service as Subedar or Sixty years of age whichever is earlier.
2	Head Subedar (22-11)	By promotion, on the basis of Seniority from amongst the following: <ol style="list-style-type: none"> Subedar (22-12) from amongst the Subedars having intermediate qualification; and Subedar (22-12) from amongst the Subedars having Secondary School Certificate. 	Three Three Years Service or Seven Years Service or Sixty Years of age whichever is earlier.

10/10/2022

SECRETARY TO GOVT

22-1-2022

SECRETARY TO GOVT

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S.No.	Name of the Post / Rank	Qualification for Promotion	Length of Service / Age
4	Inspector (SB-04)		Thirty One years service or Three years service as Inspector or Fifty One years of age, whichever is earlier.
5	Sub (SB-03)		Twenty Nine years service or Three years service as Sub or Forty Eight years of age, whichever is earlier.
6	Const (SB-02)		Twenty Seven years service or Three years service as Const or Forty Five years of age, whichever is earlier.
7	Boy (SB-01)		Twenty Five years service or Three years service as Boy or Forty Three years of age, whichever is earlier.

**SECRETARY TO
GOVERNMENT OF KHYBER PAKHTUNKHWA,
HOME & TRIBAL AFFAIRS DEPARTMENT**

Copies forwarded to Sec:-

1. Principal Secretary to the Governor, Khyber Pakhtunkhwa.
 2. Principal Secretary to the Chief Minister, Khyber Pakhtunkhwa.
 3. All Administrative Secretaries to Government of Khyber Pakhtunkhwa.
 4. Registrar, Khyber Pakhtunkhwa High Court, Peshawar.
 5. All Commissioners, Khyber Pakhtunkhwa.
 6. All Deputy Commissioners, Khyber Pakhtunkhwa.
 7. Provincial Police Officer, Khyber Pakhtunkhwa.
 8. All Heads of Attached Offices in Khyber Pakhtunkhwa.
 9. PEO to the Chief Secretary, Khyber Pakhtunkhwa.
 10. Accounts General, Khyber Pakhtunkhwa.
 11. Director, Information, Khyber Pakhtunkhwa.
 12. The Manager Government Printing & Stationery Department, Khyber Pakhtunkhwa.
- He is requested to publish the above Notification in the Extra Ordinary Gazette of Khyber Pakhtunkhwa and supply 50 copies (printed) of the same to the Home Department.

Section Officer (Police-II)

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GOVERNMENT OF KHYBER PAKHTUNKHWA

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To be substituted notification of even No & date.

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GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME AND TRIBAL AFFAIRS DEPARTMENT

NOTIFICATION

Peshawar, dated the 22-3-2021

No. SQ(Police-II)HD/MKD/Levies/Misc./2020:- . In exercise of the powers conferred by Section-9 of the PATA Levies Force Regulation, 2012, the Provincial Government of Khyber Pakhtunkhwa is pleased to direct that in the PATA Federal Levies Force Service (Amended) Rules, 2013, the following further amendments shall be made, namely:-

Amendments

In the said rules:-

1. In Rule 4, sub-rule (1), the following shall be substituted, namely:
“(1) Commandant shall be the appointing authority for initial recruitment and promotion up to the rank of Subedar:
Provided that the appointing authority for purpose of promotion to the posts of Subedar Major and Superintendents shall be Secretary, Home Department.”

2. For Rule 17, the following shall be substituted namely:
“17. Retirement: All Levy personnel shall retire as per Schedule-III and no extension in service after retirement shall be granted”.

3. For Schedule-III, the following shall be substituted, namely:

“Schedule-III
(see rule 17)

S. No.	Name of the Post / Rank	Qualification for Promotion	Length of Service / Age
1	Subedar Major (BS-16)	On the basis of Seniority-cum-fitness from amongst the Subedars having Intermediate Qualification	Thirty Seven Years or Three Years' Service as Subedar Major or Sixty Years of age whichever is earlier
2	Subedar (BS-13)	By promotion, on the basis of Seniority Cum Fitness in the following manner, namely: (i) Fifty Percent (50%) from amongst the Naib Subedars having Intermediate qualification; and (ii) Fifty Percent (50%) from amongst Naib Subedars having Secondary School Certificate	Thirty Five Years service or Five Years service as Subedar or Sixty years of age whichever is earlier
3	Naib Subedar (BS-11)	By promotion, on the basis of Seniority Cum Fitness in the following manner, namely:	Thirty Three Years' Service or Seven Years' Service as Naib Subedar or Sixty Years

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[Signature]

To
The Chief Minister

KP at Peshawar

Subject: Application for review of the levies rules 2021

Respectfully Sir/Madam

1. That the applicants are the levies personals of Malakand Levies.
2. That the Malakand Levies is established in the year 1895.
3. That the Malakand levy personals are performing their regular duty as police since 1973.
4. That in the year 1962, Levies rules were promulgated, in which the retirement age of different ranks were determined, and the of retirement of Subidar Major, Subidar, Naib Subidar were determined as 30 years of service or 50 years of age, for Lans Nask to Hawaldar 25 years of service or 50 years of age and for constable 18 years of service and 50 years of age whichever comes first. (Rules annexed) ~K
5. That after the promulgation of the said rules, the mentioned rules were first amended in February, 2013. in which the retirement age of different ranks were determined and rescheduled, the retirement age of Subidar Major were changed to 38 years of service, or 3 years as Subidar Major or 60 years of age, the retirement age Subidar were changed to 35 years of service or 3 years as Subidar or 57 years of age, the retirement age Nask

