BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL (CAMP COURT SWAT)

Service Appeal No. 1967 of 2022

Sami Ullah Khan

.....Appellant 4260

--------Versus--------

Dated 13/3/23

Government of Khyber Pakhtunkhwa and others

.....Respondents

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SEVICE TRIBUNAL ACT, 1974

PARA WISE COMMENTS ON BEHALF OF RESPONDENTS:

PRELIMINARY OBJECTION:-

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

Facts:-

1. It is correct. The petitioners were regular employee of Malakand Levies.
2. It is partially correct. The regulation of service of the petitioner was initially regulated under the Levies Force Rules 1962 called Frontier Irregular Corps Rules. But the matter regarding non-statutory is Court matter which is subject to proof by the appellant.
3. It is correct.
4. It is partially correct. The service rules 2013 was promulgated in December, 2013. It is the mandate of Government to frame or amend rules of Levies Force for the larger interest of the Force.
5. It is correct. But the same Rules were also amended on 25-08-2016, wherein tenure was fixed for (Subedar Major 37-Years Service or 03-Years Service as Subedar Major or 60-years of Age), (Subedar 35-Years Service or 05-Years Service as Subedar or 60-years of Age), (Naib Subedar 33-Years Service or 07-Years Service as Naib Subedar or 60-years of Age) **(Copy enclosed as Annexure-A).**
6. It is correct. Enacting Laws and framing rules is the domain of the Government. The Honorable Peshawar High Court Mingora Bench Dar-ul-Qaza Swat in its Judgment in W.P No.732-M/2021 held **"with bringing of amendments, on 14-07-2020 in Rules, same authority cannot be deemed divested from further amending the Rules. The age of superannuation or retirement may well be changed by an authority who has initially provided same" (Copy enclosed as Annexure-B).**
7. It is incorrect. On the application of petitioner via Commissioner Office, Home Department constituted anomaly committee and the anomaly were removed to great extent i.e age/service length was enhanced. Tenure were also removed/omitted **(Copy of minutes of anomaly committee enclosed as Annexure-C).**
8. The appellant alongwith others were retired from service according to Levy Rules amended from time to time. The respondent was bound to follow/implement the Laws and Rules of Government.
9. It is correct. However petitions of the petitioners were dismissed by the Honorable Peshawar High Court Peshawar **(Copy enclosed as Annexure-D).**
10. It is correct to the extent that the Levy Rules were amended by the Provincial Government on 21-10-2021.
11. It is incorrect. The appellant have not yet filed any departmental appeal to the competent forum (Home Department).

12. It is correct. But the same was dismissed by the Peshawar High Court Peshawar.
13. It is correct.
14. It is correct to the extent that act was passed pursuant to amended Rules 21-10-2021 and those Levy personnel how haven't cross upper age limit were re-instated into service.
15. It is correct. However CPLA has been filed against the Judgment of Peshawar High Court Mingora Bench Dar-ul-Qaza Swat in August Supreme Court of Pakistan **(Copy enclosed as Annexure-E)** which is under adjudication. Furthermore, the identical W.P has been dismissed by Peshawar High Court Peshawar its judgment dated: 29-11-2022. The same nature cases are under trial currently parallel at August Supreme Court of Pakistan and this Honorable Service Tribunal.
16. It is correct and status explained at para No.15 above.
17. No comments.

Grounds:-

A. It is incorrect. It falls in the ambit of Provincial Government (Cabinet).
B. It is incorrect. There are no bars on the Provincial Government to amend any Law/Rules which is also held by the Honorable Peshawar High Court Mingora Bench Dar-ul-Qaza Swat on its Judgment as explained in Para No.6 above.
C. Correct to the extent of Levies & Khasadar of Ex-FATA only and not for PATA (Malakand Levies) which were not part of the said Act.
D. No comments.

Pray:-

It is therefore, most humbly reiterated that currently the same cases are under trial at two different forum i.e. August Supreme Court and this Honorable Service Tribunal as mentioned above. It is humbly prayed that the process may be halted till decision of the apex Court of Law and the appeal in hand may very graciously be dismissed.

DC Malakand/Commandant
Malakand levies, Malakand
Respondent No. 3

Deputy Commissioner/
Commandant
Malakand levies

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AFFIDAVIT

I, Mr. Hakim Zada Superintendent Malakand Levies do hereby solemnly affirm and declare on oath that the contents of the accompanying Reply on behalf of the Respondent No.3 and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court please.

Deponent

Mr. Hakim Zada Superintendent
Malakand Levies
CNIC:-

Attested
09/03/23