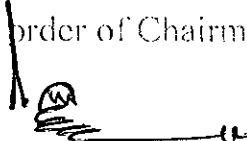


FORM OF ORDER SHEET

Court of _____

Case No.:- _____


601/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	20/03/2023	<p>The appeal of Mr. Quaid B Azam resubmitted today by Syed Roman Shah 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</p> <p> REGISTRAR</p>


Siv,

This appeal was returned twice to the counsel for the appellant to remove the deficiency by waiting 90 days after filing departmental appeal. Hence the appeal is still premature but learned counsel requested that appeal may please be put up before the worthy chair-man.

Submitted for appropriate order please.


02/01/2023

Worthy chair-man.

Be returned  premature


No, 4/ST

4/01/23

04/1/23

Notes:-

The instant was returned on 04/01/23 being premature as the appellant filed departmental appeal on 15/12/2022. Now the statutory period of 90 days has elapsed hence re-submitted for further N/A.



18/03/2023


This is an appeal filed by 'Quaid' e Azam today on 22/12/2022 against the Notification 22.3.2021 & 21.10.2021 against which he made/preferred departmental appeal/ representation on 15.12.2022 the period of ninety days is not yet lapsed as per section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, which is premature as laid down in an authority report as 2005-SCMR-890.

As such the instant appeal is returned in original to the appellant/Counsel. The appellant would be at liberty to resubmit fresh appeal after maturity of cause of action and also removing the following deficiencies.

- 1- Appeal has not been flagged/marked with annexures.
- 2- Six more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 3697 /ST,

Dt. 23.12 /2022.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.


Syed Roman Shah Adv. Peshawar.

Note :-

The instant case has been filed on the direction of Hon'ble Peshawar High Court vide its judgment dated 29/11/2022, (attached as Annexure - F). Wherein the appellant has been directed to file appeal before the worthy Services Tribunal within a period of limitation commencing from the ~~at~~ issuance of attested copy of judgment. Hence this appeal.

Re-submitted for further necessary action and order please.

Date:- 29/12/2022.


Syed Roman Shah
Advocate

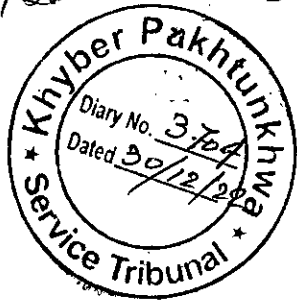
Sir

The instant appeal is still pre-mature as the period of ninety days is not ~~yet~~ yet lapsed.

As such the appeal is again returned in original to the appellant/counsel.

The appellant would be at liberty to re-submit fresh appeal after maturity of cause of action.

30/12/2022
Registrar.



Dear Sir,

This case may please be fixed before the chairman for arguments agized by your worthy office.

Sd/ Shauq
3
02/01/2023.

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

Service Appeal No. 601 /2023

Quaid E Azam Appellant

Versus

Government of Khyber Pakhtunkhwa and others Respondents

INDEX

S.No.	Description of Documents	Annex	Pages
1.	Memo of appeal with affidavit		1-5
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4.	Copy of appointment letter	A	8
5.	Copy of the Levies KP ACT 2019	B	9-12
6.	Notification No 4476/GB Dated 29/05/2019	C	13-13A
7.	Notification dated 22/03/2021	D	14-16
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11.	Copies of other relevant documents		49-52
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Appellant

Through

Syed Roman Shah
Advocate high Court
Mob No. 0333-9918830

Dated: /12/2022

①

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

Service Appeal No. 601 /2022

Case No. 2454

Dated 22/12/2022

Quaid E Azam S/o Gul Ajab Khan R/o Shehbaz Khel, Zarki Nasrati, Takht-e-Nasrati, District karak..... Appellant

Versus

1. Government of Khyber Pakhtunkhwa through Secretary, Home and Tribal Affairs Civil Secretariat, Peshawar.
2. Provincial Police officer /Inspector General of Police, Khyber Pakhtunkhwa, Peshawar
3. Regional Police Officer Kohat region Khyber Pakhtunkhwa
4. Deputy commissioner, Karak/commandant levies force Karak

.....Respondents

APPEAL UNDER SECTION 4 OF SERVICE TRIBUNAL ACT, 1974 AGAINST THE NOTIFICATION DATED 22/03/2021, AND AGAINST THE AMENDED NOTIFICATION NO.SO(POLICE-II)/HD/1-3/2020/MKD/LEVIES DATED 21-10-2021 WHEREBY THE RETIRING AGE FOR THE APPELLANT HAS BEEN REDUCED TO 25 YEARS OF SERVICE OR 42 YEARS AND FURTHER 45 YEARS OF AGE WHICHEVERE IS EARLIER FROM THE AGE OF SUPERNUATION 60 YEARS.

PRAYER

On accepting this service appeal, the impugned notification Dated 22/03/2021 and the amended notification dated 21/10/2021 may graciously be set aside by declaring it illegal, unlawful, without authority, based on mala fide, void abinitio and thus not sustainable in the eyes of law.

Filed to day
Registrar,
22/12/2022

Respectfully Sheweth;

1. That the petitioner was appointed on 23/07/2010 as levy Sepoy BPS-5 in District Karak. (Copy of appointment letter is attach as Annexure "A")

2. That initially the service of the appellant was established and controlled under the Federal levies force regulations, 2012.
3. That after Constitutional (Twenty- fifth Amendment) Act, 2018 (Act No.XXXVII of 2018) FATA has been merged in the province of Khyber Pakhtunkhwa the Provincial Assembly of Khyber Pakhtunkhwa passed a special Act for the Levies Force called Khyber Pakhtunkhwa Levies Act, 2019 (Amended) wherein in section 09 of the said act services of the levies force have been absorbed in Khyber Pakhtunkhwa Police. **(Copy of the KP Levies Act 2019 is annexed as Annexure- B).**
4. That bare reading of the section 09(2) of the abid Act Federal Levies Force Regulation 2012 will be applicable upon the Federal Levies Force until the Provincial government will absorb the Federal Levies into police department, hence, in the light of said act, the respondent No. 2 vide Notification No. 4476/GB dated Peshawar 29/05/2019 absorbed the services of appellant and all the levies force into Police Department. **(Notification 4476/GB is attached as Annexure-C).**
5. That in spite of the fact that the appellant service has been absorbed in Khyber Pakhtunkhwa Police, the respondent department issued impugned notification Federal levies force (Amended rules 2013), No. SO/Police-III/HD/MKD/Levies/Misc:/2020 Peshawar dated 22/03/2021, whereby it was stated that all levy personal shall retire on completion of 25 years services or 42 years of age whichever is earlier. **(Notification dated 22/03/2021 is attached as annexure-D).**
6. That, it is pertinent to mention here that respondent issued another Notification bearing No. SO/Police/-II/HD1-3/Federal Levies 2021, Dated 21/10/2021 amending the first notification by increasing the age of retirement from 42 to 45. **(Copy of the Notification Dated 21/10/2021 is attached as Annexure-E).**
7. That feeling aggrieved from the action and an-action of the respondents appellant alongwith other colleagues not only of District Karak but from all over the province challenged the above mentioned notifications in