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Subidar changed to 32 years of service or 3 years as Naik Subidar or 54 years of age. The retirement age of Hawaldar were changed to 29 years of service, 3 years as Hawaldar and 51 years of age. That the service of Naik were changed to 26 years of service, 3 years as Hawaldar and 48 years of age. The retirement age of Las Naik were changed to 23 years of service, 3 years as Hawaldar and 45 years of age. The retirement age of Seopy/constable were changed to 20 years of service, 42 years of age whichever comes first. (Rules attached). "B"

6. That in December, 2013 the service tenure and retirement age was rescheduled for Subidar Major 37 years of service and 60 years of age. Subidar 35 year of service or 60 years of age, for Naib Subidar 33 years of service or 60 years of age, for Hawaldar 31 years of service or 60 years of age, for Naik Hawaldar 29 years of service or 60 years of age, for Las Naik Hawaldar 27 years of service or 60 years of age and for the constable/seopy 25 years of service or 60 years of age which comes first. (Rules annexed). "C"

7. In August, 2016 the service tenure was once again rescheduled in which for the post of Subidar Major 37 years of service, 3 years as Subjdar Major and 60 years of age, For Subidar 35 years of service or 5 years as Subidar or 60 years of age, for Naib Subidar 33 years of service or 7 years as Naib Subidar or 60 years of age which comes first. (Rules annexed). "D"

8. That on 14/07/2020 the schedule of the retirement and service tenure was amended as deleted, the retirement age was fixed as 60 years, or 25 years of service tenure whichever comes first. (copy attached). "E"

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9. That on 22/03/2021 the levy rules were lastly amended, in which for the post of Subidar Major 37 years of service or 3 years as Subjdar Major or 60 years of age, for Subidar 35 year of service, 5 years as Subidar or 60 of age, for Naib Subidar 33 years of service or 7 years as Naib Subidar or 60 years of age, for Hawaldar 31 years of service or 3 years as Hawaldar or 51 years of age, for Naik Hawaldar 29 years of service or 3 years as Naik Hawaldar or 48 years of age, for Las Naik Hawaldar 27 years of service or 3 years as Las Hawaldar or 45 years of age, for constable/Seopy 25 years of service or 42 years of age. (Rules attached). F

10. That in the above mentioned rules of 2021, the ranks of Hawaldar and Seopy are changed two steps down from scale 7 to 5.

11. That against the different amendments some levy personals filed writ petitions before the Hon'able Peshawar high court, which were decided. (Copies attached). G

12. That in the year 2021 some of levy personals filed an application to your Honor, on that application the summary of ten pages were prepared which was approved by the hon'able Chief Minister of KP. (copy attached). H

13. That the final amendments of year 2021 are against the fundamental rights of the applicants, because these amendments are based on discrimination in which the service tenure and age of retirement of, Hawaldar to constable were reduced, while the service tenure and age of retirement of other ranks were enhanced.

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14. Those from the implementation of amendments of 2021, 237 levy personals of lower ranks are going to be retired.

15. That for the rank of constable the age of recruitment is minimum 18 years and the age of retirement is 42 years, so it is not possible that someone will serve for 25 years.

16. That levy personals are also serving the country as other forces and be dealt like other forces/police, and their service structure be schedule once for all.

17. That the amendments of 2021 are against the natural justice and fundamental right of the applicants are involved.

Petitioners:

1. HC Sif Ur Rehman Reg. No. 4224

2. HC Umar Rehman Reg. No. 4282

3. Nalk Hawaldar Muhtasham Khan Reg. No. 4356

4. Nalk Hawaldar Shamsul Afiqah Reg. No. 4359

5. Nalk Hawaldar Muhammad Saleem Reg. No. 4377

6. Las Hawaldar Zafar Ali Bacha Reg. No. 4415

Dated 29.03.2021

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OFFICE OF THE DC MALAKAND/
COMMANDANT MALAKAND LEVIES

NO. _____ /LC
DATED MALAKAND THE 22/3/2021
Phone: 0932-452080 Fax: 0932-452105

OFFICE ORDER

In pursuance of Notification No.SO(Police-II)/HD/MKD/Levies/Misc/2020 amended Service Rules 2021 Schedule III dated 22-03-2021, issued by Government of Khyber Pakhtunkhwa Home & Tribal Affairs Department, Peshawar, the following Naik of Malakand Levies, who have already completed the requisite service/tenure/age as noted against each stands retired from service with effect from 22-03-2021 (AN) with full pensionary benefits as per relevant pension rules:-

