

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 669/2020

Date of Institution ... 27.01.2020

Date of Decision ... 17.01.2022

Gul Salim Ex-Head Constable, Special Branch Police, Headquarter special Branch Police Khyber Pakhtunkhwa, Peshawar. ... (Appellant)

VERSUS

The Deputy Inspector General of Police, Special Branch Police Headquarter Peshawar, Khyber Pakhtunkhwa and three others. ... (Respondents)

Zia-ud-Din Khan,
Advocate

... For Appellant

Asif Masood Ali Shah,
Deputy District Attorney

... For respondents

AHMAD SULTAN TAREEN ...
ATIQU-UR-REHMAN WAZIR ...

CHAIRMAN
MEMBER (EXECUTIVE)

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are

that the appellant while serving as Head Constable in special branch police applied for LPR under the option of voluntary retirement, which was accepted and LPR was made effective from 01-01-2017 to 31-12-2017 vide order dated 02-01-2017 by the respondents. The appellant submitted an application for revocation of pension option on 21-07-2017 before respondent No. 1 prior to its date of maturity, which was processed at some length and was considered affirmatively but the accountant general office did not agree to submission of respondent No. 1, hence the appellant filed writ petition No 5174-P/2019, which was dismissed on the grounds of jurisdiction, hence the instant service appeal with prayers that the impugned order dated 02-01-2017 may be set aside and to revoke/withdraw the

option of LPR of the appellant keeping in view his dire financial condition and to restore his service with all consequential benefits.

02. Learned counsel for the appellant has contended that the act of negation of the respondents in the appellant case regarding withdrawal of LPR is reflecting their malafide, which is unlawful and trying to deprive the appellant of his fundamental right of livelihood, therefore, the appellant has not been treated in accordance with law, nor granted any proper and meaningful opportunity for justification of his case; that respondent No 1 admitted stance of the appellant in a letter dated 16-01-2019 addressed to Inspector General of Police has clearly referred to Finance Department Notification dated 05-09-2018 that the appellant is entitled to revoke his voluntary option of retirement, still his case was not considered; that AIG Legal in response had opined that in case the department need the services of the appellant, then his LPR can be cancelled.

03. Learned Deputy District Attorney for the respondents has contended that the appellant voluntarily submitted an application for grant of LPR, therefore his request was accepted as qualifying service in respect of the appellant was complete; that the appellant submitted a request for withdrawal of option of voluntary retirement vide appeal dated 21-07-2017, which was considered and processed at some length but in the meanwhile the appellant already availed all the pensionary benefits, hence his request was not processed further.

04. We have heard learned counsel for the parties and have perused the record.


05. Record reveals that the appellant himself requested for LPR, which was accepted and order dated 02-01-2017 was issued by granting 365 days LPR on full pay with effect from 01-01-2017 to 31-12-2017. The appellant submitted an application dated 21-07-2017 requesting to revoke his voluntary option of retirement, which was processed at some length and to this effect, respondent No. 1 sought guidance of IGP KP and in response, the IGP vide letter dated 10-

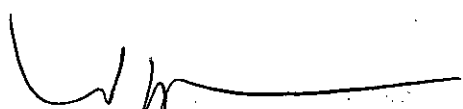
11-2017 opined that the appellant has got no right of revocation of option, in case department needs services of the appellant, then his pension option can be cancelled. In pursuance, the respondent No 1 addressed a letter to Accountant General KP to allow concurrence in the matter and also asked the Accountant General Office to recover the pensionary benefits already availed by the appellant so as to re-instate him in service but Accountant General office did not agree, hence the appellant was left with no option but to knock at the door of the court.

06. To this effect, letter of Finance Division dated 06-10-2015 provides that a government servant can withdraw option of voluntary retirement during the period for which encashment has been applied/granted, whereas the appellant had submitted his application on 21-07-2017 requesting for withdrawal of his option of retirement, which was well within time and before maturity of his pension. The letter of Finance Division was adopted by the provincial government vide order dated 05-09-2018 and the respondent No 1 already agreed to the stance of the appellant in pursuance of Finance Division instructions. To this effect judgment of the Apex Court reported as 2010 PLC (CS) 488 and 2011 PLC (CS) 546 also support the same stance.

07. In view of the foregoing, the instant appeal is accepted as prayed for with direction to respondents to process case of the appellant under the instructions of Finance Division letter dated 06-10-2015 and Finance Department letter Dated 05-09-2018 and to re-instate the appellant with all consequential benefits. In order to regularize the intervening period, such period is treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
17.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

ORDER

17.01.2022

Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Suleman Reader for respondents present. Arguments heard and record perused.

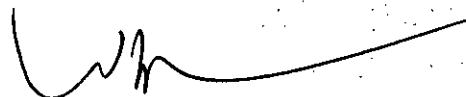
Vide our detailed judgment of today, separately placed on file, the instant appeal is accepted as prayed for with direction to respondents to process case of the appellant under the instructions of Finance Division letter dated 06-10-2015 and Finance Department letter Dated 05-09-2018 and to re-instate the appellant with all consequential benefits. In order to regularize the intervening period, such period is treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED

17.01.2022



(AHMAD SULTAN TAREEN)
CHAIRMAN



(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

15.06.2021

Clerk to counsel for appellant present.

Asif Masood Ali Shah learned D.D.A for respondents present.

Lawyers are on general strike therefore, case is adjourned. To come up for arguments on 20.10.2021 before D.B.


(Rozina Rehman)
Member (J)



Chairman

20.10.2021

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Both the parties jointly made a request for short adjournment. Case to come up for arguments on 16.11.2021 before D.B.

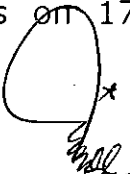

(Salah-Ud-Din)
Member (Judicial)


Chairman

16.11.2021

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Learned Member Judicial Mr. Salah-ud-Din is on leave, therefore, arguments could not be heard. Adjourned. To come up for arguments on 17.01.2022 before the D.B.


(Mian Muhammad)
Member (E)

669/20

16.11.2020

Junior to counsel for the appellant and Addl. AG alongwith Muhammad Suleman, H.C for respondents present.

Representative of the respondents seeks time to furnish reply/comments. Adjourned to 05.01.2021 on which date the requisite reply/comments shall positively be furnished.

Chairman

05.01.2021

Appellant in person and Addl. AG alongwith Suleman, H.C and Ashir Ghani, Junior Auditor for the respondents present.

Parawise comments on behalf of the respondents have been submitted. Placed on record. The appeal is assigned to D.B for hearing on 09.03.2021. The appellant may furnish rejoinder, within one month, if so advised.

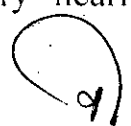
Chairman

*Due to unavailability of DB
the case is adjourned to 15-6-21*

Chairman

15.07.2020

Ibad Khan Advocate appeared on behalf of counsel for appellant and requested for adjournment on the ground that learned counsel for appellant is not available. Adjourned. To come up for preliminary hearing on 17.09.2020 before S.B.


Member (J)

17.09.2020

Counsel for the appellant present.

It is contended that the appellant, while serving in the Special Branch of Police, was ^{sent} ~~served~~ on leave preparatory to retirement (LPR) effective from 01.01.2017 to 31.12.2017. In the order dated 02.01.2017 the appellant was to retire from service with effect from 31.12.2017. In the currency of LPR the appellant submitted an application for revocation of pension option on 21.07.2017. Under the notification of Provincial Government dated 05.09.2018 issued in pursuance to the Federal Government O.M dated 06.10.2015 a government servant could withdraw from option from Voluntary retirement during the period of which encashment was granted to him. Despite, the respondents disregarded the ^{right} ~~request~~ of appellant and did not care to allow his request.

Subject to all just exceptions, instant appeal is admitted to regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 16.11.2020 before S.B.


