

BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL PESHAWAR (Camp Court Swat).

Service Appeal No. 1989 of 2022.

Diary No. 4269
Dated 13/3/23

Mr. Mushtaq Ahmad s/o Hatam Tai No. 2077 of Dir Levies R/O Village Badwan Tehsil Adenzai District Dir Lower.

(Appellant).

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs Department Civil Secretariat at Peshawar.
3. Commandant Dir levies/Deputy Commissioner Dir lower at Timergara.

..... (Respondents)

Appeal under section-4 of the Khyber Pakhtunkhwa Service Tribunal Peshawar

Para wise comments on behalf of respondents no. 1, 2 and 3 are as under:-

Preliminary Objections:-

1. That the appellant has no cause of action.
2. That the appellant has no locus standi.
3. That the appellant has not come to the court with clean hands.
4. That the appellant concealed material facts from this Honorable Tribunal.

Facts

1. Correct to the effect that the provincial Government of Khyber Pakhtunkhwa Home and TAs department Peshawar being the competent forum has amended the Federal Levies Rules from time to time to remove the anomalies in the best interest of Levies Force. Amendments made in Levies Rules so far are as under:-
 - i. Frontier Irregular Crops (FIC) Rules 1962. **Annexure "A"**
 - ii. FIC Rules were repealed vide Service Rules for Federal Levies Force in FATA on 15 February 2013. **Annexure "B"**
 - iii. Further amendments have been made in the above rules vide Notification No. SO(Levies)HD/FLW /1-1/2013/Vol-I dated 12.12.2013. **Annexure "C"**
 - iv. The Rules promulgated on 12/12/2013 were further amended vide Notification No. SO(Levies)HD/FLW/1-1/2013/Vol-I dated 25.08.2016. **Annexure "D"**
 - v. Further amended the above Rules vide Notification No. SO(Police-II)HD/1-3/dated 14.07.2020. **Annexure "E"**
 - vi. Further amended the above rules vide Notification No. SO(Police-II)HD/MKD/Levies/Misc/2022 dated 22.03.2021. **Annexure "F"**
 - vii. Further amended the above rules vide Notification No. SO(Police-II)HD/1-3/Federal Levies2021 dated 21.10.2021. **Annexure "G"**

- viii. Act passed by Provincial Assembly Secretariat Khyber Pakhtunkhwa Peshawar dated 30.11.2021 for reinstatement of Levies personnel.

Annexure "H"

The petitioners have concealed the actual facts of the case from the honorable court as the rules/notification NO. SO (Police-II)HD/1-31 dated 14/01/2020 has already been repealed by Amended rules/Notification issued by the competent authority. Hence the claim of the petitioners for retaining in service till superannuation i.e. 60 years' service is totally baseless.

2. No comments
3. No comments
4. Correct to the effect that the competent authority amended the service rules in December 2013 but as clarified in para I the same rules have been repealed through further amendments vide rules/notification dated 25.08.2016.
5. Totally incorrect, as explained in para I the amended rules in July 2020 have already been repealed through amended rules/notification dated 22/03/2021.
6. No comments
7. No comments
8. Admitted to the effect that the petitioners including others personnel of Dir Levies of different ranks have been retired from service in light of the amended rule/notification dated 21/03/2021.
9. Admitted to the effect that the petitioners along with others personnel of Dir Levies filed writ petition No. 470-M/021 titled Shah Faisal and others versus Government Khyber Pakhtunkhwa and others and writ petitioner No. 1281-M/022 titled Aziz Gul and others versus Government of Khyber Pakhtunkhwa and others, but the writ petitioner No. 470-M/021 was referred to larger Bench by the Honorable Bench Darul Qaza Swat which was disposed off by the Honorable larger Bench and referred to Khyber Pakhtunkhwa Service Tribunal Peshawar for lack of jurisdiction but the writ petition No. 1281-M/022 was allowed by the Honorable Bench Darul Qaza Swat on 23.11.2022 which is still pending before the Honorable Bench Darul Qaza Swat in shape of COC No. 103-M/022 Aziz gul and others versus Muhammad Zubair Khan Niazi. Herein it is regretted to bring in the notice of Honorable Court that the writ petition No. 470M/0201 and writ petition No. 1281-M/022 are of the same nature and of the same petitioners but the writ petition No. 470-M/021 has been referred to Khyber Pakhtunkhwa Service Tribunal for lack of jurisdiction and the writ petition No. 1281-M/022 has been disposed off without any notice for submission of comments and attendance of the respondents and even converted to COC.
10. No comments
11. Need no comments
12. Admitted to the fact that the writ petition No. 470/2021 was filed by the petitioners but actual position of the case has been explained in para No. 9
13. Need no comments
14. Need no comments.

15. In light of the Act dated 30.11.2022 regarding reinstatement of levies personnel, the levies personnel who have been retired from service under schedule-III notified on 22-03-2021 were reinstated whose service/age were not exceeded under rules notified on 21-10-2021. And those personnel who have exceeded the service/age were not reinstated because their reinstatement was not compatible with the rules.
16. No comments.
17. No comments.

Grounds

- A. As already explained in the previous paras that all amendments in Service Rules for Federal Levies Force in FATA have been made by the competent authority i.e. Secretary to Government of Khyber Pakhtunkhwa Home and Tribal Affairs Department Peshawar applicable to all personnel of Levies Force.
- C. Incorrect, as evident from the amended rules notified on 21-10-2022 which are still intact no uniform retirement age of 60 years has been incorporated in the rules ibid.
- D. The question raised is to be explained by the competent forum in a better manner.
- E. In view of the explained it is hereby prayed that the instant service appeal may graciously be dismissed please.

Handwritten signature and date: 7/3/2023

Chief Secretary,
Government of Khyber Pakhtunkhwa
~~Home & TAs Department Peshawar~~

Respondent No. 1

Handwritten signature and date: 7/3/2023

Secretary,
Govt: of Khyber Pakhtunkhwa
Home & TAs Deptt: Peshawar.
Home Secretary,
Khyber Pakhtunkhwa
Respondent No. 2

Handwritten signature and date: 4/3/2023

Deputy Commissioner/
Commandant Dir Levies/
Dir Lower.
(Commandant Dir Levies)
Deputy Commissioner
Dir Lower
Respondent No. 3