S.No	Regimental No & Designation	Name	Retirement Reason
1.	4330 Naik	Essa Khan	Completion of the both requisite 48-Years of age and 03-Years Service as Naik
2.	4331 Naik	Gul Rehman	Completion of the both requisite 48-Years of age and 03-Years Service as Naik
3.	4332 Naik	Abdul Karim,	Completion of the both requisite 48-Years of age and 03-Years Service as Naik
4.	4333 Naik	Zarminosh	Completion of the both requisite 48-Years of age and 03-Years Service as Naik
5.	4334 Naik	Zakir Ullah	Completion of the requisite 03-Years Service as Naik
6.	4337 Naik	Mohd Younas	Completion of the both requisite 48-Years of age and 03-Years Service as Naik
7.	4338 Naik	Amir Nawaz Khan	Completion of the both requisite 48-Years of age and 03-Years Service as Naik
8.	4340 Naik	Amir Akbar Khan	Completion of the both requisite 48-Years of age and 03-Years Service as Naik
9.	4341 Naik	Shah Room Khan	Completion of the requisite 03-Years Service as Naik
10.	4342 Naik	Omera Jan	Completion of the both requisite 48-Years of age and 03-Years Service as Naik
11.	4343 Naik	Said Ahmed	Completion of the both requisite 48-Years of age and 03-Years Service as Naik

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35.	4382 Naik	Sami Ullah	Completion of the requisite 48-Years of age
36.	4325 Naik	Sabzali	Completion of the requisite 48-Years of age
37.	4390 Naik	Said Jamal	Completion of the requisite 48-Years of age
38.	4391 Naik	Murad Khan	Completion of the requisite 48-Years of age
39.	4392 Naik	Badshah Zaman	Completion of the requisite 48-Years of age
40.	4394 Naik	Mohd Rooz	Completion of the requisite 48-Years of age
41.	4397 Naik	Saeed Khan	Completion of the requisite 48-Years of age
42.	4399 Naik	Bakht Moon	Completion of the requisite 48-Years of age
43.	4400 Naik	Wasilullah	Completion of the requisite 48-Years of age
44.	4401 Naik	Fazal Maula	Completion of the requisite 48-Years of age

DC MALAKAND/COMMANDANT
MALAKAND LEVIES MALAKAND

NO. 2377-81 /LC

Copy with forwarded to the:-

1. Commissioner, Malakand Division at Saidu Sharif, Swat for information, please.
2. Section Officer (Police-II), Home & TA's Department Khyber Pakhtunkhwa Peshawar for information with reference to Notification referred above.
3. District Account Officer, Malakand.
4. Subedar Major Malakand Levies.
5. Official Concerned.

For information & necessary action.

DC MALAKAND/COMMANDANT
MALAKAND LEVIES MALAKAND

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Copy forwarded to the:-

1. Principal Secretary to the Governor, Khyber Pakhtunkhwa.
2. Principal Secretary to the Chief Minister, Khyber Pakhtunkhwa.
3. All Administrative Secretaries to Government of Khyber Pakhtunkhwa.
4. Registrar, Peshawar High Court, Peshawar.
5. All Commissioners, Khyber Pakhtunkhwa.
6. All Deputy Commissioners, Khyber Pakhtunkhwa.
7. Provincial Police Officers, Khyber Pakhtunkhwa.
8. All Heads of Attached Department in Khyber Pakhtunkhwa.
9. PSO to the Chief Secretary, Khyber Pakhtunkhwa.
10. Accountant General, Khyber Pakhtunkhwa.
11. Direction Information, Khyber Pakhtunkhwa.
12. The Manager Government Printing & Stationery Department, Khyber Pakhtunkhwa. He is requested to publish the above Notification in the Extra Ordinary Gazette of Khyber Pakhtunkhwa and supply 50 copies (Printed) of the same to the Home Department.

Section Officer (Police-II)

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Annex I

بھصور جناب سیکرٹری صاحب ہوم اینڈ ٹریڈ اینڈ ایبل ایفیزر حیر پختونخواہ بمقام پشاور

اپیل نمبرانی بر جاری شدہ حکمانہ رولز نمبری 2021 HD/1-3/FEDRAL Levies/2021 (police11) so
amended Service Levy Rules 2021 Shedule 111 Dated 21-10-2021.

جاری شدہ از مجازیہ جناب موصوف سیکرٹری صاحب ہوم اینڈ ٹریڈ اینڈ ایبل افیزر۔

جناب عالی؛ ساٹان ذیل عرض رسان ہیں

۱ یہ کہ ساٹان ملاکنڈ لیویز کے ملازمین ہیں۔ اور مختلف عہدوں پر ملاکنڈ لیویز لیویز میں ڈیوٹی کرتے رہیں۔

۲ یہ کہ ساٹان کے ملازمت میں عہدوں کے لحاظ سے مختلف مختلف اوقات ملازمت باقی ہیں۔

۳ یہ کہ جناب موصوف کے دفتر سے ملاکنڈ لیویز کے حکمہ کیلئے مورہ 21-10-2021 کو رولز بانمبری بالا جاری ہو کر برائے عمل درآمد DC صاحب / کمانڈنٹ ملاکنڈ لیویز کو بھجوا گیا۔

