BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Diary No. 4061

Service appeal No. 172 /2023

Dated 6/3/2023

NIZAM UL HAQ Sepoy/Constable, Dir Levies, District Dir Upper

.....(Appellants)

Versus

1) Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa Peshawar.
2) The Secretary Home and Tribal Affairs Department, Khyber Pakhtunkhwa Peshawar.
3) The Inspector General of Police Khyber Pakhtunkhwa Peshawar.
4) The Deputy Commissioner/Commandant Dir Levies District Dir Upper.
5) The District Police Officer, Dir Upper .....(Respondents)

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Ghulam Mustafa
Superintendent
DC Office Dir Upper
MOB# 0313-3703703

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AFFIDAVIT

I, Ghulam Mustafa Superintendent, office of the Deputy Commissioner/Commandant Dir Levies District Dir Upper, do hereby solemnly affirm and declare on oath that the contents of the accompanying Para wise Comments on behalf of Respondent No. 04 are true and correct to the best of my knowledge and behalf that nothing has been concealed from this Honorable Court.

Deponent
CNIC 15701-0446324-9
MOB# 0313-3703703

ATTESTED
Azmat Ali Advocate
Notary Public
Judicial Complex Peshawar
6-3-23

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APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ISSUANCE OF THE IMPUGNED NOTIFICATIONS DATED 22-03-2021 AND 21-10-2021 WHEREBY THE AGE OF RETIREMENT FOR APPELLANT AS SEPOY/CONSTABLE HAS BEEN MENTIONED/RECKONED AS 42 YEARS OF AGE AND AGAINST THE INACTION OF THE RESPONDENT BY NOT DECIDING THE DEPARTMENTAL APPEAL WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

PARA -WISE COMMENTS ON BEHALF OF RESPONDENT NO. 4.

PRELIMINARY OBJECTIONS:

1. That the petition is not maintainable in its present form.
2. That the petitioner has got no locus stand to file the instant petition.
3. That the petition is not maintainable due to Mis-Joinder and Non-Joinder of necessary parties.
4. That the petitioner does not come to the Court with clean hands.
5. That the petitioner concealed the material fact from the Honorable Court.

RESPECTFULLY SHEWETH

ON FACTS

1) **Correct** to the extent of posting.
2) **Correct**. Pertain to record.
3) **Incorrect**. After 25th Constitutional amendment 2018 both PATA and FATA were merged in the province of Khyber Pakhtunkhwa and forces of tribal areas were also merged in the regular police of the province however, in Malakand Division Levies Force is still regulated by Levy Rules 2013 (amended) and Deputy Commissioner is the Commandant of Levies Force (copy of Notification of the Government of Khyber Pakhtunkhwa Law, Parliamentary Affairs and Human Rights Department dated 12-03-2019.
4) **Incorrect.** As explained at para No. 03 above that in Malakand Division Levy Force is still regulated by the Levy Force Service Rules 2013 (amended).
5) **Incorrect.** The Secretary Home & Tribal Affairs Department Khyber Pakhtunkhwa Peshawar being competent authority amend the Levies Force Service Rules 2013 during the year 2021 vide Notification dated 22-03-2021, so far as the question of absorption of the Levies Force in regular police of the province is concerned the same has already been explained in para No. 03 above.
6) **Incorrect**. As explained at para No. 05 above that the Secretary Home & Tribal Affairs Department Khyber Pakhtunkhwa Peshawar being competent authority amend the Levies Force Service Rules 2013 again during the year 2021 vide Notification dated 21-10-2021, and as already explained at para 03 above that in Malakand Division Levies Force has not been absorbed in regular police of the province and the same is still regulated by Levies Force Service Rules 2013 (amended).

7) **Incorrect.** The appellants will be retired from service as per Rule 17 Schedule-III of the Levy Force Service Rules 2013 (amended) and as per amended Notification dated 21-10-2021 of the Home & Tribal Affairs Department Khyber Pakhtunkhwa Peshawar i.e on attaining 45 years of age. As far as the question of Civil Servants and age of superannuation i.e 60 years is concerned the same has already been explained at Para, 3, 5 and 6 above. It is pertinent to mentioned here that Levies has been declared Force vide Khyber Pakhtunkhwa Act No. III of 2019.

8) **Correct** to the extent that colleagues of the appellant who have got retired in light of the Notification dated 22-03-2021 and 21-10-2021 have filled a writ petition in the Peshawar High Court Peshawar but the honorable court has dismissed the said writ petition vide judgment dated 29-11-2022..

9) **Correct** to the extent that the honorable Peshawar High Court Peshawar vide judgment dated 29-11-2022 has dismissed the writ petition of the petitioners and as far as the question of filling of appeal in the Service Tribunal is concerned nothing has so far been received in this office in this regard.

10) **Incorrect.** No departmental appeal/application has been filled by the appellants before any of the respondents.

11) **No comments.**

ON GROUNDS.

i. **Incorrect.** As explain earlier the Secretary Home & Tribal Affairs Department Khyber Pakhtunkhwa Peshawar being competent authority may make necessary amendments in Levy Service Rules after fulfillment of legal/codal formalities.

j. **Incorrect.** The appellant have been treated as per law and standing Levy Service Rules 2013 and the respondents have not made any violation nor even think to do so.

k. **In correct.** As explained at para No. 03 above.

l. **Incorrect.** As explained at para b above.

m. **Incorrect.** As explained at Para No. 07 above.So far as the question of writ petition 528-M/2016 is concerned the said judgment of Peshawar High Court Mingora Bench Dar-ul-Qaza Swat was challenged in the august Supreme Court of Pakistan and the honorable court has decided the same by set a siding the judgment of Peshawar High Court Mingora Bench Dar-ul-QazaSwat. **Incorrect.** As explained at paraNo. b above that the appellant have been treated as per law and standing Levy Service Rules 2013 and the respondents have not made any violation nor even think to do so.

n. **Incorrect.** As explained at 3, 5, 6 7 above.

o. **No comments.**

In light of the facts explained above, it is humbly prayed that the appeal filed by the appellant does not merit consideration, may kindly be dismissed with cost please.

Deputy Commissioner/
Commandant Dir Levies
Upper Dir
Respondent No. 04
DC/Commandant
Dir Levies