


# FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No.- 409/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	02/03/2023	<p>The appeal of Mr. Ali Ahmad resubmitted today by Mr. Sher Hyder Khan Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____ . Parcha Peshi is given to appellant/counsel for the date fixed.</p> <p>By the order of Chairman  REGISTRAR</p>

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA  
SERVICES TRIBUNEL, PESHAWAR**

Service Appeal No \_\_\_\_\_ of 2023

Ali Ahmad

**V E R S U S**

**Government of Khyber Pakhtunkhwa through  
Chief Secretary KPK & Others**

**APPLICATION FOR FIXATION OF SERVICE APPEAL BEFORE  
THE PRINCIPAL SEAT AT PESHAWAR**

**Respectfully Shweth;**

1. That the instant service appeal along with other connected appeals have been instituted before this Honorable Tribunal and where no date of hearing is fixed.
2. That the instant service appeal related to the levies personnel regulated by Home Department Government of Khyber Pakhtunkhwa; where the varies of amended levies rule have been challenged before this Honorable Tribunal.
3. That the other identical cases belong to Khyber Pakhtunkhwa e.g Kohat, Hangu, Dir Upper and Dir Lower etc have been filed before this Honorable Tribunal and have been allowed to fixed before the Principal Seat at Peshawar. *Per. 7/3/2023.*
4. That the instant service appeal is also one the same nature and identical case.

*Therefore; it is humbly submitted that the case may be fixed before the principal seat of this Honorable Tribunal for better administration of justice.*

*Advocate for appellant*

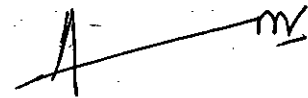
**SHER HYDER KHAN  
ADVOCATE HIGH COURT  
LL.B (Hons), LL.M (I-L)**

The appeal of Mr. Ali Ahmad r/o village Danin Tehsil and District Chitral Lower received today i.e. on 23.01.2023 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of appeal is unsigned. ✓
- 2- Copy of departmental appeal against the impugned orders/notification is not attached with the appeal which may be placed on it. ✓
- 3- Copy of final/rejection order of departmental appeal is not attached with the appeal which may be placed on it.
- 4- Annexure-B of the appeal illegible which may be replaced by legible/better one.
- 5- Check list is blank which may be filled up.

No. 306 /S.T,

Dt. 24/1 /2023

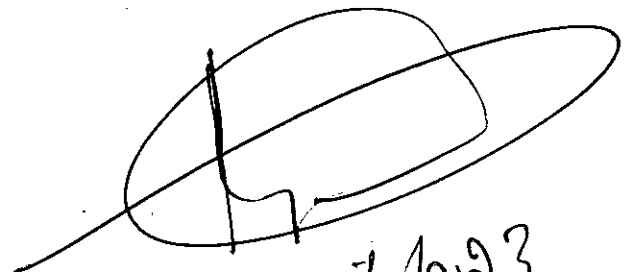


REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Sher Hyder Khan Adv.  
High Court at Peshawar.

Sir,

The appeal is resubmitted after completion and as the departmental was premature therefore the appeal is resubmitted today instead of the directions given on the note sheet

  
27/3/2023

BEFORE THE HONORABLE KHYBER PAKHTUN KHWA SERVICES  
TRIBUNAL, PESHAWAR

SERVICE APPEAL No 409 of 2023

Ali Ahmed

**VERSUS**

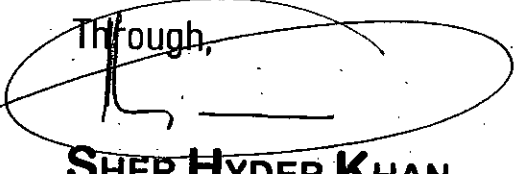
Government of Khyber Pakhtunkhwa through Chief Secretary KPK &  
Other

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Appellant

Through,

  
**SHER HYDER KHAN**  
ADVOCATE HIGH COURT  
LL.B (Hons), LL.M (I-L)

The Magister & Associates  
103, Said Anwar Plaza,  
Dabgari Gardens Peshawar Cantt  
Ph: 091-2214005 Cell: 0336-9377022

1

**BEFORE THE HONORABLE KHYBER PAKHTUN KHWA  
SERVICES TRIBUNAL, PESHAWAR**

Service Appeal No. \_\_\_\_\_ of 2023

Ali ahmed R/O Village Danin Tehsil & District Chitral Lower  
.....Appellant

**V E R S U S**

1. Government of Khyber Pakhtunkhwa through Chief Secretary  
KPK at Civil Secretariat Peshawar
  2. Secretary Home & Tribal Affairs Government of Khyber  
Pakhtunkhwa at Civil Secretariat Peshawar
  3. Commissioner Malakand Division, at Saidu Sharif Swat
  4. Deputy Commissioner / Commandant Chitral Levies at DC Office  
District Chitral (Lower)
- .....Respondents

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL ACT 1974, TO THE EFFECT THAT THE  
ORDERS/NOTIFICATIONS DATED 22/03/2021 AND 15/04/2021  
RESPECTIVELY, MAY PLEASE BE SET ASIDE, BEING ILLEGAL, VOID  
AB INITIO AND WITHOUT ANY JUSTIFICATION, AND CONSEQUENTLY  
THE RESPONDENTS MAY PLEASE BE DIRECTED TO  
COMPLY/IMPLEMENT NOTIFICATION DATED 14/07/2020, IN ITS  
LETTER AND SPIRIT.

**RESPECTFULLY SHEWETH:**

Brief facts and grounds giving rise to the instant appeal are as  
under;

1. That the appellant has been serving as regular member of  
Chitral Levies Force having a considerable length of services at  
his credit.
2. That the appellant is performing his duties with great zeal, zest,  
devotion and dedication at his level best to the entire  
satisfaction of his superiors.

3. That the provincial government introduced amendments through notification number No. SO(POLICE-II)HD/1-3, dated 14/07/2020 in the provincially administered tribal areas levis force rules 2015 vide which the appellant is entitled to continue his duties till attaining age of superannuation i.e (60) years of services. The relevant schedule of Rule 16 is being reproduced to assist this Honorable tribunal.

(a) for sub rule (1), the following shall be substituted namely: "(1) all uniformed force shall retire from service on attaining the age of superannuation i.e Sixty (60) years or they may opt for retirement after completion of twenty five (25) years regular services" and

(b) Schedule - IV shall be deleted.

Copy of Rule/Notification attached  
as annexure "A"

4. That there were certain objections in respect of the above mentioned policy of uniform retirement age, hence the rules were further amended on 22.03.2021. The amended rule seventeenth (17) which provides for retirement on attaining the age of superannuation was again omitted and amended schedule 3 of the rules of 2015 and consequently the lower rank officials were compulsorily retire from service after performing their duties for a certain period provided in the schedule, which is reproduced for assistance of this honorable tribunal.

Schedule - III

[See rule 17]

Serial No	Name of the Post / Rank	Qualification for Promotion	Length of Service / Age
1.	Subedar Major (BS-16)	On the basis of Seniority-cum-fitness from amongst the Subedars having intermediate Qualification	Thirty Seven Years or Three Years' Service as Subedar Major or Sixty Years of Age whichever is earlier
2	Subedar (BS-13)	By promotion, on the basis of seniority-cum-fitness in the following manner namely;  (i). fifty-percent (50%) form amongst the Naib Subedars having intermediate qualification; and	Thirty Five years' service or five years service as subedar or sixty years of age whichever is earlier

		(ii). Fifty Percent (50%) from amongst Naib Subedars having Secondary School Certificate	
3	Naib Subedar (BS-11)	By promotion, on the basis of seniority-cum-fitness in the following manner, namely  (i). fifty percent (50%) from amongst the Naib Subedars having Intermediates qualification; and  (ii) fifty percent (50%) form amongst Hawaldars	Thirty three years services or seven years' service as Niab subedar or sixty years of age whichever is earlier
4	Hawaldar (BS-08)		Thirty-one years' service or three years' service as Hawaldar or fifty-one years of age, Whichever is earlier
5	Naik (BS-07)		Twenty-nine years service or three years service as Naik or forty eight years of age, Whichever is earlier
6	L/Naik (BS-06)		Twenty Seven Years service or three years service as L/Naik or Forty five years of age, Whichever is earlier
7	Sepoy (BS-05)		Twenty Five years services or forty two years of age, Whichever is earlier

Copy of the impugned Rule along with schedule & retirement Order are annexure "B" & "C"

5. That the appellant along with his other colleagues and members of other District Levies Force raised their objections highlighting anomalies in the amended rule upon which respondent no. 3 addressed a letter to all the deputy commissioners in Malakand division with the direction to re-consider the amendments to rules ibid.

Copy of Letter Dated 07/04/2021 attached as Annexure "D"

6. That the appellant has been discriminated through notification dated 22.03.2021 & 15.04.2021 whereby the salary, rank and seniority of the appellant has been relegated to lower grade and retired compulsorily.
7. That the appellant being aggrieved of the acts of the respondents preferred writ petition before the honorable Peshawar High Court Peshawar, which has been disposed off vide order dated 29/11/2022 with the directions to the appellant to approach the

Honorable Tribunal for redressal of his grievances, hence; the instant service appeal inter alia, on the following grounds.

Copy of judgement dated 29/11/2022 is attached as annexure "E"

**GROUND S:**

- A. That the impugned Notifications and orders passed by Respondents are against the applicable Rules and consequently illegal, void ab initio and of no legal effect.
- B. That the appellant has been retired prematurely irrespective of the fact that the appellant is entitled for promotion to the next higher grade as sufficient number of posts are still laying vacant.
- C. That the impugned notifications of amending relevant rules and retirement of the appellant thereunder is illegal and unconstitutional hence the same is liable to be declared as such.
- D. That it is a settled proposition of law that rules cannot be amended to the detriment of civil servant /employee, Even, otherwise the same will have prospective effect and cannot be applied retrospectively.
- E. That the revised schedule 3 of the impugned amended rules is self-contradictory and discriminatory as well. The said schedule prescribed 60 years of age and certain maximum length of service for higher rank officials i.e Subedar Major, Subedar and Naib Subedar, while in case of lower rank officials like the appellant have been treated with discrimination by not extending full benefits of the rules ibid.
- F. That the impugned notification dated 22/03/2021 has no retrospective effect, yet the same has been applied against the appellant which is flagrant violation of fundamental rights guaranteed by the constitution.
- G. That the respondents have violated Article, 4 of the Constitution of Islamic Republic of Pakistan, 1973 with its heading "Rights of Individual to be dealt with in accordance with the Law" it is



mandatory for respondents to comply with law and rules in fair, equal and lawful manner as well as prohibitory for them to act in a manner which is not admissible in law/rules; hence their such act with effect to compel the petitioners for retirement is totally void.

- H. That according to Article, 25 of the Constitution of Islamic Republic of Pakistan, 1973 all citizens are equal before Law and are entitled to equal protection of Law but the respondents violated this Article of the Constitution.
- I. That act of respondents with effect to deny right to service of petitioners and their omission to protect the same is; against Article, 27 of the Constitution of Islamic Republic of Pakistan, 1973 with its heading "Safe Guard against discrimination in services".
- J. That the appellant seeks leave of this honorable tribunal to argue/raise additional grounds at the time of arguments.

