


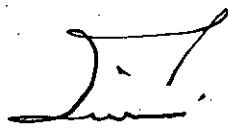
ORDER
16.09.2021

Mr. Zahanat Ullah, Advocate, for the appellant present. Mr. Tariq Umer, Inspector (Legal) alongwith Mr. Riaz Ahmed Paindakhel, Assistant Advocate General for the respondents present. Reply on behalf of respondent No. 2 submitted, which is placed on file. Arguments heard and record perused.

Vide our detailed judgment of today, placed on file of Service Appeal bearing No. 1406/2019 titled " Khaezullah Khan Versus Provincial Government through Chief Secretary, Civil Secretariat Peshawar, Khyber Pakhtunkhwa and three others", so far as the grievance of the appellants regarding their pro-forma promotion is concerned, it is directed that the directions embodied in the decision of the Secretary (Law & Order)/Appellate Authority dated 29.05.2015 should be strictly complied with in letter and spirit and the benefits of the same be extended to all similarly placed employees including Soldier Clerks. In addition thereto, it should be pointed out that all those appellants, whose pensions have been withheld due to impugned action or in-action of the respondents should be released forthwith but strictly in accordance with law. The instant appeal as well as connected Service Appeals are disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
16.09.2021


(ATIQU-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

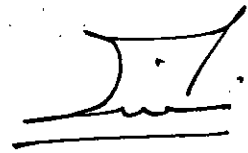
05.07.2021

Mr. Zahanat Ullah, Advocate, for the appellant present. Mr. Tariq Umer, DSP (Legal) alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Learned Additional Advocate General sought time for submission of comments. Last opportunity is granted with the direction to the respondents to positively submit comments on behalf of respondents No. 1 and 2 on the next date. Adjourned. To come up for submission of comments as well as arguments before the D.B on 26.07.2021.



(ATIQU-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

26.07.2021

Mr. Zahanat Ullah, Advocate, for the appellant present. Mr. Tariq Umer, DSP (Legal) alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Reply/comments on behalf of respondents No. 1 & 2 not submitted despite last opportunity being given, therefore, to come up for arguments before the D.B on 16.09.2021.



(ATIQU-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)

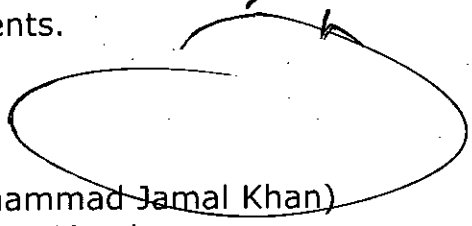


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

25.02.2021

Junior to senior counsel for appellant is present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents is also present.


Written reply on behalf of respondent No. 3 has already been submitted while neither written reply on behalf of respondents No. 1 & 2 submitted despite last chance given in the preceding order sheet dated 07.01.2021 nor any representative on their behalf is present, therefore, the appeal is posted to D.B for 01.06.2021 for rejoinder and arguments.


(Muhammad Jamal Khan)
Member

01.06.2021

Learned counsel for the appellant present. Mr. Riaz Ahmad Paindakheil, Assistant Advocate General for the respondents present and requested for adjournment being not prepared for arguments today. Adjourned. Last opportunity given. To come up for arguments before the D.B on 05.07.2021.


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


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

18.11.2020

Counsel for appellant present. Mr. Kabirullah Khattak learned Addl; AG alongwith Muhammad Nasir Khan Senior Clerk for respondents present.

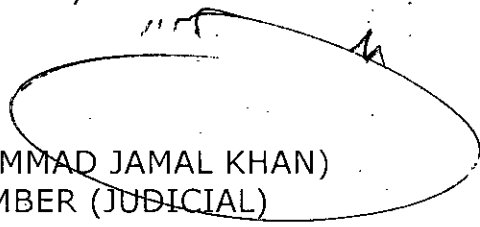
Written reply/comments on behalf respondent No. 3 has been submitted to Registrar of this Tribunal through Registrar^{ed} Post. Placed on record. Representative of respondent No.2 requests for further time for submission of written reply/comments. Adjourned to 07.01.2021 on which date the requisite reply/comments shall positively be submitted.


Chairman

07.01.2021

Junior to the senior counsel is present for appellant. Mr. Kabirullah Khattak, Additional Advocate General, for the respondents is also present.

Written reply on behalf of respondent No. 3 has already been submitted. Neither written reply on behalf of remaining respondents submitted nor any representative on their behalf is present, therefore, learned Additional Advocate General is directed to contact the remaining and submit written reply/comments on the next date by way of last chance. Adjourned to 25.02.2021 on which date requisite written reply/comments respondents shall positively be submitted on behalf of remaining respondents.


(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

21.04.2020

Due to public holidays on account of COVID-19, the case is adjourned. To come up for the same on 21.07.2020 as before.

Reader.

21.07.2020

Mr. Zahanat Ullah, Advocate for the appellant is present.

This appeal is also admitted for regular hearing in the light of order sheet recorded in **Service Appeal No. 1323/2019** titled **Gulzar Hussain Versus Provincial Government through Chief Secretary, Civil Secretariat Peshawar, KPK and two others** instituted on 17.07.2019, as common questions of law and facts are involved in the appeal. Appellant is directed to deposit security and process fee within 10 days, thereafter, notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 25.09.2020 before S.B.

Appellant Deposited
Security & Process Fee

21/7/20

(MUHAMMAD JAMAL KHAN)
MEMBER

25.09.2020

Neither appellant nor his counsel is present, however, clerk to counsel for the appellant is present. Mr. Kabirullah Khattak, Additional Advocate General for respondents present.

Written reply not submitted. Learned Additional Advocate General sought time to contact the respondents for submission of written reply/comments.

Adjourned to 18.11.2020 for written reply/comments before S.B.

(Mian Muhammad)
Member (E)

09.12.2019

Appellant present in person.


Requests for adjournment due to general strike of the Bar. Adjourned to 14.01.2020 for preliminary hearing before S.B.


Chairman

14.01.2020

Junior to counsel for the appellant present. .

Requests for adjournment due to general strike of the Bar. Adjourned to 25.02.2020 before S.B.


Chairman

25.02.2019

Appellant with counsel present, stated that the respondents have granted relief to similarly placed persons who filed Writ Petition No.4485-P/2015 before Hon'ble Peshawar High Court Peshawar and seeks adjournment to furnish additional documents to that effect. Adjourn. To come up for additional documents and preliminary hearing on 05.03.2020 before S.B


Member

05.03.2020

Appellant in person present and seeks adjournment on the ground that his counsel is not available today. To come up for additional documents and preliminary hearing as per previous order sheet dated 25.02.2020 on 21.04.2020 before S.B.





(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 1349/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	15/10/2019	<p>The appeal of Mr. Noor Jan resubmitted today by Mr. Zahanat Ullah Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 15/10/19</p> <p>2- 17/10/19.</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>03/12/19.</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p>03.12.2019</p> <p>Counsel for the appellant present.</p> <p>Learned counsel requests for adjournment of instant appeal to 09.12.2019 on which date a number of other appeals regarding similar proposition are already fixed.</p> <p>Adjourned accordingly.</p> <p style="text-align: right;"> Chairman</p>


P.S. of Justice

The appeal of Mr. Noor Jan son of Habib Gul Ex- Employee of Federal Levy Force, Kurram Agency received today i.e. on 15.07.2019 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copies of application/appeal made by the appellant before the appellate authority and order passed by the appellate authority on the application of the appellant mentioned in para-5 of the memo of appeal are not attached with the appeal which may be placed on it.
- 2- Copy of departmental appeal in respect of appellant mentioned in para-7 of the memo of appeal is not attached with the appeal which may be placed on it.
- 3- Copy of order of this Court mentioned in para-8 of the memo of appeal is not attached with the appeal which may be placed on it.
- 4- Copy of Writ Petition no.4311-P/2017 mentioned in para-9 of the memo of appeal is not attached with the appeal which may be placed on it.
- 5- Annexures of the appeal are not in sequence which may be annexed serial wise as mentioned in the memo of appeal.
- 6- Copy of reply/comments in Writ petition No. 302-P/2018 mentioned in the memo of appeal is not attached with the appeal which may be placed on it.
- 7- Annexures A & B/I of the appeal are illegible which may be replaced by legible/better one.

No. 1316/S.T.

Dt. 31-7-2019.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Zahanatullah Adv. Pesh.

objection removed and Resubmitted

Zah
15/10/19

OTO

Notes:- As the appellant approached the Honorable
Peshawar High Court for redressal of his
grievances and later on High Court in another
judgement declared Civil Servants, so the
appellant was also directed to approach tribunals
So at that time under the law there was joint
appeal concept, so the same may be accepted and
placed before Honorable Tribunal with objection.

July

11/11
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**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

Appeal. No. 1349/2019

Noor Jan(Appellant)

V E R S U S

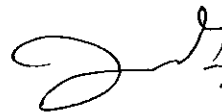
Provincial Government through Chief Secretary, Civil Secretariat Peshawar, KPK. and others(Respondents)

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S.No	Description of Documents	Annex	Pages
1.	Appeal		1-7
2.	Affidavit / Application		8-8-B
3.	Copy of letter dated 23/04/2013	A	9
4.	Copies of applications and order dated 29/05/2015	B&B-1	10-11
5.	Copies of the departmental appeals	C	12
6.	Copy of the Writ Petition and order	D	13-28
7.	Copy of the comments filed by the respondents	E	29-50
8.	Copy of the judgment dated 15/01/2019	F	51-55
9.	Wakalat Nama		56

نوید جان
Appellant

Through



Dated: 10/07/2019

Zahanat Ullah
Advocate High Court,
Peshawar.
Cell No. 0315-0266166

①

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

Appeal. No. 1349/2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 970

Dated 15-7-19

Noor Jan S/o Habib Gul

Ex-employee of Federal Levy Force, Kurram
Agency.....(Appellant)

V E R S U S

1. Provincial Government through Chief Secretary, Civil Secretariat Peshawar, KPK.
 2. Inspector General of Police Khyber Pakhtunkhwa, Police Lines Peshawar.
 3. Deputy Commissioner Kurram Agency.
-(Respondents)

**APPEAL UNDER SECTION 4 OF ~~GENL~~ THE
SERVICE TRIBUNAL ACT 1974.**

Prayer:

On acceptance of this Appeal, the respondents may kindly be directed to give proforma promotion to the appellant vide letter No.CS(F)/N/4-Levies/Concept Paper/825 dated 23/04/2013 issued by the then

Filed to-day
15/7/19
Registrar

FATA Secretariat Narcotic section.

Re-submitted to -day
and filed.

