


# FORM OF ORDER SHEET

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

**Appeal No. 1259/2023**


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	31/05/2023	<p>The appeal of Mr. Mamoor Khan resubmitted today by Mr. Mansoor Salam Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on <b>02-06-2023</b>.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

The appeal of Mr. Mamoor Khan Ex-Sepoy Sub Division Bettani Levies Lakkai Marwat received today i.e. on 25/05/2023 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

The paper used in printing of grounds of appeal is very low standard which is not acceptable.

No. 1593 /S.T.

Dt. 26/5 /2023.

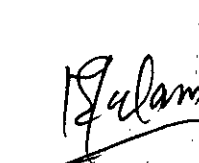


REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Masroor Salam Adv.  
High Court Peshawar.

Respected,

Objections put by  
the Service Tribunal  
has removed accordingly  
and requested for  
re-submission of the  
instant appeal for  
hearing in P.H.

  
30/05/2023  
Regards:  
Masroor Salam  
Counsel for  
Appellant.

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

SERVICE APPEAL NO. 1259 /2023

Mamoor Khan Ex-Sepoy

V/S

Govt of KP & others

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مأمور خان  
APPELLANT

THROUGH

MANSOOR SALAM  
ADVOCATE HIGH COURT

Salam  
24/05/2023

①

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR.**

SERVICE APPEAL NO. 1259 /2023

Mamoor Khan Ex-Sepoy Sub-Division Bettani Levies, District Lakki  
Marwat. (APPELLANT)

V E R S U S

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa Peshawar.
2. The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
3. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
4. The Deputy Commissioner District LakkiMarwat.
5. The District Police Officer, District LakkiMarwat.

(RESPONDENTS)

**APPEAL UNDER SECTION-04 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1973 AGAINST THE IMPUGNED NOTIFICATIONS DATED 22.03.2021 & 21.10.2021 AND AGAINST THE IMPUGNED OFFICE ORDER DATED 19.04.2021 OF COMMISSIONER (THE THEN COMMANDENT) LAKKI MARWAT, WHERE THE APPELLANT HAS DECLARED RETIRED FROM SERVICE BEFORE SUPERANNUATION AND AGAINST NOT TAKING ACTION ON DEPARTMENTAL APPEAL WITHIN STATUTORY PERIOD OF NINETY DAYS.**

**PRAYER:**

**ON THE ACCEPTANCE OF THIS SERVICE APPEAL THE IMPUGNED NOTIFICATION DATED 22.03.2021 AND 21.10.2021 AND IMPUGNED OFFICE ORDER DATED 19.04.2021, MAY VERY KINDLY BE DECLARED AS ILLEGAL, UNCONSTITUTIONAL, VOID AB INITIO AND INEFFEVTIVE UPON THE RIGHTS OF THE APPELLANT. THE RESPONDENT MAY KINDLY ALSO BE DIRECTED TO KEEP & NOT RETIRED THE APPELLANT ON THE BASIS OF AGE I.E. 42 YEARS AND ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND PROPER MAY ALSO BE AWARDED IN FAVOR OF THE APPELLANT.**

**RESPECTFULLY SUBMITTED;**

1. That appellant belongs from a respectable family, and was appointed as sepoy in respondents' department, since the date of appointment till 19.04.2021, he was performing his duties with great zeal and devotion.

2. That the service of appellant was protected/governed under PATA Levies Force Regulation 2012 and Provincially Administered Tribal Areas Federal Levies Force Service (Amended) Rules 2013. As per Rule 17 of the ibid rules read with schedule III, retiring age of levies force personals was given as 60 years.
3. That after merger of FATA and PATA with province of Khyber Pakhtunkhwa through 25<sup>th</sup> Constitutional Amendment vide dated 31.05.2018, resultanty Article 246,247 omitted & levies force were absorbed with the provincial police through legislation as well. However, in enactment, it has been mentioned that their service will be governed/protected under rules of 2013 unless and until they are absorbed into KP Police. **(Copy of 25<sup>th</sup> Constitutional Amendment is attached as Annex-A)**
4. That those levies personnel whose services are absorbed/merged in provincial police, their services are governed/protected under the police rules and other enactments of civil servants including pension rules etc. However, those levies employees who are not absorbed into police force left in vacuum.
5. That to the utmost shock and dismay of appellant, respondent No. 2 issued impugned notification dated: 22.03.2021 vide which retiring age of sepoy of levies force was reduced from 60 years to 42 years. **(Copy of Impugned Notification dated: 22.03.2021 is attached as Annex-B)**
6. That in light of the impugned notifications dated; 22.03.2021, respondent No.04 issued impugned office order dated: 19.04.2021 vide which appellant were thereby retired from service w.e.f 22.03.2021 on basis of attaining age of 42 years. **(Copy of impugned office order dated: 19.04.2021 is attached as Annex-C)**
7. That in the meanwhile respondent No.2 issued another impugned notification dated: 21.10.2021 vide which retirement age for Sepoy was determined as 45 years. It is pertinent to mention that when Article 247 of the Constitution was omitted then Regulation 2012 also stands abolished and has no legal sanctity at all and the impugned notifications which are issued under the said regulation has no legal status in the eyes of law. **(Copy of Impugned Notification dated: 21.10.2021 is attached as Annex-D)**
1. That keeping in view the above mentioned circumstances, appellant feeling aggrieved from the above notifications and office order of the respondents department, knocked the door of Hon'ble Peshawar High Court by invoking the writ jurisdiction of Article 199 of the Constitution 1973.
2. That after passing of the judgment of Hon'ble Peshawar High Court, Peshawar in W.P No. 367-M/2021 & W.P 2210-P/2021 dated:

