

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service appeal No. 322/2023

Muhammad Riaz s/o Gul Faqir Head Constable Dir Levies District Dir Upper.....(Appellant)

Versus

- 1) Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa Peshawar.
- 2) Home and Tribal Affairs Department, Khyber Pakhtunkhwa Peshawar.
- 3) Inspector General of Police (IGP) Khyber Pakhtunkhwa Peshawar.
- 4) Deputy Commissioner/Commandant Dir Levies District Dir Upper.
- 5) District Police Officer, (DPO) Dir Upper.....(Respondents)

Khyber Pakhtunkhwa
Service Tribunal

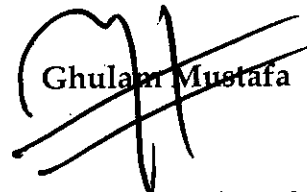
Diary No. 4873

Dated 14/4/2023

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19/4/23
Peshawar


Ghulam Mustafa

Superintendent DC Office
Upper Dir
MOB# 03133703703

Service appeal No. 322/2023

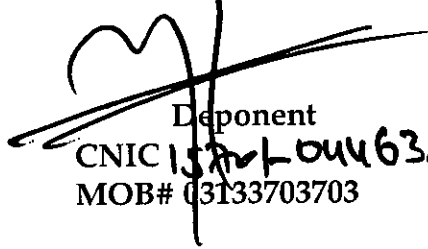
Muhammad Riaz s/o Gul Faqir Head Constable Dir Levies District Dir Upper.....(Appellant)

Versus

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- 5) District Police Officer, (DPO) Dir Upper.....(Respondents)

AFFIDAVIT

I, Ghulam Mustafa Superintendent, office of the Deputy Commissioner/Commandant Dir Levies District Dir Upper, do hereby solemnly affirm and declare on oath that the contents of the accompanying Para wise Comments on behalf of Respondent No. 04 are true and correct to the best of my knowledge and behalf that nothing has been concealed from this Honorable Court.


Deponent
CNIC 15271-0446324-9
MOB# 03133703703

ATTESTED

Azimat Ali Adnan
Notary Public
Judicial Complex Peshawar
14-04-2023

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service appeal No. 322/2023

Muhammad Riaz s/o Gul Faqir Head Constable Dir Levies District Dir Upper.....(Appellant)

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- 4) Deputy Commissioner/Commandant Dir Levies District Dir Upper.
- 5) District Police Officer, (DPO) Dir Upper.....(Respondents)

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ISSUANCE OF THE IMPUGNED NOTIFICATIONS DATED 22-03-2021 AND 21-10-2021 OF RESPONDENT NO. 02 WHEREBY THE RETIREMENT CRITERIA OF APPELLANT HAS BEEN FORMULATED IN DISREGARD OF THE PROVISION OF THE CIVIL SERVANT ACT 1973.

PARA -WISE COMMENTS ON BEHALF OF RESPONDENT NO. 04.

PRELIMINARY OBJECTIONS:

- 1. That the appeal is not maintainable in its present form.
- 2. That the appellant has got no locus standi to file the instant appeal.
- 3. That the appeal is not maintainable due to Mis-Joinder and Non-Joinder of necessary parties.
- 4. That the appellant has not come to the Court with clean hands.
- 5. That the appellant has concealed the material fact from the Honorable Court.

RESPECTFULLY SHEWETH

ON FACTS

- 1) **Correct** to the extent of appointment.
- 2) **Relates to record.**
- 3) **Incorrect.** After 25th Constitutional amendment 2018 both PATA and FATA were merged in the province of Khyber Pakhtunkhwa and forces of tribal areas were also merged in the regular police of the province however, in Malakand Division Levies Force is still regulated by Levy Rules 2013 (amended) and Deputy Commissioner is the Commandant of Levies Force (copy of Notification of the Government of Khyber Pakhtunkhwa Law, Parliamentary Affairs and Human Rights Department dated 12-03-2019 is attached at **Annexure "A"**).
- 4) **Incorrect.** As explained at para No. 03 above that in Malakand Division Levy Force is still regulated by the Levy Force Service Rules 2013 (amended).
- 5) **Incorrect.** The Secretary Home & Tribal Affairs Department Khyber Pakhtunkhwa Peshawar being competent authority amend the Levies Force Service Rules 2013 during the year 2021 vide Notification dated 22-03-2021, so far as the question of absorption of the Levies Force in regular police of the province is concerned the same has already been explained in para No. 03 above.
- 6) **Incorrect.** As explained at para No. 05 above that the Secretary Home & Tribal Affairs Department Khyber Pakhtunkhwa Peshawar being competent authority amend the Levies Force Service Rules 2013 again during the year 2021 vide Notification dated 21-10-2021, and as already explained at para 03 above that in Malakand Division Levies Force has not been absorbed