۴ یہ کہ جاری شدہ رولز بانمبری بالا اور سابقہ رولز 2020 HD/MKD/LEIES/MISC/2020 (police11) so

Amended Service Rules 2021 Shedule 111 Dated 22-03-2021 کے تحت جناب کمانڈنٹ

صاحب ملاکنڈ لیویز نے بروئے حکم نامے مورہ 22-03-2021، دیگر مختلف اوقات میں مختلف حکم نامہ کے رد سے ساٹان کو ملازمت سے ریٹائرڈ کئے گئے۔

۵ یہ کہ رولز مذکورہ جلد بازی میں تیار ہو چکے ہیں۔ جس میں ظاہری طور پر صاف اور بیٹھا حامیاں ہیں۔

۶ یہ کہ رولز مذکورہ سے خامیاں دور کرنے اور درست کرنے کیلئے رولز مذکورہ نظر ثانی کا محتاج ہے۔

۷ یہ کہ رولز مذکورہ پر نظر ثانی نہ کرنے موجودہ خامیاں دور نہ کرنے اور صحیح و درست نہ کرنے سے ساٹان کی حق تلفی ہوتی ہیں۔

اور پریشانی کی علاوہ مالی نقصان کا سامنا ہے۔ اور اسی طرح آئندہ دیگر ملازمین کو ملازمت اور ریٹائرڈ منٹ میں شوری ہوگی۔

۸ یہ کہ رولز مذکورہ پر نظر ثانی کرے اور درست ہونے کی صورت میں ساٹان ملازمت پر بحال ہونے کے صحیح حقداران ہیں۔

اسلئے بزرگ تحریرے درخواست / نگرانی ساٹان مستدی ہیں۔ کہ رولز مذکورہ پر نظر ثانی کرنے خامیاں دور کرنے صحیح اور

درست حالات میں تیار کرنے اور ساٹان کو ملازمت پر بحال کرنے اور کمانڈنٹ صاحب ملاکنڈ کے حکم نامے مورہ

22-03-2021، دیگر مختلف حکم نامے آرڈر منسوخ کرنے کے احکامات صادر فرمائے۔ اور دیگر جو قرین انصاف ہو بھی مرحمت

فرمائی جائے۔ مورہ 25-10-2021

سید علیٰ حسین
C.A.C
العرفین

ساٹان حوالہ عدلیہ عدلیہ 4578 سید علیٰ حسین 4492 خالد بھٹان سید 4559

محمد علیٰ حسین 4570 - محمد سلیم 4377 بلکھنہ خان 4559

4377 محمد علیٰ حسین 4228 محمد علیٰ حسین

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Amir J



Judgment Sheet
PESHAWAR HIGH COURT, PESHAWAR.
(JUDICIAL DEPARTMENT)

W.P.No.367-M/2021 with LR,
CM Nos.1053/2021 & 1183/2022.
JUDGMENT

Date of hearing — 29.11.2022.

Barrister Dr.Adnan for petitioners.

Mr.Saqib Raza, A.A.G for the respondents.

S M ATTIQUE SHAH, J.:- Through this single judgment, we shall also decide the connected writ petitions bearing Nos.337-M/2021, 406-M/2021, 503-M/2021, 514-M/2021, 518-M/2021, 460-M/2021, 601-M/2021, 681- M/2021, 632- M/2021, 919-M/2021, 968- M/2021, 980- M/2021, 1221-M/2021, 1222-M/2021, 1252-M/2021, 2210-P/2021, 2913-P/2021, 5092-P/2021, 5423-P/2021, and 5424-P/2021 as adjudication of a common question of law and fact is involved in all the petitions wherein the petitioners have challenged the vires of notification No. SO (Police-II) HD/ MKD/Levies/Misc/2020 dated 22.03.2021 whereby on the basis of impugned office order bearing No.128/DC/CSL dated

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20.04.2021, they have been retired from service with further prayer that they be reinstated into service from the date of their retirement i.e. 20.04.2021 with all back benefits. In alternative, they have prayed that the respondents be directed to treat them at par with erstwhile Federal Levies of Federally Administrated Tribal Area (FATA) and; absorb them in police and; grant them full pensionary benefits.

2. Likewise in W.P.Nos.333-M/2021, 334-M/2021, 335-M/2021, 338-M/2021, 345-M/2021, 1026-M/2021, 1035-M/2021, 1187-M/2021, 1206-M/2021, 1207-M/2021, 34-M/2022, 212-M/202 and 993-P/2022 the petitioners have made the following prayer:

"On acceptance of this writ petition, the impugned Notification SO (Police-II) HD/ MKD/Levies/ Misc/2020 is against law and the fundamental rights guaranteed by the Constitution of Islamic Republic of Pakistan, 1973, may be declared illegal void ab initio and of no legal effects on the rights of the petitioners."

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Similarly, in COC Nos.38-M/2021 in W.P.No.367-M/2021 and COC No.436-P/2022 in W.P.No.1335-P/2022 petitioners seek initiation of contempt of court proceedings against the respondents for violating the order of this court dated 21.04.2021 passed in W.P.No.367-M/2021.