It is therefore, humbly prayed that, on acceptance of the instant appeal the impugned notifications dated 22/03/2021 and 15/04/2021 respectively, may please be declared illegal, void ab initio and having no legal effect and consequently the respondents may please be directed to implement the notification dated 14/07/2020 in its letter and spirit by reinstating the appellant in to service with all the accruing back benefits.

Any other relief deemed appropriate and not specifically asked for may also be granted.

Appellant

Through,

**SHER HYDER KHAN**  
ADVOCATE HIGH COURT  
LL.B (Hons), LL.M (I-L)

6

BEFORE THE HONORABLE KHYBER PAKHTUN KHWA SERVICES  
TRIBUNEL, PESHAWAR

Service Appeal No \_\_\_\_\_ of 2023

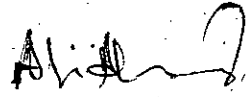
Ali Ahmed


**VERSUS**

Government of Khyber Pakhtunkhwa through  
Chief Secretary KPK & Others

**AFFIDAVIT**

I, Ali ahmed R/O Village Danin Tehsil & District Chitral Lower  
appellant do hereby solemnly affirm and declare on Oath that  
all the contents of the subject appeal are true and correct to  
the best of my knowledge and belief and nothing has been  
concealed from this Honourable Court.

  
Deponent  
CNIC:  
Cell No;

Identified by: 

**SHER HYDER KHAN**  
ADVOCATE HIGH COURT  
LL.B (Hons), LL.M (I-L)

7

**BEFORE THE HONORABLE KHYBER PAKHTUN KHWA SERVICES  
TRIBUNAL, PESHAWAR**

Service Appeal No. \_\_\_\_\_ of 2023

Ali ahmed R/O Village Danin Tehsil & District Chitral Lower

.....APPELLANT

**V E R S U S**

Government of Khyber Pakhtunkhwa through Chief Secretary  
KPK at Civil Secretariat Peshawar and others.

.....RESPONDENTS

ADDRESSES OF PARTIES

**APPELLANT**

Ali ahmed R/O Village Danin Tehsil & District Chitral Lower

**Respondents**

1. Government of Khyber Pakhtunkhwa through Chief Secretary  
KPK at Civil Secretariat Peshawar.
2. Secretary Home & Tribal Affairs Government of Khyber  
Pakhtunkhwa at Civil Secretariat Peshawar
3. Commissioner Malakand Division, at Saidu Sharif Swat
4. Deputy Commissioner / Commandant Chitral Levies at DC Office  
District Chitral (Lower)

Appellant  
Through,

**SHER HYDER KHAN**  
ADVOCATE HIGH COURT  
LL.B (Hons), LL.M (I-L)

The Magister & Associates  
103, Said Anwar Plaza,  
Dabgari Gardens Peshawar Cantt  
Ph: 091-2214005 Cell: 0336-9377022

8

Annexure "A"

BETTER COPY

HOME DEPARTMENT  
NOTIFICATION

Dated Peshawar the 14-07-2020

No. SO (Police-IDHD/1-3: In exercise of the power conferred by Section 9 of the Provincially Administered Tribal Areas Levies Force Regulation 2012, the Government of the Khyber Pakhtunkhwa is pleased to direct that in the Provincially Administered Tribal Areas (PATA) Federal Levies Force Service (Amended) Rules, 2013, the following further amendments shall be made, namely:

Amendments

In the said rules:-

a) Fro rule 17, the following shall be substituted, namely:

"17. Retirement.— All Levies Personal shall retire from service on attaining then age of superannuation i.e sixty (60) years or they may opt for retirement after completion of twenty-five (25) years regular service, and

b) Schedule-III shall be deleted.

SECRETARY TO  
GOVT. OF KHYBER PAKHTUNKHWA  
HOME DEPARTMENT

Copy forwarded to the:-

XXXXXX

CTC  
↓

*Sher Hyder Khan*  
LL.B (Hon's), LL.M  
ADVOCATE HIGH COURT

9

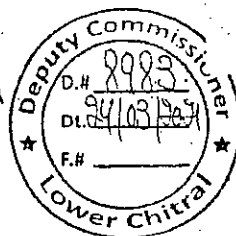
Annexur "B"

FORM NO. 102/2005

22 Mar. 2021 7:03P



GOVERNMENT OF KHYBER PAKHTUNKHWA  
HOME AND TRIBAL AFFAIRS DEPARTMENT



**NOTIFICATION**

Peshawar, dated the 22-3-2021

No. SO(Police-II)HD/MKD/Levies/Misc./2020:- In exercise of the powers conferred by Section-9 of the PATA Levies Force Regulation, 2012, the Provincial Government of Khyber Pakhtunkhwa is pleased to direct that in the PATA Federal Levies Force Service (Amended) Rules, 2013, the following further amendments shall be made, namely:-

Amendments

In the said rules:-

- In Rule 4, sub-rule (1), the following shall be substituted, namely:  
"(I) Commandant shall be the appointing authority for initial recruitment and promotion up to the rank of Subedar.

Provided that the appointing authority for purpose of promotion to the posts of Subedar Major and Superintendents shall be Secretary, Home Department."

- For Rule 17, the following shall be substituted namely;

"17. Retirement: All Levy personnel shall retire as per Schedule-III and no extension in service after retirement shall be granted".

- For Schedule-III, the following shall be substituted, namely:

"Schedule-III  
[see rule 17]"

S. No.	Name of the Post / Rank	Qualification for Promotion	Length of Service / Age
1	Subedar Major (BS-16)	On the basis of Seniority-cum-fitness from amongst the Subedars having Intermediate Qualification	Thirty Seven Years or Three Years Service as Subedar Major or Sixty Years of age whichever is earlier
2	Subedar (BS-13)	By promotion, on the basis of Seniority Cum Fitness in the following manner, namely: (i) Fifty Percent (50%) from amongst the Naib Subedars having intermediate qualification; and (ii) Fifty Percent (50%) from amongst Naib Subedars having Secondary School Certificate	Thirty Five Years service or Five Years service as Subedar or Sixty years of age whichever is earlier.
3.	Naib Subedar (BS-11)	By promotion, on the basis of Seniority Cum Fitness in the following manner, namely: (i) Fifty Percent (50%) from amongst the Naib Subedars having Intermediate qualification; and (ii) Fifty Percent (50%) from amongst Hawaldars.	Thirty Three Years Service or Seven Years Service as Naib Subedar or Sixty Years of age whichever is earlier

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29/3

Shah Afzal  
LL.B (Hon'g), LL.M  
ADVOCATE, HIGH COURT

9

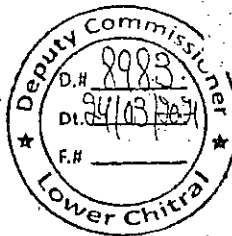
Annexur "B"

FRM NO. 106/192/10051

22 Mar. 2021 7:03P



GOVERNMENT OF KHYBER PAKHTUNKHWA  
HOME AND TRIBAL AFFAIRS DEPARTMENT



**NOTIFICATION**

Peshawar, dated the 22-3-2021.

No. SO(Police-II)HD/MKD/Levies/Misc./2020:- In exercise of the powers conferred by Section-9 of the PATA Levies Force Regulation, 2012, the Provincial Government of Khyber Pakhtunkhwa is pleased to direct that in the PATA Federal Levies Force Service (Amended) Rules, 2013, the following further amendments shall be made, namely:-

**Amendments**

In the said rules:-

- In Rule 4, sub-rule (1), the following shall be substituted, namely:  
 "(i) Commandant shall be the appointing authority for initial recruitment and promotion up to the rank of Subedar.

Provided that the appointing authority for purpose of promotion to the posts of Subedar Major and Superintendents shall be Secretary, Home Department."

- For Rule 17, the following shall be substituted namely;

"17. Retirement: All Levy personnel shall retire as per Schedule-III and no extension in service after retirement shall be granted".

- For Schedule-III, the following shall be substituted, namely:

"Schedule-III  
[see rule 17]"

S. No.	Name of the Post / Rank	Qualification for Promotion	Length of Service / Age
1	Subedar Major (BS-16)	On the basis of Seniority-cum-fitness from amongst the Subedars having intermediate Qualification	Thirty Seven Years or Three Years Service as Subedar Major or Sixty Years of age whichever is earlier
2	Subedar (BS-13)	By promotion, on the basis of Seniority Cum Fitness in the following manner, namely: (i) Fifty Percent (50%) from amongst the Naib Subedars having intermediate qualification; and (ii) Fifty Percent (50%) from amongst Naib Subedars having Secondary School Certificate	Thirty Five Years service or Five Years service as Subedar or Sixty years of age whichever is earlier
3	Naib Subedar (BS-11)	By promotion, on the basis of Seniority Cum Fitness in the following manner, namely: (i) Fifty Percent (50%) from amongst the Naib Subedars having intermediate qualification; and (ii) Fifty Percent (50%) from amongst Hawaldars.	Thirty Three Years Service or Seven Years Service as Naib Subedar or Sixty Years of age whichever is earlier

1/13  
243

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*Shah Afzal Khan*  
LL.B (Hon'g), LL.M  
ADVOCATE, HIGH COURT

S. No.	Name of the Post / Rank	Qualification for Promotion	Length of Service / Age
4	Hawaldar (BS-08)		Thirty One years service or Three years service as Hawaldar or Fifty One years of age, whichever is earlier.
5	Naik (BS-07)		Twenty Nine years service or Three years service as Naik or Forty Eight years of age, whichever is earlier.
6	Lina k (BS-06)		Twenty Seven years service or Three years service as L/Naik or Forty Five years of age, whichever is earlier.
7	Sepoy (BS-05)		Twenty Five years service or Forty Two years of age whichever is earlier.

**SECRETARY TO  
GOVERNMENT OF KHYBER PAKHTUNKHWA,  
HOME & TRIBAL AFFAIRS DEPARTMENT.**

Copy forwarded to the:-

1. Principal Secretary to the Governor, Khyber Pakhtunkhwa.
  2. Principal Secretary to the Chief Minister, Khyber Pakhtunkhwa.
  3. All Administrative Secretaries to Government of Khyber Pakhtunkhwa.
  4. Registrar, Peshawar High Court, Peshawar.
  5. All Commissioners, Khyber Pakhtunkhwa.
  6. All Deputy Commissioners, Khyber Pakhtunkhwa.
  7. Provincial Police Officers, Khyber Pakhtunkhwa.
  8. All Heads of Attached Department in Khyber Pakhtunkhwa.
  9. PSO to the Chief Secretary, Khyber Pakhtunkhwa.
  10. Accountant General, Khyber Pakhtunkhwa.
  11. Direction Information, Khyber Pakhtunkhwa.
  12. The Manger Government Printing & Stationery Department, Khyber Pakhtunkhwa.
- He is requested to publish the above Notification in the Extra Ordinary Gazette of Khyber Pakhtunkhwa and supply 50 copies (Printed) of the same to the Home Department.