15/10/19
Registrar

Respectfully Sheweth:

The Brief facts of the case are:-

1. That the appellant was an employee of Federal Levy Force and has served on different posts/ ranks at Kurram Agency.
2. That during the entire period of his service, he performed his duties honestly and courageously.
3. That in the year 2013 when the law and order situation in the Kurram Agency including other parts of the country were tense due to Talibanization and anti-state elements the appellant performed his duties valiantly and fearlessly.
4. That on dated 23/04/2013 the then FATA Secretariat Narcotics Section sanctioned 2500 Levy Posts through letter No. CS (F)/N/4-Levies/Concept Paper/825 according to which the present appellant was supposed to be given one step promotion. (Copy of letter dated 23/04/2013 is attached as annexure "A").
5. That the appellant waited for his one step promotion according to the sanction posts but respondents did nothing on their part, consequently the appellant along with his other colleagues moved an applications to respondent No. 3 regarding their promotion, but unfortunately the respondent No. 3

turn deaf ear to the said requests, although in other agencies the above said order was implemented in its true letter and spirit, consequently the appellant moved appeal to the appellate authority i.e. the then Secretary law and order FATA and the same was accepted, wherein certain directions were given to the then Political Agent now Deputy Commissioner and the same has been reproduced here for quick reference as under:

- d. Those who have been retired prematurely be resisted into service by withdrawing their retirement orders.
- e. The senior most and eligible Levy Personnel (retired) be granted one step promotion provided that vacancies exist before their due date of retirement.
- f. The recoverable amount from the Levy personnel be arranged by the Political Agent Kurram Agency from Agency Welfare Fund so as to ensure timely payment of pension to the aggrieved Levy personnel. The amount paid will be recovered from the person (s) held responsible by an enquiry committee to be constituted by the Appellate Authority after payment of recoverable amount is made. (Copies of applications and

4

order dated 29/05/2015 is attached as annexure "B" & B-1).

6. That despite the clear cut directions of the appellate authority to the respondent No. 3 to reinstate and give one step promotions to the appellant, but the respondent No. 3 compulsorily retired the petitioners from their services.
7. That the appellant and his other colleagues moved several joint applications/ departmental appeals regarding his seniority on different occasions but the respondents turn deaf ear to the requests of the appellant. (Copies of the departmental appeals are attached as annexure "C").
8. That other colleagues of the petitioners who approached ^{Peshawar High} Hon'ble Court in Writ Petition No. 4485-P/2015 wherein this Hon'ble Court allowed the said Writ Petition and directed the respondents not to make any recovery from them and to give them one step promotion as well. (Copy of the Writ Petition and order is attached as annexure "D").
9. That thereafter the appellant along with his colleagues filed a writ petition No. ³⁰² ~~4311~~/2013 in the Peshawar High Court, Peshawar for the redressal of his grievances, wherein comments were called from the respondents and

the same were submitted by them. (Copy of the comments filed by the respondents is attached as annexure "E").

10. That on the date of hearing of the above mentioned writ petition, it was observed that the Honorable Peshawar High Court has passed another judgment dated 01/03/2018 in writ petition No.345-P/2017 titled "Gul Munir Vs Govt. of Pakistan through secretary" wherein all the employees of levy force were declared civil servants. Consequently the appellant was directed to approach the Federal service tribunal, so the writ petition of the appellant was sent in original to the Federal Service Tribunal at Islamabad. (Copy of the judgment dated 15/01/2019 is attached as annexure "F").

11. That when the appellant appeared before the Federal Service Tribunal, the Federal Service Tribunal in its order dated 23/05/2019 observed that a notification No.LEGIS1(14)2012-Volume II dated 12/03/2019 whereby the Federal Levy Force regulation 2012 has been repealed through KPK Ordinance No.1 of 2019 according to which the Federal levies and Khasadar force stand provincialized, so the appeal of the appellant was returned for seeking remedy at appropriate forum, hence the present service appeal on the following grounds:

FOUNDATIONS:

- A. That the act of the respondents is against the law, rules and norms of natural justice, hence not tenable in the eyes of law.
- B. That all the Levy Personals who were performing their duties in other agencies were given promotion according to the letter No. CS (F)/N/4-Levies/Concept Paper/825 dated 23/04/2013 except the present petitioner which clear cut violation of the fundamental rights of the petitioners guaranteed by the Constitution of Islamic Republic of Pakistan, 1973.
- C. That the act of the respondent No. 3 by not obeying the decision of the appellate authority dated 11/10/2015 is against the law.
- D. That appellant was not treated equally (as compared to other levy personals serving at other agencies who has been promoted) which is discrimination on the part of respondents.
- E. That similar nature Writ Petition No. 4485-P/2015 was already decided in favour of the other colleagues of the appellant by the Hon'ble Peshawar High Court, so according to the decision of the apex Court the respondents were duty bound to treat the

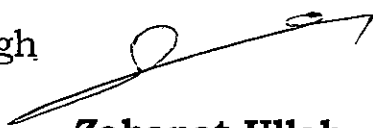
petitioners even on the basis of the above mentioned Writ Petition.

- F. That the appellant has now been retired but he has been deprived of his promotion.
- G. That the appellant has been discriminated.
- H. That any other ground specifically not mentioned in this appeal will be argued at the time of arguments.

It is, therefore, most humbly prayed that on acceptance of this Appeal, the respondents may kindly be directed to give proforma promotion to the appellant vide letter No.CS(F)/N/4-Levies/Concept Paper/825 dated 23/04/2013 issued by the then FATA Secretariat Narcotic section.

نور جان
Appellant

Through

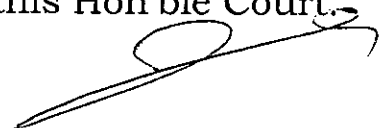


Zahanat Ullah
Advocate High Court,
Peshawar.

Dated: 10/07/2019

CERTIFICATE:

It is certified that no such like appeal has early been filed by the petitioner in this Hon'ble Court.



ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Appeal No. _____/2019

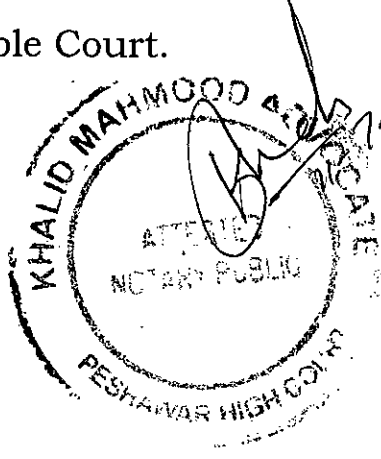
Noor Jan(Appellant)

V E R S U S

Provincial Government through Chief Secretary, Civil Secretariat Peshawar, KPK and others.....(Respondents)

AFFIDAVIT

I, Noor Jan s/o Habib Gul, Ex-employee of Federal Levy Force, Kurram Agency, do hereby solemnly affirm and declare on oath that the contents of the **instant appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



نورد جان

DEPONENT

(8-A)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.**

Appeal No. _____/2019

Noor Jan(Appellant)

V E R S U S

Provincial Government through Chief Secretary, Civil Secretariat
Peshawar, KPK and others.....(Respondents)

APPLICATION FOR CONDONATION OF DELAY

Respectfully Sheweth:

1. That the above title appeal has been filed by the appellant and no date of hearing has yet been fixed.
2. That the appellant was employee of Federal Levy Force and his service was governed by the Federal Levies Force regulations, 2012.
3. That initially the appellant has filed a writ petition in the Honorable Peshawar High Court, Peshawar (being a proper forum) in the year 2017 for the redressal of his grievances.
4. That on dated 15/01/2019 wherein the appellant was directed to approach to the Federal Service Tribunal and his writ petition was sent in original to the same.
5. That on dated 23/05/2019, the Federal Service Tribunal directed the appellant to approach the KPK Service Tribunal as the deferral Levies Force Regulations, 2012 has been

18-B'

repealed through Khyber Pakhtunkhwa Ordinance No.1 of 2019 according to which the Federal Levies and Khassadar Forces stand provincialized.

6. That the appellant initially approached to the Honorable Peshawar High Court wherein the case of the similarly placed employees/colleagues of the appellant was decided but later on another judgment was passed in writ petition No.354-P/2017 wherein the Federal Levies Force employees were declared civil servants, so in light of that judgment the appellant was directed to approach the Federal Service Tribunal and thereafter due to merger of FATA, the Federal Levies Force and Khassadar Forces stands provincialized, consequently the appellant was again directed by the Federal Service Tribunal to this Honorable Tribunal. So the delay caused by filing the instant appeal was due to the above mentioned reasons.
7. That a precious interest of appellant is involved with the matter concerned and if this Hon'ble Court/Tribunal does not entertain the present appeal, the appellant will suffer irreparable loss.

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

ذوران
Appellant

Through

Zahanat Ullah
Advocate, High Court
Peshawar

Date: 10/07/2019



Ph: (091) 9212147 Fax # (091) 9210578

FATA SECRETARIA

(Narcotics Section)
Law & Order Department

PESHAWAR

Handwritten notes:
Unit no (1)
23/4/13
no record
effort
of the person

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No. CS (F)/N/4-Levies/Concept Paper/ S25-
Dated: 23 April, 2013

All Political Agents

All Deputy Commissioners (FRs) except FR Lakki

Info: ✓ PS to Additional Chief Secretary (FATA)

PS to Secretary (Law & Order)

Subject: **CREATION OF 2500 TEMPORARY POSTS (PHASE-II) FEDERAL LEVIES IN VARIOUS AGENCIES IN FATA FOR THE FINANCIAL YEAR 2013-14**

Federal Government has sanctioned additional 2500xLevies posts for FATA. Agency/ FR wise distribution is appended below. In this regard, I am directed to convey that recruitment process may please be initiated as per Federal Levies Service (Amended) Rules-2013 in your respective area of jurisdiction, immediately.

AGENCY/ FR WISE RE-DISTRIBUTION OF 2500 LEVIES POSTS IN FATA (PHASE-II)												
Name of Agency/ FR	Sub Maj	Sub	N/Sub	Hav	Naik	L/Naik	Sepoys	Supdt.	Asstt.	S/Clerk	J/Clerk	Total
Bajaur	1	10	10	30	30	41	274	1	1	1	1	401
Khyber	2	9	9	27	27	36	236	1	1	1	1	351
Kurram	2	9	9	27	27	36	236	1	1	1	1	351
Mohmand	2	10	10	30	30	41	273	1	1	1	1	401
NWA	2	0	0	0	0	0	0	1	1	1	1	4
Orakzai	0	1	1	3	3	4	34	1	1	1	1	50
SWA	2	16	14	46	46	59	375	1	1	1	1	562
Kohat	0	5	5	15	15	20	140	0	0	0	0	200
Tank	0	1	1	3	3	4	28	0	0	0	0	36
Bannu	0	0	1	2	2	3	17	0	0	0	0	25
DIKhan	0	0	1	1	1	2	14	0	0	0	0	19
Peshawar	3	3	3	8	8	10	68	0	0	0	0	100
Total	11	64	64	192	192	256	1693	7	7	7	7	2500

Signature
Section Officer (N)

ATTESTED

Handwritten signatures and notes:
ATTESTED
True Copy
[Signatures]

ATTESTED
To Be True Copy

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Page No. (9/A)

FATA SECRETARIAT
(Narcotics Section)
Law & Order Department
Peshawar

Ph (091) 9212147 Fax # (091) 92010578

No. CS (F)/N/4-Levies/Concept Paper/825-
Dated 23 April 2013

All Political Agents

All Deputy Commissioners (FRs) except FR Lakki.