3. Brief facts of the case(s) are that the petitioners were appointed in the "Swat Levies Force" as Sepoys etc. and presently terms and conditions of their services are regulated by "Provincially Administrated Tribal Areas Levies Force Regulation 2012" whereunder besides PATA Levies Force Rules, 2012, PATA Levies Force Service (Amended) Rules 2013 were also framed. Rule 17 of the Amended Rules 2013, deals with the retirement of personnel of the force, which was amended vide notification dated 12.12.2013 in the manner that "All the personnel shall retire as per Schedule-III and no extension in service beyond retirement shall be granted". On 14.07.2020, vide Notification No.SO

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(Police-II)HD/1-3, rule 17 was further amended by deleting schedule-IV as "All uniformed force shall retire from service on attaining the age of superannuation i.e. Sixty (60) years or they may opt for retirement after completion of twenty-five (25) years regular service". Thereafter once again through certain modifications rule, 17 was amended by giving life to the deleted schedule-III of the rules 2013 as under:-

"Retirement; All levy personnel shall retire as per Schedule-III and no extension in service after retirement shall be granted."

4. Being aggrieved from the ibid amendment, the petitioners have filed the instant petitions.
5. Pursuant to the directions of this court respondents have filed their parawise comments, wherein issuance of the desired writs has been opposed.
6. Learned counsel representing the petitioners vehemently argued that the

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Impugned Notification is arbitrary, perverse, illegal, issued without lawful authority and *mala fide* intention just to deprive the petitioners of their vested rights accrued in their favour hence violative of their fundamental rights guaranteed under the Constitution and thus not sustainable in the eye of law. That though the impugned Notification was issued under the regulation 2012. However, after the 25th Constitutional amendment, the said regulation does not hold field, therefore, the impugned Notification is liable to be set aside.

7. Conversely, worthy AAG representing the respondents opposed the arguments so advanced by learned counsel representing the petitioners at the bar while arguing that after the 25th amendment the Provincial Assembly passed the continuation of laws Act No.111 of 2019 through which the laws applicable to erstwhile PATA were allowed to continue including "Provincial Administered Tribal Areas Levies Force Regulation, 2012" and;

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therefore, the Impugned Notification was issued per law which does not require any interference by this court in its writ jurisdiction under Article 199 of the Constitution. Further, petitioners are Civil Servants, and; matter in question revolves around the terms and conditions of their service which is the exclusive domain of the Service Tribunal as such the jurisdiction of this court is barred given the explicit provision of Article 212 of the Constitution.

8. Heard. Record perused.

9. Before discussing merits of the case we deem it appropriate to discuss the background of the matter in hand to properly comprehend the issue involved therein. It is worth mentioning that earlier the services of the Levies Force were dealt with under the *Frontier Irregular Corps (FIC) rules, 1962* which was substituted by the "*Provincial Administered Tribal Areas Levies Force Regulation, 2012*" (regulation) and under the said regulation "*PATA Levies*

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Force (service) Rules, 2012" were framed for Provincial Levies Force. While separate service rules were also framed thereunder for PATA Federal Levies Force performing duties in "PATA" known as "PATA Federal Levies Force Service (Amended) Rules 2013. Rule 17 of the ibid rules deals with the retirement of the Levies personnel which was amended from time to time. However, petitioners have become aggrieved from the impugned Notification vide which the petitioners' retirement age was altered which is challenged by them through instant petitions.

10. The main contention of the petitioners is that after 25th amendment the regulation has lost its efficacy and sanctity and has become redundant, therefore, the impugned amendment under the said regulation is illegal being void ab initio. It is worth mentioning that after the 25th amendment in 2018, both FATA & PATA were merged in the province of Khyber Pakhtunkhwa and Federal Levies Force

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working in FATA was merged into the regular police of the province. Albeit, in Malakand Division, Levies Force is still regulated by "PATA Federal Levies Force Service (Amended) Rules 2013 in view of the Khyber Pakhtunkhwa Act No 111 of 2019 through which the laws prevalent in erstwhile PATA at the time of 25th amendment were allowed to continue including regulation 2012 which still holds the field and as such the same is a valid instrument. Therefore, impugned Notification was issued by the respondents with lawful authority.

11. Moving toward the status of the petitioners it is worth mentioning that earlier this court while deciding W.P No 528-M/2016 (Ikramullah's case) determined the status of personnel of the Provincial Levies Force as that of civil servants in the following terms:-

"19. The Provincial Levies Force ("Force") was granted statutory cover through Khyber Pakhtunkhwa Regulation No.1 of

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2014 ("Regulation"). Paragraph No.3 of the Regulation envisages for constitution and establishment of the Force and its functions. For ease reference paragraph Nos. 3 and 4 of the Regulation are reproduced as under:-

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

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

(2) In discharge of their functions, officers and staff of the Force shall

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be guided in accordance with this Regulation and the rules.