Chairman

Appellant Deposited
Security & Process Fee

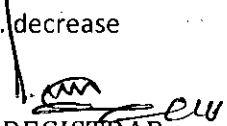



28/9/20

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.:- 669 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	27/01/2020	<p>The appeal of Mr. Gul Saleem presented today by Mr. Zia-ud-Din Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please. decrease</p> <p> REGISTRAR → 11/2020</p>
2-	04.03.2020	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>04/03/2020</u></p> <p> CHAIRMAN</p> <p>Counsel for the appellant present and seeks adjournment. Adjourned to 20.04.2020 for preliminary hearing before S.B.</p> <p> (MUHAMMAD AMIN KHAN KUNDI) MEMBER</p>
	20.04.2020	<p>Due to public holiday on account of COVID-19, the case is adjourned to 15.07.2020 for the same. To come up for the same as before S.B.</p> <p> Reader</p>

①

BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

Service Appeal No. 669 -P/2020

Gul Salim

VERSUS

DIG Special Branch Police

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4	Copy of Notification dated 05/09/2019 & dated 06/10/2015	<u>C</u>	12 - 13
5	Copy of Letter dated 16/01/2019	<u>D</u>	14
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Dated: 24/01/2020

Appellant
Through
Zia-Ud-Din Khan
Advocate, High Court
Cell No: 03459110368
03035899180
ZIA-UD-DIN KHAN
Advocate
Federal Sharia
Court of Pakistan

Office: INSAF LAW CHAMBER, Flat No. 34-B, Super Market Phase-1, Hayatabad
Township Peshawar City, Khyber Pakhtunkhwa Province, the I. R of Pakistan.
E-mail: Ziakhan_12@yahoo.com

**BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR**

Service Appeal No. 669 -P/2020

Gul Salim Ex- Head Constable, Special Branch Police, Headquarter Special Branch Police Khyber Pakhtunkhwa, Peshawar.

{Appellant} **Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 876

Dated 27/01/2020

VERSUS

- ✓ 1) The Deputy Inspector General of Police, Special Branch Police Headquarter Peshawar, Khyber Pakhtunkhwa.
- ✓ 2) The Senior Superintendant of Police (Admin), Special Branch Police Headquarter Peshawar, Khyber Pakhtunkhwa.
- ✓ 3) The Inspector General of Police, Central Police Lines Peshawar Khyber Pakhtunkhwa.
- 4) The Accountant General Pakistan, Revenue Sub-Office Peshawar Khyber Pakhtunkhwa.

{Respondents}

.....

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

AGAINST THE IMPUGNED ORDER/NOTIFICATION NO. 27-34/EB, DATED PESHAWAR THE 02/01/2017, WHEREBY THE APPELLANT HAS BEEN DECLARED RETIRED FROM SERVICE WITH EFFECT FROM 31.12.2017 (A. N) WHILE, THE DEPARTMENTAL APPEAL OF THE APPELLANT WHICH HAS BEEN PREFERRED AND SUBMITTED BEFORE THE RESPONDENTS DATED 21/07/2017 HAVEN'T BEEN DECIDED NOR ANY FINAL ORDER HAS BEEN PASSED DESPITE LAPSE OF THE STATUTORY PERIOD OF NINTY DAYS.

Filed to-day


Registrar

27/11/2020

Respectfully Sheweth;

BRIEF FACTS

- 1) That the Appellant is a respectable Law-abiding citizen of Pakistan who belongs to a respectable family. The appellant invoked the jurisdictions of this Hon'ble Tribunal/Court for the relief of his grievances through the appeal in hand. It is further supplemented that the appellant was appointed in the Special Branch Police

Khyber Pakhtunkhwa wherein he performed his duties with zeal and zest to the entire satisfaction of his superiors till the period of retirement (LPR).

2) That the Appellant while serving in the Special Branch Police has been sent on Leave Preparatory to Retirement (LPR) which was effective from 01/01/2017 to 31/12/2017 and the appellant shall stand retired from service with effect from 31/12/2017 (A. N) through vide office Order No. 27-34/EB dated 02/01/2017 by the respondents.

3) That the Respondent No. 2/the Senior Superintendent of Police (Admin) Special Branch Police, through vide office Order No. 27-34/EB, dated Peshawar the 02/01/2017 issued the LPR of the present appellant for 365 days on full pay with effect from 01/01/2017, with the direction that the appellant shall stand retired from service with effect from 31/12/2017 (A. N).

{Copy of impugned Order dated 02/01/2017 annexed Annexure- A}

4) That after the above mention Order/Notification regarding the LPR, the appellant submitted an 'Application for Revocation of Pension option (LPR)' on dated 21/07/2017 before the Respondent No. 1/the worthy Deputy Inspector General of Police, Special Branch Khyber Pakhunkhwa prior its date of maturity (31/12/2017).

{Copy of Application dated 21/07/2017 annexed Annexure- B}

5) It is pertinent to mention here that as per Notification dated 05/09/2018 of the Government of Khyber Pakhtunkhwa, Finance Department with subject title 'Clarification of Withdrawal of Request of LPR/Retired After Sanction/Notification' the respondents are legally bound to grant the same relief as claimed by the present appellant. Similarly, It is also important to mention here that the above Notification has been issued by the Government of Khyber Pakhtunkhwa in pursuance of the Finance Division, Government of Pakistan, Office Memorandum No. F. 1 (1) R-4/2007 Vol-II (PT) dated 06/10/2015, wherein it has been mentioned that the Competent Authority has been pleased to approve/adopt the Federal Government Policy with regard to the subject issue as envisaged in the O. M cited above which provides that a

Government Servant can withdraw option of voluntary retirement during the period for which encashment has been applied/granted.

{Copy of Notification dated 05/09/2019 & 06/10/2015 annexed
Annexure- C}

- 6) It is further averred that the appellant while filing the appeal in hand, earlier submitted Writ Petition No.5174-P/2019 before the Hon'ble Peshawar High Court. However, the same was dismissed for the reason that the same is not maintainable before the apex Court due to the existing legal embargo of Article 212 of the 1973 Constitution of the Islamic Republic of Pakistan.
- 7) That the delay in filing of the above titled appeal is neither willful, nor intentional, but due to the reason mentioned above. Reliance could be made on the judgment of the Hon'ble Supreme Court of Pakistan in the case title REHMAT ULLAH KHAN and others VS POST MASTER GENERAL, POST OFFICE NWFP PESHAWAR and others (PLJ 2003, SC 23) wherein the apex Court held that;

Service Tribunal Act, 1973 (LXX of 1973) -- S. 2-A-Constitution of Pakistan (1973), Art. 212 (3)-Dismissal of service appeal by Service Tribunal being time-barred-Leave to appeal was granted to consider; whether delay in filing appeals before Service Tribunal was condonable after insertion of S. 2-A in Service Tribunal Act 1973.

Service Tribunal Act, 1973 (LXX of 1973) -- S. 2-A-Constitution of Pakistan (1973), Art. 212-Delay in filing appeal before Service Tribunal-Entitlement to condonation of delay-Appellants main contention was that Supreme Court in similar circumstances had already taken lenient view in Muhammad Afzal's case (1999 SCMR 92) by remanding matter to Service Tribunal keeping view of insertion of S. 2-A in Service Tribunal Act 1973, for fresh decision on merits while condoning delay in filing appeal before it-Muhammad Afzal case (1999 SCMR (92) having been published in January part of SCMR-Tribunal should have taken view for condoning delay in filing appeal on account of prevailing confusion with regard to availability of remedy to aggrieved person-Appellants had filed their respective appeals before Service Tribunal on 28.11.1998, admittedly prior to January 1999 on which date Muhammad Afzal's Judgment (1999

SCMR 92) was published-Order of Service Tribunal relating to dismissal of appeals was set aside and cases were remanded to service Tribunal with direction to decide same in accordance with law while determining question of condonation of delay in the light of observations of Supreme Court.

8) Likewise, the Hon'ble Supreme Court of Pakistan in Muhammad Nawaz Sharif case (PLD 1993 SC 473) held that;

'Fundamental rights in essence are restraints on the arbitrary exercise of power by the State in relation to any activity that an individual can engage. Although constitutional guarantees are often couched in permissive terminology, in essence they impose limitations on the power of the State to restrict such activities. Moreover, basic or fundamental rights of individuals which presently stand formally incorporated in the modern constitutional documents derives their lineage from and are traceable to the ancient Natural Law. With the passage of time and the evolution of civil society great changes occur in the political, social and economic conditions of society. There is, therefore, the corresponding need to re-evaluate the essence and soul of the fundamental rights as originally provided in the Constitution. They require to be construed in consonance with the changed conditions of the society and must be viewed and interpreted with a vision to the future'.