Info: PS to Additional Chief Secretary (FATA)
PS to Secretary (Law & Order)

Subject: **CREATION OF 2500 TEMPORARY POTS (PHASE-II)
FEDERAL LEVIES IN VARIOUS AGENCIES IN FATA
FOR THE FINANCIAL YEAR 2013-14**

Federal Government has sanctioned additional 2500xLevies posts for FATA Agency./FR wise distribution is appended below. In this regard, I am directed to convey that recruitment process may please be entitled as per Federal Levies Service (Amended) Rules-2013 in your respective area of jurisdiction immediately.

AGENCY / FR WISE RE-DISTRIBUTION OF 2500 LEVIES POSTS IN FATA (PHASE-II)												
Name of Agency/FR	Sub Maj	Su b	N/Su b	Ha v	Nai k	L/Na ik	Sepo ys	Supd t.	Asst t.	S/Cler k	J/Clerk	Total
Bajaur	1	10	10	30	30	41	274	1	1	1	1	405
Khyber	2	9	9	27	27	36	236	1	1	1	1	350
Kuram	2	9	9	27	27	36	236	1	1	1	1	350
Mohmand	2	10	10	30	30	41	273	1	1	1	1	400
NWA	2	0	0	0	0	0	0	1	1	1	1	8
Orakzai	0	1	1	3	3	4	34	1	1	1	1	50
SWA	2	16	14	46	46	59	375	1	1	1	1	562
Kohat	0	5	5	15	15	20	140	0	0	0	0	200
Tank	0	1	1	3	3	4	26	0	0	0	0	38
Bannu	0	0	1	2	2	3	17	0	0	0	0	25
DIKhan	0	0	1	1	1	2	14	0	0	0	0	19
Peshawar	0	3	3	8	8	10	68	0	0	0	0	100
Total	11	64	64	192	192	56	1693	7	7	7	7	2500

-sd-
Section Officer (N)

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(2A) (X) (J)

FATA SECRETARIAT

Law & Order Department

PESHAWAR

(B)

10

No.CS (F)/N/4-Levy/Appeal/1476-77

Dated: 27.8.2015

Political Agent
Kurram Agency

Info: PS to Secretary Law and Order

Subject: APPEAL -MR.REHMAN GUL, MUHAMMAD RASHEED, NOOR
AKBAR, SAEED KHAN AND OTEHS. EX-PESONNEL OF
KURRAM LEVY FORCE

I am directed to refer to the subject noted above and to state that the Appellate Authority has again directed to immediately implement the subject decision dated 29.5.2015 conveyed vide this office letter No. even dated 1.6.2015. The same may immediately be implemented and compliance report be submitted within 05 days, otherwise case of non-compliance would be initiated against the Political Administration Kurram Agency, please.


Shabir Khan
Section Officer
(NARCOTICS)

ATTESTED

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**BEFORE THE COURT OF
APPELLATE AUTHORITY / SECRETARY (LAW & ORDER) FATA LEVY
FORCE, FATA SECRETARIAT, PESHAWAR**

**REQUEST FOR REDRESSAL OF GREVIENCE
REQUEST FOR REINSTATEMENT AND PROMOTION**

BI 11

Mr. Rehman Gul, Muhammad Rasheed, Noor Akbar, Saeed Khan & others. Ex-Personnel
of Kurram Levy Force..... Appellants

Vs

Political Agent, Kurram..... Respondent

ORDER No. CSF/N/4-Levy/Appeal/2015 Appellants through the instant appeal has challenged their retirement order dated 03/04/2015 on the ground that they were eligible for promotion from 23/04/2014 when FATA Secretariat circulated new posts and submitted numerous applications in this regard, however, meeting of Departmental Promotion Committee has not been convened and consequently there were retired.

Documentary evidence and record placed before this Authority was perused minutely, which reveal that meeting of Departmental Promotion Committee of Kurram Levy Force has not been convened since long and one was convened on 07/03/2015, however, the same was not held due to some preoccupation while the appellants were in service at that time as is evident from record. Thus on factual side, the submission of the appellants carries weight. Though Federal levies service amended rules 2013 are silent in this regard, however, the principles of natural justice and principles of law laid down by the honorable Supreme Court of Pakistan in various SCMRs provide necessary guidance in this regard.

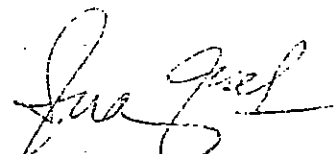
Firstly, it is an established principle of natural justice that no one can be punished for the action or inaction of others. If meeting of Departmental Promotion Committee was not convened or held, the appellants cannot be punished for inaction of others. Secondly it has been held in 1985 SCMR 1391, 1991 SCMR 1334 and 1998 SCMR 736, that an incumbent if otherwise found eligible and fit for promotion shall be given promotion with back benefits even after retirement.

Above in view, appeal of the appellants being logical, factual and supported by relevant rules is accepted. ~~The appellants are reinstated on the grounds quoted above and they may be promoted~~

~~against their respective next higher ranks subject to seniority cum fitness otherwise their retirement as per rules would be correct.~~

~~Appeal disposed off in the above terms.~~

Announced
29.005.2015


Secretary (Law & Order)
Appellate Authority

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BEFORE THE COURT OF
APPELLATE AUTHORITY / SECRETARY (LAW & ORDER)
FATA LEVY. FORCE, FATA SECRETARIAT, PESHAWAR

REQUEST FOR REDRESSAL OF GRIEVANCES REQUEST FOR
REINSTATEMENT AND PROMOTION

Mr. Rehman Gul, Muhammad Rasheed, Noor Akbar, Saeed Khan & others. Ex-Personnel of Kurram Levy Force..... Appellant

Vs.

Political Agent Kurram Respondent

ORDER No. CSF/N/4-Levy/Appeal/2015 Appellants through the instant appeal has challenged their retirement order dated 03/04/2015 on the ground that they were eligible for promotion 23/04/2014 when FATA Secretariat circulated new posts and submitted numerous application in this regard, however, meeting of Departmental Promotion Committee has not been convened and consequently there were retired.

Documentary evidence and record placed before this Authority was perused minutely, which reveal that meeting of Departmental Promotion Committee of Kurram Levy Force has not been convened since long and one was convened on 07/03/2015, however, the same was not held due to some preoccupation while the appellants were in service that time as is evidence from record. Thus on factual side, the submission of the appellants carries weight. Though Federal levies service amended rules, 2013 are silent in this regard, however, the principles of natural justice and principles of law laid down by the honorable Supreme Court of Pakistan in various SCMRs provide necessary guidance in this regard.

Firstly, it is an established principle of natural justice that no one can be punished for the action or inaction of others. If meeting of Departmental Promotion Committee was not convened for held, the appellants cannot be punished for inaction of others. Secondary It has been held in 1985 SCMR 1394, 19994 SCMR 1334 and 1998 SCMR 736, that an incumbent if otherwise found eligible and fit promotion shall be given promotion with back benefits even after retirement.


Above in view, appeal of the appellants being logical, factual and supported by relevant rules is accepted. The appellants are reinstated on the grounds quoted above and they may be promoted against their respective next higher ranks subject to seniority cum fitness otherwise their recruitment as per rules should be correct.

Appeal disposed off in the above terms.

Announced:
29.05.2015


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Secretary (Law & Order)
Appellate Authority.


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پولیسٹریٹس ایجنٹ صاحب کرم ایجنسی

P-12

(2)

عنوان: درخواست براداری فرمانے ساٹلان لیوی فوری کرم ایجنسی

Annex

C⁴

جناب عالی! - سائنس ذیل عرض رسال ہے۔

- ۱- یہ کہ ساٹلان لیوی فوری کرم ایجنسی کے اہلکاران جو کہ مختلف عہدوں پر اپنے فرائض منصبی سرانجام دے رہے ہیں۔
 - ۲- یہ کہ بذریعہ آرڈر نمبر CS(F)/N/4-Levies/Concept Paper/825 مورخہ 23 April 2013 کو ٹائٹل سیکرٹریٹ نارویجس سیکشن لاء اینڈ آرڈر ڈیپارٹمنٹ نے مختلف Catagories میں آسامیوں کا اجراء کیا۔ (نقل آرڈر لف ہذا ہے)۔
 - ۳- یہ کہ برطانیہ قوانین موجودہ فوری کو پرموشن دینا ضروری تھا، لیکن ابھی تک ساٹلان کو کوئی پرموشن یا اس قانون پر کوئی عمل درآمد نہیں ہو رہا، جس کی وجہ سے مختلف عہدوں پر تعینات اہلکاران کی حق تلفی ہو رہی ہے، مزید یہ کہ متاثرین کو ناقابل تلافی نقصان بھی پہنچ رہا ہے۔
 - ۴- یہ کہ ساٹلان کی برطانیہ سفارتی اسٹ پر پرموشن دینا نہایت ضروری ہے۔
- لہذا استدعا ہے کہ برطانوی درخواست ہذا مذکورہ بالا آرڈر پر سن اور سن قانون کی مطابق عمل کیا جا کر ساٹلان کو پرموشن دیا جا کر منگوانے فرمائیں۔

العارض مورخہ 5/1/15

ساٹلان لیوی فوری کرم ایجنسی

کاپی برائے اظہار عیانی و ضروری کارروائی:-

- ۱- پولیسٹریٹس ایجنٹ کرم ایجنسی۔
- ۲- اسٹنٹ پولیسٹریٹس ایجنٹ کرم ایجنسی۔
- ۳- اسٹنٹ پولیسٹریٹس ایجنٹ کرم ایجنسی۔
- ۴- لاء اینڈ آرڈر، ٹائٹل سیکرٹریٹ۔
- ۵- پولیسٹریٹس ایجنٹ کرم ایجنسی۔
- ۶- لیوی آفس پانچ، چار کرم ایجنسی۔
- ۷- سفید اور کرم لیوی کرم ایجنسی۔

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بخدمت جناب پولیٹیکل ایجنٹ صاحب کرم ایجنسی

عنوان: درخواست بمراد درجی فرمانے ساٹلان لیوی فورس کرم ایجنسی

جناب عالی! ساٹل حسب ذیل عرض رساں ہے۔

۱۔ یہ کہ ساٹلان لیوی فورس کرم ایجنسی کے اہلکاران جو کہ مختلف عہدوں پر اپنے فرائض سرانجام دے رہے ہیں۔

۲۔ یہ کہ بذریعہ آرڈر نمبر CS(F)/N/3-Levies/Concept Paper/825 مورخہ 23 April 2013 کو فائنا سیکرٹریٹ نارکائس سیکشن لاء اینڈ آرڈر ڈیپارٹمنٹ نے مختلف Catagories میں آسامیوں کا اجراء کیا۔ (نقل آرڈر لف ہذا ہے)۔