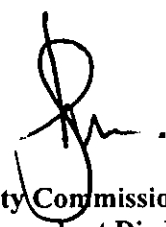
in regular police of the province and the same is still regulated by Levies Force Service Rules 2013 (amended).

- 7) **Incorrect.** The appellants have been retired from service as per Rule 17 Schedule-III of the Levy Force Service Rules 2013 (amended) and as per amended Notification dated 21-10-2021 of the Home & Tribal Affairs Department Khyber Pakhtunkhwa Peshawar i.e on attaining 45 years of age. As far as the question of Civil Servants and age of superannuation i.e 60 years is concerned the same has already been explained at Para, 3, 5 and 6 above. It is pertinent to mention here that Levies has been declared Force vide Khyber Pakhtunkhwa Act No. III of 2019 (copies enclosed at Annexure "B, C" and D).
- 8) **Correct** to the extent that the Notification dated 22-03-2021 and 21-10-2021 have been challenged in the Peshawar High Court Peshawar but the honorable court has dismissed the said writ petition vide judgment dated 29-11-2022 which is now pending for disposal before the Khyber Pakhtunkhwa Service Tribunal Peshawar (copy enclosed at "Annexure E").
- 9) **Incorrect.** No departmental appeal/application has been filed by the appellants before any of the respondents.

ON GROUNDS.

- a. **Incorrect.** As explain earlier the Secretary Home & Tribal Affairs Department Khyber Pakhtunkhwa Peshawar being competent authority may make necessary amendments in Levy Service Rules after fulfillment of legal/codal formalities.
- b. **Incorrect.** As explained at para No. 03 and 07 above.
- c. **In correct.** As explained at para No. 03 above.
- d. **Incorrect.** As explained at para No. 05 and 06 above.
- e. **Incorrect.** The appellant has been treated as per standing Levy Rules and no discrimination has been made by the respondent.
- f. **Incorrect.** As explained at Para No. 09 above.
- g. **Incorrect.** As explained at above paras the appellant has been retired from service as per standing Levy Rules.
- h. **Incorrect.** As explained at Para No. 05 and 06 above.

In light of the facts explained above, it is humbly prayed that the appeal filed by the appellant does not merit consideration, may kindly be dismissed with cost please.


**Deputy Commissioner/
 Commandant Dir Levies
 Upper Dir
 Respondent No. 04
 DC/Commandant
 Dir Levies**

Annex A

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FROM : HOMEDESE

FAX NO. : 9210065

14 Mar. 2019 4:36PM P1

EXTRAORDINARY
GOVERNMENT



REGISTERED NO. PIII
GAZETTE

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, TUESDAY, 12TH MARCH, 2019.

**GOVERNMENT OF THE KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS AND HUMAN RIGHTS
DEPARTMENT.**

NOTIFICATION

Dated Peshawar, the 12th March, 2019.

No. LEGIS: 1(4) 2019-Vol.— The following Ordinance by the Governor of the Khyber Pakhtunkhwa is hereby published for general information:

(KHYBER PAKHTUNKHWA ORD. NO. II OF 2019)

AN

ORDINANCE

to regulate and maintain the Khasadar Force previously working in the erstwhile Federally Administered Tribal Areas and now in the merged districts of the Province of the Khyber Pakhtunkhwa.