29.11.2022, where the appellant has been declared as Civil Servant and directed to avail the proper forum of Provincial Service Tribunal Khyber Pakhtunkhwa. (Copy of Judgment dated 29.11.2021 is attached as Annexure-E)

3. That the appellant being aggrieved from the impugned notifications and office order, preferred departmental appeal on 02.02.2022 to the respondent No.1 that has not been decided and till date no response is made despite lapse of statutory period of 90 days. (Copy of Departmental Appeal is attached as Annex-F)
4. That appellant feeling aggrieved with the actions and inactions of the respondents, and having no other alternate adequate remedy, preferred instant service appeal before the Hon'ble Service Tribunal on the following grounds inter alia;

### GROUNDS

- A. That the respondents have no authority to issue the impugned notifications dated: 22.03.2021 & 21.10.2021 & office order dated 19.04.2021. Indeed, the impugned notifications & order are beyond the authority of its maker.
- B. That the actions and inactions of the respondents proclaim their own mala fide and discrimination meted out to the appellant, where the competent authority treated employee of the levies force according to law & rules and declared their age of retirement as 60 years, however appellant has been treated unlawfully, unconstitutionally, without lawful authority, hence liable to be treated alike other employees.
- C. That the appellant has not been treated in accordance with Article 25 of the Constitution of Pakistan 1973.
- D. That impugned notifications regarding changing retiring age and office order dated: 19.04.2021 are squarely falls in the domain of discriminatory treatment, as other civil servants especially police personnel would be retired at the age of 60 years while appellant is retired at the age of 45, wherein mala-fide and discrimination is apparent.
- E. That the impugned notifications & order dated: 14.09.2021 offends the provision of Article 4 of the Constitution of Pakistan 1973 to enjoy the protection of law and to be treated in accordance with law which is inalienable right of every citizen.
- F. That the appellant has got the fundamental right of being treated in accordance with law but the treatment meted out to the appellant is on consideration other than legal and has been deprived of his rights duly guaranteed to him by the Constitution of Pakistan 1973.

- G. That it has been settled by the Apex Court as well as superior courts that every law governing terms and conditions of service is to be applied prospectively and not retrospectively.
- H. That it is settled principle of law that where the law requires the things to be done in accordance with law the same shall be done accordingly and not otherwise.
- I. That after merger of FATA/PATA & their Sub-Division into province through 25<sup>th</sup> Amendment and after passing of law regarding absorption of levies force into police, neither the regulation nor rules made thereunder are applicable nor the respondents have any authority to issue any notification under the said regulation/rules.
- J. That it has been held in number of judgments that no legislation can be made which is detrimental to the terms and conditions of service of civil servant at the time of his initial appointment. As appellant whose services were protected/governed before merger under regulation of 2012 read with rules of 2013 in which retiring age was fixed as 60 years, so through subsequent amendment it can't be reduced.
- K. That the appellant has been deprived of his cardinal right of being heard and the impugned order has been passed affecting the vested rights of the appellant. Thus, overlooking the Principle of Natural Justice.
- L. That the appellant seeks permission of this Hon'ble Tribunal to advance others grounds and proofs at the time of hearing.

صہور خان  
APPELLANT

THROUGH

MANSOOR SALAM  
ADVOCATE HIGH COURT

Salam  
24/05/2023

**NOTE:**

Same nature of Service Appeals No. 168/2023 & 193/2023 is pending & fix before Hon'ble Service Tribunal on 14.07.2023, hence the instant appeal may also be club with same.

صہور خان  
DEPONENT

-5-

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

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

Mamoor Khan Ex-Sepoy V/S Govt of KP& others

**AFFIDAVIT**

I, Mamoor Khan S/o Sher Bahadur, Village & Post Office Ghazni Khel, District Lakki Marwat (Appellant) do hereby affirm and declare that the contents of instant Service Appeal are true and correct and nothing has been withheld from this Hon'ble Tribunal.