various Writ Petitions Before the Worthy Peshawar High Court Peshawar, and as the crucial and important question was that whether appellants comes under the definition of Civil Servant or otherwise, a Lager Bench was constituted and the Larger Bench of the High Court vide order dated 29/11/2022 decided the case in the following manner,(The relevant portion of the said Judgment is re-produced Below);

"In view thereof, the status of the petitioners has been declared as that of civil servants and the matter in question revolve around the term and; conditions of their service which does fall outside the jurisdiction of this court given the baring 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 grievances 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 case in Gul Raqib Khan's case 2018 SCMR 903." (Judgment is attached as Annexure-F)

8. That the petitioner was directed by worthy High Court Peshawar to approach this honorable Tribunal within a statutory period of One Month commencing from the date of issuance of the certified copy of the Judgment hence this Appeal on the followings amongst others grounds inter alia;

GROUND:


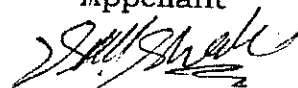
- a. That both the impugned notifications are illegal, unlawful, without authority, based on mala fide intention, against the natural justice, violative of the Constitution and Service Law and equally without jurisdiction, hence the same are liable to be set aside in the best interest of justice.
- b. That the petitioner has been absorbed in the Khyber Pakhtunkhwa police then as per law the government of Khyber Pakhtunkhwa home and Tribal Affairs has no right to frame/make any rules for the Levies Force, Hence the illegal notifications are liable to be set aside which was issued on abrupt manner.

- c. That once the services of the petitioner is absorbed in the Police then all the civil servants rules will be applicable to the petitioner, therefore the respondents are required to treat the petitioner as a civil servant.
- d. That according to absorption notification dated 29/05/2019 the necessary entries were made in the service record of the petitioner and the petitioner was upgraded to Police constable BPS-07, similarly the petitioner starting drawing his salary according to BPS-7 and also given arrears and risk allowance.
- e. That the petitioner is young and energetic civil servant and can efficiently perform his duty, and if these notifications remain in field the petitioner will get retired in young age which is against the basic principle of service, therefore these are liable to be set aside.
- f. That impugned illegal notifications are discriminatory in nature as other fellow civil servants will be retired after attaining superannuation while the petitioner will be stand retired at the age of 42 or 45 year, hence the notifications may please be declared illegal.
- g. That both the impugned notifications are against the constitution of Islamic Republic of Pakistan, 1973 similarly are liable to be declared as null and void.
- h. That the biasness of the respondents are very much obvious from the fact that while issuance of the impugned notifications the petitioner was neither heard nor even informed thus all the proceedings thereof are illegal and against the basic rules of the services.
- i. That now in august Peshawar High Court judgment it was categorically clarified that the petitioner are civil servants hence the petitioner is liable for all the benefits available to a civil servants hence the impugned notifications has no standings in the eye of law thus liable to be declared illegal and against the accrued rights of the petitioner.

- j. That while issuing the impugned notifications department did not bothered to take into consideration that the appellant is honest and dedicated official and left no stone unturned to discharge his duties.
- k. That the impugned notifications have been passed in violation of law and rules of disciplinary proceedings and principles of natural justice. The authority wrongly and malafidly based the impugned notifications without giving any reason whatsoever, therefore the impugned notifications & order are bad in law.
- l. That the fundamental rights of the petitioner have been violated due to the issuance of the impugned notifications through which the services of the appellant was taken into high risk.

On accepting this service appeal, the impugned notification Dated 22/03/2021 and the amended notification dated 21/10/2021 may graciously be set aside by declaring it illegal, unlawful, without authority, based on mala fide, void abinitio and thus not sustainable in the eyes of law.

Any other relief not specifically prayed for but deems appropriate in the circumstances of the case may also be granted.


 Appellant
 Through

 Syed Roman Shah
 Advocate high Court

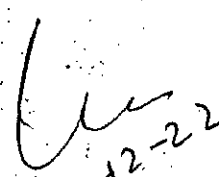
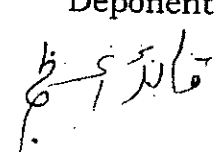
Dated: /12/2022

Certified that as per instruction of my client no such appeal has been filed before this Hon'ble Forum.

Advocate

AFFIDAVIT

I, Quaid E Azam S/o Gul Ajab Khan R/o Shehbaz Khel, Zarki Nasrati, Takht-e-Nasrati, District karak, do hereby solemnly affirm and declare on Oath that the contents of the above appeal are true and correct to the best of my knowledge and belief and nothing has been kept secret from this Hon'ble Tribunal.


 22-12-22
 Deponent


6

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

Service Appeal No. /2022

Quaid E Azam Appellant

Versus

Government of Khyber Pakhtunkhwa and others..... Respondents

ADDRESSES OF THE PARTIES

APPELLANT


Quaid E Azam S/o Gul Ajab Khan R/o Shehbaz Khel, Zarki Nasrati, Takht-e-Nasrati, District Karak

RESPONDENTS

1. Government of Khyber Pakhtunkhwa through Secretary, Home and Tribal Affairs Civil Secretariat, Peshawar.
2. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar
3. Regional Police Officer Kohat region Khyber Pakhtunkhwa
4. Deputy commissioner, Karak/Commandant levies force Karak


Appellant

Through


Syed Roman Shah
Advocate high Court

Dated: /12/2022

(7)

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

Service Appeal No. /2022

Quaid E AzamAppellant

Versus

Government of Khyber Pakhtunkhwa and othersRespondents

Application for the suspension of impugned notifications dated 22/03/2021 and 21/10/2021, so that the appellant may please to continue their duty, till the final decision of the service appeal.