9) That keeping in view the above the appellant being aggrieved of the unlawful acts of the Respondents, and finding no other alternative remedy/option but to approach this Hon'ble Tribunal/Court through the appeal in hand on the following grounds inter alia:-

GROUND

A) That the act of negation of the Respondents in the appellant case regarding withdrawal of LPR is reflecting their malafide intention, ill-will, which is unlawful and trying to deprive the appellant of his Fundamental Right of livelihood. Therefore, the appellant has not been treated in accordance with law, nor granted any proper and meaningful opportunity for justification of his case.

B) That the Respondent No. 1/the worthy Deputy Inspector General of Police, Special Branch Peshawar through Letter No. 814/EB, Dated

(6)

Peshawar the 16/01/2019, clearly stated that 'Ex-HC Gul Saleem requested that his retirement order may be withdrawn in light of the above mentioned letter. It is therefore, requested that necessary guidance in this regard may be issued whether his retirement order can be withdrawn or otherwise'.

{Copy of Letter dated 16/01/2019 annexed Annexure-D}

C) That this Hon'ble Tribunal/Court had earlier passed a judgment on similar point of view in Appeal No. 1347/2013 with case title 'Shariat Khan Vs The Provincial Police Officer KPK'. While, the Hon'ble Supreme Court of Pakistan in the Constitution Petition No. 24 of 2012 and Civil Petition No. 773-P of 2018, further explicate that;

'All are equal before the law and are entitled without any discrimination to equal protection of law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the constitution or by law'.

D) That the Respondent No. 3/the worthy Inspector General of Police Khyber Pakhtunkhwa, through vide Office Letter No. 15446/E-IV dated Peshawar the 10/11/2017 to the Respondent No. 1 with the subject note Application for Cancellation of LPR, wherein it has been clearly mentioned that;

'AIG/Legal CPO Peshawar has opined that the applicant has got no revocation of option. In case department need services of applicant then his LPR can be cancelled'.

E) Likewise, the Respondent No. 1/the worthy Deputy Inspector General of Police, Special Branch Khyber Pakhtunkhwa through Letter No. 608/Legal dated Peshawar the 04/02/2019 to Respondent No. 4/the Accountant General Khyber Pakhtunkhwa Peshawar regarding the appellant request for reinstatement in service by revocation option of Leave Preparatory for Retirement (LPR).

{Copies of Letter dated 10/11/2017 & dated 04/02/2019 annexed
Annexure-'E'}

F) That despite of the above mentioned official correspondence it is very much clear that the respondents had no objection in reference to withdrawal of LPR of the present appellant. It is further averred that the appellant has no any other option except to file the instant appeal before the Hon'ble Tribunal/Court as a last resort for justice and fair play under the umbrella of Humanitarian Principle keeping in view his financial domestic problems. Reliance could be made on the judgment of the Hon'ble Supreme Court of Pakistan in the famous case of 'Benazir Bhutto Vs The Federation of Pakistan', wherein the 11 Member Bench held that;

'The Socio-Economic rights of the people were accorded constitutional recognition and it was held that liberty did not merely mean freedom from physical restrain but also freedom from poverty and destitution. It was laid down that the Constitution aimed at establishment of an egalitarian society in accordance with the Islamic Principles of social justice'.

Likewise, in the case of Inspector General of Police, Police Headquarters Office, Karachi and others Vs Shafqat Mehmood (2003 SCMR, Page 207), the Hon'ble Supreme Court of Pakistan precisely stated that;

'Natural Justice, principles of---Applicability---Opportunity of defence to civil servant---Scope---Proper inquiry is to be conducted wherein Government servant is to be provided an opportunity of defence and personal hearing and if regular inquiry are proved then action against the public servant is to be taken'.

G) It is further averred that Constitutional Provisions containing fundamental rights and the powers of the Courts to enforce them also received a broader interpretation after the Benazir Bhutto judgment. In the widely celebrated case in Shehla Zia Vs Wapda, the concept of right to life was not allowed to be confined to mere vegetal existence but was held to include the right to enjoy all decent comforts of life including the right to live in a pollution free environment.

H) That the appellant shall be allowed to add any other ground(s) at the time of arguments.

PRAYER IN APPEAL

It is therefore, most humbly prayed that on acceptance of the Appeal in hand;

- i) The Impugned Office Order No. 27-34/EB dated Peshawar the, 02/01/2017 of the Respondent No. 1/the worthy Deputy Inspector General, Special Branch Police Khyber Pakhtunkhwa, may please be Set-aside and to revoke/withdraw the option of LPR of the appellant keeping in view his dire financial conditions and to restore his service with all consequential benefits on Humanitarian Principle in the best interest of justice.
- ii) The Respondents shall further be directed to revoke/withdraw the Leave Preparatory for Retirement (LPR) of the appellant in light of the recent Notification No. FD (SOSR-II)/4-36/2018 Dated Peshawar the 05/09/2019 issued by the Government of Khyber Pakhtunkhwa Finance Department.
- iii) Any other remedy deems proper in the matter and not specified may also be granted to the Petitioner.

Dated: 24/01/2020

[Handwritten Signature]
Appellant

Through

Zia-Ud-Din Khan
Advocate High Court
ZIA-UD-DIN KHAN
Advocate
High court Federal Sharia
Court of Pakistan

AFFIDAVIT

I, Gul. Salim Ex- Head Constable, Special Branch Police, Headquarter Special Branch Police Khyber Pakhtunkhwa Peshawar, do hereby solemnly affirm and declare on oath that the contents of this 'Appeal' are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal/Court.



[Handwritten Signature]
24-1-2020

[Handwritten Signature]
DEPONENT

**BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR**

Service Appeal No. _____ -P/2020

Gul Salim

VERSUS

DIG Special Branch Police

APPLICATION FOR CONDONATION OF DELAY

Respectfully Sheweth:

- 1) That the above titled case has been filed by the applicant wherein no date for hearing has yet been fixed.
- 2) That the reason behind delay in filing of the instant appeal before the Hon'ble Tribunal/Court is the Writ Petition which was filed before the Hon'ble Peshawar High Court Peshawar (Principal Bench). While, the reason for delay in filing of the Departmental Appeal before the respondents was the illness of the applicant/appellant daughter.
- 3) That the delay in filing of the above title appeal is neither willful, nor intentional, but due to the above stated reason.
- 4) There are plethora of judgments of the Superior Courts that cases must be decided on merits and technicalities should be avoided. The applicant is diligently pursuing his case therefore; the case deserves to be decided on merits.

It is therefore, most humbly prayed that on acceptance of this application, the delay in filing the above titled appeal may kindly be condoned in the interest of justice.

Dated: 24/01/2020

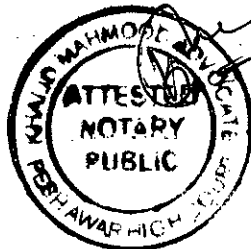

Appellant

Through

Zia-Ud-Din Khan
Advocate High Court
ZIA-UD-DIN KHAN
Advocate
High court Federal Sharia
Court of Pakistan

Affidavit

I, Gul Salim Ex- Head Constable, Special Branch Police, Headquarter Special Branch Police Khyber Pakhtunkhwa Peshawar, do hereby solemnly affirm and declare on oath that the contents of the accompanying 'Condonation Application' are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal/Court.



[Handwritten signature]
20/11/20
DEPONENT

Annex-A

14

1475-1/2017

ORDER.

Head Constable Gul Saleem No.98/SB of this Establishment is hereby granted 365 days LPR on full pay with effect from 01.01.2017. He shall stand retired from service with effect from 31.12.2017(A.N).

Mu
Sr. Superintendent of Police Admn:
For Addl: Inspector General of Police
Special Branch Khyber Pakhtunkhwa
Peshawar.