*Shir Ali Khan*  
LL.B (Hon's), LL.M  
ADVOCATE HIGH COURT

*[Signature]*  
Section Officer (Police-II)



GOVERNMENT OF KHYBER PAKHTUNKHWA  
HOME & TRIBAL AFFAIRS DEPARTMENT

NO. SO (POLICE)/HD/2-5/018/CHITRAL/VOL-III  
Dated Peshawar the 16.12.2021.

To,

The Deputy Commissioner / Commandant,  
Lower Chitral, Chitral Levies

SUBJECT: - Chief Minister Directives, Restoration of Schedule III of Federal Levies Rules 2013 and Schedule IV of Provincial Levies Force Rules 2015 in Chitral Levies Lower Chitral.

Dear Sir,

I am directed to refer to your office letter no.249/DC/CLC-18 dated 6-12-2021 on the subject noted above and to state that promotion from Sepoy to Hawaldars may be carried out as per past practice. The condition of matric qualification is meant only for initial recruitment as per this department's notification dated 21-10-2021; please.

Yours faithfully,



Section Officer (Police-II)

Endst: No & date of even  
Copy forwarded to:-

1. PS to Secretary Home & TA's Department.
2. Master file.

16/12/21



EXTRAORDINARY  
GOVERNMENT



REGISTERED NO. PIII  
G A Z E T T E

29  
KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, TUESDAY, 30<sup>th</sup> NOVEMBER, 2021.

PROVINCIAL ASSEMBLY SECRETARIAT  
KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 30<sup>th</sup> NOVEMBER, 2021.

No. PA/Khyber Pakhtunkhwa/Bills-192/2021/8536.— The Provincially Administered Tribal Areas Levies Force (Amendment) Bill, 2021 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 22<sup>nd</sup> NOVEMBER, 2021 and assented to by the Governor of the Khyber Pakhtunkhwa on 26<sup>th</sup> NOVEMBER, 2021 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

THE PROVINCIALLY ADMINISTERED TRIBAL AREAS LEVIES FORCE (AMENDMENT) ACT, 2021.  
(KHYBER PAKHTUNKHWA ACT NO. XXXIV OF 2021)

*(First published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa, (Extraordinary), dated the 30<sup>th</sup> November, 2021).*

AN  
ACT

*to amend the Provincially Administered Tribal Areas Levies Force Regulation, 2012*

WHEREAS it is expedient to amend the Provincially Administered Tribal Areas Levies Force Regulation, 2012.

It is hereby enacted by the Provincial Assembly of the Khyber Pakhtunkhwa as follows:

1. **Short title and commencement.**—(1) This Act may be called the Provincially Administered Tribal Areas Levies Force (Amendment) Act, 2021.

(2) It shall come into force with effect from 22.03.2021.

2. **Insertion of new section to the Khyber Pakhtunkhwa Regulation No. 1 of 2012.**—In the Provincially Administered Tribal Areas Levies Force Regulation, 2012 (Khyber Pakhtunkhwa Regulation No. 1 of 2012), after section 10, the following new section shall be added, namely:

"11. Re-instatement of the levies personnel.--- All levies personnel, who have been retired from the Force, with effect from 22.03.2021, till the commencement of the Provincial Administered Tribal Areas Levies Force.(Amendment) Act, 2021, shall be reinstated in the Force, as regular employees, with effect from their respective dates of retirement and they shall be deemed as never retired from the Force."

13

BY ORDER OF MR. SPEAKER  
PROVINCIAL ASSEMBLY OF KHYBER  
PAKHTUNKHWA

Page 21

(KIFAYAT ULLAH KHAN AFRIDI)  
Secretary  
Provincial Assembly of Khyber Pakhtunkhwa

Printed and published by the Manager,  
Staty. & Ptg. Deptt., Khyber Pakhtunkhwa, Peshawar

RECEIVED



GOVERNMENT OF KHYBER PAKHTUNKHWA  
HOME AND TRIBAL AFFAIRS DEPARTMENT

NOTIFICATION

Peshawar, dated the 21-10-2021

NO. SO(POLICE-IIJHD/1-3/FEDERAL LEVIES 2021)- In exercise of the powers conferred by Section-9 of the PATA Levies Force Regulation, 2012, and in continuation of this department notification No. SO(Police-IIJHD/AKD/levies/Misc/2020 dated 22-03-2021, the Provincial Government of Khyber Pakhtunkhwa is pleased to direct that in the PATA Federal Levies Force Service (Amended) Rules, 2013, the following further amendments shall be made, namely:-

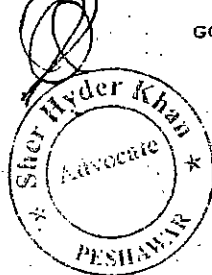
SCHEDULE-III

S. No.	Name of the Post / Rank	Length of Service / Age
1	Subedar Major (BS-14)	Thirty Seven Years of service or Three Years' Service as Subedar Major or Sixty Years of age whichever is earlier.
2	Subedar (BS-14)	Thirty five years of service or five years' service as Subedar or Sixty years of age whichever is earlier.
3	Ndab Subedar (BS-11)	Thirty Three Years of Service or Seven Years' service as Ndab Subedar or Sixty Years of age whichever is earlier.
4	Howaldar (BS-09)	Thirty nine years of service or fifty one year of age whichever is earlier.
5	Naik (BS-06)	Twenty nine years of service or forty nine years of age whichever is earlier.
6	W/Naik (BS-08)	Twenty seven years of service or forty seven years of age whichever is earlier.
7	Sepoy (BS-07)	Twenty two years of service or forty two year of age whichever is earlier.

SCHEDULE-I

S.No	Post/ Rank	Eligibility for Promotion	Promotion Quota	Direct Quota	Qualification
1	Subedar Major (BS-14)	02 years' service as Subedar Or Total 21 years of service	100%		
2	Subedar (BS-14)	02 years' service as Ndab Subedar Or Total 19 years of service	100%		
3	Naib Subedar (BS-11)	04 years' service as Howaldar Or Total 17 years of service	100%		
4	Howaldar (BS-09)	03 years' service as Naik Or Total 13 years of service	100%		
5	Naik (BS-06)	03 years' service as Lance Naik Or Total 08 years of service			
6	W/Naik (BS-08)	05 years' service as Sepoy			
7	Sepoy (BS-07)			100%	SSC
8	Head Armourer (BS-5)	05 years' service as Assistant Armourer	100%		SSC Qualification with Certificate of Armourer
9	Assistant Armourer (BS-4)			100%	SSC Qualification with certificate of Armourer

ATTESTED



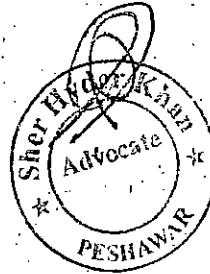
SECRETARY TO  
GOVERNMENT OF KHYBER PAKHTUNKHWA,  
HOME & TRIBAL AFFAIRS DEPARTMENT

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Schedule - III

Serial No	Name of the Post / Rank	Length of Service / Age
1	Subedar Major (BS-16)	Thirty Seven Years of service or Three Years Service as Subedar Major or Sixty Years (60) of Age whichever is earlier
2	Subedar (BS-13)	Thirty Five years service or five tears service as subedar or Sixty years (60) of age whichever is earlier
3	Naib Subedar (BS-11)	Thirty three years services or seven years service as Niab subedar or Sixty years (60) of age whichever is earlier
4	Hawalदार (BS-08)	Thirty one years service or fifty one years of age, Whichever is earlier
5	Naik (BS-07)	Twenty nine years service forty nine years of age, Whichever is earlier
6	L/Naik (BS-06)	Twenty Seven Years service or Forty seven years of age, Whichever is earlier
7	Sepoy (BS-05)	Twenty Five years services or forty five years of age, Whichever is earlier

COPY OF THE IMPUGNED RULE ALONG WITH SCHEDULE ARE



9  
15 Better copy



Annexur "C"

16

THE DEPUTY COMMISSIONER, LOWER CHITRAL  
COMMANDANT CHITRAL LEVIES

Tel: (0943) 412055, Fax: (0943) 412421, FB: - Twlter: - Instagram: @DCLowerChitral  
No. 4728-38/DCC/CLC-20 Dated Chitral the 12<sup>th</sup> April, 2021

**RETIREMENT ORDER:**

In compliance with the Home & Tribal Affairs Department Khyber Pakhtunkhwa Notification No. SO(Police-II)HD/MKD/Levies/Misc/2020 dated 22.03.2021, the following levies personnel of Chitral Levies (Lower Chitral), are retired from their service on attaining the age of retirement as per Schedule-III of the PATA Levies Service (Amended) Rule 2013 dated 22.03.2021 with effect from 22.03.2021 (AN) with full pension benefits as admissible under relevant pension rules, in the best interest of public service.

S#	Rank	Name	Date of Birth	Required length of Age	Age as on (22.03.21)	Service as on (22.03.21)	Retirement on account of
1	Hav	Fazal Muhammad	1-May-67	51	53	25	Age
2	LNK	Syed Muhammad Raza Shah	5-Feb-75	45	46	27	Age / Service
3	LNK	Muhammad Akbar Shah	1-Jul-72	45	48	27	Age / Service
4	LNK	Aman Ullah	4-Dec-73	45	47	25	Age
5	LNK	Abdul Ghaffar Khan	4-Jun-72	45	49	28	Age / Service
6	LNK	Muhammad Ali	20-Feb-70	45	50	21	Age
7	Sepoy	Balan Khan	10-Mar-62	42	59	33	Age / Service
8	Sepoy	Burhanuddin	1-Jul-64	42	56	38	Age / Service
9	Sepoy	Khan Shoab	1-Jul-65	42	55	35	Age / Service
10	Sepoy	Hazrat Shah	3-Jul-69	42	51	23	Age
11	Sepoy	Abdul Samad	2-Dec-71	42	49	21	Age
12	Sepoy	Akbar Khan	2-Dec-71	42	49	21	Age
13	Sepoy	Kashkari Khan	1-Mar-72	42	49	21	Age
14	Sepoy	Nasiruddin	1-Jul-73	42	47	22	Age
15	Sepoy	Mujib Ur Rehman	3-Jan-74	42	46	24	Age
16	Sepoy	Wazir Khan	9-Oct-75	42	45	24	Age
17	Sepoy	Ali Ahmad	1-Jul-75	42	45	11	Age
18	Sepoy	Muhammad Karim	10-Mar-78	42	43	15	Age
19	Sepoy	Noor Islam	1-Jul-78	42	42	15	Age

In pursuance of the Finance Department Notification No. SO(FR)/FD/5-92/2005/Vol-V dated 25.08.2017, the personnel at vice No. 2, 3, 5, 7, 8 and 9 above are hereby allowed the encashment of LPR for 365 days as provided under Rule 20 of Government of NWFP, Civil Servants Revised Leave Rule 1981, *Mutatis Mutandis*.