Respectfully sheweth,

1. That the appellant has filed the above mentioned appeal (the facts and grounds of which may please be treated as part and parcel of this application) in which the date has not been fixed yet.
2. That the appellant has a good prima facie case and very much confident that the appeal may be allowed.
3. That the appellant is performing his duty the respondent department, if the status quo is not maintained the appellant will cause irreparable loss.
4. That the balance of convenience also lies in favor of the appellant.
5. That during the pendency of the Writ petition the Honorable Peshawar High court Peshawar was kind enough to suspended the impugned notifications; therefore this honorable tribunal is pleased to suspend the said notifications.

It is therefore most humbly prayed that upon acceptance of this application the impugned notifications may please be suspended and the appellant may please be continue his services till the final disposal of the case.

Through

Applicant/appellant

Syed Roman Shah
Advocate High Court

0333-9918830

(8)

Annexure - A

UNDES. DIR. HOSPITAL
CERTIFICATE

OFFICE OF THE DISTRICT COORDINATION OFFICER, KARAK.

OFFICE ORDER.

Dated Karak the 23/7/2010

No. 2479 S/EA/Levy Mr. Qaid-e-Azam s/o Gul Ajab Khan r/o Zarki Nusratti Tehsil Takhti Nusratti District Karak is hereby appointed as Sepoy against the vacancy of Sepoy in Federal Levy Force Karak with immediate effect in the interest of public service.

TERMS AND CONDITIONS.

1. The above appointment is purely on temporary basis and liable to cancellation / withdrawal without any notice / reasons.
2. The services of the above named sepoy will be governed by such rules / regulations / orders / act and ordinances promulgated by Federal Govt. for that category of employees.
3. He shall not be entitled for pensionary benefit unless sanctioned by the Govt. except gratuity already sanctioned in this regard.
4. He shall have to produce health and age certificate from authorized Medical Superintendent.

DISTRICT COORDINATION OFFICER
KARAK

Ends: of Even No. & Date.

Copy forwarded to the:-

1. District Coordination Officer Kohat.
2. DAO Karak / Kohat.
3. Individual concerned.

DISTRICT COORDINATION OFFICER
KARAK

ATTESTED

9

Annexure-B

An
Act
to provide for the maintenance of Khyber Pakhtunkhwa
Levies Force and to enable its transition
to Khyber Pakhtunkhwa Police.

WHEREAS after Constitution (Twenty-fifth Amendment) Act, 2018 (Act No. XXXVII of 2018), the erstwhile Federally Administered Tribal Areas have been merged in the Province of the Khyber Pakhtunkhwa, and Federal Levies Force, established under the Federal Levies Force Regulation, 2012, working in the said areas, has lost its legal status for working in the merged districts and sub-divisions;

AND WHEREAS it is in the best public interest to allow the Federal Levies Force to continue its functions in the merged districts and sub-divisions and to regulate and maintain it under the administrative control of the Government of Khyber Pakhtunkhwa;

AND WHEREAS to achieve the objectives it is expedient to give legal status to the Federal Levies Force in the merged districts and sub-divisions and to re-visit its institutional structure and functional assignment for effective discipline, better performance and optimal utility;

It is hereby enacted as follows:

1. Short title, application, extent and commencement.--(1) This Act may be called the Khyber Pakhtunkhwa Levies Force Act, 2019.

(2) It shall apply to all the members of Levies Force.

(3) It shall extend to the districts and sub-divisions of the Province of Khyber Pakhtunkhwa as provided in the Schedule.

(4) It shall come into force at once.

2. Definitions.--In this Act, unless there is anything repugnant in the subject or context,-

(a) "Code" means the Code of Criminal Procedure, 1898 (Act of V of 1898);

(b) "Commandant" means the Commandant of the Levies Force;

(c) "Department" means the Home and Tribal Affairs Department of the Government of Khyber Pakhtunkhwa;

(d) "Deputy Director General" means the Deputy Director General of the Levies Force;

(e) "Director General" means the Director General of the Levies Force;

(f) "Government" means the Government of the Khyber Pakhtunkhwa;


ATTESTED

- (g) "Levies Force" means the Federal Levies Force, established under the repealed regulation and re-constituted, regulated and maintained under this Act;
- (h) "Police" means the Khyber Pakhtunkhwa Police;
- (i) "prescribed" means prescribed by rules;
- (j) "Provincial Police Officer" means the Provincial Police Officer of Khyber Pakhtunkhwa Police;
- (k) "public agency" means any department of Government, attached department, public authority, commission or autonomous body, setup under any statutory instrument, or public sector company or body corporate, owned, controlled or financed by Government;
- (l) "repealed regulation" means the Federal Levies Force Regulation, 2012, repealed under section 15 of this Act;
- (m) "rules" mean rules made under this Act; and
- (n) "Schedule" means the Schedule appended to this Act.

3. Reconstitution and maintenance of Levies Force.--(1) On commencement of this Act, the Levies Force shall be re-constituted and maintained by Government in accordance with the provisions of this Act and shall be known as the Khyber Pakhtunkhwa Levies Force, consisting of-

- (a) the Director General;
- (b) the Deputy Director General;
- (c) the Commandant; and
- (d) all existing strength of members of the Levies Force working in the merged districts and sub-divisions, as specified in the Schedule.

(2) The Director General, Deputy Director General and the Commandant shall be the officers of the Police.

(3) The District Police Officer shall be assigned the additional charge of the Commandant in the same district.

(4) The Regional Police Officer shall be assigned the additional charge of the Deputy Director General in their Police Region.

(5) The Deputy Director General, who shall be appointed by Government, in consultation with the Provincial Police Officer, in such manner and on such terms and conditions as may be prescribed.

Explanation: For the purpose of this section, Regional Police Officer and District Police Officer shall have the same meanings as are given to them, respectively, in the Khyber Pakhtunkhwa Police Act, 2017 (Khyber Pakhtunkhwa Act No. 11 of 2017).

4. Superintendence, administration and control of the Levies Force.--(1) The overall power of superintendence of the Levies Force shall vest in Government.

(2) The general administration and operational control of the Levies Force shall vest with the Director General to be exercised by him either directly or through the Commandant in the district.

[Signature]
ATTESTED

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5. Powers and duties of the Levies Force.—(1) Notwithstanding anything contained, in any other law for the time being in force, the Levies Force shall have the parallel policing powers as are assigned to the Police under the Code.

(2) Without prejudice to the generality of the forgoing policing powers under sub-section (1), the Levies Force shall perform such institutional or organizational functions and duties as provided under the Khyber Pakhtunkhwa Police Act, 2017 (Khyber Pakhtunkhwa Act No.11 of 2017).