میسور خان  
**DEPONENT**  
**(APPELLANT)**  
CNIC: 11201-3705040-3  
Cell: 0345-1953474

Mansoor Salam  
**IDENTIFIED BY:**  
Mansoor Salam  
Advocate High Court



REGISTERED No. M - 302  
L - 7646

**The Gazette of Pakistan**



EXTRAORDINARY  
PUBLISHED BY AUTHORITY

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ISLAMABAD, TUESDAY, JUNE 5, 2018.

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PART I

Acts, Ordinances, President's Orders and Regulations

SENATE SECRETARIAT

*Islamabad, the 4th June, 2018*

No. F. 9 (30)/2018-Legis.—The following Act of *Majlis-e-Shoora* (Parliament) received the assent of the President on 31st May, 2018 and is hereby published for general information:—

ACT No. XXXVII of 2018

*An Act further to amend the Constitution of the Islamic Republic of Pakistan*

WHEREAS it is expedient further to amend the Constitution of the Islamic Republic of Pakistan for the purposes hereinafter appearing;

It is hereby enacted as follows:—

1. **Short title and commencement.**—(1) This Act may be called the Constitution (Twenty-fifth Amendment) Act, 2018.

(2) Except as provided in this Act, it shall come into force at once.

(713)

Price: Rs. 3.00

[5996(2018) Ex.Gaz.]

*Jalain*  
ATTESTED

2. **Amendment of Article 1 of the Constitution.**—In the Constitution of the Islamic Republic of Pakistan, hereinafter referred to as the Constitution, in Article 1, in clause (2),—

- (i) in paragraph (b), after semi-colon the word “and” shall be inserted;
- (ii) paragraph (c) shall be omitted; and
- (iii) paragraph (d) shall be renumbered as paragraph (c).

3. **Amendment of Article 51 of the Constitution.**—In the Constitution, in Article 51,—

- (i) in clause (1), for the expression “three hundred and forty-two” the expression “three hundred and thirty-six” shall be substituted;
- (ii) for clause (3) and the Table thereunder, the following shall be substituted, namely:—

“(3) The seats in the National Assembly referred to in clause (1), except the seats mentioned in clause (4), shall be allocated to each Province and the Federal Capital as under:—

	General Seats	Women Seats	Total Seats
Balochistan	16	4	20
Khyber Pakhtunkhwa	45	10	55
Punjab	141	32	173
Sindh	61	14	75
Federal Capital	3	—	3
<b>Total:</b>	<b>266</b>	<b>60</b>	<b>326</b>

- (iii) after clause (3), substituted as aforesaid, the following new clause shall be inserted, namely:—

“(3A) Notwithstanding anything contained in clause (3) or any other law for the time being in force, the members of the National Assembly from the Federally Administered Tribal Areas to be elected in the general elections, 2018 shall continue till dissolution of the National Assembly and thereafter this clause shall stand omitted.”; and

- (iv) in clause 5, the words, brackets, figure and comma “Save as provided in clause (3) in respect of the Federally Administered Tribal Areas,” shall be omitted and for the word “the”, occurring for the first time, the word “The” shall be substituted.

**ATTESTED**  
*[Signature]*

4. **Amendment of Article 59 of the Constitution.**—In the Constitution, in Article 59,—

- (1) in clause (1),—
  - (a) for the words “one hundred and four” the word “ninety-six” shall be substituted; and
  - (b) paragraph (b) shall be omitted;
- (2) in clause (3), paragraph (b) shall be omitted; and
- (3) after clause (3), amended as aforesaid, the following new clause shall be inserted, namely:—

“(3A) Notwithstanding the omission of paragraph (b) of clause (1) and the omission of paragraph (b) of clause (3), the existing members of the Senate from the Federally Administered Tribal Areas shall continue till expiry of their respective terms of office and on the expiry of the aforesaid terms this clause shall stand omitted.”

5. **Amendment of Article 62 of the Constitution.**—In the Constitution, in Article 62, in clause (1), in paragraph (c), the words “or the Federally Administered Tribal Areas” shall be omitted.

6. **Amendment of Article 106 of the Constitution.**—In the Constitution, in Article 106,—

- (I) in clause (1), in the Table, for the expression “Khyber Pakhtunkhwa”, in the first column and the entries relating thereto in the second, third, fourth and fifth columns, the following shall be substituted, namely:—

“Khyber Pakhtunkhwa 115 26 4 145”; and

- (II) after clause (1), amended as aforesaid, the following new clauses shall be inserted, namely:—

“(1A) The seats for the Province of Khyber Pakhtunkhwa, referred to in clause (1), include sixteen general seats, four seats for women and one seat for non-Muslims in respect of the Federally Administered Tribal Areas:

Provided that elections to the aforesaid seats shall be held within one year after the general elections, 2018.