Hasan Abid  
DEPUTY COMMISSIONER  
COMMANDANT

Sher Ayaz Khan  
LL.B (Hon's), LL.M  
ADVOCATE HIGH COURT

**DISTRIBUTION FOR INFORMATION & NECESSARY ACTION:**

1. The Secretary to Govt of Khyber Pakhtunkhwa Home & TAs Deptt Peshawar
2. The Commissioner Malakand Division Swat
3. The Additional Deputy Commissioner, Lower Chitral
4. The District Accounts Officer, Chitral
5. The Assistant Commissioner / Deputy Commandant Levies Lower Chitral
6. The Section Officer.(Police-II) Home and TAs Department Khyber Pakhtunkhwa Peshawar for information with reference to the Notification referred above.
7. The Accountant Chitral Levies
8. The Incharge Levies HQ Chitral
9. Official Concerned
10. Office record / Notice Board HQ

Hasan Abid  
DEPUTY COMMISSIONER  
COMMANDANT

17  
**BETTER COPY**

ANNEXURE

To

**THE SECRETARY TO GOVERNMENT OF  
KHYBER PAKHTUNKHWA HOME AND  
TRIBAL AFFAIRS DEPARTMENT PESHAWAR**

Subject; **ANOMALIES IN THE RECENT AMENDMENT  
MADE IN LEVY RULES 2015, DATED 22.03.2021  
AND RESTORATION OF SCHEDULE-III RULE -  
17 (RETIREMENT) OF NOTIFICATION DATED  
12.12.2013.**

Sir,

In continuation to this office letter no 387-88/6/16/FW, dated 05-04-2021 a copy of the Deputy Commissioner, Dir Upper letter No 4212-13/dc/dir(U)/LHC/MISC; dated 24-03-2021 along with application of levy personnel of Dir Upper against the recent amendment made in the levy Rule 2015 dated 22.03.2021 is endorsed it is also added that in this regard a delegation of the public representatives of district Malakand met the undersigned on 05-04-2021, for redressal of reverences / observation of the levy personnel over the recent amendments.

2. It is further to convey, that the levy personnel of district Malakand, Dir Lower, Dir Upper and Swat have made serious observation over the recent amendments dated 22.3.2021. They are of the view that the recent amendments have kept them deprived of their due rights of serving the force till the age of superannuation, as were applicable in light of the Home Department Khyber Pakhtunkhwa "Service Rules of federal levies force in PATA" dated 15.02.2013 (Copy Attached).
3. In light of the above, it is stated that there are few anomalies in the recent amendments dated 22.03.2021, as there is nomination of Qualification for promotion column serial 1 to 3 of schedule - iii rule - 17 of the rule ibid, likewise, the main observation, which is raised in these rule is at column - 4 length of service / age serial 1 to 7, all the levy personnel in case of age limit have to retire from service after serving a very short span of time.
4. Keeping in view the above observations, it is required that a meeting of stakeholders may please be convened in order to dilate upon the observations and redress the genuine grievances of the levy personnel.

**COMMISSIONER  
Malakand Division**

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secretary2000@gmail.com

Commissioner Malakand Division

Commissioner Malakand Division



OFFICE OF THE  
COMMISSIONER MALAKAND DIVISION  
SAIDU SHABIE SWAT

No. 3-14/6/16/FW

Dated 07/04/2021

To  
The Secretary to Government of Khyber Pakhtunkhwa,  
Home & Tribal Affairs Department, Peshawar.

Subject: ANOMALIES IN THE RECENT AMENDMENT MADE IN THE LEVY RULES 2015 DATED 22/03/2021 AND RESTORATION OF SCHEDULE III, RULE-17 (RETIREMENT) OF NOTIFICATION DATED 17/12/2013

Sir,  
In continuation to this office letter No. 387-03/6/16/FW, dated 05/06/2021, a copy of the Deputy Commissioner, Dir Upper letter No. 4212-13/DC/Dir(U)/LHC/Misc, dated 24/03/2021 along with application of levy personnel of Dir Upper against the recent amendment made in the Levy Rules, 2015 dated 22/03/2021 is enclosed. It is also added, that in this regard a delegation of the public representatives of district Malakand met the undersigned on 05/04/2021, for redressal of grievances / observations of the levy personnel over the recent amendments.

2. It is further to convey, that the levy personnel of district Malakand, Dir Lower, Dir Upper and Swat have made serious observations over the recent amendments dated 22/03/2021. They are of the view, that the recent amendments have kept them deprived of their due rights of serving the force till the age of superannuation, as were, applicable in light of the Home Department, Khyber Pakhtunkhwa "Service Rules For Federal Levies Force In PATA" dated 15/02/2013 (copy attached).

3. In light of the above, it is stated that there are few anomalies in the recent amendments dated 22/03/2021, as there is no mention of "Qualification for Promotion" column-4 S# 1 to 3 of schedule-III, Rule-17 of the rules ibid. Likewise, the main observation, which is raised in these rules @ at column-4 "Length of Service / age" S#1 to 7, all the levy personnel in case of age limit have to retire from service after serving a very short span of time.

4. Keeping in view, the above observations, it is requested that a meeting of stakeholders may please be convened in order to dilate upon the observations and redress the genuine grievances of the levy personnels.

COMMISSIONER  
MALAKAND DIVISION

Encls: No. & Date given.

Copy for information is forwarded to:

- 1) All Deputy Commissioners in Malakand Division.
- 2) The PSO to Chief Minister, Khyber Pakhtunkhwa, Peshawar.
- 3) The PSO to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.

COMMISSIONER  
MALAKAND DIVISION

Advocate High Court  
M.L.M (Hon'rs), LL.M  
ADVOCATE HIGH COURT

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ANNEXURE

E

BEFORE THE PESHAWAR HIGH COURT AT  
MINGORA BENCH  
(DARUL QAZA) SWAT



Writ petition No. 540-M of 2021

1. Abdul Ghaffar S/O Ahmad Faraz R/O Village Shishi Koh Tehsil & District Chitral Lower
2. Fazal Muhammad R/O Village Arandu Khas Tehsil Drosh & District Chitral Lower
3. Muhammad Ali R/O Village Ayun Tehsil & District Chitral Lower
4. Burhanuddin R/O Village Ursun Tehsil Drosh & District Chitral Lower
5. Khan Shoiab R/O Village Ursun Tehsil Drosh & District Chitral Lower
6. Hazrat Shah S/O Mubarik Shah R/O Village Bighusht Tehsil Garamchashma & District Chitral Lower
7. Wazir Khan R/O Village Jughur Shot Tehsil & District Chitral Lower
8. Ali Ahmad R/O Village Danin Tehsil & District Chitral Lower
9. Muhammad Karim S/O Hasil Karim R/O Village Rumbur Tehsil & District Chitral Lower

.....Petitioners

**V E R S U S**

1. Government of Khyber Pakhtunkhwa through Chief Secretary KPK at Civil Secretariat Peshawar
2. Secretary Home & Tribal Affairs Government of Khyber Pakhtunkhwa at Civil Secretariat Peshawar
3. Secretary Law & Parliamentary Affairs Government of Khyber Pakhtunkhwa at Civil Secretariat Peshawar
4. Secretary SAFRON Government of Pakistan at Pak-Secretariat Islamabad
5. Commissioner Malakand Division, at Saidu Sharif Swat
6. Deputy Commissioner /-Commandant Chitral Levies at DC Office District Chitral (Lower)
7. District Account Officer Chitral Lower

**ATTESTED**  
**EXAMINER**  
Peshawar High Court  
.....Respondents



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

**PRAYER:**

On acceptance of the instant Writ Petition impugned notification -Order of Respondent No. 2 bearing No. SO(POLICE-II)HD/MKD/LEVIES/MISC/2020, Dated; 22.03.2021 as well as order of the Respondent No. 6 bearing No. 4728-38/DCC/CLC-20, Dated 15.04.2021; be set aside and the declare is illegal, unlawful, void ab-initio and without lawful authority. Consequently the petitioners being employees of Chitral Levies Force to be declared entitled to continue/perform their services till completion of superannuation; in compliance of Government Notification No. SO(POLICE-II)HD/1-3, Dated 14.07.2020. Any such relief which this Honorable Court deems proper and just be granted to the petitioners against respondents keeping in view the circumstances of the case.

**RESPECTFULLY SHEWETH:**

Brief facts and grounds giving rise to the instant writ petition are as under;

1. That the names and addresses of the parties have correctly been given in the head note of the instant writ petition, which are sufficient for the purpose of effecting their proper services and citation etc.
2. That the petitioners have been serving as regular member of Chitral Levies Force having a considerable length of services at their credit.
3. That the petitioners are performing their duties with great zeal, zest, devotion and dedication at their best level to the entire satisfaction of their senior officials and there is no complaint or disciplinary proceedings against the petitioners.

(Copies of Payslip attached as annexure "A")

**ATTESTED**  
**EXAMINER**  
Peshawar High Court

4. That according to the applicable Rules i.e. The Provincially Administered Tribal Areas Provincial Levies Force Rules, 2015, amendments made through Government Notification No. SO(POLICE-II)HD/1-3, Dated 14.07.2020 The petitioners are entitle to perform their duties till the completion of superannuation i.e (60) years of services. The relevant schedule of Rule is being reproduced to assist this Honourable Court.

In the said rules, in rule 16:-

- (a) for sub rule (1), the following shall be submitted namely: "(1) all uniformed force shall reitere form service on attaining the age of superannuation i.e Sixty (60) years or they may opt for retirement after completion of twenty five (25) years regular services", and
- (b) Schedule - IV shall be deleted.

(Copy of Rule/Notification attached as annexure "B")

5. That there were certain voice against the above mentioned policy of uniform retirement age, hence the rule were further amended on 23.03.2021. The amended rule seventeenth (17) which provided for retirement on attaining superannuation was again omitted and schedule 3 was changed with the certain amendments; consequently the lower rank official; the presents petitioners have been compulsory retired from services after performing certain years of services or on attaining the certain age. The amended impugned notification and relevant schedule of Rule is being reproduced to assist this Honourable Court.