۳۔ یہ کہ بمطابق قوانین موجودہ نفری کو پروموشن دینا ضروری تھا، لیکن ابھی تک ساٹلان کو کوئی پروموشن یا اس قانون پر کوئی عمل درآمد نہیں ہو رہا، جس کی وجہ سے مختلف عہدوں پر تعینات اہلکاران کی حق تلفی ہو رہی ہے۔ مزید یہ کہ متاثرین کو ناقابل تلافی نقصان بھی پہنچ رہا ہے۔

۴۔ یہ کہ ساٹلان کی بمطابق سناریو لسٹ پروموشن دینا نہایت ضروری ہے۔

لہذا استدعا ہے کہ بمنظوری درخواست ہذا مذکورہ بالا آرڈر پر من اور عن قانون کی مطابق عمل کیا جا کر ساٹلان کو پروموشن دیا جا کر مشکور فرمائیں۔

العارض مورخہ 15/1/2015

ساٹلان: لیوی فورس، کرم ایجنسی۔

کاپی برائے اطلاعیاتی و ضروری کارروائی:-

- ۱۔ پولیٹیکل ایجنٹ کرم ایجنسی۔
- ۲۔ اسٹنٹ پولیٹیکل ایجنٹ اپر کرم ایجنسی۔
- ۳۔ اسٹنٹ پولیٹیکل ایجنٹ لوئر کرم ایجنسی۔
- ۴۔ لاء اینڈ آرڈر، فائنا سیکرٹریٹ۔
- ۵۔ پولیٹیکل تحصیلدار علی زئی، کرم ایجنسی۔
- ۶۔ لیوی آفس پارہ چنار، کرم ایجنسی۔
- ۷۔ صوبیدار میجر کرم لیوی، کرم ایجنسی۔

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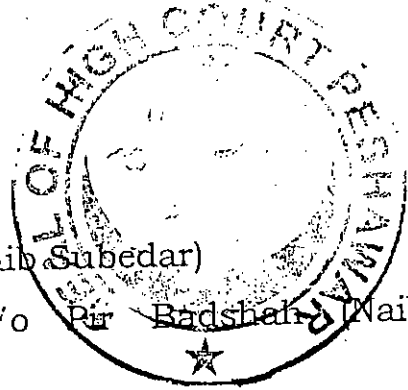
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BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

W.P. No. WUSSP/2015



1. Rehman Gul S/o Pir Ghulam (Naib Subedar)
2. Muhammad Rashid Khan S/o Pir Badshah (Naib Subedar)
3. Noor Akbar S/o Khaista Khan (Naib Subedar)
4. Saeed Khan S/o Gul Nazir (Naik)
5. Said Marjan S/o Asghar Khel (Hawaldar)
6. Sultan Ali S/o Mardan Ali
7. Jamal Hussain S/o Ghulam Ali
8. Ashiq Hussain S/o Rehmat Ali
9. Yousaf Ali S/o Manzar Ali
10. Manzoor Hussain S/o Qambar Ali
11. Mushtaq Hussain S/o Lal Hussain
12. Noor Hussain S/o Hussain Faqir
13. Inayat Hussain S/o Muhammad Anwar Hussain
14. Asghar Hussain S/o Gulab Hussain
15. Syed Sajjad Hussain S/o Syed Badshah Hussain
16. Ajeeb Hussain S/o Muhammad Hussain
17. Ramzan Ali S/o Qurban Ali
18. Syed Noor Hussain S/o Syed Ali Akbar
19. Syed Ghulam S/o Ghulam Ali
20. Syed Ghulam S/o Abbas Ghulam
21. Syed Muhammad Afzal S/o Syed Muhammad Asghar
22. Gul Muhammad S/o Ghulam Muhammad
23. Syed Sabir Hussain S/o Syed Shah Hussain
24. Ali Naqi S/o Abdul Akbar
25. Subhan Ali S/o Mardan Ali
26. Yousaf Ali S/o Dost Ali

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27. Ghulam Akbar S/o Ali Akbar
28. Shan Ali S/o Ghulam Muhammad
29. Iqbal Hussain S/o Muhammad Yousaf
30. Hashim Ali S/o Ghulam Jan
31. Nijat Hussain S/o Sahib Shah
32. Shah Mehmood Khan S/o Fazal Jan
33. Noor Faraz S/o Syed Sharif
34. Sharab Khan S/o Fazalay
35. Sardar Ghulam S/o Mosam Khan
36. Khwaja Khel S/o Sharif Khan
37. Musa Khan S/o Meman Khan
38. Mubarak Khan S/o Sardar Khan
39. Noor Muhammad S/o Saleh Muhammad
40. Habib Shah S/o Syed Zahid
41. Raham Noor S/o Muhammad Noor
42. Muhammad Sharif S/o Muhammad Habib
43. Muhammad Ishaq S/o Hussain Khan
44. Ali Akbar S/o Mir Akbar
45. Islam Muhammad S/o Ghulam Muhammad
46. Khiyal Muhammad S/o Jan Muhammad
47. Gul Bhadur S/o Syed Sharif
48. Nabi Khan S/o Jehangir Khan
49. Kabal Khan S/o Sardar Jan
50. Muhammad Khan S/o Said Muhammad
51. Moin Shah S/o Nawak Shah
52. Falak Naz S/o Matanay
53. Lal Badhsh S/o Niaz Badshah
54. Hakim Khan S/o Amir Khan
55. Azem Khan S/o Nat Khan
56. Khiyal Bat Khan S/o Adam Khan
57. Khan Gul S/o Khameer Gul
58. Shehzad Gul S/o Habib Gul

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Peshawar High Court
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59. Noor Islam S/o Noor Wali
60. Noor ul Haq S/o Ali Ahmad Khan
61. Saadat Khan S/o Batokay
62. Wali Shah S/o Gulab Shah
63. Muhammad Rehman S/o Mir Alam Khan
64. Noor Zaman S/o Shehzada
65. Muhammad Jan S/o Gulbat Khan
66. Abdullah Khan S/o Ashraf Khan
67. Hayat Ullah S/o Muhammad Khan
68. Wazir Khan S/o Muhammad Adam Khan
69. Muhammad Rasool S/o Rasool Khan
70. Syed Hussain S/o Muhammad Hussain
71. Badshah Jan S/o Piao Jan
72. Pehalwan S/o Khwaja Mat Khan
73. Din Bat Khan S/o Rasool Khan
74. Munir Hussain S/o Hassan Gul (Naib Subedar)
75. Zakhmeen Khan S/o Janat Mir
76. Syed Abid Hussain S/o Syed Abdul Hussain
- All employees of Federal Levy Force, Kurram Agency.
(Petitioners)

V E R S U S

1. Chief Secretary FATA, FATA Secretariat, Warsak Road, Peshawar.
2. Secretary Law and Order FATA, FATA Levy Force, FATA Secretariat, Warsak Road, Peshawar.
3. Political Agent Kurram Agency.
4. Section Officer (L&K) FATA, FATA Secretariat, Warsak Road, Peshawar.
5. Agency Account Officer, Kurram Agency.
6. Secretary SAFRON Division, Pak Secretariat Islamabad.....(Respondents)

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Peshawar
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(A) (B) 16
(C) (D)

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

Prayer:

On acceptance of this Writ Petition, the respondents may kindly be directed:

- a. To reinstate and promote those petitioners who have been prematurely retired by withdrawing their retirement orders, as per the order dated 29/05/2015 of respondent No. 2.
- b. To give one step promotion to the senior most and alleageable Levy Personnel (retired) according to the sanction posts dated 24/04/2014.
- c. To declare null and void the recover order dated 09/02/2015 of the respondent No. 2 being illegal and the respondents may further be directed to release the pension of the petitioners along with interest (who has attained the age of superannuation) along with back benefits.

Respectfully Sheweth:

The Brief facts of the case are:-

1. That the petitioners were employees of Federal Levy Force and were servicing on different posts/ ranks at Kurram Agency.
2. That during the entire period of their services they performed their duties honestly and courageously.

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3. That in the year 2013 when the law and order situation in the Kurram Agency including other parts of the country were tense due to Talibanization and anti state elements the petitioners performed their duties valiantly and fearlessly.

4. That on dated 23/04/2013 the FATA Secretariat Narcotics Section sanctioned 2500 Levy Posts through letter No. CS (F)/N/4-Levies/Concept Paper/825 according to which the present petitioners were suppose to be given one step promotion. (Copy of letter dated 23/04/2013 is attached as annexure "A").

5. That the petitioner waited for their one step promotion according to the sanction posts but respondents did nothing on their part, consequently the petitioner moved applications to respondent No. 3 regarding their promotion, but unfortunately the respondent No. 3 turn deaf ear to the said requests, although in other agencies the above said order was implemented in its true letter and spirit consequently the petitioners moved appeal to the

WILSON TOUAY
Deputy Registrar
23/04/2013

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appellate authority i.e. respondent No. 2 and the same was accepted, wherein respondent No. 3 made certain directions to respondent No. 2 the same has been reproduced here for quick reference as under:

- d. Those who have been retired prematurely be resisted into service by withdrawing their retirement orders.
- e. The senior most and eligible Levy Personnel (retired) be granted one step promotion provided that vacancies exist before their due date of retirement.
- f. The recoverable amount from the Levy personnel be arranged by the Political Agent Kurram Agency from Agency Welfare Fund so as to ensure timely payment of pension to the aggrieved Levy personnel. The amount paid will be recovered from the person (s) held responsible by an enquiry committee to be constituted by the Appellate Authority after payment of recoverable amount is made.

(Copies of applications and order dated 29/05/2015 is attached as annexure "B" & "B-1").

Deputy Director
23/5/2015

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6. That despite the clear cut directions of respondent No. 2 to reinstate and give one step promotions to the petitioner, but the respondent No. 3 compulsorily retired the petitioners from their services.
7. That it is pertinent to mention here that in the Kurram Agency the Law and order situation was tense enough and for the reason some of the petitioners who had attained the age of superannuation were not called from the trenches and they continued their duties with the employed consent of respondent No. 2 with all their logistic support and for the reasons the respondents continuously paid their monthly salaries to the petitioners even thereafter.
8. That now after spending hard time for the protection of mother land and maintaining the law and order situation astonishingly the respondent No. 2 issued a letter/ circular dated 09/12/2015 demanding the petitioners to pay back the salaries paid to them for the duties they performed with the implied consent of the respondent in the hard and

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Peshawar High Court
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fast time of law and order situation. (Copy of letter circular dated 09/12/2015 is attached as aenxnure "C").

- 9. That the petitioners have asked time and again respondent No. 3 to implement the decision of respondent No. 2, but respondent No. 3 failed to do so, and even not releasing the pension of some petitioners who's age of superannuation nor giving them beck benefits and promotion/ reinstatement.
- 10. That feeling aggrieved from the above said acts/ conduct of the respondents, while having no other adequate efficacious remedy, the petitioners approaches this Hon'ble Court for redressal of their grievances, inter-alia on the following grounds:

GROUND:

- A. That the act of the respondents is against the law, rules and norms of natural justice, hence not tenable in the eyes of law.