WHEREAS after Constitution (Twenty Fifth) (Amendment) Act, 2018 (Act No. XXXVII of 2018) the erstwhile Federally Administered Tribal Areas were merged in the Province of Khyber Pakhtunkhwa and the special provisions for the governance system in the said areas were omitted through said amendment, leading to the extension of the executive authority of the Province of the Khyber Pakhtunkhwa to the said areas;

AND WHEREAS the Khasadar Force, which was established in the erstwhile Federally Administered Tribal Areas through Executive Orders and instructions, for management of the said areas within the framework of territorial and collective responsibility, has now been lost their legal status, for working in the merged districts and sub-divisions;

Attested
RZK

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AND WHEREAS it is in public interest to allow the Khasadar Force to continue their functions for better public order, peace and security in the merged districts and sub-divisions; and to achieve the objectives, it is expedient to give legal status to the Khasadar Force in the merged districts and sub-divisions, and to revisit their institutional structure and functional assignment for effective discipline, better performance and optimal utility;

AND WHEREAS the Provincial Assembly is not in session and the Governor of the Khyber Pakhtunkhwa is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by Clause (1) of Article 128 of the Constitution of the Islamic Republic of Pakistan, the Governor of the Khyber Pakhtunkhwa is pleased to make and promulgate the following Ordinance:

1. Short title, application, extent and commencement,---(1) This Ordinance may be called the Khyber Pakhtunkhwa Khasadar Force (Maintenance, Regulation and Protection of Service) (Transition) Ordinance, 2019.

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

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

(4) It shall come into force at once.

2. Definitions.--- In this Ordinance, unless the context otherwise requires,-

(a) "Commandant" means the District Police Officer, as defined in the Khyber Pakhtunkhwa Police Act, 2017 (Khyber Pakhtunkhwa Ordinance No. II of 2017);

(b) "District Administration" means the Deputy Commissioner, Additional Deputy Commissioner, Assistant Commissioner, Additional Assistant Commissioner and their subordinate staff in the district;

(c) "District Police Officer" means Head of the Police, under section 21 of the Khyber Pakhtunkhwa Police Act, 2017 (Khyber Pakhtunkhwa Act No. II of 2017);

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

(e) "Khasadar Force" means the Khasadar Force constituted, through executive orders, for the erstwhile Federally Administered Tribal Areas and now re-constituted and maintained by Government under section 3 of this Ordinance;

Attested
R/S

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KHYBER PAKHTUNKHWA GOVT. GAZETTE, EXTRAORDINARY, 12th MARCH, 2019 104

- (i) "prescribed" means prescribed by rules;
- (g) "public agency" means any department of Government, its attached department, public authority, commission or autonomous body set up under any statutory instrument or public sector company or body corporate, owned, controlled or financed by Government; and
- (h) "rules" means rules made under this Ordinance.

3. **Re-constitution, regulation and maintenance of the Khasadar Force.**---(1) On promulgation of this Ordinance, the Khasadar Force, shall be reconstituted, regulated and maintained by Government in accordance with the provisions of this Ordinance and shall be known as the Khyber Pakhtunkhwa Khasadar Force, consisting of all existing strength of its members.

(2) The Khasadar Force shall be organized in senior ranks and junior ranks officers and officials.

(3) The senior rank officer shall consist of Commandant, who shall be District Police Officer, having additional charge of the Commandant in the District, while the junior ranks shall consist of the following:

- (a) Subedar Major;
 (b) Subedar;
 (c) Naib Subedar;
 (d) Havaldar; and
 (e) Khasadar.

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

(2) The general administration and operational control of the Khasadar Force shall vest with the Commandant in the District.

5. **Method of recruitment.**---(1) Subject to other provisions of this Ordinance, recruitment in the Khasadar Force shall be made, in the prescribed manner:

Provided that initial recruitment shall be made only in the rank of Khasadar Force:

Provided further that Government shall specify committee for recruitment and promotion in the Khasadar Force:

Provided also that members of the Khasadar Force may be absorbed in the Khyber Pakhtunkhwa Police in accordance with prescribed procedure.

Attested
 RPK

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(2) The Commandant shall be authority for posting and transfer of members of the Khasadar Force within the district.

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

(2) Without prejudice to the generality of the foregoing policing powers under sub-section (1), the Khasadar Force shall perform such institutional or organization functions and duties as are provided in the Khyber Pakhtunkhwa Police Act, 2017 (Khyber Pakhtunkhwa Act No. II of 2017).