ATTESTED  
Gulam

(1B) After elections to seats referred to in clause (1A), both clause (1A) and this clause shall stand omitted.”

7. **Amendment of Article 155 of the Constitution.**—In the Constitution, in Article 155, in clause (1), the words and comma “or the Federally Administered Tribal Areas,” shall be omitted.

8. **Amendment of Article 246 of the Constitution.**—In the Constitution, in Article 246,—

- (i) in paragraph (b), the word “and”, at the end, shall be omitted;
- (ii) in paragraph (c), for the full stop at the end, a semi colon and the word “; and” shall be substituted; and
- (iii) after paragraph (c), as amended herein above, the following new paragraph shall be added, namely:—

“(d) On the commencement of the Constitution (Twenty-fifth Amendment) Act, 2018, the areas mentioned in—

- (i) paragraph (b),—
  - (a) in sub-paragraph (i), shall stand merged in the Province of Khyber Pakhtunkhwa; and
  - (b) in sub-paragraph (ii), shall stand merged in the Province of Balochistan; and
- (ii) paragraph (c), shall stand merged in the Province of Khyber Pakhtunkhwa.”

9. **Omission of Article 247 of the Constitution.**—In the Constitution, Article 247 shall be omitted.

*Amjed Pervez*  
**ATTESTED**

AMJED PERVEZ,  
Secretary.



GOVERNMENT OF KHYBER PAKHTUNKHWA  
HOME AND TRIBAL AFFAIRS DEPARTMENT

**NOTIFICATION**

Peshawar, dated the 22-1-2013

No. SP/PA/HR-1117/MK/HR/Secy/MS/2013. In exercise of the powers conferred by Section 6 of the PATA Local Form Regulation, 2012, the Provincial Government of Khyber Pakhtunkhwa is pleased to direct that in the PATA Federal Law Enforcement Service (Amended) Rules, 2013, the following special amendments shall be made, namely:-

AMENDMENTS

In the said rules:-

1. In Rule 4, sub-rule (1), the following shall be substituted, namely:-

(1) The candidate 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 rank of Subedar Major and Superintendents shall be Secretary, Home Department.

2. For Rule 17, the following shall be substituted, namely:-

"17. Requirement As Levy candidate shall relax as per Schedule-III and no extension in special after recruitment shall be granted".

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

"Schedule-III  
See rule (7)

S. No.	Name of the Post / Rank	Qualification for Promotion	Length of Service / Age
1	Subedar Major (SB-12)	On the basis of Superior grades from amongst the Subedar Major Immediate Promotion	Thirty Three Years, or Three Years Service as Subedar Major or Six Years of age whichever is earlier.
2	Subedar (SB-11)	By promotion on the basis of Juniority from those in the following - namely: (A) Fifty Percent (50%) from amongst the men - Superior grade - Immediate promotion; and (B) Fifty Percent (50%) from amongst those having Secondary School Certificate	Twenty Five Years Service or Four Years Service as Subedar or Six Years of age whichever is earlier.
3	Subedar (SB-11)	By promotion on the basis of Seniority from those in the following - namely: (A) Fifty Percent (50%) from amongst the men - Superior grade - Immediate promotion; and (B) Fifty Percent (50%) from amongst those having Secondary School Certificate	Thirty Three Years Service or Four Years Service as Subedar or Six Years of age whichever is earlier.

OFFICE OF THE SECRETARY

ISSUED: IN MS

SECRETARY

*Gulam*  
**ATTESTED**

S. No.	Grade of the Post / Posts	Qualification for Promotion	Length of Service / Age
1	Magistrate (B-10)		Thirty One years service of Three years service as Magistrate or J. M. One year of age, whichever is earlier.
2	Mag. (B-9)		Twenty Nine years service as Mag. or J. M. Two years of age, whichever is earlier.
3	Mag. (B-8)		Twenty Seven years service as J. M. or J. M. One year of age, whichever is earlier.
4	Mag. (B-7)		Twenty Five years service as J. M. or J. M. One year of age, whichever is earlier.

SECRETARY TO  
GOVERNMENT OF KHYBER PAKHTUNKHWA  
HOME & TRIBAL AFFAIRS DEPARTMENT

Date: 10/07/2010

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. PSD to the Chief Secretary, Khyber Pakhtunkhwa.
  10. Accountant General, Khyber Pakhtunkhwa.
  11. Division Information, Khyber Pakhtunkhwa.
  12. The Manager 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 (Policy-II)

*Shilam*  
**ATTESTED**

**GOVERNMENT OF KHYBER PAKHTUNKHWA  
HOME AND TRIBAL AFFAIRS DEPARTMENT**

**NOTIFICATION**

Peshawar, dated the 22-3-2021

**No.SO(Police-IJHD/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;

1. In rule 4, Sub-rule (1), the following shall be substituted namely;

- i. Commandant shall be the appointing authority for initial recruitment and promotion up to the rank of Subedar