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B. That all the Levy Personals who were performing their duties in other agencies were given promotion according to the letter No. CS (F)/N/4-Levies/Concept Paper/825 dated 23/04/2013 except the present petitioner which clear cut violation of the fundamental rights of the petitioners guaranteed by the Constitution of Islamic Republic of Pakistan, 1973.

C. That the demand of arrears in respect of salaries from the petitioners for which they have rendered their services/ sacrifices during the bad law and order situation is illegal and against norms of natural justice.

D. That the act of the respondent No. 3 by not obeying the decision of respondent No. 2 dated 11/10/2015 is against the law.

E. That the act of the respondent No. 3 by not giving back benefits and releasing pension is also illegal and against the law and facts.

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F. That petitioners were not treated equally (as compared to other levy personals serving at other agencies who has been promoted) which is discrimination on the part of respondents.

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G. That the petitioners have not been paid their pensionary benefits since they were compulsorily retired from their services. Consequently the petitioners along with their families are facing huge financial problems. The same pensions need to be paid along with the interest to the petitioner.

H. That any other ground specifically not mentioned in this Writ Petition may kindly be allowed at the time of arguments.

It is, therefore, most humbly prayed that on acceptance of this Writ Petition, the respondents may kindly be directed:

g. To reinstate and promote those petitioners who have been prematurely retired by withdrawing their retirement orders.

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- h. To give one step promotion to the senior most and alleageable Levy Personnel (retired) according to the sanction posts dated 24/04/2014.
- i. To declare null and void the recover order dated 09/02/2015 of the respondent No. 2 being illegal and the respondents may further be directed to release the pension of the petitioners along with interest (who has attained the age of superannuation) along with back benefits.

Petitioners

[Signature]

Through

[Signature]

Zahanat Ullah.
Advocate High Court,
Peshawar.

Dated: 23/12/2015

CERTIFICATE:

Certified on instructions of my client that petitioner has not previously moved this Hon'ble Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 regarding the instant matter.

[Signature]
ADVOCATE

LAW BOOKS:

- 1. Constitution of Islamic Republic of Pakistan, 1973.
- 2. Any Law Book as per need.

[Signature]

ADVOCATE

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Peshawar High Court
12 AUG 2016

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(B) (A)

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

W.P. No. 4485/P/2015

Rehman Gul and others.....(Petitioners)

V E R S U S

Chief Secretary FATA, FATA Secretariat, Warsak Road,
Peshawar and others(Respondents)

AFFIDAVIT

I, Rehman Gul S/o Pir Ghulam (Naib Subedar) Federal Levy Force, Kurram Agency, do hereby solemnly affirm and declare that the contents of the accompanying **Writ Petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

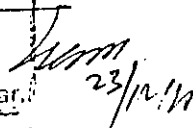
21303-2257130-7


DEPONENT

Identified by:



Zahanat Ullah
Advocate High Court,
Peshawar.

No. <u>9642</u>
Certified that the above was verified on solemnly affirmation before me in office, this <u>23rd</u> day of <u>Dec</u> 2015 by <u>Rehman Gul</u> s/o <u>Pir Ghulam</u> who was identified by <u>Zahanat Ullah</u> who is personally known to me:
 Oath Commissioner Peshawar High Court

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Peshawar High Court

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Deputy Registrar
25 DEC 2015

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JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT, PESHAWAR.

JUDICIAL DEPARTMENT

W.P No. 4485-P of 2015.

JUDGMENT

Date of hearing 19-05-2016

Petitioner (s) *(Rehman Gul)* by *Mr. Zaharutullah, Advocate.*

Respondent (s) *(Addl. Chief Secy)* by *Mr. Iqbal Ahmad Durani, Advocate*
Mr. Kifaitullah, D.A.O.

YAHYA AFRIDI:-J:- Rehman Gul and

seventy five others, the petitioners, seek the Constitutional jurisdiction of this Court praying that:

"It is, therefore, most humbly prayed that on acceptance of this petition, the respondents may kindly be directed;

- a. *To reinstate and promote those petitioners who have been prematurely retired by withdrawing their retirement orders,*
- b. *To give one step promotion to the senior most and allegeable Levy Personnel (retired) according to the sanction posts dated 24.4.2014.*
- c. *To declare null and void the recovery order dated 9.2.2015 of the respondent No.2 being illegal and the respondents may further be directed to release the pension of the petitioners along with interest (who has attained the age of*

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Peshawar High Court
12 AUG 2016

superannuation) along with
back benefits."

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2. In essence, the grievance of the petitioners relate to the recovery being made from the petitioners for the pay already received for services rendered and the payment of their pension.

3. The respondents were put to notice. They have contended that due to sectarian conflict in Kurram Agency, dire need arose for the Levy Force personnel to be retained, some of whom were then reaching their age of superannuation and thus the urgent steps taken by the respondents have led to the present grievance of the petitioners.

4. It was brought to the attention of the Court that the petitioners had earlier moved the Appellate Authority under Rule-11 of Services Rules for Federal Levies Force in PATA, 2013 ("Rules"), which was duly considered and finally it was decided by respondent No.2 vide order dated 29.05.2015 in terms that;

"ORDER NO.CSF/N/4-Levy/Appeal/2015.

Appellants through the instant appeal has challenged their retirement order dated 3.4.2015 on the ground that they were eligible for promotion from 23.4.2014 when FATA Secretariat circulated new posts and submitted numerous applications in this regard, however, meeting of Departmental

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Promotion Committee has not been convened and consequently they were retired.

Documentary evidence and record placed before this Authority was perused minutely, which reveal that meeting of Departmental Promotion Committee of Kurram Levy Force has not been convened since long and one was convened on 7.3.2015, however, the same was not held due to some preoccupation while the appellants were in service at that time as is evident from record. Thus on factual side, the submission of the appellants carries weight. Though Federal levies service amended rules 2013 are silent in this regard, however, the principles of natural justice and principles of law laid down by the honourable Supreme Court of Pakistan in various SCMRs provide necessary guidance in this regard.

Firstly, it is an established principle of natural justice that no one can be punished for the action or inaction of others. If meeting of Departmental Promotion Committee was not convened or held, the appellants cannot be punished for inaction of others. Secondly, it has been held in 1985 SCMR 1394, 1994 SCMR-1334 and 1998 SCMR-736, that an incumbent if otherwise found eligible and fit for promotion shall be given promotion with back benefits even after retirement.

Above in view, appeal of the appellants being logical, factual and supported by relevant rules is accepted. The appellants are reinstated on the grounds quoted above and they may be promoted against their respective next higher ranks subject to seniority cum fitness otherwise their retirement as per rules would be correct.

Appeal disposed of in the above terms.

(Secretary (Law & Order)/Appellate Authority.)

5. This being the position, it is but a settled principle of law that once payments are received

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by a person for services rendered, without any misrepresentation or fraud by him, the same should not be recovered. As far as the other grievances of the petitioners are concerned, the directions embodied in the decisions of the Appellate Authority dated 29.05.2015 should be strictly and promptly complied with. In addition thereto, it should also be pointed out that all those petitioners, whose pensions have been withheld because of the impugned action or inaction of the respondents, should be released forthwith, but surely in accordance with law.

This petition is disposed of, in the above terms.

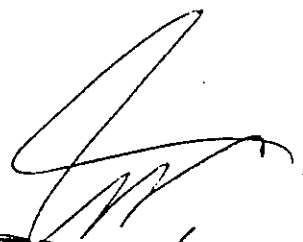
S.d = Yahya Afridi. J

Announced.
Dated.19.5.2016.

S.d. J. Rooh-ul-Amin Khan. J

JUDGE

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EXAMINER
Authorised Signatory
The Government of Punjab
15 AUG 2016

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Date of Presentation of Application 13/8/16

No of Pages 10/11

Copying fee

Urgent Fee 25/-

Total

Date of Preparation 13/8/16

Date Given For Delivery 13/8/16

Date of Delivery of Copy 13/8/16

Prepared by J.P.P.

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BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

29 (E)
Appeal No. 391 (P) 5/19

W.P. No. 309/2018

Presented by Post
May be registered

Muhammad
Registrar

26/04/2019

- Wife of Mr. Akbar*
at 37/5118
Abdul Jalil
(Deceased)
Love Wali
son
MSI
MSI
wife
(E) 10000
son
(C) Samiullah
son
(E) 1754
Heela (Din)
(E) 1754
naib of daughter
1. Khaezullah Khan S/o Akber Khan (Naik)
 2. Jan Muhammad S/o Shakir Muhammad (Naik)
 3. Noor Jan S/o Habib Gul (Naik)
 4. Alam Gul S/o Khyal Gul (Naik)
 5. Rasul Khan S/o Nasrullah Khan (L. Naik)
 6. Itibar Gul S/o Khyal Gul (L. Naik)
 7. Sharif Khan S/o Shahbaz Khan (L. Naik)
 8. Hayat Gul S/o Syedmar Gul (L. Naik)
 9. Rehman Gul S/o Eadat Gul (Sepoy)
 10. Abdul Malik S/o Itebar Khan (L. Naik)
 11. Tariq Masih S/o Lal Masih (Sepoy)
 12. Dildar Hussain S/o Gul Din (Sepoy)
 13. Intizar Hussain S/o Gul Din (Sepoy)
- All Ex-employees of Federal Levy Force, Kurram Agency.....(Petitioners)

6 APR 2019

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VERSUS

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1. Chief Secretary FATA, FATA Secretariat, Warsak Road, Peshawar.
 2. Secretary Law and Order FATA, FATA Levy Force, FATA Secretariat, Warsak Road, Peshawar.
 3. Political Agent Kurram Agency.
 4. Section Officer (L&K) FATA, FATA Secretariat, Warsak Road, Peshawar.
 5. Agency Account Officer, Kurram Agency.
 6. Secretary SAFRON Division, Pak Secretariat Islamabad.....(Respondents)

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16 JAN 2018

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

Prayer:

On acceptance of this Writ Petition, the respondents may kindly be directed:

- a. To reinstate and promote those petitioners who have been prematurely retired by withdrawing their retirement orders, as per the order dated 29/05/2015 of respondent No. 2.
- b. To give one step promotion to the senior most and allegeable Levy Personnel (retired) according to the sanction posts dated 24/04/2014.
- c. To declare null and void the recover order dated 09/02/2015 of the respondent No. 2 being illegal and the respondents may further be directed to release the pension of the petitioners along with interest (who has attained the age of superannuation) along with back benefits.

Respectfully Sheweth:

The Brief facts of the case are:-

1. That the petitioners were employees of Federal Levy Force and were servicing on different posts/ ranks at Kurram Agency.

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2. That during the entire period of their services they performed their duties honestly and courageously.

3. That in the year 2013 when the law and order situation in the Kurram Agency including other parts of the country were tense due to Talibanization and anti state elements the petitioners performed their duties valiantly and fearlessly.