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

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

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

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

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

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

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

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

- (a) *take effective measures for ensuring security of assigned jurisdiction and for safeguarding against acts of unlawful interference;*
- (b) *prevent unauthorized persons and vehicles from access to the territorial jurisdiction;*
- (c) *take effective measures for preventing sabotage, placement of car bombs, letter bombs, dangerous article and carriage of arms and ammunition into the restricted area;*
- (d) *use such arms and ammunition and equipment as may be authorized by the Commandant or an officer authorized by him;*
- (e) *search and arrest without warrant any person who he suspects of endangering or attempting to endanger or having endangered the safety of an installation and may use such force as may be necessary in the discharge of his aforesaid duties; and*
- (f) *perform such other legal functions as the competent authority may require him to perform*.*

20. The close perusal of the Regulation would clearly show that the Force is receiving its salary from the Provincial

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Peshawar High Court

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Exchequer and performs the policing service in the erstwhile PATA.

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

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

2. Definitions.—(1) In this act, unless the context otherwise requires the following expressions shall have the meanings hereby respectively assigned to them, that is to say—

- (a)
- (b) "civil servant" means a person who is a member of a civil service of the Province, or who holds a civil post in connection with the affairs of the Province, but does not include—

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- (i) a person who is on deputation to the Province from the Federation or any other Province or other authority;
- (ii) a person who is employed on contract, or on work charged basis, or who is paid from contingencies; or
- (iii) a person who is a "worker" or "workman" as defined in the Factories Act, 1934 (Act XXV of 1934), or the Workmen's Compensation Act, 1923 (Act VIII of 1923)".

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

"260.
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"service of Pakistan" means any service, post or office in connection with the affairs of the Federation or of a Province, and includes an All-Pakistan Service, service in the Armed Forces and any other service declared to be a service of Pakistan by or under Act of [Majlis-e-Shoora

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(Parliament)] or of a Provincial Assembly, but does not include service as Speaker, Deputy Speaker, Chairman, Deputy Chairman, Prime Minister, Federal Minister, Minister of State, Chief Minister, Provincial Minister, [Attorney-General], [Advocate-General], [Parliament Secretary] or [Chairman or member of a Law Commission, Chairman or member of the Council of Islamic Ideology, Special Assistant to the Prime Minister, Adviser to the Prime Minister, Special Assistant to a Chief Minister, Adviser to a Chief Minister] or member of a House or a Provincial Assembly;

Whereas Article 240 of the Constitution envisages that:-

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

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

Explanation.- In this Article, "All-Pakistan Service" means a service common to the Federation and the Provinces, which was in existence immediately before the commencing

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day or which may be created by Act of [Majlis-e-Shoora (Parliament)]".

24. The Phrase "performing in connection with the affairs of Federation or for present matter Province" was elaborately explained in the case of Salahuddin and 2 others vs. Frontier Sugar Mills & Distillery Ltd. Tekht Bhai and 10 others (PLD 1975 Supreme Court 244).

In the said judgment, the Apex Court has held:

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

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Federal Government or a Provincial Government.

25. Admittedly, as evident from the bare reading of paragraph-3 & 4 of the Regulation, the present petitioners are performing policing service in the erstwhile tribal area, however, their terms and conditions are being regulated through Regulation No.1 of 2014 and after the omission of Article 247 from the Constitution; through a provincial statute i.e. the Khyber Continuation of Laws in the Erstwhile Provincially Administered Tribal Areas Act, 2018 (Khyber Pakhtunkhwa Act No. III of 2019), the operation of Regulation No.1 of 2014 was continued. Thus, the essential criteria for being a civil servant is that the person holding the post must perform his functions in connection with the affairs of Federation/Province and the terms and conditions of his service should be determined by or under the Act of Parliament/Provincial Assembly. The Apex Court in the case of Federation of Pakistan through Secretary, Ministry of Interior (Interior Division), Islamabad and 2 others vs. RO-

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177. Ex-DSR Muhammad Nazir (1998 SCMR 1081), while dealing with the case of an employee of Pakistan Rangers has observed that:

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

26: Similarly, in the case of Commandant Frontier Constabulary, Khyber Pakhtunkhwa, Peshawar and

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others vs. Gul Raqib Khan and others (2018 SCMR 903), the Hon'ble Apex Court has elaborately examined service structure of the employees of Frontier Constabulary, which is established under Frontier Constabulary Act (Act-XIII) of 1915. Relevant paragraphs of the said judgment are reproduced as under:-

"6. Three broad tests for establishing the status and character of a civil servant emerge from the Constitutional mandate of the afore-going Articles. Firstly, under Article 240(a) of the Constitution, appointments to and the terms and conditions of service of the persons in the "service of Pakistan" are to be determined by or under Act of Parliament. Secondly, by virtue of Article 260 of the Constitution, 'service of Pakistan' means any service, post or office in connection with the affairs of the Federation. Thirdly, under Article 212(1) (a) of the Constitution, the exclusive jurisdiction to adjudicate disputes relating to the terms and conditions of persons, who are in the service of Pakistan vests in an Administrative Tribunal, namely, the Federal Service Tribunal. These tests are mentioned in the Muhammed Mubeen-us-Salam case

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ibid (at pp. 686-689 of the law report). The definition of the term 'civil servant' in the Act adopts the Constitutional criteria given in Article 260 noted above to reiterate that a person who, *inter alia*, holds a civil post "in connection with the affairs of the Federation" including any such post connected with defence, to be a civil servant. The larger Bench has in this respect taken the logical step to incorporate the requirements under Article 240 (a) and 260 of the Constitution as the definitional criteria of the term "civil servant" (at p. 682 of the law report).