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

2. 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"

3. For Schedule-III, the following shall be substituted, namely;

**Schedule-111**

(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 Seniority cum-fitness from amongst the Subedits having intermediate qualification	Thirty Seven Years or Three Years Service as Subedar major or Sixty Years of age whichever is earlier
2	Subedar (BS-13)	By promotion on the basis of Seniority Cum Fitness in the following manner namely: i. Fifty Percent (50%) from amongst the Naib Subedars having intermediate qualification; and ii. Fifty Percent (50%) from amongst Naib Subedars having secondary School Certificate.	Thirty Five Years service or Five Years service as Subedar or Sixty years of age whichever is earlier.
3	Naib Subedar (BS-11)	By promotion on the basis of Seniority Cum Fitness in the following manner namely: i. Fifty Percent (50%) from amongst the Naib Subedar having Intermediate qualification, and ii. Fifty Percent (50%) from amongst Naib Subedars having Secondary School Certificates	Thirty Five Years service or Five Years service as Sbedar or Sixty years of age whichever is earlier.

*Balam*  
**ATTESTED**

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

**SECRETARY TO  
GOVERNMENT OF KHYBER PAKHTUNKHWA  
HOME & TRIAL 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. Director Information, Khyber Pakhtunkhwa.
12. The Manager Government Printing & Stationary 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)

*Salman*  
**ATTESTED**





**OFFICE OF THE**  
**DEPUTY COMMISSIONER/ COMMANDANT LEVIES FORCE**  
**LAKKI MARWAT KHYBER PAKHTUNKHWA** Ph: 0969-538330-31, Fax #: 538333  
 email: [dekkimurwat@goat.gov.pk](mailto:dekkimurwat@goat.gov.pk) facebook: [www.facebook.com/dekkimurwat](https://www.facebook.com/dekkimurwat)  
 No. 1173 / Dated: 19/04/2021

**RETIREMENT ORDER.**

In pursuance of the Secretary to Government of Khyber Pakhtunkhwa, Home & Tribal Affairs Department Notification bearing No. SO(Police-II)HD/MKD/Levies/Misc./2020 dated 22.03.2021, the following Levy Personnel are hereby retired from services w.e.from 22.03.2021 (A/N) on the basis of completion of their prescribed age limit as mentioned in the Schedule-III (See rule-17) of PATA Federal Levies Force Service (Amended) Rules 2013.

S.N	Name	Father Name	Designation	Date of Birth	Age on 22.3.2021	Required age limit
1	Safi Ullah	Hayatullah	Naik	12.11.1965	55 Years + 4 M-10 D	48 years
2	Umar Khan	Habibullah	Lance Naik	01.07.1969	51 Years 8 M- 21 D	45 Years
3	Fazal Rehman	Muhammad Amir	Sepoy	03.09.1972	48 Years 6 M- 19 D	42 Years
4	Nour Nawaz	Sher Nawaz	Sepoy	11.08.1971	49-Years 7 M- 11 D	42 Years
5	Badur Munir	Habib Ullah Khan	Sepoy	14.04.1977	43-Years 11 M- 8 D	42 Years
6	Syed Rehman	Zarif Khan	Sepoy	23.04.1974	42-Years 10 M-29 D	42 Years
7	Shah Hussain	Abdullah Jan	Sepoy	11.09.1978	42-Years 6 M- 11 D	42 Years
8	Muhamad Khan	Sher Bahadar	Sepoy	06.02.1976	45-Years 1 M - 16 D	42 Years

~~Deputy Commissioner/  
Commandant Levy Force  
District Lakki Marwat~~

Even No. & Date.

Copy forwarded to:-

1. The District Accounts Officer Lakki Marwat
2. The Section Officer (Police-II) Home & Tribal Affairs Department Govt of Khyber Pakhtunkhwa Peshawar
3. The Incharge Levy Force Distt Lakki Marwat for further necessary action.
4. Subedar Levy Force District Lakki Marwat
5. Levy Personal concerned.