Schedule - III  
[See rule 17]

Serial No	Name of the Post / Rank	Qualification for Promotion	Length of Service / Age
1	Subedar Major (BS-16)	On the basis of Seniority-cum-fitness from amongst the Subedars having intermediate Qualification	Thirty Seven Years or Three Years Service as Subedar Major or Sixty Years of Age whichever is earlier
2	Subedar (BS-13)	By promotion, on the basis of seniority-cum-fitness in the following manner namely;  (i). fifty percent (50%) form amongst the Naib Subedars having intermediate qualification; and	Thirty Five years service or five tears service as subedar or sixty years of age whichever is earlier

**ATTESTED**  
**EXAMINER**  
Peshawar High Co

		(ii). Fifty Percent (50%) from amongst Naib Subedars having Secondary Scholl Certificate	
3	Naib Subedar (BS-11)	By promotion, on the basis of seniority-cum-fitness in the following manner, namely (i). fifty percent (50%) from amongst the Naib Subedars having Intermediates qualification; and (ii) fifty percent (50%) form amongst Hawaldars	Thirty three years services or seven years service as Niab subedar or sixty years of age whichever is earlier
4	Hawaldar (BS-08)		Thirty one years service or three years service as Hawaldar or fifty one years of age. Whichever is earlier
5	Naik (BS-07)		Twenty nine years service or three years service as Naik or forty eight years of age, Whichever is earlier
6	L/Naik (BS-06)		Twenty Seven Years service or three years service as L/Naik or Forty five years of age, Whichever is earlier
7	Sepoy (BS-05)		Twenty Five years services or forty two years of age, Whichever is earlier

(Copy of the impugned Rule along with schedule & retirement Order are annexure "C" & "D")

6. That in addition some employees of Dir Levies, Malakand Levies and Chitral Levies Force also challenged the impugned notification through different writ petition before this Honourable Court. The said writ petition. has already been admitted for hearing.
7. That the petitioners and other District Levies Force employees raised their voice qua. So much so, the Commissioner Malakand has also highlighted the anomalies in the said rule and in this respect a written letter to the all Deputy Commissioners in Malakand Division, demanding therein reconsideration of the decision so taken.  
(Copy of Departmental Letter Dated 07/04/2021 attached as Annexure "E")
8. That the petitioners and other colleagues have been discriminated through notification dated 22.03.2021 & 15.04.2021 whereby the salary, rank and seniority have been converted to low grade and compulsory retired from their services.

**ATTESTED**  
**EXAMINER**  
Peshawar

9. That the petitioners being aggrieved of the acts and action of respondents having no other adequate and efficacious remedy, except to file this writ petition inter alia, on the following grounds.

**GROUND S:**

- A. That the action and inaction of the respondents are illegal, against the law, void ab-initio the impugned Notification and order passed by Respondent No. 6 are against the applicable Rules because petitioner is not liable to get pre mature retirement on the basis of maximum age i.e. 60 years as well as due to completion of required length of services, (31 years). Furthermore the promotion of the Petitioners are due for the next higher post as sufficient numbers of posts are lying vacant and Petitioner is fully qualified for the same.
- B. That the impugned act/notification of amending relevant rule and retirement of the petitioners under said notification are illegal and unconditional, hence the same are liable to be declared as such.
- C. That it is a settle law that serves rules cannot be amended to the detriment of public sector employees. Even, if they are so amended, the same having prospective effect cannot be applied against the present petitioners/employees.
- D. That the revived schedule 3 of the impugned amended rules is self-contradictory and discriminatory as well. The said schedule prescribed 60 years of age are certain maximum length service for high rank official i.e Subedar Major , Subedar and Naib Subedar, regrettably, the petitioners being in low rank have been treated discriminatorily for the reason that they have not been allowed to serve till 60 years of age.
- E. That the petitioners have not been given opportunity of hearing as per law and rules.
- F. That the notification of respondents is against the law and rules because the petitioners are performing their duties with great zeal, zest, devotion and dedication at their best level to the entire satisfaction of their senior officials. There is no complaint

**ATTESTED**  
**EXAMINER**  
Peshawar High Court

against the petitioners but the respondents act is against the law and rules.

- G. That the alleged notification has issued on 22-03-2021 having no retrospective effect though the same notification is lack back of law, unlawful and against the fundamental rights.
- H. That the apprehended forceful premature termination of the petitioners is unjustified and illegal. The said act of the respondents are be clear and sheer violation of the fundamental rights of the petitioners, which is envisaged and granted by the Constitution of the Islamic Republic of Pakistan.
- I. That the sheer abuse of the powers and consequent harassment of the petitioners at the hand of the respondents is gross violation of fundamental right of the petitioners.
- J. That from very prospect of the Constitution of Islamic Republic of Pakistan, 1973 and policies governing the subject Respondents have no excuse at all to avoid vested rights of the Petitioners in matter of performance of service.
- K. That respondent violated Article, 4 of the Constitution of Islamic Republic of Pakistan, 1973 with its heading "Rights of Individual to be dealt with in accordance with the Law" it is mandatory for respondents to comply with law and rules in fair, equal and lawful manner as well as prohibitory for them to act in a manner which is not admissible in law/rules; hence their such act with effect to compel the petitioners for retirement is totally void.
- L. That according to Article, 25 of the Constitution of Islamic Republic of Pakistan, 1973 all citizens are equal before Law and are entitled to equal protection of Law but the respondents violated this Article of the Constitution.
- M. That act of respondents with effect to deny right to service of petitioners and their omission to protect the same is; against Article, 27 of the Constitution of Islamic Republic of Pakistan, 1973 with its heading "Safe Guard against discrimination in services".
- N. That the matter in the instant petition relates to enquire functionaries of the Government; with effect to secure the constitutionally guaranteed rights of the petitioner therefore,

ATTESTED  
EXAMINER  
Peshawar High Court

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this honourable court has ample jurisdiction to exercise its writ jurisdiction under Article, 199 of the Constitution of Pakistan, 1973.

- O. That the petitioners seeks leave of this honourable court to argue/raise additional grounds at the time of arguments.

**INTERIM RELIEF**

- A. All the three ingredients like prima facie case, balance of convenience and irreparable loss are in favour of the petitioners against the respondents, therefore by way of Interim Relief the impugned notification dated 22-03-2021 as well as order of the Respondent No. 6 Dated 15.04.2021; be suspended.
- B. The respondents may kindly be restrained from any adverse action against the petitioners till the final decision of the instant writ Petition.

It is therefore, humbly prayed that, on acceptance of the instant Writ Petition be accepted and allow as prayed on the heading.

  
Petitioners


Through,



SHER HYDER KHAN  
Advocate High Court  
103, Said Anwar Plaza  
Dabgari Gardens Peshawar  
Cantt; Cell 0336-9377022

**CERTIFICATE.**

(As per directions of my client) No such like Writ Petition has earlier been filed by the petitioners on the subject matter before this Honorable Court.

  
Counsel

**LIST OF BOOKS**

1. Constitution of Islamic Republic of Pakistan, 1973
2. General Clause Act
3. Rules of Business, 1985
4. Provincially Administered Tribal Areas Provincial Levies Force Rules, 2015
5. All required Notifications
6. Any other Book according to need

  
**ATTESTED** Counsel  
**EXAMINER**  
Peshawar High Court

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BEFORE THE PESHAWAR HIGH COURT AT  
MINGORA BENCH  
(DARUL QAZA) SWAT

Writ petition No. \_\_\_\_\_ of 2021

Abdul Ghaffar & Others

**VERSUS**

Government of Khyber Pakhtunkhwa through Chief Secretary KPK  
& Others

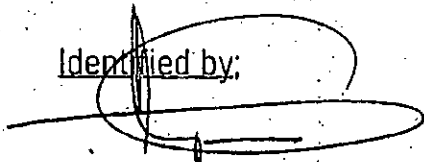
**AFFIDAVIT**

I, Muhammad Zuhair S/O Nasrullah Khan, R/O, Bada Ber Tehsil and District Peshawar (through special power of attorney) for Petitioners; do hereby solemnly affirm and declare on Oath that all the contents of the subject Writ Petition; are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.

*Zuhair*  
Deponent

C.N.I.C No  
17301-8867731-5  
Cell No; 0321-9105391

Identified by;



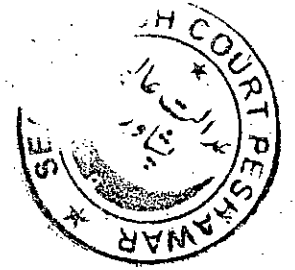
**SHER HYDER KHAN**  
Advocate High Court

No.	<i>26002</i>
Certified that the above was verified on solemnly affirmation before me in office, this <i>06</i> day of <i>May</i> <i>21</i> by <i>M. Zuhair</i> s/o <i>Nasrullah Khan</i> <i>Peshawar</i> who was identified by <i>Sher Hyder Khan</i> Who is personally <i>Relief</i>	
<i>6/5/2021</i> Oath Commissioner Peshawar	

*Nadra verified*

**ATTESTED**  
**EXAMINER**  
Peshawar High Court

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Judgment Sheet

PESHAWAR HIGH COURT, PESHAWAR.

(JUDICIAL DEPARTMENT)

COC No.38-M/2021 in  
W.P.No.367-M/2021.

**JUDGMENT**

Date of hearing --- 29.11.2022:

Applicants/petitioners by --- Mr.Muhammad Yar Malezai,  
Advocate.

Respondents by --- Mr.Saqib Raza, AAG.

=====

**S M ATTIQUE SHAH, J:-** As we have  
dismissed the writ petition for its being not  
maintainable before this court, therefore,  
the instant COC has become infructuous  
and as such is hereby dismissed.

  
JUDGE

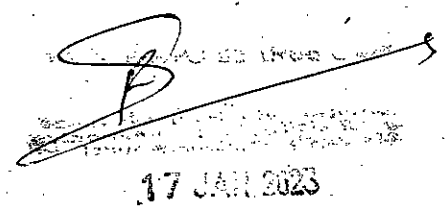
  
JUDGE

  
JUDGE

Announced.  
Dt.29/11/2022.

HON'BLE MR.JUSTICE LAL JAN KHATTAK,  
HON'BLE MR.JUSTICE S M ATTIQUE SHAH &  
HON'BLE MR.JUSTICE SYED ARSHAD ALI.

(R-K-KHAN Court Secretary)

  
17 JAN 2023



Judgment Sheet

PESHAWAR HIGH COURT, PESHAWAR.

(JUDICIAL DEPARTMENT)

W.P.No.367-M/2021 with I.R,  
CM Nos.1053/2021 & 1183/2022.JUDGMENT

Date of hearing --- 29.11.2022.

Barrister Dr.Adnan for petitioners.

Mr.Saqib Raza, A.A.G for the respondents.

=====

**S M ATTIQUE SHAH, J:-** Through this single judgment, we shall also decide the connected writ petitions bearing Nos.337-M/2021, 406-M/2021, 503-M/2021, 514-M/2021, 518-M/2021, 450-M/2021, 601-M/2021, 681- M/2021, 632- M/2021, 919-M/2021, 968- M/2021, 980- M/2021, 1221-M/2021, 1222-M/2021, 1252-M/2021, 2210-P/2021, 2913-P/2021, 5092-P/2021, 5423-P/2021, and 5424-P/2021 as adjudication of a common question of law and fact is involved in all the petitions wherein the petitioners have challenged the vires of notification No. SO (Police-II) HD/ MKD/Levies/Misc/2020 dated 22.03.2021 whereby on the basis of impugned office order bearing No.128/DC/CSL dated



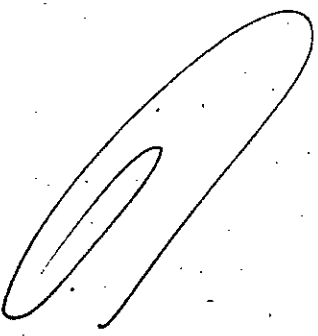
**ATTESTED**  
**EXAMINER**  
Peshawar High Court

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20.04.2021, they have been retired from service with further prayer that they be reinstated into service from the date of their retirement i.e. 20.04.2021 with all back benefits. In alternative, they have prayed that the respondents be directed to treat them at par with erstwhile Federal Levies of Federally Administrated Tribal Area (FATA) and; absorb them in police and; grant them full pensionary benefits.