7. Liability of Khasadar Force.---It shall be the duty of every member of the Khasadar Force to obey and execute all lawful orders and instructions, issued to him by the Commandant.

8. Power to make rules.---Government may make rules for carrying out the purposes of this Ordinance.

9. Ordinance to override other laws.---The provisions of this Ordinance shall have overriding effect, notwithstanding anything contained in any other law, on the subject, for the time being in force.

10. Actions taken in good faith.---No suit, prosecution, or other legal proceedings shall lie against the Government, any authority exercising powers under this Ordinance or any member of the Khasadar Force for anything done in good faith under this Ordinance or any rule made there under or matters specified in pursuance of this Ordinance.

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).

11. Removal of difficulty.---The Home and Tribal Affairs Department of Government may, by order, provide for the removal of any difficulty which may arise in giving effect to the provisions of this Ordinance.

12. Repeal and saving.---(1) Soon after the commencement of this Ordinance, all provisions of the circulars, rules, standing orders and regulatory instruments, relating to the Khasadar Force, inconsistent with the provisions of this Ordinance, shall stand revoked to the extent of inconsistency.

(2) Save as otherwise specifically provided, nothing in this Ordinance, or any repeal effected thereby shall affect or be deemed to affect:

Attested
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KHYBER PAKHTUNKHWA GOVT: GAZETTE, EXTRAORDINARY, 12th MARCH, 2019 106

- (a) the existing terms and conditions of service in the Khasadar Force unless amended through a substitute rule or instrument; and
- (b) the validity of anything done, action taken, investigation or proceedings commenced, orders issued, appointments made, direction given, proceedings taken or instrument executed or issued, under or in pursuance of any rule or regulatory instrument repealed or amended by this Ordinance and any such thing, action, investigation, proceedings, orders, appointment, direction, proceedings or instrument suits, right or claims shall, if in force at the commencement of this Ordinance and not inconsistent with any of the provisions of this Ordinance, continue to be in force, and have effect as if it were respectively done, taken, commenced, issued, made, directed, given, executed, or issued under this Ordinance.

Peshawar,
Dated the
11th March, 2019.

SHAH FARMAN
Governor of the Khyber Pakhtunkhwa

ZAKA ULLAH KHATTAK
Secretary to
Government of the Khyber Pakhtunkhwa,
Law, Parliamentary Affairs and
Human Rights Department.

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

Attested
RKH

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9107 KHYBER PAKHTUNKHWA GOVT: GAZETTE, EXTRAORDINARY, 12th MARCH, 2019SCHEDULE
[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	Hasan Khel in district Peshawar.
2	Daira Adam Khel in district Kohat.
3	Bettani in district Lakkhi Marawat.
4	Wazir in district Bannu.
5	Jandola in district Tank.
6	Darazinda in district Dera Ismail Khan.

Attested
Rah

(2) Casual leave may be allowed upto three days by Subedar Major. Casual leave up to nine days may be granted by the Deputy Commandant (to be notified by the Commandant) on the recommendation of the concerned JCO.

(3) Medical leave shall be granted by the Commandant on the production of medical certificate from the medical superintendent concerned.

16. **Salary.**-The Force personnel shall be entitled to receive pay and allowances as per their pay scales notified by the Federal Government from time to time.

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

18. **Conduct.**-The conduct of Force personnel shall be regulated by these rules or instructions issued by Government from time to time.

19. **Gratuity and pension.**-All Force personnel will be entitled to pension as per prevailing Federal Government rules.

20. **Compensation.**- (1) The family of Force personnel shall be granted death compensation in case the Force Personnel embraces martyrdom during discharge of his duty as per rates prescribed by the Federal Government.

(2) Force personnel shall be granted compensation in case of sustaining fatal injury or injuries during the discharge of his duty. If he is declared incapacitated for further services due to such fatality, he shall be entitled to gratuity and pension as per Federal Government Rules.

(3) 5% quota shall be reserved for sons and wards of martyred in initial recruitment of Force personnel.