~~Deputy Commissioner/  
Commandant Levy Force  
District Lakki Marwat~~

*Qalam*  
**ATTESTED**



GOVERNMENT OF KHYBER PAKHTUNKHWA  
HOME AND TRIBAL AFFAIRS DEPARTMENT

**NOTIFICATION**

Peshawar, dated the 21-10-2021

NO. SO(POLICE-I)HD/1-3/FEDERAL LEVIES 2021:- In exercise of the power conferred by Section-9 of the PATA Levies Force Regulation, 2012, and in continuation of this department notification No. SO(Police-I)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 Thirty Years of age whichever is earlier.
2	Subedar (BS-14)	Thirty Five Years of service or Five Years' service as Subedar or Fifty years of age whichever is earlier.
3	Naib Subedar (BS-11)	Thirty Three Years of Service or Seven Years' service as Naib Subedar or Fifty Years of age whichever is earlier.
4	Howaldar (BS-09)	Thirty one years of service or fifty one year of age whichever is earlier.
5	Naik (BS-06)	Twenty nine years of service or forty nine years age whichever is earlier.
6	L/Naik (BS-03)	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. No.	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 Howaldar Or Total 17 years of service	100%		
4	Howaldar (BS-09)	05 years' service as Naik Or Total 13 years of service	100%		
5	Naik (BS-06)	03 years' service as Lance Naik Or Total 08 years of service			
6	L/Naik (BS-03)	05 years' service as Sepoy			
7	Sepoy (BS-07)			100%	SSC
8	Head Armourer (BS-5)	05 years' service as Assistant Armourer	100%		SSC Qualification with Certificate of Armourer
9	Assistant Armourer (BS-1)			100%	SSC Qualification with Certificate of Armourer

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

*Gulaw*  
**ATTESTED**

SEARCHED WITH CARE

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

*(Signature)*  
**ATTESTED**

Judgment Sheet

PESHA WAR 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 Adminstrated 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."*

**ATTESTED**

*Efulam*

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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*[Handwritten signature]*

(Police-II)HD/1-3, rule 17 was further amended by deleting schedule-IV as **"All uniformed force shall retire from service on attaining the age of superannuation i.e. Sixty (60) years or they may opt for retirement after completion of twenty-five (25) years regular service"**. Thereafter once again through certain modifications rule, 17 was amended by giving life to the deleted schedule-III of the rules 2013 as under:-

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

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

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

6. Learned counsel representing the petitioners vehemently argued that the

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

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



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

8. Heard. Record perused.

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



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

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

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

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

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

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

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

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

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

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be guided in accordance with this Regulation and the rules.

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

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

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

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

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

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

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

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

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

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

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Exchequer and performs the policing service in the erstwhile PATA.

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

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

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

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

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**ATTESTED**

- (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 Pakistani 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).

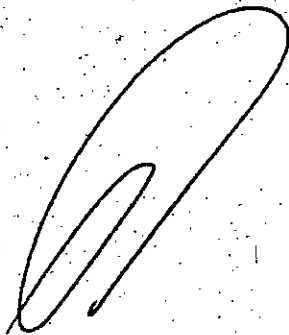
In the said judgment, the Apex Court has held:

"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:

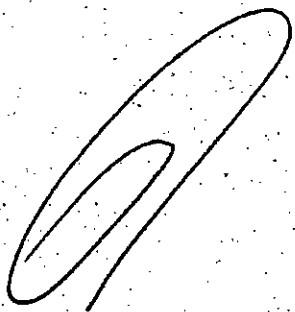
"7....Perusal of these rules clearly shows that they are all embracing, and therefore, under the amendment of section 1 of the Pakistan Rangers Ordinance, these rules would prevail over the Rules of 1973. The Pakistan Rangers Ordinance was promulgated to constitute a force called the Pakistan Rangers 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 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



*Palani*  
**ATTESTED**



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

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

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

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

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

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Gulam



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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 Gulam

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

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

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**ATTESTED**

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 according 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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**ATTESTED**

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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

ATTESTED *Galan*

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.**

ATTESTED

*Julian*

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

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

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

ATTESTED

*H. Gulam*

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

(HON'BLE Court Secretary)

*[Signature]*  
11/12/22

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21-12-22  
21-12-22

*[Signature]*

*[Signature]*  
**ATTESTED**

To, The Chief Secretary  
Khyber Pakhtunkhwa.

*Secretary*  
Deputy Secretary/  
PS to Chief Secretary  
Khyber Pakhtunkhwa  
-43-

**SUBJECT:**

DEPARTMENTAL APPEAL AGAINST THE IMPUGNED NOTIFICATION DATED 22.03.2021 OF THE OFFICE OF SECRETARY HOME KHYBER PAKHTUNKHWA WHILE USING CONFRRED POWERS BY PATA LEVIES FORCE REGULATION 2012 (REPEALED) SCHEDULE-III OF PATA FEDERAL LEVIES FORCE SERVICE (AMENDED) RULES 2013, AND AGAINST THE IMPUGNED OFFICE ORDER DATED 19.04.2021 OF COMMISSIONER LAKKI MARWAT, WHERE THE APPELLANT HAS DELARED RETIRED FROM SERVICE BEFORE SUPERANNUATION, WITH CURSURY AND WHIMSICAL MANNER.