No.27-34/EB, dated Peshawar the, 02/01/2017

Copy forwarded to the:-

1. DPO Karak.
2. DSP/HQrs/SB.
3. GO/Karak/SB.
4. Acctt:/SB.
5. PC/SB.
6. LO/SB.
7. EA/SB.
8. IT Section.


Attested
ZIA-UD-DIN KHAN
Advocate
High court Federal Sharia
Court of Pakistan

گزارش ہے کہ سائل نے چند ناگزیر وجوہات کی بنا پر مورخہ 01.01.2017 سے PR
تخوواہ کے علاوہ کوئی اور ذریعہ معاش نہیں ہے اور سائل کے چھوٹے چھوٹے بچے ہیں جو کہ زیر تعلیم ہیں جس
سبب ان دنوں شدید مشکلات کا سامنا ہے۔


بذریعہ درخواست استدعا کی جاتی ہے کہ سائل کی LPR واپس کر کے سائل کو دوبارہ ملازمت
محاکمہ صادر فرمائیں۔ سائل تاحیات دعا گو رہیگا۔

عین نوازش ہو

العارض


آپ کا تابع دار حاجی گل سلیم HC سیشن برانچ کرک
سکنہ تحصیل تخت نصرتی ضلع کرک ڈاکخانہ منزیلی بانڈہ
موبائل نمبر 0333-9604429

acctt/ec


21.7.17

Attested
ZIA-UD-DIN KHAN
Advocate
High court Federal Sharia
Court of Pakistan

Annex - "C" (12-13)

(12)



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

Finance Department Civil Secretariat Peshawar <http://www.financekpp.gov.pk> [facebook.com/GoKPPD](https://www.facebook.com/GoKPPD) twitter.com/GoKPPD

M.P. (SOSR-II)/4-36/2018

Dated Peshawar the 5/09/2018

1. All Administrative Secretaries, Government of Khyber Pakhtunkhwa.
2. The Senior Member Board of Revenue, Khyber Pakhtunkhwa.
3. The Principal Secretary to Governor, Khyber Pakhtunkhwa.
4. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. All Commissioners / Deputy Commissioners of Khyber Pakhtunkhwa.
6. Registrar Peshawar High Court.
7. Chairman Public Service Commission, Khyber Pakhtunkhwa.
8. Chairman Service Tribunal, Khyber Pakhtunkhwa.
9. All Head of Attach Departments, Khyber Pakhtunkhwa.

Subject: CLARIFICATION OF WITHDRAWAL OF REQUEST OF LPR/RETIRED AFTER SANCTION / NOTIFICATION.

Dear Sir,

In pursuance of Finance Division Government of Pakistan O.M No.F.1(1)R-4/2007-4-11(P) dated 6.10.2015, the Competent Authority has been please to approve / adopt the Federal Government Policy with regard to the subject issue as envisaged in the O.M cited above which provides that a Government servant can withdraw option of voluntary retirement during the period for which encashment has been applied / granted subject to the following conditions:-

- i. He/She may withdraw his/her option of voluntary retirement before retirement matures;
- ii. It is binding on a government servant to return any amount of leave pay received by him/her, in lieu of encashment of LPR for that period;
- iii. Later on, on attaining the age of superannuation, if he / she again opts for 365 days leave encashment in lieu of 365 days LPR, such option of an individual may be treated as a fresh case and he / she will be allowed encashment of LPR in toto.

This supersedes Finance Department Letter No.SOSR-II/4-92/81 dated: 01.10.1981 as the cases already decided thereunder shall not be reopened / reconsidered.

SECRETARY TO GOVERNMENT
OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

Encl: No. & Date Even.

Copy is forwarded for information to:

1. The Secretary to Government of Punjab, Sindh and Balochistan, Finance Department.
2. The Accountant General, Khyber Pakhtunkhwa, Peshawar.

Attested
ZIA-UD-DIN KHAN
Advocate
High Court Federal Sharia
Court of Pakistan

(ABDUL MALIK)
DEPUTY SECRETARY (REG-II)

Encl: No. & Date Even.

Copy is forwarded for information and necessary action to:

1. Chief Treasuries & Accounts, Khyber Pakhtunkhwa.
2. District Comptroller & Accounts in Khyber Pakhtunkhwa.
3. Chief Local Fund Audit, Khyber Pakhtunkhwa.
4. Chief FIMU, Finance Department, Khyber Pakhtunkhwa.
5. District / Agency Accounts Officers in Khyber Pakhtunkhwa.
6. Section Officers/Budget Officers in Finance Department.
7. The Private Secretary to Minister Finance, Khyber Pakhtunkhwa.
8. The Private Secretary to Secretary / FAs to Special Secretary, Additional Secretaries / Deputy Secretaries in Finance Department.
9. The Section Officer (Reg-4) Government of Pakistan, Finance Division, (Regulation Wing with reference to his letter referred above.
10. HR Finance Department (Assistant Director Web).

Government of Pakistan
FINANCE DIVISION
 (Regulations Wing)

>>><<<

No.F.1(1)R-4/2007-Vol-II(Pt)

Islamabad October 6, 2015.

OFFICE MEMORANDUM

**Subject: CLARIFICATION OF WITHDRAWAL OF REQUEST OF LPR/
RETIREMENT AFTER SANCTION/NOTIFICATION.**

The undersigned is directed to refer to Finance Division's O.M.No.F.1(1)R-4/2007- (Vol.II) dated 17-11-2011 on the above subject and to state that it has been decided in consultation with Establishment Division that a Government Servant can withdraw option of voluntary retirement, during the period for which encashment has been applied/granted, subject to the following conditions:-

- i. He/She may withdraw his/her option of voluntary retirement before retirement matures;
- ii. It is binding on a government servant to return any amount of leave pay received by him/her, in lieu of encashment of LPR for that period;
- iii. Later on, on attaining the age of superannuation, if he /she again opts for 365 days leave encashment in lieu of 365 days LPR, such option of an individual may be treated as a fresh case and he /she will be allowed encashment of LPR in toto.


 (Myra Javaid Khan)
 Section Officer (R-4)
 Tel:9245872

All Ministries/Division,

Office of the Military Accountant General
 Mr. Maqbool Hussain Raja,
 Accounts Officer,
 Government of Pakistan,
 Islamabad.

w.r.t their U.O.No.492/AT/PC/4890
 XVIII/Part dated 20-11-2014.

✓
 Copy to Web-master Mr. Faheem Anwar, Finance Division.

(12-13)

BETTER COPY

**GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT**

NO. FD (SOSR-II)/4-36/2018

Dated Peshawar the 5/09/2018

1. All Administrative Secretaries,
Government of Khyber Pakhtunkhwa.
2. The Senior Member Board of Revenue, Khyber Pakhtunkhwa.
3. The Principal Secretary to Governor Khyber Pakhtunkhwa.
4. The Principal Secretary to Chief Minister Khyber Pakhtunkhwa.
5. All Commissioners/Deputy Commissioners of Khyber Pakhtunkhwa.
6. Registrar Peshawar High Court.
7. Chairman Public Service Commissions, Khyber Pakhtunkhwa.
8. Chairman Service Tribunal, Khyber Pakhtunkhwa.
9. All Heads of Attach Departments, Khyber Pakhtunkhwa.

**Subject: CLARIFICATION OF WITHDRAWAL OF REQUEST OF
LPR/RETIRED AFTER SANCTION/NOTIFICATION.**

Dear Sir,

In pursuance of Finance Division Government of Pakistan in pursuance of the Finance Division, Government of Pakistan, **Office Memorandum No. F. 1 (1) R-4/2007Vol-II (PT) dated 06/10/2015**, the Competent Authority has been pleased to approve/adopt the **Federal Government Policy** with regard to the subject issue as envisaged in the O. M cited above which provides that a Government Servant can withdraw option of voluntary retirement during the period for which encashment has been applied/granted subject to the following conditions:-

- i. He/She may withdraw his/her option of voluntary retirement before retirement matures;
- ii. It is binding on a government servant to return any amount of leave pay received by him/her, in lieu of encashment of LPR for that period;
- iii. Later on, on attaining the age of superannuation, if he/she again opts for 365 days leave encashment in lieu of 365 days LPR, such option of an individual may be treated as a fresh case and he/she will be allowed encashment of LPR in toto.

13

This supersedes Finance Department Letter No. SOSR-III/4-92/81 dated 01.10.1981 and the cases already decided there under shall not be reopened/reconsidered.

**SECRETARY TO GOVERNMENT
OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT**

Endt No & Date Even

Copy forwarded for information to:

- i. The Secretary to Government of Punjab, Sindh and Balochistan, finance Department.
- ii. The Accountant General, Khyber Pakhtunkhwa, Peshawar.