4. That on dated 23/04/2013 the FATA Secretariat Narcotics Section sanctioned 2500 Levy Posts through letter No. CS (F)/N/4-Levies/Concept Paper/825 according to which the present petitioners were suppose to be given one step promotion. (Copy of letter dated 23/04/2013 is attached as annexure "A").

5. That the petitioner waited for their one step promotion according to the sanction posts but respondents did nothing on their part, consequently the petitioner moved applications to respondent No. 3 regarding their promotion, but unfortunately the

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respondent No. 3 turn deaf ear to the said requests, although in other agencies the above said order was implemented in its true letter and spirit, consequently the petitioners moved appeal to the appellate authority i.e. respondent No. 2 and the same was accepted, wherein respondent No. 3 made certain directions to respondent No. 2 the same has been reproduced here for quick reference as under:

- d. Those who have been retired prematurely be resisted into service by withdrawing their retirement orders.
- e. The senior most and eligible Levy Personnel (retired) be granted one step promotion provided that vacancies exist before their due date of retirement.
- f. The recoverable amount from the Levy personnel be arranged by the Political Agent Kurram Agency from Agency Welfare Fund so as to ensure timely payment of pension to the aggrieved Levy personnel. The amount paid will be recovered from the person (s) held responsible by an enquiry committee to be constituted by the Appellate Authority after payment of recoverable amount is made.

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(Copies of applications and order dated 29/05/2015 is attached as annexure "B" & "B-1").

6. That despite the clear cut directions of respondent No. 2 to reinstate and give one step promotions to the petitioner, but the respondent No. 3 compulsorily retired the petitioners from their services.
7. That it is pertinent to mention here that in the Kurram Agency the Law and order situation was tense enough and for the reason some of the petitioners who had attained the age of superannuation were not called from the trenches and they continued their duties with the employed consent of respondent No. 2 with all their logistic support and for the reasons the respondents continuously paid their monthly salaries to the petitioners even thereafter.
8. That now after spending hard time for the protection of mother land and maintaining the law and order situation astonishingly the respondent No. 2 issued a letter/ circular dated 09/12/2015

[Signature]

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demanding the petitioners to pay back the salaries paid to them for the duties they performed with the implied consent of the respondent in the hard and fast time of law and order situation. (Copy of letter/circular dated 09/12/2015 is attached as annexure "C").

9. That the petitioners have asked time and again respondent No. 3 to implement the decision of respondent No. 2, but respondent No. 3 failed to do so, and even not releasing the pension of some petitioners who's age of superannuation nor giving them back benefits and promotion/ reinstatement.
10. That other colleagues of the petitioners who approached this Hon'ble Court in Writ Petition No. 4485-P/2015 wherein this Hon'ble Court allowed the said Writ Petition and directed the respondents not to make any recovery from them and to give them one step promotion as well. (Copy of the Writ Petition and order is attached as annexure "D").
11. That the petitioners approached the respondents and requested them to treat the petitioner similarly

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like their other colleagues who's Writ Petition was allowed by this Hon'ble Court, but the respondents refused to do so.

12. That feeling aggrieved from the above said acts/ conduct of the respondents, while having no other adequate efficacious remedy, the petitioners approaches this Hon'ble Court for redressal of their grievances, inter-alia on the following grounds:

GROUND:

- A. That the act of the respondents is against the law, rules and norms of natural justice, hence not tenable in the eyes of law.
- B. That all the Levy Personals who were performing their duties in other agencies were given promotion according to the letter No. CS (F)/N/4-Levies/Concept Paper/825 dated 23/04/2013 except the present petitioner which clear cut violation of the fundamental rights of the petitioners guaranteed by the Constitution of Islamic Republic of Pakistan, 1973.

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- C. That the demand of arrears in respect of salaries from the petitioners for which they have rendered their services/ sacrifices during the bad law and order situation is illegal and against norms of natural justice.
- D. That the act of the respondent No. 3 by not obeying the decision of respondent No. 2 dated 11/10/2015 is against the law.
- E. That the act of the respondent No. 3 by not giving back benefits and releasing pension is also illegal and against the law and facts.
- F. That petitioners were not treated equally (as compared to other levy personals serving at other agencies who has been promoted) which is discrimination on the part of respondents.
- G. That the petitioners have not been paid their pensionary benefits since they were compulsorily retired from their services. Consequently the petitioners along with their families are facing huge

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financial problems. The same pensions need to be paid along with the interest to the petitioner.

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H. That similar nature Writ Petition No. 4485-P/2015 was already decided in favour of the other colleagues of the petitioner by this Hon'ble Court, so according to the decision of the apex Court the respondents were duty bound to treat the petitioners even on the basis of the above mentioned Writ Petition.

I. That any other ground specifically not mentioned in this Writ Petition may kindly be allowed at the time of arguments.

It is, therefore, most humbly prayed that on acceptance of this Writ Petition, the respondents may kindly be directed:

a. To reinstate and promote those petitioners who have been prematurely retired by withdrawing their retirement orders.

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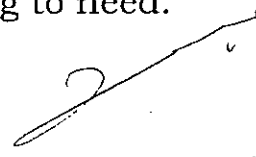
CERTIFICATE:

It is certified by no such like Writ Petition has early been filed by the petitioner in this Hon'ble Court. Further stated that being Writ Petition on the score that since there is no adequate and alternate remedy is available or previously avail or approach lower forum, thus this case may fixed before the Worthy Division Bench (D.B) of this Hon'ble Court.


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LIST OF BOOKS:

1. Constitution of Islamic Republic of Pakistan, 1973.
2. Any other law books according to need.


ADVOCATE

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BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

W.P. No. 309/2018

12

39

Khaezullah Khan and others.....(Petitioners)

V E R S U S

Chief Secretary FATA, FATA Secretariat, Warsak Road,
Peshawar and others(Respondents)

ADDRESSES OF THE PARTIES

PETITIONERS:


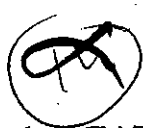
1. Khaezullah Khan S/o Akber Khan (Naik)
2. Jan Muhammad S/o Shakir Muhammad (Naik)
3. Noor Jan S/o Habib Gul (Naik)
4. Alam Gul S/o Khyal Gul (Naik)
5. Rasul Khan S/o Nasrullah Khan (L. Naik)
6. Itibar Gul S/o Khyal Gul (L. Naik)
7. Sharif Khan S/o Shahbaz Khan (L. Naik)
8. Hayat Gul S/o Syedmar Gul (L. Naik)
9. Rehman Gul S/o Eadat Gul (Sepoy)
10. Abdul Malik S/o Itebar Khan (L. Naik)
11. Tariq Masih S/o Lal Masih (Sepoy)
12. Dildar Hussain S/o Gul Din (Sepoy)
13. Intizar Hussain S/o Gul Din (Sepoy) All Ex-employees of
Federal Levy Force, Kurram Agency.

RESPONDENTS:

1. Chief Secretary FATA, FATA Secretariat, Warsak Road,
Peshawar.

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2. Secretary Law and Order FATA, FATA Levy Force, FATA Secretariat, Warsak Road, Peshawar.
 3. Political Agent Kurram Agency.
 4. Section Officer FATA, FATA Secretariat, Warsak Road, Peshawar.
 5. Agency Account Officer, Kurram Agency
 6. Secretary SAFRON Division, Pak Secretariat Islamabad.
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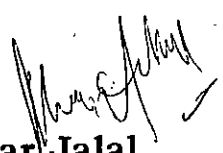
Petitioners

Through

Dated: 15/01/2018


Zahanat Ullah

&


Moammar Jalal
Advocates High Court,
Peshawar.

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BEFORE THE HONOURABLE PESHAWAR HIGH COURT, PESHAWAR

W.P.No. 4311-P / 2017.

Ashiq Hussain.....Petitioner

Vs

Additional Chief Secretary & others.....Respondents.

Para wise comments for & on behalf
of Respondent No.3 & 4.

Respectfully Sheweeth:

Preliminary Objections:

- a. That the Federal Levy Rules has been promulgated in the year 2012 and appellate authority i-e Secretary Law & Order FATA Secretariat has been established for redressal of grievance of levy personal & officials.
- b. The Petitioner has not come to the Court with clean hands.

ON FACTS:

1. In reply to Para No.1, it is humbly submitted that the instant Para is wrong and misleading. Levy Force was raised and established in Kurram Agency in the year 1981. After the establishment of Kurram Levy Force in Kurram Agency, some educated persons also applied for recruitment in Levy Force as Sepoy. Some of the highly qualified Levy Force Sepoy already recruited as Levy Sepoy were entrusted with the duties of Soldier Clerks to perform office duties which were ordered by the then Commandant/Political Agent Kurram Agency vide different office Orders. It is important to mention here, that they were basically recruited as Levy Sepoy in B.P.S-5.
2. In reply to Para 2, it is respectfully submitted that some of the Levy Sepoys were entrusted with the responsibilities to perform duties as

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Soldier Clerks as per need of office of Political Agent/Commandant Kurram Agency.

3. In reply to the instant Para, it is respectfully submitted that all the Petitioners got retired from service long before and never agitated that their right of promotion has been curtailed and that they have been discriminated. Now in the year 2018 i-e after a lapse of almost four years of their retirement, are asking for their promotion which is not tenable in the eye of law.
4. In reply to Para 4, it is humbly submitted that the instant Para is incorrect. If the Petitioners appeals were not decided by the respondents then they should have approached the proper remedy at that particular time and not at this belated stage.
- 5 & 6. In reply to the instant Paras, it is respectfully submitted that in the year 2013, unprecedented law and order situation prevailed in Kurram Agency in the shape of militancy/terrorism and sectarian clashes. A large number of Levy Personal who were about to retire on attaining the age of superannuation were asked by the political authorities to continue their duties even beyond their retirement to maintain sufficient strength of Levy Force which was direly needed in the wake of worst Law & order situation. All those Levy personal were regularly paid their salaries. When the law & order situation in the agency became normal, all the levy personal who performed their duties beyond the age of superannuation were retired and their pension cases were processed and the FATA Secretariat was asked to give ex-post facto sanction of payments of salaries. In the meantime some of the Levy Personal filed a W.P.No.4485-P/2015 before this Honourable Court and that Writ Petition was accepted by this Honourable Court vide Order dated.19.05.2016 in the following terms:

"This being the position, it is but settled principle of Law that once payments are received by a person for services rendered, without any misrepresentation or fraud by him, the same should not be recovered. As far as the other grievances of the Petitioners are concerned,

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the directions embodied in the decisions of the Appellate Authority dated.29.05.2015 should be strictly and promptly complied with. In addition thereto, it should also be pointed out that all those Petitioners, whose pensions have been withheld because of the Impugned inaction of the respondents, should be released forthwith, but surely in accordance with Law."