*SSM*  
*MS(P/L)*

Respected Sir,

With high reverence, utmost obeisance, and due deference, the Appellant very humbly solicits the instant Departmental Appeal to your good-self office, to the following effect;

*S. J. (L & K)*

*3/2/23*  
*ASST*

*06/01/23*

1. That the Appellant is a naturally born bona-fide citizen of Islamic Republic of Pakistan belongs from a respectable family & was appointed as Sepoy in levies force in District Lakki Marwat.
2. That the on 29.08.2012, provincial administed tribal areas levies force regulation 2012 has been introduced that were applicable to all the levies officials of said areas i.e. provincial tribal areas Khyber Pakhtunkhwa.
3. That under Sec-09 of PATA Levies Force Regulation 2012, the provincial government of Khyber Pakhtunkhwa has established certain rules on 15.02.2013, for levies employees, which are known provincial administered tribal areas i.e. PATA, Federal Levies Force Service (Amended) Rules 2013.
4. That according to Rule-17 of the above mention rules, all levies personnel shall retired as per Schedule-III of the Levies Force Service (Amended) Rules 2013 and no extension in service beyond retirement shall be granted & according to Schedule-III of provincially administered tribal areas PATA Federal Levies Force Service (Amended) rules 2013 constitute 20 years service or 42 years age whichever is earlier for appellant.
5. That Khyber Pakhtunkhwa home & tribal affairs department circulate a notification vide No. SO (Levies)HD/FLW/1-1/2013/Vol.1 dated 12.12.2013 which amended schedule-I of rule-04(2) & schedule-III of rule-17 under Para-0 of regulation for PATA levies force 2012 & rule-24 of PATA federal levies force service (Amended) rules 2013, where the retirement age of the appellant was extended to 60 years.
6. That later on home & tribal affairs department of Khyber Pakhtunkhwa partially modified previous notification dated 12.12.2013 while issuing dated 17.03.2014, and recommended that PATA levies force

D.No. 6/2023  
Date: 6/2/23  
L&K Section  
Home & T&A Deptt

*Jaliam*  
**ATTESTED**



7. That the Governor Khyber Pakhtunkhwa, with prior approval of President of Pakistan, under Article 247 (4) of constitution of Islamic Republic of Pakistan, has promulgated the "PATA provincial levies force regulation 2014 vide dated 14.04.2014.

8. That in 2015, home & tribal affair department of Khyber Pakhtunkhwa while using the power conferred by R-09 of PATA provincial levies force regulation 2014 has issued a notification vide No. ALD-III/REG:1(6)2012/8066-68 dated 14.04.2015 and make rules known "The PATA Provincial Levies Force Rules 2015, more so the said rules denoted under R-16(1) that all uniformed personnel shall retire as per schedule-IV and no extension in service after retirement shall be granted similarly under R-16(2) all non-uniformed personnel shall retire from service on attaining the age of superannuation or they may opt from the retirement after completion of 25 years of regular service and no extension in service after retirement shall be granted and R-17 of PATA levies force rules 2015, all employees shall be entitled to pension & gratuity as per government rules.

9. That after 25<sup>th</sup> Constitutional amendments 2018, erstwhile FATA merged in Khyber Pakhtunkhwa and federal levies force as established under Federal Levies Force Regulation 2012 & working in FATA areas has eventually lost their legal position working in merge districts & sub-divisions, hence it was in the best public interest to allow the federal levies force to continue their functions/duties in merge districts & sub-division, for controlling, regulating & maintaining law & order & peace, for which government of KP enacted "KP Levies Force Act 2019 on dated 16.09.2019.

10. That it is pertinent to mention here that R-09 of KPK Levies Act 2019 suggested that i) the members of levies force may be absorbed in police, subject to the procedure as may be determined by government and ii) until their absorption in the police, the members of the levies force shall be governed by their existing terms & conditions of service under the federal levies force (amended) service rules 2013.

11. That as per the R-15(1) of KPK levies force act 2019, the federal levies force regulation 2012 and KPK levies force ordinance 2019 was repealed. However R-15(2) says "Notwithstanding the repeal of the federal levies force regulation 2012 under sub-sec(1), the federal levies force (amended) service rules 2013 shall continue to remain in force and the terms & conditions of the service of all the members of the levies force shall be governed there under, until new rules are made under this act.

12. That respondent department issued another notification dated 14.07.2020 where amendments were brought in PATA provincial levies force rules 2015, and according to R-16(a) of sub-rule (1) all uniformed force shall retire from service on attaining the age of superannuation or they may opt for retirement after completion of 25 years regular service, however clause (b) of schedule-IV shall be deleted.

13. That later on impugned notification issued on 22.03.2021 which amended the PATA federal levies force service (amended) rules 2013 under Sec-09 of repealed PATA levies force regulation 2012 and reduced the age of the retirement of the appellant from superannuation to 42 years for Sepoy and on the basis of new amendments deputy commissioner/commandant levy force Lakki Marwat passed the orders, whereby the appellant was shown retired from service before the age of superannuation. (Copy of the impugned notification dated 22.03.2021 is Annexure-A)

*Gulam*  
**ATTESTED**

14. That after the above mentioned notification the chief minister of province issued the directives for restoration of schedule-III of federal levies rules 2013 & schedule-IV of provincial levies rules 2015 to all deputy commissioners of district Swat, Malakand, Dir, Upper & Lower Chitral, Kohat, Hangu, Karak, Lakki Marwat & Torghar.