2. Likewise in W.P.Nos.333-M/2021, 334-M/2021, 335-M/2021, 338-M/2021, 345-M/2021, 1026-M/2021, 1035-M/2021, 1187-M/2021, 1206-M/2021, 1207-M/2021, 34-M/2022, 212-M/202 and 993-P/2022 the petitioners have made the following prayer:

***"On acceptance of this writ petition, the impugned Notification SO (Police-II) HD/ MKD/Levies/ Misc/2020 is against law and the fundamental rights guaranteed by the Constitution of Islamic Republic of Pakistan, 1973, may be declared illegal void ab initio and of no legal effects on the rights of the petitioners."***



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Similarly, in COC Nos.38-M/2021 in W.P.No.367-M/2021 and COC No.436-P/2022 in W.P.No.1335-P/2022 petitioners seek initiation of contempt of court proceedings against the respondents for violating the order of this court dated 21.04.2021 passed in W.P.No.367-M/2021.

3. Brief facts of the case(s) are that the petitioners were appointed in the "Swat Levies Force" as Sepoys etc. and presently terms and conditions of their services are regulated by "Provincially Administrated Tribal Areas Levies Force Regulation 2012" whereunder besides PATA Levies Force Rules, 2012, PATA Levies Force Service (Amended) Rules 2013 were also framed. Rule 17 of the Amended Rules 2013, deals with the retirement of personnel of the force, which was amended vide notification dated 12.12.2013 in the manner that **"All the personnel shall retire as per Schedule-III and no extension in service beyond retirement shall be granted"**. On 14.07.2020, vide Notification No.SO

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(Police-II)HD/1-3, rule 17 was further amended by deleting schedule-IV as ***"All uniformed force shall retire from service on attaining the age of superannuation i.e. Sixty (60) years or they may opt for retirement after completion of twenty-five (25) years regular service"***.

Thereafter once again through certain modifications rule, 17 was amended by giving life to the deleted schedule-III of the rules 2013 as under:-

***"Retirement; All levy personnel shall retire as per Schedule-III and no extension in service after retirement shall be granted."***

4. Being aggrieved from the ibid amendment, the petitioners have filed the instant petitions.

5. Pursuant to the directions of this court respondents have filed their parawise comments, wherein issuance of the desired writs has been opposed.

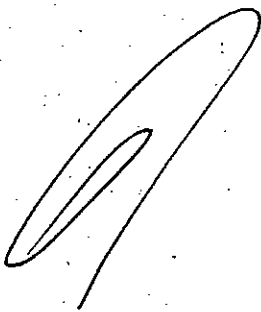
6. Learned counsel representing the petitioners vehemently argued that the

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impugned Notification is arbitrary, perverse, illegal, issued without lawful authority and *mala fide* intention just to deprive the petitioners of their vested rights accrued in their favour hence violative of their fundamental rights guaranteed under the Constitution and thus not sustainable in the eye of law. That though the impugned Notification was issued under the regulation 2012. However, after the 25<sup>th</sup> Constitutional amendment, the said regulation does not hold field, therefore, the impugned Notification is liable to be set aside.

7. Conversely, worthy AAG representing the respondents opposed the arguments so advanced by learned counsel representing the petitioners at the bar while arguing that after the 25<sup>th</sup> amendment the Provincial Assembly passed the continuation of laws Act No.111 of '2019 through which the laws applicable to erstwhile PATA were allowed to continue including "Provincial Administered Tribal Areas Levies Force Regulation, 2012" and;



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therefore, the impugned Notification was issued per law which does not require any interference by this court in its writ jurisdiction under Article 199 of the Constitution. Further, petitioners are Civil Servants, and; matter in question revolves around the terms and conditions of their service which is the exclusive domain of the Service Tribunal as such the jurisdiction of this court is barred given the explicit provision of Article 212 of the Constitution.

8. Heard. Record perused.


9. Before discussing merits of the case we deem it appropriate to discuss the background of the matter in hand to properly comprehend the issue involved therein. It is worth mentioning that earlier the services of the *Levies Force* were dealt with under the *Frontier Irregular Corps (FIC) rules, 1962* which was substituted by the "*Provincial Administered Tribal Areas Levies Force Regulation, 2012*" (regulation) and under the said regulation "*PATA Levies*

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*Force (service) Rules, 2012* were framed for *Provincial Levies Force*. While separate service rules were also framed thereunder for *PATA Federal Levies Force* performing duties in "PATA" known as "*PATA Federal Levies Force Service (Amended) Rules 2013*". Rule 17 of the *ibid* rules deals with the retirement of the *Levies* personnel which was amended from time to time. However, petitioners have become aggrieved from the impugned Notification vide which the petitioners' retirement age was altered which is challenged by them through instant petitions.

10. The main contention of the petitioners is that after 25<sup>th</sup> amendment the regulation has lost its efficacy and sanctity and has become redundant, therefore, the impugned amendment under the said regulation is illegal being void ab initio. It is worth mentioning that after the 25<sup>th</sup> amendment in 2018, both *FATA & PATA* were merged in the province of Khyber Pakhtunkhwa and *Federal Levies Force*



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working in *FATA* was merged into the regular police of the province. Albeit, in Malakand Division, *Levies Force* is still regulated by "*PATA Federal Levies Force Service (Amended) Rules 2013* in view of the Khyber Pakhtunkhwa Act No 111 of 2019 through which the laws prevalent in erstwhile *PATA* at the time of 25<sup>th</sup> amendment were allowed to continue including regulation 2012 which still holds the field and as such the same is a valid instrument. Therefore, impugned Notification was issued by the respondents with lawful authority.

11. Moving toward the status of the petitioners it is worth mentioning that earlier this court while deciding *W.P. No. 528-M/2016 (Ikramullah's case)* determined the status of personnel of the *Provincial Levies Force* as that of civil servants in the following terms:-

"19. The *Provincial Levies Force* ("*Force*") was granted statutory cover through Khyber Pakhtunkhwa Regulation No.1 of

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2014 ("Regulation"). Paragraph No.3 of the Regulation envisages for constitution and establishment of the Force and its functions. For ease reference paragraph Nos. 3 and 4 of the Regulation are reproduced as under:-

**"3. Power to constitute and maintain by the Force and its functions.--** (1) Government may constitute and maintain a Force for performing the following functions, namely:

- (a) ensuring security of roads in PATA;
- (b) ensuring security and manning of piquet;
- (c) guarding Government institutions and installations;
- (d) ensuring security of jails and arrested criminals;
- (e) generally maintaining law and order providing mobile escort to VIPs;
- (f) anti-smuggling activities especially timber smuggling;
- (g) destruction of illicit crops;
- (h) serving of summons or procedures;
- (i) raid and ambush; and
- (j) such other functions as Government may, by notification in the official Gazette, require the Force to perform.

(2) In discharge of their functions, officers and staff of the Force shall

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be guided in accordance with this Regulation and the rules.

(3) The head of the Force shall be Commandant in his respective jurisdiction.

(4) Secretary to Government, Home and Tribal Affairs Department shall be the competent authority of the Force.

(5) The Force shall consist of such ranks and number of officers and members and shall be constituted in such manner as may be prescribed by rules.

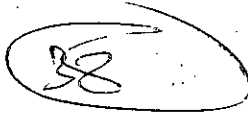
(6) The officers and members of the Force shall receive such pay, pension, allowances and other remunerations and shall enjoy such leave and other privileges as may be prescribed by rules.

(7) The officers and members of the Force shall wear such uniform as may be prescribed by rules or instructions.

(8) The administration of the Force shall vest in the Commandant in his jurisdiction who shall administer it in accordance with the provisions of this Regulation, rules and instructions.

(9) The Commandant shall exercise his powers and perform his functions under the general supervision and directions of Government.

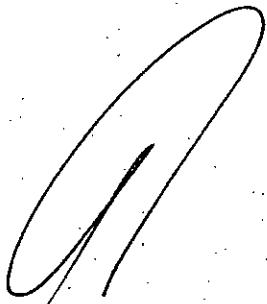
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**4. Powers and duties of officers and members of the Force.—An officer or member of the Force shall-**

- (a) take effective measures for ensuring security of assigned jurisdiction and for safeguarding against acts of unlawful interference;
- (b) prevent unauthorized persons and vehicles from access to the territorial jurisdiction;
- (c) take effective measures for preventing sabotage, placement of car bombs, letter bombs, dangerous article and carriage of arms and ammunition into the restricted area;
- (d) use such arms and ammunition and equipment as may be authorized by the Commandant or an officer authorized by him;
- (e) search and arrest without warrant any person who he suspects of endangering or attempting to endanger or having endangered the safety of an installation and may use such force as may be necessary in the discharge of his aforesaid duties; and
- (f) perform such other legal functions as the competent authority may require him to perform".

20. The close perusal of the Regulation would clearly show that the Force is receiving its salary from the Provincial



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Exchequer and performs the policing service in the erstwhile PATA.

21. Having said this, we would now refer to the crucial issue as to whether the employees of the Force can be termed as a civil servants and as such they cannot maintain a constitutional petition before this Court for enforcement of the terms & conditions of their service.

22. The connotation 'civil servant' is defined and explained in respect to the Province of Khyber Pakhtunkhwa, in the Civil Servants Act, 1973 ("Act, 1973"). For ease reference, we would refer to Section 2 (b) of Act, 1973, which reads as under:-

*"2. Definitions.—(1) In this act, unless the context otherwise requires the following expressions shall have the meanings hereby respectively assigned to them, that is to say—*

- (a) .....
- (b) "civil servant" means a person who is a member of a civil service of the Province, or who holds a civil post in connection with the affairs of the Province, but does not include—

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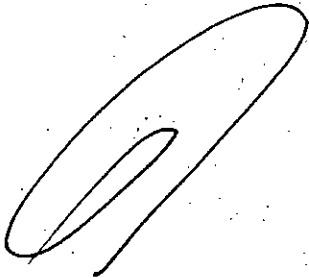
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- (i) a person who is on deputation to the Province from the Federation or any other Province or other authority;
- (ii) a person who is employed on contract, or on work charged basis, or who is paid from contingencies; or
- (iii) a person who is a "worker" or "workman" as defined in the Factories Act, 1934 (Act XXV of 1934), or the Workman's Compensation Act, 1923 (Act VIII of 1923)".

23. The perusal of the definition would show that a member of a civil service of the Province or who holds a civil post in connection with the affairs of the Province is civil servant. All Pakistan Services are explained in Article 260 of the Constitution, which reads as under:-

"260.  
 (1).....  
 .....  
 .....  
 ....."