6. Liabilities of officers and members of the Levies Force.—(1) It shall be the duty of every member of the Levies Force to obey and execute all lawful orders and instructions, issued to him by the Commandant, or any other officer authorized by him in this behalf to issue such orders and instructions.

(2) The Levies Force shall be an essential service and every member thereof shall be liable to serve whenever he is required to serve by the Director General.

7. Constitution of Selection and Promotion Committees.—Government shall notify the Selection and Promotion Committees for recruitment and promotion of employees of the Levies Force.

8. Postings, transfers and distribution of the Levies Force.—(1) The Commandant shall be competent to post and transfer members of the Levies Force within the district.

(2) The Director General shall be competent to post and transfer members of the Levies Force from one district to another.

(3) Subject to the decision of the Department, a sufficient number of members of the Levies Force shall be placed at the disposal of the District Administration in performing its legally mandated functions.

9. Absorption.—(1) Notwithstanding anything contained in any other law for the time being in force, the members of the Levies Force may be absorbed in the Police, subject to the procedure as may be determined by Government.

(2) Until their absorption in the Police, the members of the Levies Force shall be governed by their existing terms and conditions of service under the Federal Levies Force (Amended) Service Rules, 2013.

10. Assistance and support to Government functionaries.—On the requisition of the District Administration, the Commandant shall provide assistance and support to the District Administration and Heads of all public agencies in the District, required for performing their official duties.

11. Power to make rules.—Government may make rules for carrying out the purposes of this Act.

12. Act to override other laws.—The provisions of this Act shall be in force notwithstanding anything repugnant or contrary contained in any other law for the time being in force.

13. Indemnity.—Except as otherwise expressly provided in this Act, no suit, prosecution or other legal proceedings shall lie against any member of the Levies Force, Government or any other authority for anything which is done in good faith or intended to be done under this Act or the rules.

Explanation: The phrase "good faith" shall have the same meaning as given to it in section 52 of the Pakistan Penal Code, 1860 (Act No. XLV of 1860).

S. J. S. S. S.
ATTESTED

(12)

14. Removal of difficulties.—If any difficulty arises in giving effect to any of the provisions of this Act, the Department may notify a committee to take a decision not inconsistent with the provisions of this Act, as may appear to it to be necessary for the purpose of removing the difficulty.

15. Repeal and savings.—(1) The Federal Levies Force Regulation, 2012 and the Khyber Pakhtunkhwa Levies Force Ordinance, 2019 (Khyber Pakhtunkhwa Ordinance No. III of 2019) are hereby repealed.

(2) Notwithstanding the repeal of the Federal Levies Force Regulation, 2012, under sub-section(1); the Federal Levies Force (Amended) Service Rules, 2013 shall continue to remain in force and the terms and conditions of service of all the members of the Levies Force shall be governed thereunder until new rules are made under this Act.

(3) Anything done, action taken, rule made or notification or orders issued under the Khyber Pakhtunkhwa Levies Force Ordinance, 2019 (Khyber Pakhtunkhwa Ord. No. III of 2019), and the Federal Levies Force Regulation, 2012, shall be deemed valid and the same shall not be called in question in any Court of law.

SCHEDULE
(see section-1(3))

Part-A

S.No.	District.
1.	Bajaur.
2.	Mohmand.
3.	Khyber.
4.	Orakzai.
5.	Kurram.
6.	South-Waziristan.
7.	North-Waziristan.

Part-B

S.No.	Sub-Division.
1.	HusnKhel in district Peshawar.
2.	Darra Adam Khel in district Kohat.
3.	Beltani in district Lakki Marwat.
4.	Wazir in district Ferozpur.
5.	Jandola in district Tank.
6.	Darazinda in district Dera Ismail Khan.

BY ORDER OF MR. SPEAKER
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA.

(AMJAD ALI)
Secretary

Provincial Assembly of Khyber Pakhtunkhwa

[Signature]
ATTESTED

(B-A)

Better Copy

Office of the Inspector General
of Police Officer Khyber
Paktunkhwa Peshawar.

Notification.

No. 4476/GB

Dated Peshawar 29/05/2019

The Provincial Police Officer Khyber Pakhtunkhwa is pleased to designate the following rank of levies and Hisadar Force for the purpose of their induction / absorption in Khyber Paktunkhwa with immediate effect

S. No	From Rank in Levies / hisadar	To Rank in Police
1	Sepoy	Constable BPS07
2	Lince Naik	Constable A-1 BPS-07
3	Naik	Constable B-1 IHC BPS-07
4	Hawaldar	Head Constable BPS - 09
5	Naib Subidar	Assistant Inspector BPS - 11
6	Subidar	Sub Inspector BPS-14
7	Subidar Major	Inspector BPS-16

Sd.

Muhanmad Naeem Khan PSP
Inspector General of Police
Khyber Pakhtunkhwa

Copy forward to

1. Secretary Establishment Khyber Paktunkhwa Peshawar.
2. Secretary Finance Department Govt: of KP Peshawar.
3. Secretary Home & Tribble Affair Department Govt: of KP Peshawar.
4. All head of police KPK
5. PSO to IGP KP Peshawar.
6. Registrar CPO.


ATTESTED

Saddiq Baloch PSI
PSP AIG / Establishment
For Inspector General of Police KP
Peshawar

(14)

Annexure-D

FRI 10MEDEFTTQFSE

FORM NO. 1034210015



GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT
PESHAWAR

No. SC(Police-II)HD/MKD/Levies/Res.12/21
Dated. Peshawar the 22-3-2021

To

The Deputy Commissioners,

1. Malakand
2. Swat
3. Upper Dir
4. Lower Dir
5. Upper Chitral
6. Lower Chitral
7. Kohat
8. Hangu
9. Karak
10. Lakki Marwat
11. Torghar

SUBJECT: CHIEF MINISTER DIRECTIVES - RESTORATION OF SCHEDULE III OF FEDERAL LEVIES RULES, 2013 AND SCHEDULE IV OF PROVINCIAL LEVIES RULES, 2015.

Dear Sir,

I am directed to refer to the subject noted above and to forward herewith approved notification regarding amendments in Federal Levies Rules, 2013 in compliance of the Provincial Cabinet Decision dated 24-02-2021, for further necessary action with intimation to this department, please.