Thereafter C.O.C.No.365-P/2016 in W.P.No.4485-P/2015 was filed before this Honourable Court which was disposed of by this Honourable Court on 14.12.2017 as payments to all the Petitioners in those Writ Petitions were made and the remaining 6 employees cases for payment of pension was in process who were directed to appear before the Agency Accounts Officer Kurram Agency to verify their antecedents for due payment.

7. In reply to the instant Para, it is respectfully submitted that the letter dated.09.12.2015 was prior to the decision of this Honourable Court in W.P.No.4485-P/2015 and after the decision of this Honourable Court no such letter or demand to payback the salaries has ever been made by the respondents.

8 & 9. In reply to Paras, it is respectfully submitted that detailed reply to the instant Para has already been given in the preceding Paras.

GROUNDS:

A. In reply to the instant Para it is humbly submitted that once the decision of this Honourable Court came in W.P.No.4485-P/2015, the letter dated.09.12.2015 has lost its value and that is the reason no such letter has ever been written again as all the pension cases of those Levy personal who performed their duties beyond the age of superannuation were settled and their pension amount was paid to them.

B. In reply to the instant Para it is humbly submitted that all the promotions were made in accordance with Law & Rules.

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C. In reply to Para C, it is respectfully submitted that after the decision of this Honourable Court in W.P.No.4485-P/2015, no demand for payment of arrears has ever been made by the respondents.

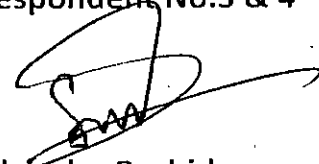
D. In reply to Para D, it is humbly submitted that detailed reply to the instant Para has already been given in the preceding Paras.

E. In reply to Para E, it is respectfully submitted that detailed reply to the instant Para has already been given in the preceding Paras.

It is therefore humbly prayed that in the light of above stated submissions, the instant Petition being devoid of any merits may kindly be dismissed.

through

Respondent No.3 & 4



Sikandar Rashid,
Advocate, Supreme
Court of Pakistan.

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BEFORE THE HONOURABLE PESHAWAR HIGH COURT, PESHAWAR

In Re:

W.P.No. 4311-P / 2017.

Asma Hussain.....Petitioner

Vs

ACS, FATA & others.....Respondents.

AFFIDAVIT

I, Sikandar Rashid, Legal Advisor to Political Agent, Kurram Agency do hereby solemnly affirm and declare on oath that the contents of these comments are true and correct to the best of my knowledge and belief and nothing material has been concealed from this Honourable Court.

Deponent

C.N.I.C.No.17301-2325709-1

No. <u>1708</u> Certified to affidavit on day of <u>Jun</u> <u>18</u> at <u>Legal Advisor</u> who is and is Commissioned <u>27/6</u>	<u>Sikandar Rashid</u> <u>Kurram Ag</u> <u>Self</u>
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BEFORE THE PESHAWAR HIGH COURT PESHAWAR

In W.P No. 4311-P/2017

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Mr. Ashiq Hussain s/o Qadam Ali Caste, Duperzai Resident of Village Shakh Upper Kurram Agency & others of Kurram Agency ----- *Petitioners*

Versus

Federation of Pakistan & Others----- *Respondents*

I N D E X

<i>S.No</i>	<i>Particulars</i>	<i>Pages</i>
1.	Parawise Comments	1-3
2.	Affidavit	4

Respondents No 1, 2 & 5

*Deputy Secretary Levy & Khassadar)
Law & Order Department
FATA Secretariat*

*Branch
09/07*

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getting their salaries from the budget of Kurram Agency were also basically Levy Sepoy getting their salary in BPS 5 as Levy Sepoy from the budget of Levy Force Change of Cadre From Levy Force to clerical staff of Political Agent Kurram Agency has been now declared as illegal and void by the Honorable Supreme Court of

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BEFORE THE PESHAWAR HIGH COURT PESHAWAR

In W.P Nos. 4311-P/2017

Mr. Ashiq Hussain s/o Qadam Ali Caste, Duperzai Resident of Village Shakh Upper Kurram Agency & others of Kurram Agency ----- *Petitioners*

Versus

Federation of Pakistan & Others----- *Respondents*

Reply on behalf of Respondent No.1 Additional Chief Secretary (FATA), Respondent No. 2 (Secretary Law & Order) FATA and Respondent No. 5 Section Officer (Levy & Khassadar) FATA.

RESPECTFULLY SHEWTH:

The answering respondents most respectfully submit the following

PRELIMINARY OBJECTIONS:

- a. After the promulgation of Levy Force Regulation 2010, amended 2013, called Federal Levy Regulation 2012, rule were also framed in Levy Force Regulation and a proper remedy for the aggrieved Levy personnel has been provided in the regulation/ rules mentioned above. The petitioners have been provided proper remedy under the law for their grievances if any and as such the question of maintainability of the petition/ jurisdiction is of much importance and the approaches of the petitioners to this Honourable court under Article-199 of the Constitution of Islamic Republic of Pakistan 1973 have a big question mark.
- b. That the petitioners have not come to this Honorable court with clean hands.

FACTS:

The contents of Para-1 are misconceived and based on wrong information. Levy Force was raised and established in Kurram Agency in the year 1981. After the establishment of Levy Force in Kurram Agency, some educated persons also applied for recruitment in Levy Force as Sepoy. Recruitment order of some of the Sepoys is annex "A" Some of the highly qualified Levy Force Sepoy already recruited as Levy Sepoy were entrusted with the duties of soldier clerks to perform office duties which were ordered by the then commandant/ Political Agent Kurram Agency vide different office orders. It is important to mention here that they were basically recruited as Levy Sepoy in BPS-5 and their promotion in Levy Force was as such:-

From Levy Sepoy to Lance Naik

From Lance Naik in Havaldar

From Havaldar to Naib Subedar

From Naib Subedar to subedar and Major.

Annual budget of Levy Force was prepared by SAFRON and Levy Force personnel were getting their salaries from that specific budget sanctioned for Levy Force. The Levy Clerk were also basically Levy Sepoy getting their salary in BPS 5 as Levy Sepoy from the budget of Levy Force Change of Cadre From Levy Force to clerical staff of Political Agent Kurram Agency has been now declared as illegal and void by the Honorable Supreme Court of Pakistan Islamabad in C.P. No. 71 of 2011 decided in 12.6.2013.

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The Ministerial Staff working under the control of Political Agent Kurram Agency are getting their salaries from the sanctioned budget for Ministerial Staff and their chain of promotion is also specifically mentioned in the record.

Para wise Comments:

1. Correct to the extent that some of the Petitioners have served in the office of Political Agent Kurram Agency. Most of the petitioners have been properly trained as Levy Sepoy after initial recruitment. Some of the Levy Sepoys were entrusted with the responsibilities to perform duties as Soldier Clerks as per need of office of the political Agent/ commandant Kurram Agency. As for as initial training as Levy Sepoy is concerned majority have gone through.
2. Correct. They served to the entire satisfaction of their superiors.
3. Incorrect. All Junior Clerks mentioned in the said para except Bilal Hussain at S.No 8 was adjusted as Junior Clerk in the Ministerial staff of Political Agent Kurram Agency before promulgation of Levy Force Rules in 2013. Promotion of Bilal Hussain as Junior Clerk in the office of Political Agent Kurram Agency is subjudice in the Honourable apex court of Pakistan where as the adjustment of Hashim Ali as Junior Clerk has since been withdrawn vide office order No. 234-38/ Kurram Levy/ Dated 23.2.2016 as per directive issued by the appellate authority (Secretary Law & Order FATA Secretariat) vide letter No. CS(F)/M/4/Levy/concept paper/311-16/ dated 15.12.2015, Annex "B" as change of cadre of uniform force is violation of Federal Levy Force Rules (Amended 2013).
4. Incorrect.
5. The facts are that in the year 2013, unprecedented law and order situation along with internal tribal sectarian issues further aggravated by the menace of militancy/ terrorism prevailed in Kurram Agency in last few years. In such like sensitive law and order situation recruitment against levy Posts could not be made. A large number of Levy Personnel are retired which constrained the Political Administration Kurram Agency not to retire the Levy Personnel to maintain sufficient strength of Levy which was direly needed in the wake of worst Law and order situation arising out of law enforcing agencies operation in adjoining agencies as well as in central Kurram coupled with intra sectarian cleavage created in the 2013 general elections. In wake of the above, service of 126 levy personnel including petitioners who were due to retirement were retained beyond their due dates of retirement. As they had performed their duties beyond their dates of retirement, their salaries were paid regularly as they were performing their duties to the satisfaction of administration. When law and order situation subsided the pension cases of the afore said levy personnel (including petitioners) were submitted to Agency Accounts Officer Kurram Agency which were returned with the remarks to recover the amount of salaries paid to Levy Force personnel, beyond their dates of retirements. The pension cases submitted to Agency Accounts Officer are pending final decision. Political Administration Kurram Agency has taken up the pension cases of those persons with FATA Secretariat and has requested Ex-post facto Sanction of payments of salaries made to retired Levy Personnel who were retained by the Political Administration Kurram Agency for the reasons detailed above and their cases are under process in the office of the Secretary

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- 6. As already submitted, the petitioners were due to for retirement at the time when 2 their services were retained for the reasons detailed above.
- 7. Reply already submitted above.
- 8. Correct. But as is very clear from his own statement that they have thoroughly performed their duties as soldier clerks in offices/ check posts as Moharrirs and no promotion had been granted to soldier clerk till yet as promotion is being granted to those sepoy who performs active rifle duties day and night. If promotion granted to the petitioners, it will open a new Pandoras Box and all retired solder clerks will demand for their promotion.
- 9. Detailed reply already submitted in Para-8 Above.
- 10. No comments.

Grounds:

- A. The contents of Para are mis-conceived and not admitted.
 - B. Detailed reply already submitted in Para-8 Above.
 - C. Detailed reply already submitted in para-5 above.
 - D. Proper answered has been submitted above.
- A. No comments

In the light of the submissions made above it is most respectfully prayed that the writ petition having no legal grounds may very kindly be dismissed.

Respondent No. 1
Additional Chief Secretary FATA)

Respondent No. 2
Secretary Law & Order

Respondent No. 5
Section Officer (Levy & Khassadar)

FILED TODAY
Deputy Registrar
09 JUL 2018

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2015	-do-	-d-
JCS/2015	-do-	-d-
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BEFORE THE PESHAWAR COURT 1 COURT PESHAWAR

In W.P Nos. 4311-P/2017

Mr. Ashiq Hussain s/o Qadam Ali Caste, Duperzai Resident of Village Shakh Upper Kurram Agency & others of Kurram Agency ----- *Petitioners*

Versus


Federation of Pakistan & Others----- *Respondents*

AFFIDAVIT

I, Mr. Miraj Muhammad Deputy Secretary (Levy & Khassadar) FATA Secretariat, Peshawar do hereby solemnly affirms and declared that parawise comments submitted by Respondent No. 1, 2 & 5 is true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable court.