(ABDUL MALIK)
DEPUTY SECRETARY (REG-II)

Endt No & Date Even

Copy forwarded for information and necessary action to:

- i. Director Treasuries & Accounts Khyber Pakhtunkhwa
- ii. District Comptroller & Accounts Khyber Pakhtunkhwa
- iii. Director Local Fund Audit, Khyber Pakhtunkhwa
- iv. Director FMIU, Finance Department Khyber Pakhtunkhwa
- v. District/Agency Accounts Officers in Khyber Pakhtunkhwa
- vi. All Section Officers/Budget Officers in Finance Department
- vii. The Private Secretary to Minister Finance, Khyber Pakhtunkhwa
- viii. The Private Secretary to Secretary/PA's to Special Secretary, Additional Secretaries/Deputy Secretaries in Finance Department.
- ix. The Section Officer (Reg-4) Government of Pakistan Finance Division (regulation Wing with reference to his letter referred above.
- x. HR Finance Department (Assistant Director Web).

(NAEEM TABASSUM)

ZIA-UD-DIN KHAN
Advocate
High court Federal Sharia
Court of Pakistan

Annex - "E" (15) (16)

(15)



11/10/17

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
Central Police Office, Peshawar

No. 15446 /E-IV dated Peshawar the 10/11 /2017

To, The Dy. Inspector General of Police,
Special Branch KPK, Peshawar.

217/1

Subject: APPLICATION FOR CANCELLATION OF LPR

Memo. Please refer to your letter No. 7081/EB dated: 30.10.2017 on the subject noted above.

AIG/Legal CPO, Peshawar has opined that the applicant has got no right of revocation of option. In case department need services of applicant then his option can be cancelled. The option of pension is final.

(SYED ZIA ALI SHAH)
Registrar

For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar

Attested
ZIA-UD-DIN KHAN
Advocate
High Court Federal Sharia
Court of Pakistan

2803
16-11-17

From: The Deputy Inspector General of Police,
Special Branch, Khyber Pakhtunkhwa, Peshawar.

To: The Accountant General,
Khyber Pakhtunkhwa, Peshawar.

No. 608/Legal dated Peshawar the 04/02/2019.

Subject: APPLICATION FOR CANCELLATION OF LPR.

Memo:

It is stated that Gul Salim Retired Head Constable (hereinafter referred to as applicant) has placed request for reinstatement in service by revocation of option of leave preparatory for retirement (LPR).

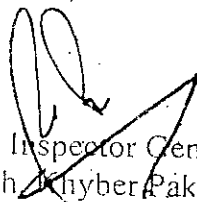
That applicant while serving in Special Branch Police applied for grant of LPR with effect from 01.01.2017 to 31.12.2017 which was allowed vide Order bearing No. 27-34/EB dated 02.01.2017.

Applicant submitted an application for revocation of option of LPR before its maturity but an opinion was received from CPO vide letter No. 15446/E-IV dated 10.11.2017 that option once exercised cannot be revoked, therefore his application was filed.

The LPR of applicant matured on 01.12.2017 therefore pension was granted to him with effect from 01.01.2018. Meanwhile, applicant submitted a fresh application based on the contents of Provincial Government letter No. FD (SOSR-II) 4-36/2018 which allows revocation of option of LPR possible before maturity. An opinion was again sought into the matter and CPO reported that the revocation of LPR was possible before 31.12.2017.

Since applicant had submitted the former application for revocation of option of LPR before 31.12.2017 therefore his case is arguable and worth acceptance. However the Accountant General office has finalized his pension case and applicant has received pension benefits for long period of more than one year, therefore concurrence of your office and guidance with regard to recovery of pension benefits and LPR period is mandatory in the matter.

Therefore, it is requested to allow concurrence in the matter and guidance for recovery.



Deputy Inspector General of Police,
Special Branch, Khyber Pakhtunkhwa, Peshawar.

Attested
ZIA-UD-DIN KHAN
Advocate
High Court Federal Sharia
Court of Pakistan

9/c

قیمت 50 روپے	25084			
ایڈوکیٹ: ضیاء الدین خان		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل / ایسوسی ایشن نمبر: BC-10-9856				
رابطہ نمبر: 0345-9110368/03035893				

بعدالت جناب: محترم صدر صوبہ پختونخواہ سروسز کمیشن پشاور

دعویٰ:	منجانب: گل سلیم
علت نمبر:	
مورخہ:	24/11/2020
جرم:	
تھانہ:	

بنام
ڈپٹی ایگزیکٹو جنرل
سینٹرل ایجنسی
پشاور

باعث تحریر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کا روائی متعلقہ
آن مقام لکھنؤ کے لیے ضیاء الدین خان ایڈوکیٹ کی مداخلت سے کوڈیکل مقرر
کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی 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
کاروائی 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 باختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ 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: 24 جنوری 2020

العبد _____ گواہ شد _____ العبد

مقام لکھنؤ کے لیے منظور ہے۔

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

Accepted
Attested
ZIA-UD-DIN KHAN
Advocate
High Court Federal Sharia
Court of Pakistan

24/11/2020

6/6/2020 ^{for} JK

Date of Commencement of LPR — 1-1-2017

~~No~~ Notification of Retirement — 31-12-2017

Applied for cancellation of LPR on
21-7-2017.

Retiring Pension

Remaining to superannuation — 9 years

Points

Notification of PS page-13
(Withdrawal of LPR)

Request for withdrawal — 21.7.2017

Service Appeal, 27-1-2020

Appeal to higher Authority?

No other notification issued after 1-1-2017

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 669 /2020.

Gul Salim Ex- Head Constable Special Branch Police, Khyber Pakhtunkhwa, Peshawar
..... (Petitioner)

VERSUS

Deputy Inspector General of Police, Special Branch, Khyber Pakhtunkhwa and
others.....(Respondents)

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BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 669 /2020.

Gul Salim Ex- Head Constable Special Branch Police, Khyber Pakhtunkhwa, Peshawar
..... (Petitioner)

VERSUS

Deputy Inspector General of Police, Special Branch, Khyber Pakhtunkhwa and
others.....(Respondents)

COMMENTS ON BEHALF OF RESPONDENT NOS. 1, 2 & 3.

PRELIMINARY OBJECTIONS:-

- a) That option of voluntary retirement from service once exercised, accept and matured is final and its revocation is not permissible.
- b) That appeal of appellant is not maintainable as he has filed no departmental appeal under the rules.
- c) That appellant has got no cause of action to file the appeal because his voluntary retirement order has already matured long before on 31.12.2017 and he is regularly availing all the pensionary benefits for the last three (03) years.
- d) That the appeal of appellant is barred by law and limitation.
- e) That the appeal of appellant not based on facts.
- f) That appeal has not come to this Hon'ble Tribunal with clean hands.
- g) That appellant is estopped by his own conduct to file the appeal as he is regularly availing the voluntary retirement benefits for the last (03) years.
- h) That appeal of appellant is bad for non-joinder and miss-joinder of necessary parties.

FACTS:-

1. Incorrect, appellant was received on transfer to Special Branch from district Police and he voluntarily submitted an application for grant of Leave Preparatory to Retirement (LPR). (Copy of application is enclosed as Annexure-A)
2. Incorrect, qualifying Service for Pension was at the credit of appellant therefore Respondent No. 2 accepted the application of appellant for grant of LPR of 365 days and voluntarily retired with effect from 31.12.2017 vide order No. 27-34/EB dated 02.01.2017. Copy already enclosed as Annexure-A with original appeal.
3. Correct, appellant has admitted voluntary retirement from service with effect from 31.12.2017 after availing 365 days LPR. Furthermore, appellant is regularly

availing all the pensionary benefits for the last 03 years which further support that the retirement order was passed in pursuance of the written request of appellant.