Encls. As above:-

Yours faithfully,

Section Officer (Police-II)

Copy of the above is forwarded to the:-

1. Section Officer (Cabinet), Administration Department, Khyber Pakhtunkhwa with reference to the letter No. SO(E&AD)/9-51/2021, dated 08-3-2021.
2. Section Officer (D/AB), Home Department, with reference to the letter No. SO(D/AB)/HD/6-8/2020, dated 15-3-2021 in compliance of SO (Cabinet), Administration Department letter quoted above.
3. Assistant to the Commissioners of Malakand, Hazara, Kohat and Bannu, for information please.
4. District Accounts Officers, Malakand, Swat, Upper Dir, Lower Dir, Upper Chitral, Lower Chitral, Kohat, Hangu, Karak, Lakki Marwat and Torghar
5. PS to the Secretary Home Department
6. PS to the Special Secretary-II, Home Department.
7. Mater File

24/3/21

[Signature]

[Signature]

Section Officer (Police-II)

ATTESTED

15

FROM: HQ:HEFTTQF6E

FFX NO. 10349210654444444440 1 Jan. 2020 12:01PM P2

To be substituted notification of even No & date.



GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME AND TRIBAL AFFAIRS DEPARTMENT

NOTIFICATION

Peshawar dated the 21.1.2021

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:
 "(1) 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-II 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 Main 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	Thirty Three Years Service or Seven Years Service as Naib Subedar or Sixty Years of age whichever is earlier

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S. No.	Name of the Post / Rank	Qualification for Promotion	Length of Service / Age
4	Hawalदार (BS-08)	Qualification; and (ii) Fifty Percent (50%) from amongst Hawaldars.	Thirty One years service or Three years service as Hawaldar or Fifty One years of age, whichever is earlier.
5	Nalk (BS-07)		Twenty Nine years service or Three years service as Nalk or Forty Eight years of age, whichever is earlier.
6	L/Nalk (BS-06)		Twenty Seven years service or Three years service as L/Nalk or Forty Five years of age, whichever is earlier.
7	Sopay (BS-05)		Twenty Five years service or Forty Two Years of age, whichever is earlier.

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

Copy forwarded to:-

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. PSC 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.

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Section Officer (Police-II)



GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME AND TRIBAL AFFAIRS DEPARTMENT

NOTIFICATION

Peshawar, dated the 21-10-2021

NO. SO(POLICE-II)HD/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-II)HD/MKD/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-16)	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	Naib Subedar (BS-11)	Thirty Three Years of Service or Seven Years' service as Naib Subedar or Sixty Years of age whichever is earlier.
4	Hawaldar (BS-09)	Thirty one years of service or fifty one year of age whichever is earlier.
5	Naik (BS-08)	Twenty nine years of service or forty nine years age whichever is earlier.
6	L/Naik (BS-08)	Twenty seven years of service or forty seven years age whichever is earlier.
7	Sepoy (BS-07)	Twenty five years of service or forty five year of age whichever is earlier.

SCHEDULE-I

S.N	Post/ Rank	Eligibility for Promotion	Promotion Quota	Direct Quota	Qualification
1	Subedar Major (BS-16)	02 years' service as Subedar Or Total 21 years of service	100%		
2	Subedar (BS-14)	02 years' service as Naib Subedar Or Total 19 years of service	100%		
3	Naib Subedar (BS-11)	04 years' service as Hawaldar Or Total 17 years of service	100%		
4	Hawaldar (BS-09)	05 years' service as Naik Or Total 13 years of service	100%		
5	Naik (BS-08)	03 years' service as Lance Naik Or Total 08 years of service			
6	L/Naik (BS-08)	05 years' service as Sepoy		100%	SSC
7	Sepoy (BS-07)				
8	Head Armorer (BS-5)	05 years' service as Assistant Armorer	100%		SSC Qualification with certificate of Armorer
9	Assistant Armorer (BS-1)			100%	SSC Qualification with certificate of Armorer

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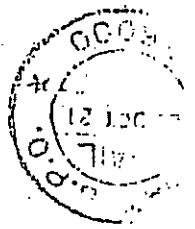
1. Principal Secretary to the Governor, Khyber Pakhtunkhwa.
2. Principal Secretary to the Chief Minister, Khyber Pakhtunkhwa.
3. All Administrative Secretaries to Government of Khyber Pakhtunkhwa.
4. Registrar, Peshawar High Court, Peshawar.
5. All Commissioners, Khyber Pakhtunkhwa.
6. All Deputy Commissioners, 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.

[Handwritten signatures and initials]

Section Officer (Police-II)

21/10/2011

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

W.P. No. 367 - M/2021



1. Muhammad Ghafar (Naik), Regt / belt No. 02,
2. Nowsher (Naik), Regt / belt No. 03,
3. Inayatullah (Lance Naik) Regt / belt No. 5,
4. Umar Bakht Lance Naik Regt / belt No. 20,
5. Muhammad Yasin Lance Naik Regt / belt No. 21,
6. Akhtar Munir Lance Naik Regt / belt No. 22,
7. Israr Ud Din Lance Naik Regt / belt No. 23,
8. Sardar Hussain (Sepoy) Regt / belt No. 225,
9. Amir Rahman (Sepoy) Regt / belt No. 226,
10. Shah Hussain (Sepoy) Regt / belt No. 250,
11. Mukhtiar Ali (Sepoy) Regt / belt No. 251,
12. Usman Ali (Sepoy) Regt / belt No. 272,
13. Attaullah (Sepoy) Regt / belt No. 273,
14. Muhammad Nawaz (Sepoy) Regt / belt No. 274,
15. Tariq Mahmood (Sepoy) Regt / belt No. 288,
16. Sajjad Ahmad Sepoy/Tailor Regt / belt No. 262,
17. Muhammad Naeem Sepoy/Gardner Regt / belt No. 263,
18. Samiullah Sepoy/Cook Regt / belt No. 264,
19. Mian Umar Khan Sepoy / Carpenter Regt / belt No. 266,
20. Umar Zada Sepoy/Mason Regt / belt No. 267,
21. Fazal Maula Sepoy/Penter Regt / belt No. 269,
22. Bacha Khan Sepoy/Dhobi Regt / belt No. 296,
23. Muhammad Ismail Lance Naik Regt / belt No. _____,
24. Waqar Habib Lance Naik Regt / belt No. 25,
25. Irfan Lance Naik Regt / belt No. 27,