 Deputy Secretary Levy & Khassadar)
 Law & Order Department
 FATA Secretariat

2641
 I declare that the contents are verified on solemnly
 affirmed by me on this 9
 day of July 18 Miraj Muhammad
 Dep Sec Peshawar
 self
 who is personally present

 9/7/18

FILED TODAY
 Deputy Registrar
 09 JUL 2018

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PESHAWAR HIGH COURT, PESHAWAR

ORDER SHEET

F

SI

Date of Order or Proceedings	Order or others Proceedings with Signature of Judge
1	2
15.01.2019	<p><u>W.P No.4311-P/2017.</u></p> <p>Present: Mr. Zahanatullah, Advocate, for the petitioners.</p> <p>Mr. Sikandar Rashid, for the respondents.</p> <p>*****</p> <p><u>MUSARRAT HILALI, J.</u>- Through this single judgment, we propose to decide connected Writ Petition bearing No. 302-P/2018 (Khazullah Khan etc Vs. Chief Secretary FATA etc), as both the matters have common questions of law and facts involved therein.</p> <p>2. Petitioners in both the petitions have sought similar prayer that they may be given proforma promotion with all back benefits by declaring the recovery order dated 09.02.2015 of respondent No.2 as null and void. They have also prayed that the respondents may be directed to release the pension of the petitioners</p>

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alongwith interest.

Arguments heard and appended record gone through.

3. This Court in its judgment rendered in W.P.No. 354-p/2017 titled "Gul Munir .Vs. The Govt. of Pakistan through Secretary, Ministry of States and Frontier Regions (SAFRON), Islamabad & others" decided on 01.03.2018 had declared that all employees of Levy Force are civil servants, in light of the judgment of the Apex Court, rendered in Civil Appeal Nos. 521/2015, 2387/ 2388, 2552, 2553 of 2016 and others decided on 29.01.2018.

4. When learned counsel for the petitioners was confronted with the above situation, he stated at the bar that the instant Writ Petition may be treated as Appeal and be sent to the Services Tribunal for decision in accordance with law.

5. The office is directed to send the original file to Federal Service Tribunal by retaining a

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photocopy of memo of Petition for the purpose of record.

6. Accordingly, both the writ petitions are disposed of in the above terms.

[Handwritten Signature]
JUDGE
[Handwritten Signature]
JUDGE

**Announced
15.01.2019**

(DB) Hon'ble Justice Musarrat Hilali
Hon'ble Mr. Justice Muhammad Ayub Khan

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IN THE FEDERAL SERVICE TRIBUNAL, 47-ATTATURK AVENUE,
SECTOR. G-5/2, ISLAMABAD.

D. No. 5271

Dated 28 MAY 2019

Subject:- ORDER PASSED IN APPEAL NO. 391(P)CS-2019 FILED BY
MR. KHAEZULLAH KHAN & OTHERS VS FATA ETC.

A certified copy of the judgment passed by this Honourable Tribunal in the appeal noted in the subject is sent herewith for your information/compliance.

By Order

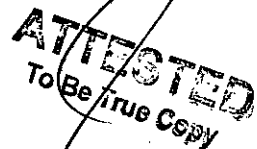

REGISTRAR

To,

1. Mr. Khaezullah Khan S/o Akbar Khan, (Naik)
2. Mr. Jan Muhammad S/o Shakir Muhammad (Naik)
3. Mr. Noor Jan S/o Habib Gul (Naik)
4. Mr. Alam Gul S/o Khayal Gul (Naik)
5. Mr. Rasul Khan S/o Nasrullah Khan (L.Naik)
6. Mr. Itibar Gul S/o Khayal Gul (L.Naik)
7. Mr. Sharif Khan S/o Shahbaz Khan (L.Naik)
8. Mr. Hayat Gul S/o Syedmar Gul (L.Naik)
9. Mr. Rehman Gul S/o Eadat Gul (Sepoy)
10. Mr. Abdul Malik S/o Itebar Khan (L.Naik)
11. Mr. Tariq Masih S/o Lal Masih (Sepoy)
12. Mr. Dildar Hussain S/o Gul Din, (Sepoy)
13. Mr. Intizar Hussain S/o Gul Din (Sepoy)

(All appellants mentioned at Serial No.1 to 13 are Ex-Employees of Federal Levy Force Kurram Agency).

14. The Secretary, Establishment Division, Government of Pakistan, Islamabad.
15. The Solicitor, Law & Justice Division, Islamabad.


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Federal Service Tribunal, Islamabad.

Appeal No. 391(P)CS/2019

Khaezullah Khan & others Vs Secy. FATA & 5 others

23.05.2019 BEFORE: Mr. Muhammad Jahangir Mir and
Mr. Muhammad Humayun, Members.

PRESENT: Mr. Khaezullah Khan, appellant in person.

ORDERMuhammad Jahangir Mir, Member:

The appeal is at pre-admission stage. It has been observed that a notification No. LEGIS 1(14) 2012-Vol.II dated 12.03.2019, whereby the Federal Levies Force Regulation, 2012 has been repealed through Khyber Pakhtunkhwa Ordinance No. 1 of 2019. According to which the Federal Levies and Khassadar Forces stand provincialized.

In the above circumstances the present appeal is ^{to be} returned ^{for} seeking remedy at appropriate forum. Therefore, the appeal is disposed of accordingly.




Sd -
MEMBER

Sd -
MEMBER



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Registrar
Federal Service Tribunal
Islamabad

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قیمت 50 روپے	20104			
ایڈووکیٹ: <u>Rahanaullah</u>		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل/ایسوسی ایشن نمبر: <u>BC-157560</u>				
رابطہ نمبر: <u>0315-0260166</u>				

بعدالت جناب: _____ سر و جسٹس ایسوسی ایشن ۱۰۰۰ جیٹا رو

مخائب: <u>Appellant</u>	دعویٰ: <u>Appeal</u>
<u>نور جان</u>	علت نمبر: _____
<u>بنام</u>	مورخہ: _____
<u>گورنمنٹ آف ۱۰۰۰</u>	جرم: _____
	تھانہ: _____

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ (مجلس) آن مقام پشاور کیلئے بانت اکتھ کے لئے کوویل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو مراضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال و 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 پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم: _____ ۱۱-۷-۲۰۱۰

الع بد _____ واہ شد _____ الع بد

مقام _____ مشاعر _____ کے لیے منظور ہے۔

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No: 1349/2019

Noor Jan.....Appellant

VERSUS

Provincial Government through Chief Secretary Civil Secretariat Peshawar, Khyber Pakhtunkhwa
.....Respondents

APPEAL U/S 4 OF SERVICE TRIBUNAL ACT 1974.

Respectfully Shewith:

The requisite comments are under:

It is humbly submitted that during the tenure of Erst while FATA and due to shortage of Ministerial staff the then Political Agent's being Commandant of Kurram Levy Force, some educated levy sepoy's including the petitioner were entrusted the duties of soldier clerks to cope the offices requirements who were later on retired from their services as per rules framed for the purpose.

Now, after merger of Erst while FATA , the levy/Khasadars have been adjusted in Khyber Pakhtunkhwa Police, hence has no concern with this office, therefore, it is humbly prayed that the concerned authorities of the Police Department may please be asked for the purpose who will be in better position to through light over it.


Deputy Commissioner
District Kurram

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

Service Appeal No 1349/2019

Noor Jan

(Appellant)

VERSUS

Govt. of KP etc. (Respondents)

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S. NO	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGE
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2.	Affidavit		3

Respondent through



(TARIQ UMAR)
Inspector/ Legal CPO,
Peshawar.

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

Service Appeal No 1349/ 2019.

Noor Jan..... (Appellant)

VERSUS

Govt. of KP etc.....(Respondents)

REPLY BY RESPONDENTS NO. 2

RESPECTFULLY SHEWETH:

PRELIMINARY OBJECTIONS:-

- a) That the appeal is bad for miss-joinder and non-joinder of necessary parties.
- b) That the appeal is not based on facts.
- c) That the appeal is not maintainable in the present form.
- d) That the appeal is badly barred by law & limitation.
- e) That the appellant is estopped to file the appeal by his own conduct.
- f) That the appellant has not come to this Honorable Tribunal with clean hands.
- g) That the appellant has got no cause of action to file instant service appeals.

FACTS:-

1. Pertains to record of Ex-Commandant Kurram Agency. As per rules answering respondent is neither appointing nor dismissal authority of appellant.
2. Pertains to record.
3. Pertains to period of 2013 which the appellant spent with Ex- Political Agent, Kurram Agency.
4. Correct to the extent that on 23.04.2013, then FATA Secretariat Narcotics Section sanctioned 25 Levy Posts through Letter No. CS(F)/N/4-Levies/ Concept Paper/825, but the same is pre-merger matter and there is nothing on the part of answering respondent.
5. Pertains to record of Ex- Political Agent, Kurram Agency. Answering respondent has no concern with the pre-merger services of appellant as he is neither appointing nor dismissal or promotional authority of appellant.
6. Pertains to record of Ex- Political Agent, Kurram Agency.
7. Pertains to record of Ex- Political Agent, Kurram Agency. Record is not available with the answering respondent.
8. Pertains to record of Ex- Political Agent, Kurram Agency.

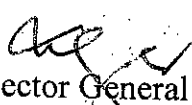
9. Pertains to record of Ex- Political Agent, Kurram Agency.
10. Pertains to record of Ex- Political Agent, Kurram Agency, hence needs no comments.
11. Pertains to record of Ex- Political Agent, Kurram Agency, hence needs no comments.

GROUND:-

- A. Incorrect. The act of respondent is in accordance with law/ rules and no malafide is existing on the part of answering respondent.
- B. Pertains to record and left for the appellant to prove as why he was not promoted by Ex- Political Agent, Kurram Agency.
- C. Pertains to record of Ex- Political Agent, Kurram Agency hence, no comments.
- D. As explained in Para B of Grounds.
- E. Pertains to record of Ex- Political Agent, Kurram Agency hence, no comments.
- F. Pertains to record of Ex- Political Agent, Kurram Agency hence, no comments.
- G. Incorrect. No discrimination has been committed by answering respondent
- H. The respondents may also be allowed to raise additional Grounds at the time of hearing of the instant Service Appeal.

PRAYER:-

Keeping in view the above stated facts and rules it is humbly prayed that the appeal is not maintainable and devoid of legal force against the answering respondent may kindly be dismissed with costs, please.


Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 2)

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR -**

Service Appeal No 1349/2018

Noor Jan

..... (Appellant)

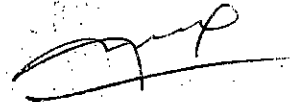
VERSUS

Govt: of KP etc.....(Respondents)

AFFIDAVIT

I, Tariq Umar Inspector/ Legal CPO, Peshawar do hereby solemnly affirm on oath that the contents of accompanying comments on behalf of Respondent No. 2 is correct to the best my knowledge and belief. Nothing has been concealed from this Honorable Tribunal.

Respondent through



(TARIQ UMAR)
Inspector/ Legal CPO,
Peshawar.