"service of Pakistan" means any service, post or office in connection with the affairs of the Federation or of a Province, and includes an All-Pakistan Service, service in the Armed Forces and any other service declared to be a service of Pakistan by or under Act of [Majlis-e-Shoora



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(Parliament)] or of a Provincial Assembly, but does not include service as Speaker, Deputy Speaker, Chairman, Deputy Chairman, Prime Minister, Federal Minister, Minister of State, Chief Minister, Provincial Minister, [Attorney-General], [Advocate-General],] Parliament Secretary] or [Chairman or member of a Law Commission, Chairman or member of the Council of Islamic Ideology, Special Assistant to the Prime Minister, Adviser to the Prime Minister, Special Assistant to a Chief Minister, Adviser to a Chief Minister] or member of a House or a Provincial Assembly;

Whereas Article 240 of the Constitution envisages that:-

"240. Subject to the Constitution, the appointments to and the conditions of service of persons in the service of Pakistan shall be determined -

- (a) .....
- (b) in the case of the services of a Province and posts in connection with the affairs of a Province, by or under Act of the Provincial Assembly.

Explanation.- In this Article, "All-Pakistan Service" means a service common to the Federation and the Provinces, which was in existence immediately before the commencing

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day or which may be created by Act of [Majlis-e-Shoora (Parliament)]".

24. The Phrase "performing in connection with the affairs of Federation or for present matter Province" was elaborately explained in the case of Salahuddin and 2 others vs. Frontier Sugar Mills & Distillery Ltd., Tokht Bhai and 10 others (PLD 1975 Supreme Court 244).

In the said judgment, the Apex Court has held:

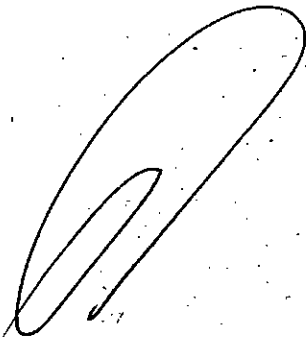
"Now, what is meant by the phrase "performing functions in connection with the affairs of the Federation or a Province". It is clear that the reference is to governmental or State functions, involving, in one form or another, an element of exercise of public power. The functions may be the traditional police functions of the State, involving the maintenance of law and order and other regulatory activities; or they may comprise functions pertaining to economic development, social welfare, education, public utility service and other State enterprises of an industrial or commercial nature. Ordinarily, these functions would be performed by persons or agencies directly appointed, controlled and financed by the State, i.e., by the

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Peshawar High Court

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*Federal Government or a Provincial Government".*

25. Admittedly, as evident from the bare reading of paragraph-3 & 4 of the Regulation, the present petitioners are performing policing service in the erstwhile tribal area, however, their terms and conditions are being regulating through Regulation No.1 of 2014 and after the omission of Article 247 from the Constitution; through a provincial statute i.e. the Khyber Continuation of Laws in the Erstwhile Provincially Administered Tribal Areas Act, 2018 (Khyber Pakhtunkhwa Act No. III of 2019), the operation of Regulation No.1 of 2014 was continued. Thus, the essential criteria for being a civil servant is that the person holding the post must perform his functions in connection with the affairs of Federation/Province and the terms and conditions of his service should be determined by or under the Act of Parliament/Provincial Assembly. The Apex Court in the case of Federation of Pakistan through Secretary, Ministry of Interior (Interior Division), Islamabad and 2 others vs. RO-



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**177 Ex-DSR Muhammad Nazir**  
(1998 SCMR 1081), while dealing with the case of an employee of Pakistan Rangers has observed that:

"7....Perusal of these rules clearly shows that they are all embracing, and therefore, under the amendment of section 1 of the Pakistan Rangers Ordinance, these rules would prevail over the Rules of 1973. The Pakistan Rangers Ordinance was promulgated to constitute a force called the Pakistan Rangers for the protection of and maintenance of order in the border areas. Since with regard to the status of the members of the force the Pakistan Rangers Ordinance is silent, therefore, it can be safely said that the employees of the Pakistan Rangers will be deemed to be civil servants as they are performing duties in connection with affairs of the Federation and hence under the Service Tribunals Act, 1973, an appeal by a member of the Pakistan Rangers regarding a matter relating to terms and conditions of his service is competent before the Federal Service Tribunal..."

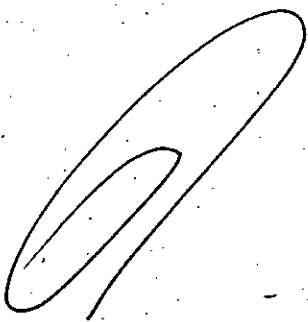
26. Similarly, in the case of  
**Commandant, Frontier**  
**Constabulary, Khyber**  
**Pakhtunkhwa, Peshawar and**

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others vs. Gul Raqib Khan and others (2018 SCMR 903), the Hon'ble Apex Court has elaborately examined service structure of the employees of Frontier Constabulary, which is established under Frontier Constabulary Act (Act-XIII) of 1915. Relevant paragraphs of the said judgment are reproduced as under:-

"6. Three broad tests for establishing the status and character of a civil servant emerge from the Constitutional mandate of the afore-going Articles. Firstly, under Article 240(a) of the Constitution, appointments to and the terms and conditions of service of the persons in the "service of Pakistan" are to be determined by or under Act of Parliament. Secondly, by virtue of Article 260 of the Constitution, 'service of Pakistan' means any service, post or office in connection with the affairs of the Federation. Thirdly, under Article 212(1) (a) of the Constitution, the exclusive jurisdiction to adjudicate disputes relating to the terms and conditions of persons, who are in the service of Pakistan vests in an Administrative Tribunal, namely, the Federal Service Tribunal. These tests are mentioned in the Muhammad Mubeen-us-Salam case



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*ibid* (at pp. 686-689 of the law report). The definition of the term 'civil servant' in the Act adopts the Constitutional criteria given in Article 260 noted above to reiterate that a person who, *inter alia*, holds a civil post "in connection with the affairs of the Federation" including any such post connected with defence, to be a civil servant. The larger Bench has in this respect taken the logical step to incorporate the requirements under Article 240 (a) and 260 of the Constitution as the definitional criteria of the term "civil servant" (at p. 682 of the law report).

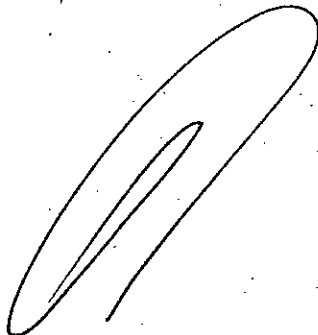
7. Having noticed the qualifying criteria of a civil servant under the law, it is appropriate now to examine the factual matrix of the present controversy. The FC was established by the NWFP Constabulary Act, (Act-XIII) of 1915 ("Constabulary Act"). Section 3 of the Constabulary Act empowers the Federal Government to maintain the FC as a force "for the better protection and administration of the external frontiers of Pakistan within the limits of or adjoining North-West Frontier or any part thereof". Section 3-A of the Constabulary Act authorises the Federal Government to employ the FC outside the limits of or adjoining the North-West Frontier Province in other parts of Pakistan for

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Lawar High Court



the better protection and administration of those parts. Section 5(1) of the Act *ibid* vests the Federal Government with power to appoint the Commandant and other persons including the District Constabulary Officers or Assistant Constabulary Officers of the force in one or more districts. Section 6 delegates to the Commandant and District Constabulary Officer the power to appoint subordinate officers in the manner prescribed by Rules made under the Act. The Federal Government exercised its power conferred by Section 21 of the Constabulary Act, to frame the NWFP Constabulary Rules, 1958 ("Constabulary Rules"), in order to provide the terms and conditions of service of the officers and men in the FC.

8. It will be observed that the matter of terms and conditions of service of the respondent-employees of the FC, are in the first place regulated by the Constabulary Act and elaborated pursuant thereto by the FC Rules. The provisions made by the Constabulary Rules are in furtherance of and in exercise of the power conferred by the Constabulary Act. Therefore, the terms and conditions of service of the employees of the FC are prescribed



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in the Act and the Rules. The test laid down in Article 240(a) of the Constitution requires that the appointment to and the terms and conditions of service of posts in connection with the affairs of the Federation and of a service of Pakistan shall be determined "by or under an Act of" Parliament. The expression "by or under" in Article 240(a) of the Constitution authorizes the terms and conditions of service of a civil servant to be provided both by statute or by statutory rules. The provision made in the Constabulary Act and the Constabulary Rules, therefore, satisfy the Article 240(a) test. The judgment in the Muhammad Mubeen-us-Salam case *ibid* endorses this point of view:-

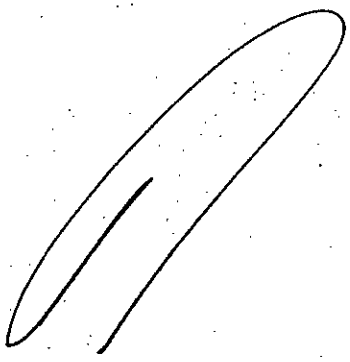
"86.... The terms and conditions of service of those employees, however, are required to be specified under Article 240 of the Constitution by or under Act of the Parliament. Thus, the conclusion would be that only those persons, who are in the service of Pakistan, as discussed hereinabove, and if their terms and conditions are governed either by a statute or statutory rules, in terms of Article 240 of the Constitution, can seek remedy before the Service Tribunals.."

27. Similarly, this Court in the case of Gul Munir vs. The

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Peshawar High Court



Government of Pakistan through Secretary, Ministry of States and Frontier Regions (SAFRON), Islamabad and others (2019 PLC (C.S) 645), on the basis of law laid down by the Apex Court in Commandant, Frontier Constabulary Khyber Pakhtunkhwa, Peshawar's case (2018 SCMR 903), while dealing with the case of Federal Levies Force, which was established through Federal Levies Force Regulation, 2012 having the same structure of service for its employees/force as provided in Regulation No. 1 of 2014 has held that employees of the Federal Levies Force whose terms and conditions of service are governed under Federal Levies Force Regulation, 2012 are civil servants. Keeping in view the above, the Force established under Regulation No. 1 of 2014 qualifies the criteria of being civil servant in view of its composition, functions and duties as per law laid down by the Apex Court in the cases of Federation of Pakistan through Secretary, Ministry of Interior (Interior Division), Islamabad and 2 others



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**vs. RO-177 Ex-DSR Muhammad Nazir (1998 SCMR 1081) and Commandant, Frontier Constabulary, Khyber Pakhtunkhwa, Peshawar and others vs. Gul Raqib Khan and others (2018 SCMR 903)**, thus, the preliminary objection raised by the learned counsels for the respondents is sustained and accordingly, the present petitions in view of clear bar contained in Article 212 of the Constitution are not maintainable. The present petitioners may agitate their grievances before the Provincial Services Tribunal. However, prior to this judgment, the status of present petitioners being a civil servant was not determined and in the similar cases, the Apex Court in **Gul Raqib Khan's case (2018 SCMR 903)** has held that:

"11. It follows from the dicta laid down above that the protection of the border areas is a sovereign function belonging to and performed by the Federation. The same duty is performed equally in the present case by the FC not only on the frontiers of KPK Province but also by maintaining order in other parts of Pakistan. For discharging such functions, the

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services rendered by the FC have direct nexus with the affairs of the Federation. Therefore, the reasons given in the Muhammad Nazir case (supra) fully apply here as well and we hold that the employees of FC are civil servants. Insofar as the question of competent remedy in respect of service disputes of FC men is concerned, we hold that in a matter relating to the terms and conditions of service of the respondent-employees of the FC, an appeal before the Federal Service Tribunal is available to them as the exclusive remedy under the law. Accordingly, this remedy may be availed by them within the statutory period of limitation commencing from the date of issuance of certified copy of this judgment. All these appeals filed by the appellant-Commandant, FC are accordingly allowed in above terms".