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30 MAR 2021

Additional Registrar

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- 26. Sajjad Ali Lance Naik Regt / belt No. 28,
- 27. Saida Hussain Lance Naik Regt / belt No. 29,
- 28. Muhammad Diyar Lance Naik Regt / belt No. 30,
- 29. Akbar Shah Sepoy/Electrician Regt / belt No. _____, Swat Levies at office of the Deputy Commissioner district Swat at Saidu Shārif.
- 30. Haidar Ali Sepoy/pentert Regt/belt No. 275,
- 31. Rahmat Ali _____
- 32. Sultan Ali Sepoy/tailor Regt/belt No. 268,
- 33. Sarfaraz Khan sepoy Regt/belt No. 227,
- 34. Shaukat Ali Sepoy Regt/belt No. 252,
- 35. Sana Ullah Sepoy/Electrician Regt/belt No. 271,
- 36. Shaukat Rahman Sepoy Regt/belt No. 253

.....Petitioners

VERSUS

- 1) Khyber Pakhtunkhwa through Chief Secretary to Government of Khyber Pakhtunkhwa at Peshawar,
- 2) Secretary to Government of Khyber Pakhtunkhwa, Home and Tribal Affairs Department, at Peshawar,
- 3) Commandant Swat Levies / Deputy Commissioner District Swat at Saidu Sharif Swat,
- 4) Islamic Republic of Pakistan through Secretary to Government of Pakistan SAFRON Division at Islamabad,
- 5) Secretary to Government of Pakistan SAFRON division at Islamabad

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Per Court
Order dt 28/3/21

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.....Respondents

3.0 MAR 2021

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Peshawar High Court

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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.

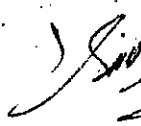
Barrister Dr.Adnan for petitioners.

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



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Peshawar High Court

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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Peshawar High Court

4 (24)

(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

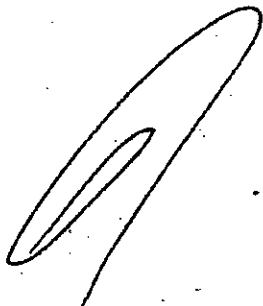
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Peshawar High Court

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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 25th 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 25th 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;



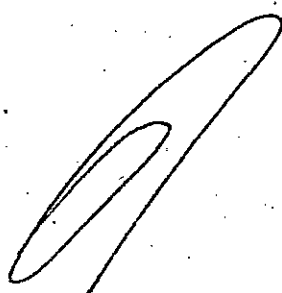
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Peshawar High Court

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*



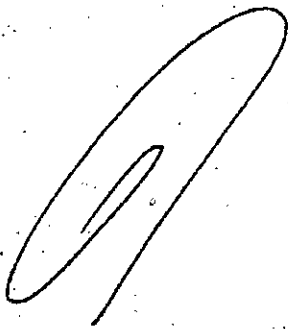
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Peshawar High Court

(27)

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 25th 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 25th 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 25th 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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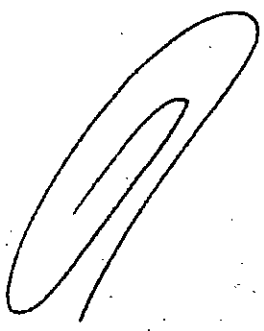
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2014 ("Regulation"). Paragraph No.3 of the Regulation envisages for constitution and establishment of the Force and its functions. For ease reference paragraph Nos. 3 and 4 of the Regulation are reproduced as under:-

"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.

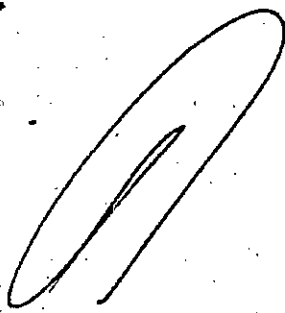
(5) The Force shall consist of such ranks and number of officers and members and shall be constituted in such manner as may be prescribed by rules.

(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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- (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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EXAMINER
Peshawar High Court

(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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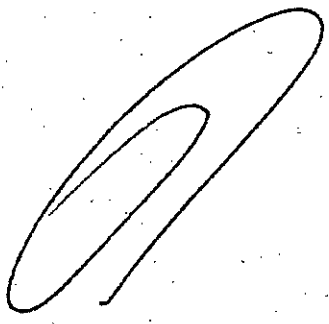
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y or which may be created by Act
(Majlis-e-Mocra (Parliament))".

The phrase "performing in
connection with the affairs of
Federation or for present matter
Province" was elaborately
explained in the case of
Alahuddi and 2 others vs.
Frontier Spinning Mills & Distillery
Ltd., Tokht and 1 others
(PLD 1975 Supreme Court 1).

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



Judgment

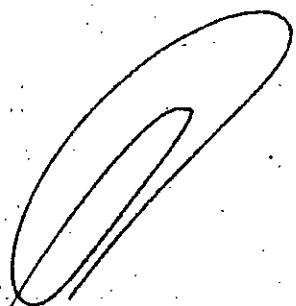
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Peshawar High Court

177 Ex-DSR Muhammad Nazir
(1998 SCMR 1), while dealing with the case of an employee of Pakistan Rangers has observed that:

"7...Perusal of the Rules clearly shows that the Rules embracing, and therefore, upon 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**

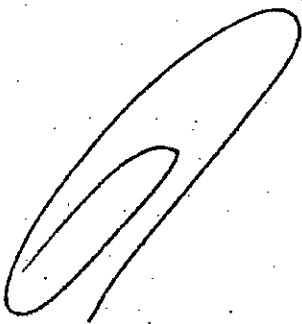
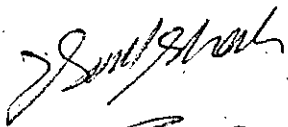


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Peshawar High Court

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 foregoing 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 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

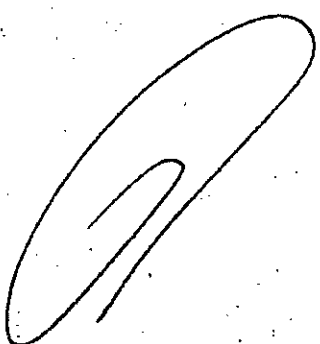



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ibid (at pp. 686-689 of the law report). The definition of the term 'civil servant' in the Act adopts the Constitutional criteria given in Article 260 noted above to reiterate that a person who, inter alia, holds a civil post "in connection with the 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



S. S. Khan
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the better protect and
 adm: ration of those p: ection
 5(1) the Act ibid vests federal
 Gov: nent with power appoint
 the nmandant and oth: persons
 incl: ng the District Co: nstabulary
 Offi: or Assistant Co: nstabulary
 Offi: of the force in o: more
 distric: Section 6 deleg: to the
 Comm: ant and District
 Const: ary Officer the power to
 appoint subordinate officers in the
 manner ascribed 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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 Peshawar High Court

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 provisions made in the Constabulary Act and the Constabulary Rules, therefore, satisfy the Article 240(a) test. The judgment in the Amjad Mubeen-us-Salam case ibid endorses this point of

"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.."