4. Incorrect, appellant after availing the major part of LPR had submitted an application for revocation of LPR on 21.07.2017 but by the time no policy of revocation of LPR was existing and policy of option of voluntary retirement once exercised, accepted and executed cannot be revoked was in vogue. Therefore, no force was found in the application of appellant.
5. Incorrect, Government of Khyber Pakhtunkhwa Finance Department adopted the policy of Federal Government in respect of withdrawal of LPR vide Notification No. FD(SOSR-II)4-36/2018 dated 05.09.2018. The Notification inter alia imposes the following condition for withdrawal of LPR. "He/She may withdraw his/her option of voluntary retirement before retirement matures." The Notification was issued on 05.09.2018 and the voluntary retirement of appellant had matured on 31.12.2017 and the appellant had availed all the pensionary benefits right from the date of maturity of the order therefore the notification ibid was into covering the case of appellant. Respondent No. 1 sought opinion of Finance department Khyber Pakhtunkhwa into the case of appellant but the Finance Department categorically explained vide letter No. FD(SOSR-II)4-36/2019 dated 25.04.2019 that the notification noted above was not covering the case of appellant. Copy of Finance Department letter in enclosed as Annexure-B. Furthermore, appellant has not impleaded Finance Department as Respondent in the appeal.
6. Correct to the extent that writ petition of appellant was dismissed on the ground of jurisdiction but approaching wrong forum is no ground for condonation of delay because ignorance of law is no excuse. Again the writ petition was filed after delay of about two years in the year 2019 against the order passed in the year 2017 therefore the contention of appellant for condonation of delay is not tenable.
7. Incorrect, the impugned matter pertains to the year 2017 and appellant has filed the Service Appeal in the year 2020 after delay of about four (04) years. The grounds and explanation contended by appellant in Para 6 and 7 of the appeal are not legally justified. Under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 limitation of 30 days has been provided for lodging Service Appeal against the final order of departmental authority. It is well settled Principle of law that limitation prescribed by statute was not subject to Section 5 of the limitation of Act, 1908 due to bar contain in Section 29(2) and (b) of the Act. Therefore the prayer of appellant for condonation of delay is groundless.

- 8. Incorrect, the judgment of Hon'ble Supreme Court of Pakistan relied upon by the appellant was passed in public importance matter and prayer of appellant pertains to individual and personal matter. It is well settled principle of law that there shall be an end to litigation and delay of each day shall be explained.
- 9. Incorrect, the appeal of appellant is groundless and baldy time barred.

GROUNDS:-

- A. Incorrect, appellant has been treated in accordance with law and Rules governing the subject matter. He was retired from Service on his own request with effect from 31.12.2017 after availing 365 days LPR. He is regular recipient of his monthly pension for the last 03 years. He has availed all the pensionary benefits. Withdrawal of option of voluntary retirement after acceptance, maturity and execution is not permissible.
- B. Incorrect, Respondent No. 3 furnished opinion in response to the letter of Respondents No. 1 that option once exercised cannot be revoked. This view was further confirmed by Finance Departmental vide letter No. FD(SOSR-II)4-36/2019 dated 25.04.2019. Copy already enclosed as Annexure-B.
- C. Incorrect, each case is decided on its own facts and merit. Appellant has not annexed copy of the judgment relied upon therefore comments could not be furnished. However, its is submitted that Punjab and Sindh Service Tribunals accepted Service Appeals with prayer of withdrawal of LPR/Retirement but the Hon'ble Supreme Court of Pakistan set aside the judgments passed by the Service Tribunal vide reported judgment 2012 SCMR 745 and 2006 SCMR-453.
- D. Incorrect, this para is repetition of Para-B of the Grounds of appeal. Furthermore, Respondent No. 3 has furnished opinion in clear terms that option once exercised cannot be revoked.
- E. Incorrect, Respondent No. 4 submitted reply that guidance of the Finance Department may be sought into the matter and Finance Department furnished opinion vide letter mentioned above and copy already enclosed as Annexure-B.
- F. Incorrect, Respondent No. 1 has not admitted the prayer of appellant and has processed his case for just decision. The voluntary option of retirement of appellant was accepted, matured and executed long before there (03) years ago therefore its revocation is not permissible. Again appellant has availed its benefits. Furthermore, the case law relied upon by the appellant pertains to public importance matter and the case of appellant is individual and personal matter.

(4)


G. Incorrect, this Para of the ground of appeal is mere repetition of Para F of the appeal. The case law relied upon by the appellant is distinguishable as it explain public importance matter.

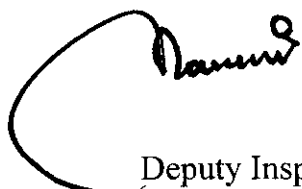
H. Respondents may be allowed to raise other grounds at time of arguments.

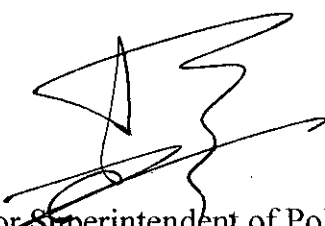
PRAYER:-

In view of the position explained in reply to facts and grounds of the appeal, there is no force is the appeal of appellant. Being groundless because the option of voluntary retirement from service has become final on its acceptance and execution. Appellant is regularly availing the retirement benefits. The second prayer is also without force because Finance Department has furnished opinion that the notification does not cover the case of appellant.

It is therefore prayed that on acceptance of reply to the appeal, the same may kindly be dismissed with costs please.


Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar
(Respondent No. 3)


Deputy Inspector General of Police,
Special Branch, Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 1)


Senior Superintendent of Police Admn,
Special Branch, Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 2)

A-5

جناب عاں!

گزارش ہے کہ سائل 31.03.1988 کا بھرتی شدہ ہے۔ سائل کا عرصہ ملازمت دورانہ
28 سال سے زائد پورا ہو چکا ہے۔ اب سائل بخوشی خود LPR پنشن پر جانا چاہتا ہے۔ بذریعہ درخواست
استدعا کی جاتی ہے کہ سائل کو مورخہ 01.01.2017 سے ایک سال LPR پنشن پر جانے کا حکم صادر
فرمائیں۔ سائل جناب کے اہل و عیال کی سہ پلندی کیلئے دعا گو رہے گا۔
عین نوازش ہوگی۔

مورخہ: 26.12.2016

سائل: گل سلیم خان 98/HC متعینہ دفتر سپیشل برانچ کرک

Sir,

forwarded please

Group Officer
Special Branch
Distt: Karak
26/12/2016

E e

Q
SSPIP
27-12-16



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

13-6

NO.FD/SOSR-II/4-36/2019
Dated Peshawar the 25.04.2019

To

✓ The Deputy Inspector General of Police,
Special Branch, Khyber Pakhtunkhwa,
Peshawar.

Subject **APPLICATION FOR CANCELLATION OF LPR**

Dear Sir,

I am directed to refer to your letter No:619/Legal dated 04.04.2019 on the subject cited above and to state that the retirement of Mr. Gul Saleem, Head Constable Special Branch Peshawar has been matured on 31.12.2017 and notification for recalling of LPR was issued on 05.09.2018 with no retrospective effect, therefore the demand of the official concerned is not covered under the policy of Provincial Government.

Yours faithfully,

(MOAZZAM KHAN)
(SECTION OFFICER (SR.II))

Copy forwarded:

Master File.

(SECTION OFFICER (SR.II))

7

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 669 /2020.

Gul Salim Ex- Head Constable Special Branch Police, Khyber Pakhtunkhwa, Peshawar
..... (Petitioner)

VERSUS

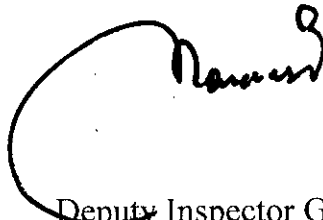
Deputy Inspector General of Police, Special Branch, Khyber Pakhtunkhwa and
others.....(Respondents)

AUTHORITY LETTER

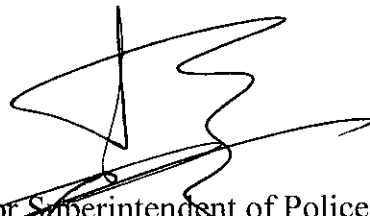
Muhammad Asif DSP Legal, Special Branch, Khyber Pakhtunkhwa Peshawar is hereby authorized to appear on behalf of the Respondents before the Hon'ble Service Tribunal Peshawar. He is authorized to submit all required documents and replies etc pertaining to the appeal through the Government Pleader.



Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 3)



Deputy Inspector General of Police,
Special Branch, Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 1)



Senior Superintendent of Police Admn,
Special Branch, Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 2)

(4)

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 669 /2020.