Provided that in case of permanently incapacitated personnel of the force during the course of duty, preference shall be given to the sons and wards of such incapacitated Force Personnel in general recruitment.

21. **Funds.**-Force personnel shall be governed by the provision of general provident funds, benevolent funds and group insurance as prescribed for other employees of the Federal Government.

22. **Health care.**-Medical facilities for the Force personnel and their families shall be catered for at Government hospitals and dispensaries at par with other employees of the Federal Government.

23. **Monitoring and evaluation.**- (1) Commandant or Deputy Commandant of the Force shall set up suitable number of levy posts in their respective jurisdiction and shall assign suitable number of Force personnel at each of such levy post. In case of establishment of Levies Station within their jurisdiction shall require prior approval of the government.

(2) There shall be levy line in each district, which shall have all necessary facilities including parade ground, barracks, quarter guards, koth/armoury etc.

(3) Duty Register showing the duties assigned to each individual on day-to-day basis shall be maintained in each levy post /Levy Station/Levy Lines by a levy Muharir.

(4) Naib Subedar shall be responsible for carrying out the work assigned to Force personnel whose duties shall be entered in advance in the duty register.

(5) Registers including *roznamchas* as prescribed by the Commandant shall be maintained in every levy post/Station/Lines.

(6) Commandant, Deputy Commandant or any other officer of the District Administration shall in the course of their tours in their jurisdiction, may inspect duty register and *roznamchas of Levy posts/stations* and satisfy themselves that Force Personnel are carrying out their assigned duties. A note regarding absence from the post or from the place of duty of any Force personnel without leave, shall invariably be recorded by inspecting officers in the duty register. Such entry shall be communicated to the Commandant and Deputy Commandant (Operations) by incharge of the post/station within twenty four

Attested
R/S

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SCHEDULE -III
See Rule 17

S.#	Post/Rank	Length of service / Age
1	Subedar Major (BS-16)	38 years service or 03 years service as Subedar Major or 60 years age whichever is earlier
2	Subedar (BS-13)	35 years service or 03 years service as Subedar or 57 years age whichever is earlier
3	Naib Subedar (BS-11)	32 years service or 03 years service as Naib Subedar or 54 years age whichever is earlier
4	Havaldar (BS-8)	29 years service or 03 years service as Havaldar or 51 years age whichever is earlier
5	Naik (BS-7)	26 years service or 03 years service as Naik or 48 years age whichever is earlier
6	L/Naik (BS-6)	23 years service or 03 years service as L/Naik or 45 years age whichever is earlier
7	Sepoy (BS-5)	20 years service or 42 years age whichever is earlier

Attested
R/S

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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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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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EXAMINED

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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 Raqlb 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 Raqlb 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

ATTESTED
EXAMINER

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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,

ATTESTED
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Peshawar High Court

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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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High Court

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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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Therefore, the contention so agitated at the bars 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-

ATTESTED
EXAMINER
Peshawar High Court

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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

(H. B. Khan) Court Secretary

RECEIVED
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سرور خان سیال



OFFICE OF THE
DEPUTY COMMISSIONER/COMMANDANT DIR
LEVIES UPPER DIR



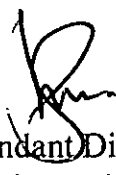
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No: 5940 /DC/LHC/C. Case

Dated Dir the 13 /04/2023

AUTHORITY LETTER

Mr. Ghulam Mustafa Superintendent Office of the Deputy Commissioner/Commandant Dir Levies District Dir Upper is hereby authorized to attend Khyber Pakhtunkhwa Service Tribunal Peshawar to submit parawise comments in service appeal No. 322/2023 Muhammad Riaz versus Government of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs Department Khyber Pakhtunkhwa.


Commandant Dir Levies/
Deputy Commissioner
Dir Upper.

Even No & Date:

Copy to Mr. Ghulam Mustafa Superintendent local office for information and necessary action.


Commandant Dir Levies/
Deputy Commissioner
Dir Upper.