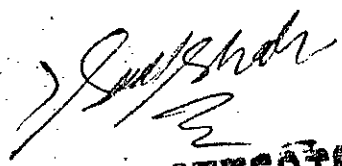
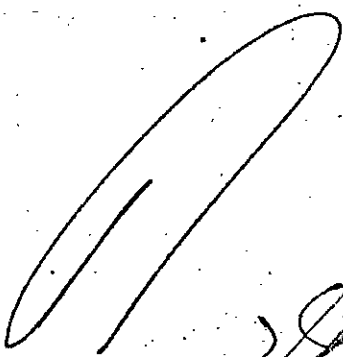
27. Similarly, this Court in the case of Gul Munir vs. The

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Peshawar High Court

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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

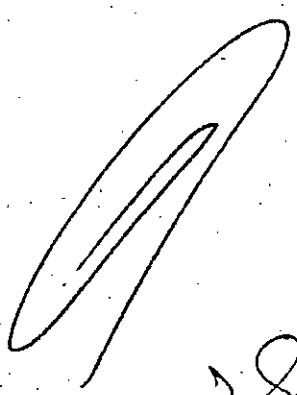


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Peshawar High Court

vs. RO-177 Ex-L Muhammad Nazir (1998 SCOR 1081) and Commandant Frontier Constabulary, Khyber Pakhtunkhwa, Peshawar and others vs. Gul Raqib Khan and others (2018 SCOR 903), thus, the preliminary objection filed by the learned counsel 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



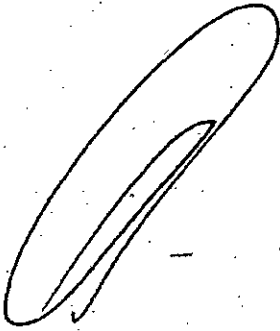
Gul Raqib Khan
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 Peshawar High Court

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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

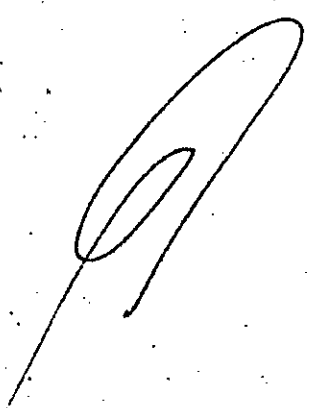
Said Shah
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not distinguish the status of petitioners (PATA Federal Levies Force) vis a vis Provincial Levy Force in any manner. Both forces are performing their functions in the same area for the same object and; purpose, and both are being maintained 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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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 baring 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.

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JUDGE

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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)

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17-12-22

سرور خان شاہ

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**BEFORE THE HONOURABLE PESHAWAR HIGH COURT
PESHAWAR.**

Writ Petition No. 1335 of 2021

1. Lal Nawaz son of Azal Nawaz Resident of Mohalla Mabian Tehsil & District, Karak.
2. Jan Muhammad son of Hashim Khan Resident of Kamali Banda Tehsil & District, Karak.
3. Qadir Ullah son of Faqir Ullah Resident of Latamber Tehsil & District, Karak.
4. Rifat Ullah son of Eid Rehman Resident of Aral Adam Khan Tehsil & District, Karak.
5. Muhammad Khurshid Alam son of Mir Ajab Resident of Darish Khel Tehsil B.D. Shah District, Karak.
6. Shah Nawaz Khan son of Amir Nawaz Resident of Aral Adam Banda Tehsil & District, Karak.
7. Javed Iqbal son of Sher Nawaz Resident of Nari Khawarna Tehsil Takht-e-Nasrati District, Karak.
8. Waheed Iqbal son of Muhammad Iqbal Resident of Main City, Karak Tehsil & District, Karak.
9. Mustaf Kama son of Gul Zeban Resident of Karak City Tehsil & District, Karak.
10. Arif Saeed son of Banda Bad Shah Resident of Gardi Banda Tehsil Takht-e-Nasrati District, Karak.
11. Quaid-e-Azam son of Gul Ajab Khan Resident of Zarki Nasrati Tehsil Takht-e-Nasrati District, Karak.
12. Sultan Ayaz son of Tajmal Khan Resident of Ashraf Khel Tehsil Takht-e-Nasrati District, Karak.
13. Fiaz ul Islam son of presently Levy Sepy Karak.
14. Javed Ahmad son of Lal Sattar resident of Sher Qaiser Banda Tehsil Takht-e-Nasrati District, Karak.
15. Resham gul son of Zameer Gul Resident of Bahadar Khel Tehsil B.D. Shah District, Karak.
16. Haroon Ahmad son of Zahoor Ahmad Resident of Chokara Tehsil Takht-e-Nasrati District, Karak.
17. Naeem Khan son of Ghazi Khan Resident of Nashpa Banda Bahadar Khel Tehsil B.D. Shah District, Karak.
18. Abdul Qayyum son of Sarfaraz Resident of Shanki Banda Tehsil Takht-e-Nasrati District, Karak.
19. Mansar Khan son of Zarin Khan Resident of Surdag Tehsil & District, Karak.
20. Wali Muhammad son of Dashaq Noor Resident of Karak City Tehsil & District, Karak.
21. Muhammad Yousaf son of Zar Nawab Khan Resident of Showzi Khel Tehsil & District, Karak.
22. Reshmain Gul son of Zamir Gul Resident of Karak City Tehsil & District, Karak.
23. Farooq Islam son of Noor Shah Ali Khan Resident of Karak City Tehsil & District, Karak.
24. Dali Khan son of Sahib Ullah Resident of Karak City Tehsil & District, Karak.