Gul Salim Ex- Head Constable Special Branch Police, Khyber Pakhtunkhwa, Peshawar
..... (Petitioner)

VERSUS

Deputy Inspector General of Police, Special Branch, Khyber Pakhtunkhwa and
others.....(Respondents)

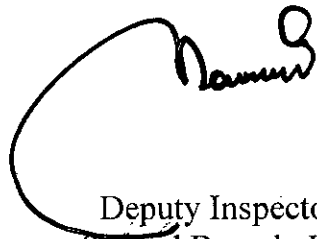
AFFIDAVIT

We the deponents do hereby declare that the contents of the written reply are true and correct to the best of my knowledge and nothing has been concealed from this Hon'ble Tribunal.

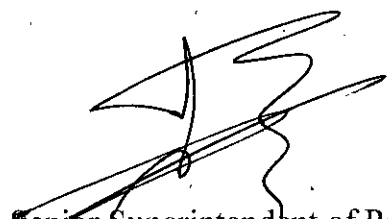
Deponents



Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 3)



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Special Branch, Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 1)



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Special Branch, Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 2)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No.669/2020

Gul Salim.....Appellant.

V/S

Deputy Inspector General of Police, Special Branch Peshawar,
KPK and others.....Respondent.

(Para wise reply on behalf of Respondent No.4)

Preliminary Objection:-

1. That the appellant has no locus standi and cause of action.
2. That the claim is not based on fact.
3. That the Appeal in hand is barred by law.
4. That the instant appeal is not maintainable, hence liable to be dismissed.
5. That the appellant has been retired from Government Service W.e.f 31/12/2017 and has filed the instant appeal for revocation of retirement order dated: 02/01/2017 is totally time barred.

Respectfully Sheweth-

Para :-1 Relates to record, however liable to be proved by the appellant.

Para :-2 Correct to the extent that the appellant is receiving his monthly Pension regularly amounting to Rs.28246/- through Bank A/c No.4009456599, NBP, Branch Karak city.

Para :-3 Correct.

Para:- 4 Relates to Respondent No.1 and they are in better position to show the status of the case.

Para:- 5 That in Para "1" of the Finance Department Khyber Pakhtunkhwa letter No. FD (SOSR-II)/4-36/2018,dated:05/09/2018 read with Finance Division Islamabad office Memorandum No. FI(I)R-4/2007 Vol-II(PT),dated:06/10/2015, it is clearly mentioned that:-

"He/she may draw his/her option of voluntary retirement before retirement matters".

But in this case the appellant is receiving his Pension regularly as mentioned in Para "4" above. Hence the retirement orders of the appellant cannot be withdrawn under the rules.

Para:- 6 No comments.

Para:- 7 That the appellant has been retired from Government Service W.e.f 31/12/2017 and has filed the instant appeal for revocation of retirement order dated:02/01/2017 is totally time barred.

Para :- 8 No comments.

Para:- 9 As mentioned in Para "5" above , this Honorable Court lacks the jurisdiction to entertain the instant appeal, hence liable to be dismissed.

GROUNDS:-

- A. That Respondent No.5 is bound to follow the rules and instructions issued by the Provincial Government of Khyber Pakhtunkhwa as well as Federal Government of Pakistan from time to time.
- B. That in light of Para "1" of the Finance Department khyber pakhtunkhwa as well as Finance Division Islamabad letter as mentioned in Para "5" above , the competent authority as well as the Honorable Court lacks the jurisdiction to withdraw or entertain the retirement case of the appellant. As the appellant is receiving his pension regularly from the last 2 and half years.
- C. As mentioned in Para "B" above.
- D. Incorrect as mentioned in Para "B" above to the extent that Administrative Department of the appellant has no power to withdraw or cancel the retirement orders of the appellant on this belated stage.
- E. As mentioned in Para "D" above.
- F. As mentioned in Para "B" above.
- G. That all the judgments as reproduced by the appellant is not identical to the instant appeal.
- H. No comments.

Keeping in view the above mentioned facts it is, therefore, humbly prayed that the appeal in hand having no merits may be dismissed with cost.

For

**ACCOUNTANT GENERAL
KHYBER PAKHTUNKHWA**

PENSION ROLL DATA SHEET & PENSION SLIP

Date of issue : 20.11.2020
 Pension Type: FRESH
 Pension Number : 00030592-01
 Pensioner ID : 00030592
 Pension Register No:G-45/2018-2019
 Pensioner's Name : **GUL SALIM KHAN**
 Spouse / Husband name : **ZAR KHAN**
 Designation: HEAD CONSTABLE
 Pension No.: 1420320530407
 Grade / Scale : 07
 Department.Min: SPECIAL BRANCH
 Pensioner's Type: SELF
 Pension Type: RETIRING PENSION
 Date of Birth :15.04.1969
 Date of appointment:31.03.1988
 Date of retirement: 31.12.2017
 Date of Death:
 Date of commence :01.01.2018
 Date of Restoration :
 Accounts office ID :PW
 Accounts office Name :AG KP Peshawar
 District / Province :Khyber Pakhtunkhwa
 Length of Qualifying Service :29 years,9 months,0 days
 PPO Number :
 Date and Date of sanction of pension / Letter No. :NO.639/PC
 Date of the other Audit and Accounts officer authorising
 Pension/Gratuity/Commutation
 Permanent Address:

Note : RECOVERY OF O/P OF RS;92652/-
 Age : 49 years
 Last Drawn pay/Emoluments(Rs.): 28680.00
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 1/4th Surrendered Portion (Rs.) :
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 Balochistan : 0.00 Military : 0.00
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She is also entitled to the following increases

Period	Increase % or amount	Increase Amount	W.E.F.
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 Year: 2020

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0101	Pension Increases - Self	11119.00
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1600	Med. All. 2015 Pensioner	816.00

Bank Details

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 Bank Branch : KARAK CITY
 KARAK CITY
 Payment Mode :NATIONAL BANK OF PAKISTAN

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 669 /2020.

Gul Salim Ex- Head Constable Special Branch Police, Khyber Pakhtunkhwa, Peshawar
..... (Petitioner)

VERSUS

Deputy Inspector General of Police, Special Branch, Khyber Pakhtunkhwa and
others.....(Respondents)

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3.	Finance Department letter No. FD(SOSR-II) 4-36/2019 dated 25.04.2019	B	6
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(1)

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 669 /2020.

Gul Salim Ex- Head Constable Special Branch Police, Khyber Pakhtunkhwa, Peshawar
..... (Petitioner)

VERSUS

Deputy Inspector General of Police, Special Branch, Khyber Pakhtunkhwa and
others.....(Respondents)

COMMENTS ON BEHALF OF RESPONDENT NOS. 1, 2 & 3.

PRELIMINARY OBJECTIONS:-

- a) That option of voluntary retirement from service once exercised, accept and matured is final and its revocation is not permissible.
- b) That appeal of appellant is not maintainable as he has filed no departmental appeal under the rules.
- c) That appellant has got no cause of action to file the appeal because his voluntary retirement order has already matured long before on 31.12.2017 and he is regularly availing all the pensionary benefits for the last three (03) years.
- d) That the appeal of appellant is barred by law and limitation.
- e) That the appeal of appellant not based on facts.
- f) That appeal has not come to this Hon'ble Tribunal with clean hands.
- g) That appellant is estopped by his own conduct to file the appeal as he is regularly availing the voluntary retirement benefits for the last (03) years.
- h) That appeal of appellant is bad for non-jounder and miss-jounder of necessary parties.

FACTS:-

1. Incorrect, appellant was received on transfer to Special Branch from district Police and he voluntarily submitted an application for grant of Leave Preparatory to Retirement (LPR). (Copy of application is enclosed as Annexure-A)
2. Incorrect, qualifying Service for Pension was at the credit of appellant therefore Respondent No. 2 accepted the application of appellant for grant of LPR of 365 days and voluntary retired with effect from 31.12.2017 vide order No. 27-34/EB dated 02.01.2017. Copy already enclosed as Annexure-A with original appeal.
3. Correct, appellant has admitted voluntary retirement from service with effect from 31.12.2017 after availing 365 days LPR. Furthermore, appellant is regularly

availing all the pensionary benefits for the last 03 years which further support that the retirement order was passed in pursuance of the written request of appellant.