When case of the petitioners (PATA Federal Levies Force) was examined in juxtaposition with the Provincial Levies Force and *ibid* judgment, we observed that service of both the forces is governed under the rules so framed under the provisions of "Provincial Administered Tribal Areas Levies Force Regulation,

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2012". Therefore, we believe that the status of petitioners is that of civil servants for all practical and material purposes, and as such, the matter of terms and conditions of their service squarely falls outside the ambit of writ jurisdiction of this court given the explicit bar contained in Article 212 of the Constitution. As earlier discussed service rules of the petitioners (*PATA Federal Levies Force*) and *Provincial Levies Force* both were framed under the provisions of "*Provincial Administered Tribal Areas Levies Force Regulation, 2012*" and through the *ibid* judgment, the personnel of *Provincial Levies Force* were declared as Civil Servants after exhaustively discussing the matter of *Levies Force* performing their duties in *PATA*. Therefore, on the same premise, we have no hesitation to hold that the petitioners are Civil Servants as their service fulfills the entire criteria of Civil Servants so provided by the law. Learned counsel representing the petitioners could

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shawar High Court



not distinguish the status of petitioners (PATA Federal Levies Force) vis a vis Provincial Leavy Force in any manner. Both forces are performing their functions in the same area for the same object and; purpose, and both are being maintained through the provincial exchequer. Therefore, the matters arising out of the terms and; conditions of service of the petitioners are only amenable to the jurisdiction of the Service Tribunal in terms of Article 212 of the Constitution.

So far as the contention of petitioners that they have challenged the vires of the impugned Notification and as such the same are not amenable to the jurisdiction of the Service Tribunal is concerned, suffice it to state that it has long been settled that Service Tribunal has ample jurisdiction to deal with the issue of vires of the law and rules framed thereunder. **2015 SCMR 253 NATIONAL ASSEMBLY SECRETARIAT through Sectrary V. MANZOOR AHMAD and others.**


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Peshawar High Court



Therefore, the contention so agitated at the bar is misconceived and as such repelled.

In view thereof, the status of petitioners has been declared as that of Civil Servants and the matter in question revolves around the terms and; conditions of their service which does fall outside the jurisdiction of this court given the barring provision of Article 212 of the Constitution and as such instant petitions are dismissed; being not maintainable. However, the petitioners may approach the worthy Service Tribunal for the redressal of their grievance if so advised. Albeit, earlier the status of petitioners being civil servants was not determined, therefore, the petitioners may avail the remedy of appeal within the statutory period of limitation commencing from the date of issuance of the certified copy of this judgment in terms of the judgment of august apex court in **Gul Raqib khan's case 2018 SCMR 903.**

COC Nos.38-M/2021 in  
W.P.No.367-M/2021 and; COC No.436-



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P/2022 in W.P.No.1335-P/2022 are dismissed for having become infructuous.

*[Signature]*  
JUDGE

*[Signature]*  
JUDGE

*[Signature]*  
JUDGE

Announced.  
Dt.29/11/2022.

HON'BLE MR.JUSTICE LAL JAN KHATTAK,  
HON'BLE MR.JUSTICE S M ATTIQUE SHAH &  
HON'BLE MR.JUSTICE SYED ARSHAD ALI

(A-K-KHAN Court Secretary)

*[Signature]*  
17 JAN 2023

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17-1-23

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محکمہ اہیل بہ فلا حکم خورہ  $\frac{4}{15}$  جلی روڈ  
سے ڈیٹی کنٹرا کمانڈنٹ لیون فورس، شمال  
نے ایبلٹ کو ایبلٹ کرنے کے اوقات ۱۵۰۰  
کئے ہیں۔

ضمانتی! ایبل حسب ذیل عرض ہے۔

۱۔ یہ کہ حکومت سسر، ٹنکوٹرا نے پورے نو سفیشن خورہ  $\frac{7}{14}$  PATA لیون  
فورس روز ۲۰۱۵ میں ٹریم کرنے لیون فورس ایبلٹان کے ایبلٹمنٹ  
کلیئر کر کے ۶۰ سال خورہ کرنے کیساف وقت ملازمت ۲۵  
سال خورگی۔

۲۔ یہ کہ ایبلٹان PATA لیون فورس روز ۲۰۱۵ میں پورے نو سفیشن  
خورہ  $\frac{3}{22}$  فنڈرہ بالا نو سفیشن میں نہ یہ نہ ٹریم کر کے آئینہ  
ریٹرن سے نیکے نام ایبلٹان مشمول ۳ میں نہ ٹریم کیساف  
۱۷۔ حال کر کے۔ ہم ایبلٹ نہ کر کے حکم خورہ  $\frac{4}{15}$  ایبلٹان کر کے  
اور اس کا اطلاق خورہ  $\frac{3}{22}$  سے کیا ہو کہ پوجو پات ذیل قابل  
منوفی ہے۔

I۔ یہ کہ حکم اس امر کا باند ہے کہ ایبل ملازمت میں کیساف ہلے سے  
لے کر خورہ کے مطابق نہ کر کے۔

II۔ یہ کہ حکم کسی بھی حکم کو پچھلی تاریخ میں نافذ العمل کرنے کا  
حجاز نہیں اور ایسا یہ عمل غیر قانونی اور ہوگا اور یہ  
حکم خورہ  $\frac{4}{15}$  قابل بحالی نہ ہے، بلکہ قابل استرداد ہے۔

III۔ یہ کہ خورہ نہ ٹریم کر کے ایبلٹ کیساف (سیاری  
سلور کے ٹریم سے جسی قانون میں کوئی گنجائش نہیں ہے۔

ATTESTED

(57)

IV - پاکستان نام سرحدوں کے ساتھ حدودی سٹیٹ کی

حکومت دینا کے عمل کے ساتھ ساتھ 22/3 اور 15/4 021  
مہرنگی اس کے مفاد میں

اس کے ساتھ ساتھ منظور کی اپیل پر PATA کی

فوری رولز 15/2015 کے تحت فیوڈیشن

22/3 اور اس کے اساس پر مفاد کے

مکمل طور پر 15/4 کا اہم و متعلقہ قرار دیکر

اپیلانٹ کو 8 مفاد کے ملازمین

بجائے کرنے کے اوقات کے لئے فراہم کرنے

الم فوم 11/05

ARRESTED

علی احمد سائن ڈائری، صدر ایف ڈی

آئی ڈی

58

# WAKALAT NAMA

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. \_\_\_\_\_ /2023

(Petitioner)  
(Plaintiff)  
**(Appellant)**  
(Accused)

**ALI AHMAD**

**V E R S U S**

**THE GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH CHIEF SECRETARY, KPK AND OTHERS**

**(Respondents)**  
(Defendant)  
(Opponent)  
(Complainant)

**I, ALI AHMAD RESIDENT OF DISTRICT CHITRAL LOWER, (APPELLANT)**

The above named appellant hereby appoints and constitute **SHER HYDER KHAN, ADVOCATE HIGH COURT, PESHAWAR**, as counsel for (Appellant) in the above mentioned case, to do all or any of the following acts, deeds and things:-

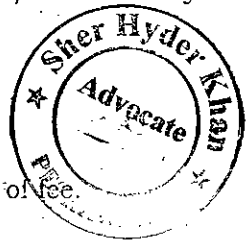
- 1- To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal or any other court/tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
- 2- To sign, verify and file or withdraw all proceedings, petitions, appeals, revision, review affidavits and applications for compromise or withdrawal, or for submission to arbitration of the said case, or any other document, as may be deemed necessary or advisable by him for the conduct, prosecution or defense of the said case at any stages.
- 3- To receive payment of and issue receipts for all money that may be or become due and payable to us during the course or on the conclusion of the proceedings. To do all other acts and things this may be deemed necessary or advisable during the course of the proceedings.

**AND HEREBY AGREE:-**

- a) To ratify whatever the said Advocate may do in the proceedings.
- b) Not to hold the Advocate responsible if the said case be proceeded ex-parte or dismissed in default in consequence of their absence from the Court/Tribunal when it is called for hearing.
- c) That the Advocate shall be entitled to withdraw from the prosecution of the said case if the whole OR any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this power of Attorney/Wakalat Nama hereunder the contents of which have been read/explained to me/us and fully understood by me / us this 18-01-2023 at Peshawar.

Accepted subject to term regarding payment of fee.



*Ali Ahmad*

**SIGNATURE OF APPELLANT**

**SHER HYDER KHAN**  
ADVOCATE HIGH COURT  
LL.B (Hons), LL.M (I-L)

59

# WAKALAT NAMA

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

**SERVICE APPEAL NO. \_\_\_\_\_ /2023**

**ALI AHMAD**

(Petitioner)  
(Plaintiff)  
**(Appellant)**  
(Accused)

**V E R S U S**

**THE GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH CHIEF  
SECRETARY, KPK AND OTHERS**

**(Respondents)**  
(Defendant)  
(Opponent)  
(Complainant)

**I, ALI AHMAD RESIDENT OF DISTRICT CHITRAL LOWER, (APPELLANT)**

The above named appellant hereby appoints and constitute **SIDRA NAZIR, ADVOCATE HIGH COURT, PESHAWAR**, as counsel for (Appellant) in the above mentioned case, to do all or any of the following acts, deeds and things:-

- 1- To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal or any other court/tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
- 2- To sign, verify and file or withdraw all proceedings, petitions, appeals, revision, review affidavits and applications for compromise or withdrawal, or for submission to arbitration of the said case, or any other document, as may be deemed necessary or advisable by him for the conduct, prosecution or defense of the said case at any stages.
- 3- To receive payment of and issue receipts for all money that may be or become due and payable to us during the course or on the conclusion of the proceedings. To do all other acts and things this may be deemed necessary or advisable during the course of the proceedings.


**AND HEREBY AGREE:-**

- a) To ratify whatever the said Advocate may do in the proceedings.
- b) Not to hold the Advocate responsible if the said case be proceeded ex-parte or dismissed in default in consequence of their absence from the Court/Tribunal when it is called for hearing.
- c) That the Advocate shall be entitled to withdraw from the prosecution of the said case if the whole OR any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this power of Attorney/Wakalat Nama hereunder the contents of which have been read/explained to me/us and fully understood by me / us this  
18-01-2023 at Peshawar.

  
**SIGNATURE OF APPELLANT**

Accepted subject to term regarding payment of fee.

  
**SIDRA NAZIR  
ADVOCATE HIGH COURT  
LL.B (Hons), LL.M**