7. Having noticed the qualifying criteria of a civil servant under the law, it is appropriate now to examine the factual matrix of the present controversy. The FC was established by the NWFP Constabulary Act, (Act-XIII) of 1916 ("Constabulary Act"). Section 3 of the Constabulary Act empowers the Federal Government to maintain the FC as a force "for the better protection and administration of the external frontiers of Pakistan within the limits of or adjoining North-West Frontier or any part thereof". Section 3-A of the Constabulary Act authorises the Federal Government to employ the FC outside the limits of or adjoining the North-West Frontier Province in other parts of Pakistan for

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the better protection and administration of those parts. Section 5(1) of the Act ~~also~~ vests the Federal Government with power to appoint the Commandant and other persons including the District Constabulary Officers or Assistant Constabulary Officers of the force in one or more districts. Section 6 delegates to the Commandant and District Constabulary Officer the power to appoint subordinate officers in the manner prescribed by Rules made under the Act. The Federal Government exercised its power conferred by Section 21 of the Constabulary Act, to frame the NWFP Constabulary Rules, 1958 ("Constabulary Rules"), in order to provide the terms and conditions of service of the officers and men in the FC.

8. It will be observed that the matter of terms and conditions of service of the respondent-employees of the FC, are in the first place regulated by the Constabulary Act and elaborated pursuant thereto by the FC Rules. The provisions made by the Constabulary Rules are in furtherance of and in exercise of the power conferred by the Constabulary Act. Therefore, the terms and conditions of service of the employees of the FC are prescribed

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In the Act and the Rules. The test laid down in Article 240(a) of the Constitution requires that the appointment to and the terms and conditions of service of posts in connection with the affairs of the Federation and of a service of Pakistan shall be determined "by or under an Act of Parliament. The expression "by or under" in Article 240(a) of the Constitution authorizes the terms and conditions of service of a civil servant to be provided both by statute or by statutory rules. The provision made in the Constabulary Act and the Constabulary Rules, therefore, satisfy the Article 240(a) test. The judgment in the Muhammed Mubeen-us-Salam case ibid endorses this point of view:-

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

27. Similarly, this Court in the case of Gul Munir vs. The

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Government of Pakistan through Secretary, Ministry of States and Frontier Regions (SAFRON), Islamabad and others (2019 PLC (C.S) 645), on the basis of law laid down by the Apex Court in Commandant, Frontier Constabulary Khyber Pakhtunkhwa, Peshawar's case (2018 SCMR 903), while dealing with the case of Federal Levies Force, which was established through Federal Levies Force Regulation, 2012 having the same structure of service for its employees/force as provided in Regulation No. 1 of 2014 has held that employees of the Federal Levies Force whose terms and conditions of service are governed under Federal Levies Force Regulation, 2012 are civil servants. Keeping in view the above, the Force established under Regulation No. 1 of 2014 qualifies the criteria of being civil servant in view of its composition, functions and duties as per law laid down by the Apex Court in the cases of Federation of Pakistan through Secretary, Ministry of Interior (Interior Division), Islamabad and 2 others

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vs. RO-177 Ex-DSR Muhammad Nazir (1998 SCMR 1001) and Commandant Frontier Constabulary, Khyber Pakhtunkhwa, Peshawar and others vs. Gul Raqib Khan and others (2018 SCMR 903), thus, the preliminary objection raised by the learned counsels for the respondents is sustained and accordingly, the present petitions in view of clear bar contained in Article 212 of the Constitution are not maintainable. The present petitioners may agitate their grievances before the Provincial Services Tribunal. However, prior to this judgment, the status of present petitioners being a civil servant was not determined and in the similar cases, the Apex Court in Gul Raqib Khan's case (2018 SCMR 903) has held that:

"11. It follows from the dicta laid down above that the protection of the border areas is a sovereign function belonging to and performed by the Federation. The same duty is performed equally in the present case by the FC not only on the frontiers of KPK Province but also by maintaining order in other parts of Pakistan. For discharging such functions, the

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services rendered by the FC have direct nexus with the affairs of the Federation. Therefore, the reasons given in the Muhammad Nazir case (supra) fully apply here as well and we hold that the employees of FC are civil servants. Insofar as the question of competent remedy in respect of service disputes of FC men is concerned, we hold that in a matter relating to the terms and conditions of service of the respondent-employees of the FC, an appeal before the Federal Service Tribunal is available to them as the exclusive remedy under the law. Accordingly, this remedy may be availed by them within the statutory period of limitation commencing from the date of issuance of certified copy of this judgment. All these appeals filed by the appellant-Commandant, FC are accordingly allowed in above terms.