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Peshawar High Court

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**BEFORE HONORABLE PESHAWAR HIGH COURT,
PESHAWAR**

CM In Writ Petition No.1335 -P/2022



Lal Nawaz and othersPetitioner

Versus

Government of Khyber Pakhtunkhwa, and
others.....Respondents

**APPLICATION FOR ISSUANCE OF JUDGMENT/ORDER IN WRIT PETITION
No. 1335-P/2022 AS WELLAS FOR CORRECTION IN THE SHORT ORDER
OF COC NO. 436-P/2022, in Writ petition No. 1335-P/2022, DECIDED ON
DATED 29/11/2022**

Respectfully Sheweth,

Petitioner humbly submits as under;

1. That the above mentioned writ petition along with 39 other identical writ Petitions was fixed for hearing on 29/11/2022. (Cause list of 29/11/2022 is attached as annexure-A)
2. That the main writ petitions No 367-M/2021 along with the other identical writs were decided by the Larger Bench on the date fixed.
3. That the judgment was received to the petitioner on 17/12/2022 and from the perusal of the judgment it transpired that all the identical writs were dismissed being not maintainable and the petitioners were directed to approach the worthy service tribunal for redressal of grievances, but unfortunately neither the writ petition of the applicant is mentioned in the main judgment nor any short order is issued in the Writ petition. (Copy of the judgment is attached as Annexure-B)
4. That when the applicant approached to the service tribunal for filing of appeal the appeal was returned on the score that Neither the writ petition of the applicant is decided nor the Number of the applicant's writ is mentioned in the main Judgment.(Copy of the objection slip is attached as Annexure-C)

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Peshawar High Court**

50-A



PESHAWAR HIGH COURT, PESHAWAR.
FORM "A"
FORM OF ORDER SHEET.

Serial No of order or proceeding	Date of Order or Proceeding	Order or other proceedings with Signature of judge or Magistrate and that of parties or counsel where necessary
1	2	3
	18.03.2023.	<p><u>CM No.28-P/2023 in W.P.No.1335-P/2022.</u></p> <p><u>Present:-</u> Syed Roman Shah, Advocate for the applicants/petitioners.</p> <p>Malik Haroon Iqbal, A.A.G for official respondents.</p> <p>=====</p> <p><u>S M ATTIQUE SHAH, J:-</u> Through instant application, learned counsel for the applicants/petitioners seeks addition/insertion of writ petition No.1335-P/2022 in the main judgment dated 29.11.2022 rendered by Hon'ble Larger Bench of this court in W.P.No.367-M/2021 along with other identical matters as the same has not been shown mentioned therein.</p> <p>Malik Haroon Iqbal, A.A.G present in court in some other cases has got no objection over the acceptance of this application.</p> <p>Record reflects that W.P.No.No:1335-P/2022 was fixed before the court duly mentioned in the cause list of even date and; the same was also heard along with other identical petitions, however, inadvertently, it could not be mentioned in the main judgment. The non-mentioning of the writ petition is, therefore, neither intentional, nor deliberate, rather, the same has been left</p>

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unintentionally in the main judgment rendered therein.

In view of the above, this application stands allowed and the writ petition bearing No.1335-P/2022 shall be deemed to have been decided by the Hon'ble Larger Bench of this court in the judgment rendered in W.P.No.367-M/2021 and; the attendance of the learned counsel Syed Roman Shah, Advocate shall be considered to be marked in the writ petition as well as in COC.


JUDGE


JUDGE

CERTIFIED TO BE TRUE

Examiner
Peshawar High Court Peshawar
Authorised Under Article 177
The Qanun-e-Shahadat Order

19 MAR 2023

75761
Date of Presentation of Application 17-03-2023
No of Pages 5
Copying fee 20/-
Date of Preparation of Copy 16-03-2023
Date of Delivery of Copy 18-03-2023
Submitted By M. SHORAH

Date of Presentation of Application
No of Pages
Copying fee
Total
Date of Preparation of Copy
Date of Delivery of Copy
Submitted By

(51)

بخدمت جناب میسٹر ٹرنہن، مہتمم صاحب چیمبر مجسٹریٹوں

1) قائد اعظم سپاہی لیویں فورس کمرٹ

بنام

ڈپٹی کمشنر، کمانڈنٹ لیویں فورس کمرٹ

ٹھکانہ اپیل نمبر 111-3 Federal Lev²⁰²¹ (Police-11) 50
مردہ 21/10/2021 یا ایسی کے مطابق ریٹائرمنٹ کے باقی قریب ہے

جناب عالی، سائلین ذیل عرضا رہا ہے

پہلے سائل لیویں فورس ضلع کمرٹ میں عمر کم دراز سے ہیں
مردہ 23/7/2010 کو بھرتی ہوا تھا

2) سائل نے تقریباً 12 سال تک خوش السلوبی سے ڈپوٹی سرائفم رہا ہے

3) سائل یا ایسی کے مطابق 45 سال کے قریب ہے۔ اور سائل ٹھکانہ اپیل نمبر 111-3

نہ سائل کو 2019 میں پولیس میں اہم ہوا ہے اور سائل پولیس مراعات سے بھی رہا ہے

4) سائل ڈپوٹی کے قابل بھی ہے۔ سائل ڈپوٹی بھی رہا ہے

لہذا مستعدا ہی جاتی ہے کہ نوٹی فیکشن کو ماکہم قرار دئے سائل

قائد اعظم ولد نکل بخت خان لیویں سپاہی فورس ضلع کمرٹ کو ڈپوٹی پر

پر قرار رکھا جائے

الکفار حسن

مردہ 15/12/2022

قائد اعظم ولد نکل بخت خان

TESTED

قائد اعظم سپاہی لیویں فورس ضلع کمرٹ

بعد الت
کونسل
کونسل

Appeal No. 1252

Appellant
قادر ایٹم
بینام گورنمنٹ و دیگرین

- موزخه
- مقدمہ
- دعویٰ
- پہلو

باعث تحریر آنگہ

مقدمہ میں جج صاحب نے اپنی طرف سے دائر کی درخواست پر دیکھ کر اس کا رد کیا اور اس کے متعلق
 اس کے لئے سپریم کورٹ میں رجسٹرڈ ہو جانے سے پہلے اس کے خلاف اس کے خلاف اس کے خلاف اس کے خلاف
 متفرق کر کے اقرار کیا جاتا ہے۔ کہ صاحب مدعومہ کو مقدمہ کی کاپی اور اس کا کاپی اختیار ہو گا۔ نیز
 وہ اس کے ساتھ ساتھ اس کے لئے اس کے لئے اس کے لئے اس کے لئے اس کے لئے اس کے لئے اس کے لئے اس کے لئے
 بلا وقت ڈگری کرنے کے اجراء اور اصولی ایک اور روپہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
 ذرا اس پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یا ٹیل کی برادگی اور منسوخی
 نیز دائر کرنے کے اپیل گرانے اور نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
 کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ لیا اپنے بجائے تفرک اختیار
 ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساتھ
 پر و اخذ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے ہوگا۔
 کوئی تاریخ پیشی مقدمہ دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
 مذکور کریں۔ لہذا وکالت نامہ لکھنا یا کہ مندر ہے۔

تاریخ

20 _____ ماہ _____ المرجوم

_____ واہ العب