- 4. Incorrect, appellant after availing the major part of LPR had submitted an application for revocation of LPR on 21.07.2017 but by the time no policy of revocation of LPR was existing and policy of option of voluntary retirement once exercised, accepted and executed cannot be revoked was in vogue. Therefore, no force was found in the application of appellant.
- 5. Incorrect, Government of Khyber Pakhtunkhwa Finance Department adopted the policy of Federal Government in respect of withdrawal of LPR vide Notification No. FD(SOSR-II)4-36/2018 dated 05.09.2018. The Notification inter alia imposes the following condition for withdrawal of LPR. "He/She may withdraw his/her option of voluntary retirement before retirement matures." The Notification was issued on 05.09.2018 and the voluntary retirement of appellant had matured on 31.12.2017 and the appellant had availed all the pensionary benefits right from the date of maturity of the order therefore the notification ibid was into covering the case of appellant. Respondent No. 1 sought opinion of Finance department Khyber Pakhtunkhwa into the case of appellant but the Finance Department categorically explained vide letter No. FD(SOSR-II)4-36/2019 dated 25.04.2019 that the notification noted above was not covering the case of appellant. Copy of Finance Department letter in enclosed as Annexure-B. Furthermore, appellant has not impleaded Finance Department as Respondent in the appeal.
- 6. Correct to the extent that writ petition of appellant was dismissed on the ground of jurisdiction but approaching wrong forum is no ground for condonation of delay because ignorance of law is no excuse. Again the writ petition was filed after delay of about two years in the year 2019 against the order passed in the year 2017 therefore the contention of appellant for condonation of delay is not tenable.
- 7. Incorrect, the impugned matter pertains to the year 2017 and appellant has filed the Service Appeal in the year 2020 after delay of about four (04) years. The grounds and explanation contended by appellant in Para 6 and 7 of the appeal are not legally justified. Under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 limitation of 30 days has been provided for lodging Service Appeal against the final order of departmental authority. It is well settled Principle of law that limitation prescribed by statute was not subject to Section 5 of the limitation of Act, 1908 due to bar contain in Section 29(2) and (b) of the Act. Therefore the prayer of appellant for condonation of delay is groundless.

- 8. Incorrect, the judgment of Hon'ble Supreme Court of Pakistan relied upon by the appellant was passed in public importance matter and prayer of appellant pertains to individual and personal matter. It is well settled principle of law that there shall be an end to litigation and delay of each day shall be explained.
- 9. Incorrect, the appeal of appellant is groundless and baldy time barred.

GROUND:-


- A. Incorrect, appellant has been treated in accordance with law and Rules governing the subject matter. He was retired from Service on his own request with effect from 31.12.2017 after availing 365 days LPR. He is regular recipient of his monthly pension for the last 03 years. He has availed all the pensionary benefits. Withdrawal of option of voluntary retirement after acceptance, maturity and execution is not permissible.
- B. Incorrect, Respondent No. 3 furnished opinion in response to the letter of Respondents No. 1 that option once exercised cannot be revoked. This view was further confirmed by Finance Departmental vide letter No. FD(SOSR-II)4-36/2019 dated 25.04.2019. Copy already enclosed as Annexure-B.
- C. Incorrect, each case is decided on its own facts and merit. Appellant has not annexed copy of the judgment relied upon therefore comments could not be furnished. However, its is submitted that Punjab and Sindh Service Tribunals accepted Service Appeals with prayer of withdrawal of LPR/Retirement but the Hon'ble Supreme Court of Pakistan set aside the judgments passed by the Service Tribunal vide reported judgment 2012 SCMR 745 and 2006 SCMR-453.
- D. Incorrect, this para is repetition of Para-B of the Grounds of appeal. Furthermore, Respondent No. 3 has furnished opinion in clear terms that option once exercised cannot be revoked.
- E. Incorrect, Respondent No. 4 submitted reply that guidance of the Finance Department may be sought into the matter and Finance Department furnished opinion vide letter mentioned above and copy already enclosed as Annexure-B.
- F. Incorrect, Respondent No. 1 has not admitted the prayer of appellant and has processed his case for just decision. The voluntary option of retirement of appellant was accepted, matured and executed long before there (03) years ago therefore its revocation is not permissible. Again appellant has availed its benefits. Furthermore, the case law relied upon by the appellant pertains to public importance matter and the case of appellant is individual and personal matter.

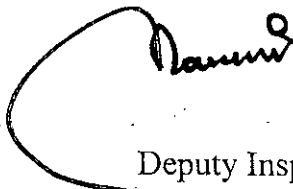
- (4)
- G. Incorrect, this Para of the ground of appeal is mere repetition of Para F of the appeal. The case law relied upon by the appellant is distinguishable as it explain public importance matter.
- H. Respondents may be allowed to raise other grounds at time of arguments.


PRAYER:-

In view of the position explained in reply to facts and grounds of the appeal, there is no force is the appeal of appellant. Being groundless because the option of voluntary retirement from service has become final on its acceptance and execution. Appellant is regularly availing the retirement benefits. The second prayer is also without force because Finance Department has furnished opinion that the notification does not cover the case of appellant.

It is therefore prayed that on acceptance of reply to the appeal, the same may kindly be dismissed with costs please.


Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar
(Respondent No. 3)


Deputy Inspector General of Police,
Special Branch, Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 1)


Senior Superintendent of Police Admn,
Special Branch, Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 2)

A-5

جناب عالی!

گزارش ہے کہ سائل 31.03.1988 کا بھرتی شدہ ہے۔ سائل کا عرصہ ملازمت دورانہ
28 سال سے زائد پورا ہو چکا ہے۔ اب سائل بخوشی خود LPR پنشن پر جانا چاہتا ہے۔ بذریعہ درخواست
استدعا کی جاتی ہے کہ سائل کو مورخہ 01.01.2017 سے ایک سال LPR پنشن پر جانے کا حکم صادر
فرمائیں۔ سائل جناب کے اہل و عیال کی سز بلندی کیلئے دعا گو رہیگا۔
عین نوازش ہوگی۔

مورخہ: 26.12.2016

سائل گل سلیم خان 98/HC متعینہ دفتر سپیشل برانچ کرک

Sir,

forwarded please

Group Officer
Special Branch
Distt: Karak

26/12/2016

E e

Q
SSP IP
27-12-16



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

13-6

NO.FD/SOSR-II/4-36/2019
Dated Peshawar the 25.04.2019

To

✓ The Deputy Inspector General of Police,
Special Branch, Khyber Pakhtunkhwa,
Peshawar.

Subject

APPLICATION FOR CANCELLATION OF LPR

Dear Sir,

I am directed to refer to your letter No:619/Legal dated 04.04.2019 on the subject cited above and to state that the retirement of Mr. Gul Saleem, Head Constable Special Branch Peshawar has been matured on 31.12.2017 and notification for recalling of LPR was issued on 05.09.2018 with no retrospective effect, therefore the demand of the official concerned is not covered under the policy of Provincial Government.

Yours faithfully

(MOAZZAM KHAN)
(SECTION OFFICER (SR.II))

Copy forwarded:-

Master File.

(SECTION OFFICER (SR.II))

(7)

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 669 /2020.

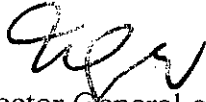
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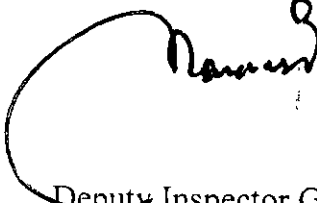
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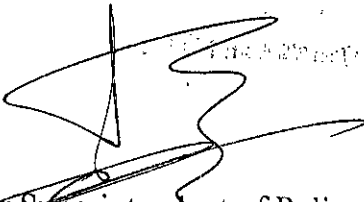
Deputy Inspector General of Police, Special Branch, Khyber Pakhtunkhwa and
others.....(Respondents)

AUTHORITY LETTER

Muhammad Asif DSP Legal, Special Branch, Khyber Pakhtunkhwa Peshawar is hereby authorized to appear on behalf of the Respondents before the Hon'ble Service Tribunal Peshawar. He is authorized to submit all required documents and replies etc pertaining to the appeal through the Government Pleader.


Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 3)


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(Respondent No. 2)

(8)

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 669 /2020.

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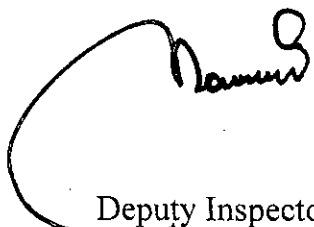
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(Para wise reply on behalf of Respondent No.4)

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KHYBER PAKHTUNKHWA**

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