When case of the petitioners (PATA Federal Levies Force) was examined in juxtaposition with the Provincial Levies Force and *ibid* judgment, we observed that service of both the forces is governed under the rules so framed under the provisions of "Provincial Administered Tribal Areas Levies Force Regulation,

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2012". Therefore, we believe that the status of petitioners is that of civil servants for all practical and material purposes, and as such, the matter of terms and conditions of their service squarely falls outside the ambit of writ jurisdiction of this court given the explicit bar contained in Article 212 of the Constitution. As earlier discussed service rules of the petitioners (*PATA Federal Levies Force*) and *Provincial Levies Force* both were framed under the provisions of "*Provincial Administered Tribal Areas Levies Force Regulation, 2012*" and through the *ibid* judgment, the personnel of *Provincial Levies Force* were declared as Civil Servants after exhaustively discussing the matter of *Levies Force* performing their duties in *PATA*. Therefore, on the same premise, we have no hesitation to hold that the petitioners are Civil Servants as their service fulfills the entire criteria of Civil Servants so provided by the law. Learned counsel representing the petitioners could

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not distinguish the status of petitioners (PATA Federal Levies Force) vis a vis Provincial Levy Force in any manner. Both forces are performing their functions in the same area for the same object and purpose, and both are being maintained through the provincial exchequer. Therefore, the matters arising out of the terms and conditions of service of the petitioners are only amenable to the jurisdiction of the Service Tribunal in terms of Article 212 of the Constitution.

So far as the contention of petitioners that they have challenged the vires of the impugned Notification and as such the same are not amenable to the jurisdiction of the Service Tribunal is concerned, suffice it to state that it has long been settled that Service Tribunal has ample jurisdiction to deal with the issue of vires of the law and rules framed thereunder. 2015 SCMR 253 NATIONAL ASSEMBLY SECRETARIAT through Sectrary V. MANZOOR AHMAD and others.

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Therefore, the contention so agitated at the bar is misconceived and as such repelled.

In view thereof, the status of petitioners has been declared as that of Civil Servants and the matter in question revolves around the terms and conditions of their service which does fall outside the jurisdiction of this court given the barring provision of Article 212 of the Constitution and as such instant petitions are dismissed; being not maintainable. However, the petitioners may approach the worthy Service Tribunal for the redressal of their grievance if so advised. Albeit, earlier the status of petitioners being civil servants was not determined, therefore, the petitioners may avail the remedy of appeal within the statutory period of limitation commencing from the date of issuance of the certified copy of this judgment in terms of the judgment of august apex court in *Gul Raqib Khan's case 2018 SCMR 903*.

COC Nos.38-M/2021 in
W.P.No.367-M/2021 and; COC No.436-

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P/2022 in W.P.No.1335-P/2022 are dismissed for having become infructuous.

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JUDGE

Announced.
DL29/11/2022.

HON'BLE MR.JUSTICE LAL JAIN KHATTAR,
HON'BLE MR.JUSTICE S M ATTIQUE SHAH &
HON'BLE MR. JUSTICE SYED ARSHAD ALI

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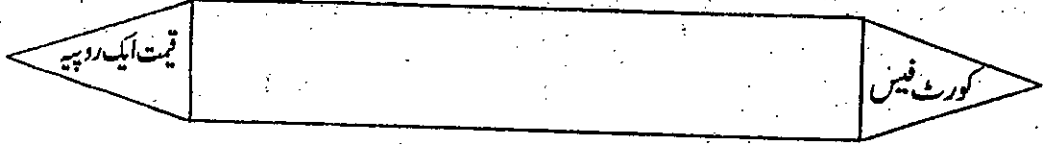
date of presentation of Application 17-12-22

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سید عرفان شاہ

EFFECTIVE

بعدالت خیبر پختونخوا سروس ٹریبونل پشاور / سوات کیمپ کورٹ



مورخہ 6 دسمبر
مقدمہ سید احمد
دعویٰ سروس ایپل
جرم

۲۰۲۲ء منجانب
بنام حکومت پاکستان

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام پشاور ٹریبونل کیمپ کورٹ سوات کیلئے پیر سٹر عدنان خان ASC عمر صادق ایڈووکیٹ مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل احتیاط ہوگا۔ نیز وکیل صاحب کو راضی نامہ و تقرر ثالث و فیصلہ پر حلف دینے جواب دی اور اقبال دعویٰ اور درخواست ہر قسم کی تصدیق زرا اور اس پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری ایک طرف یا اپیل کی برآمد ہوگی اور منسوخ مذکور کے نسل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقررہ شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اس کا ساختہ برواختہ منظور و قبول ہوگا۔ اور دوران مقدمہ میں جو خرچہ و ہر چاہنے التوائے مقدمہ کے سبب سے ہوگا اسکے مستحق وکیل صاحب ہونگے۔ نیز بقایا و خرچہ کی وصولی کرتے وقت کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ ہر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہونگے کی پیروی مقدمہ مذکور لہذا وکالت نامہ لکھ دیا کہ سند رہے

المرقوم 6
ماہ دسمبر ۲۰۲۲ء

سید احمد ولد احمد خان کاسن ہر و سوا
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واہ شدہ العبد

کے لئے منظور ہے

Umar Lodhi San

Dr. Adnan Khan
Advocate Supreme Court of Pakistan