**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

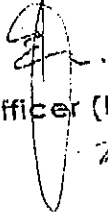
S.N	Post/ Rank	Eligibility for Promotion	Promotion Quota	Direct Quota	Qualification
1	Subedar Major (BS-16)	02 years' service as Subedar Or Total 21 years of service	100%		
2	Subedar (BS-14)	02 years' service as Naib Subedar Or Total 19 years of service	100%		
3	Naib Subedar (BS-11)	04 years' service 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			
7	Sepoy (BS-07)			100%	SSC
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

Attested
Rah

**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.


Section Officer (Police-II)

21/10/2021

Attested
RAB

**THE KHYBER PAKHTUNKHWA CONTINUATION OF LAWS IN THE
ERSTWHILE PROVINCIALY ADMINISTERED TRIBAL AREAS
ACT, 2018**

(KHYBER PAKHTUNKHWA ACT NO. III OF 2019)

CONTENTS

PREAMBLE

SECTIONS

1. Short title, extent and commencement.
2. Definition.
3. Continuation of laws.
4. Removal of difficulties.

*Attested
Rah*

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**THE KHYBER PAKHTUNKHWA CONTINUATION OF LAWS IN THE
ERSTWHILE PROVINCIALLY ADMINISTERED TRIBAL AREAS
ACT, 2018**

(KHYBER PAKHTUNKHWA ACT NO. III OF 2019)

*(First published after having received the assent of the Governor of the
Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa,
(Extraordinary), dated the 10th January, 2019).*

**AN
ACT**

*to provide for the continuation of laws in the erstwhile Provincially Administered Tribal
Areas of the Province of the Khyber Pakhtunkhwa.*

Whereas it is expedient to provide for the continuation of laws in the erstwhile Provincially Administered Tribal Areas which are merged in the Province of Khyber Pakhtunkhwa in pursuance of the Continuation (Twenty-Fifth Amendment) Act, 2018;

It is hereby enacted as follows:

1. **Short title, extent and commencement.**—(1) This Act may be called the Khyber Pakhtunkhwa Continuation of Laws in the Erstwhile Provincially Administered Tribal Areas Act, 2018.

(2) It shall extend to the areas as defined in clause (b) of section 2 of this Act.

(3) It shall come into force at once and shall be deemed to have taken effect from 7th September, 2018.

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

(a) "competent authority" in respect of—

(i) an Ordinance, the Governor of the Khyber Pakhtunkhwa;

(ii) an Act, the Provincial Assembly of the Khyber Pakhtunkhwa;
and

(iii) notifications, rules, regulations, orders and bye-laws, the authority in which the powers to make, alter, repeal or amend, vests under the law; and

(b) "Provincially Administered Tribal Areas" means the Provincially Administered Tribal Areas, as provided in sub-clause (i) of clause (b) of Article 246 of the Constitution of Islamic Republic of Pakistan.

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3. Continuation of laws.---(1)Notwithstanding anything contained in any other law, for the time being in force, all the laws, Regulations, rules, notifications and bye-laws, including Actions (in Aid of Civil Power) Regulation, 2011, or any other legal instrument, applicable in the erstwhile Provincially Administered Tribal Areas and having had the force of law under or in pursuance of Article 247 of the Constitution of Islamic Republic of Pakistan, now omitted vide the Constitution (Twenty-Fifth Amendment) Act, 2018, shall continue to remain in force until altered, repealed or amended by the competent authority.

(2) Notwithstanding anything contained in any other law, for the time being in force, Secretary to Government, Home and Tribal Affairs Department may, by notification in the official Gazette, confer policing powers upon member of the Federal and Provincial levies force in the Province of the Khyber Pakhtunkhwa, as and when required.

4. Removal of difficulties.---If any difficulty arises in giving effect to the provisions of this Act, the matter shall be placed before a Committee, to be constituted by the Chief Secretary, Khyber Pakhtunkhwa, for removing the difficulty.

Attested
RB

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Annex E



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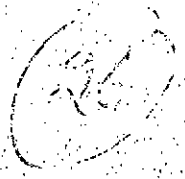
2014 ("Regulation"). Paragraph No.3 of the Regulation envisages for constitution and establishment of the Force and its functions. For ease reference paragraph Nos. 3 and 4 of the Regulation are reproduced as under:-

"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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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 Bhal 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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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 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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the better protection and administration of those parts. Section 5(1) of the Act 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 proscribed 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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