15. That a meeting of anomaly committee under the chairmanship of special secretary-II of home department was held on 26.04.2021 about the federal levies rules 2013, where committee proposed amendment in schedule-III, by which retiring age for the appellant (Sepoy-05) was proposed 45 years.

16. That keeping in view the supra-mentioned episode, the grievances, that comes into existence, the Appellant approaches to knock the door of competent court/forum & invoke the writ jurisdiction of Peshawar High Court under Article 199 of Islamic Republic of Pakistan, where Peshawar High Court in their detail judgment, awarded by larger bench, declared the appellant Civil Servant and stated that appellant be treated under Civil Servant Act 1973.

17. That from the supra-mentioned episode, the grievances, that comes into existence, the appellant approaches competent authority in shape of departmental representation/appeal for redressal of their contentions & grievances upon the following grounds, inter-alia;

**GROUND:**

- A. That the amended schedule-III of PATA federal levies rules 2013 dated 22.03.2021 is against the law, rules and as such the competent authority is under obligation to either withdraw it or mend it and bring it as per service laws. The said amendment of schedule-III is wrong, mala-fide, grudgeful, immeritorious, and unlawful and is liable to be rectified / modified.
- B. That the inaction of the competent authority while retiring the appellant pre-superannuation is illegal and against the PATA federal levies force service (amended) rules 2013 & PATA provincial levies rules 2015 & against the fundamental rights of the appellant as guaranteed by the constitution of Pakistan.
- C. That laws of the civil servants on the subject matter is very much clear from its very face that age of superannuation extended to 60 years vide Khyber Pakhtunkhwa Civil Servants (Second) ordinance 1977 w.e.f 22.11.1976 and against the Civil Servants-(Amendments) ordinance 2021 where it says that civil servant shall retire from service on the completion of 60 years of age.
- D. That it is a cherished principal of law, that where a law requires a thing to be done in a particular manner, the same is to be done in that manner and not otherwise.
- E. That R-9 of KP levies Act 2019 i.e. the members of levies force may be absorbed in KP police force, subject to the procedure as may be determined by government & until their absorption in police force, the members of levies force shall be governed by their existing terms & conditions of service under federal levies force (amended) service rules 2013, where the age of retirement is 60 years, furthermore the law and courts of the country have always encouraged and preferred that rules are to be followed and have deplored, discoursed and depreciated any violation or variation therein.

ATTESTED

- F. That from all prospective, the impugned order is wrong and void and is liable to be modified and rectified and the appellant being a civil servant has to be treated according to services, more so the inaction of the competent authority is based on mala-fide, on ulterior motives, and against the norms & natural justice.
- G. That the appellant is eligible, employable for force job, experienced therefore his retirement of pre-superannuation is against the Pension Rules, and the inaction on the part of the competent authority against the appellant has financially shake and adversely affected the appellant.
- H. That the discrimination meted out to the appellant, where the competent authority treated other employee of the levies force according to law & rules and declared their age of retirement as 60 years, however appellant has been treated unlawfully, unconstitutionally, without lawful authority, hence liable to treated alike other employees.

It is therefore most humbly prayed that on acceptance of the instant Departmental Appeal, the impugned Notification dated 22.03.2021 be declared illegal, ineffective upon the rights of appellant, also declared office order of DC Lakki Marwat dated 19.04.2021 be null & void & by doing so, the Appellant may kindly be reinstated on the basis of notification dated 14.07.2020 on their OPS with all back & consequential benefits.

**Note:** The Appellant also implores and beseeches for personal hearing as well.

**Date:** 01.02.2023

Ex-Sepoy  
Mamoor Khan S/o Sher Bahadur  
Ghazni Khel, Lakki Marwat  
CNIC: 11201-3705040-3

*Mamoor Khan*  
**ATTESTED**

# (POWER OF ATTORNEY)

## BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR,

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

Mamooy Khan VS GOVT. OF KP & OTHERS

I, Mamooy Khan do hereby nominated and appointed MANSOOR SALAM, Advocate High Court, Peshawar, to be counsel in the above matter for me/us and on my/our behalf as agreed to appear, plead, act and answer in the above court or any appellate court or any court to which the business is transferred in the above matter as and is agreed to sign and file petition, appeals, statements, accounts, exhibits, compromises or other documents whatsoever, in connection with the said matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc and to apply for and issue summons and other writs or subpoena and to apply for and get issued any arrest, attachment or other execution, warrants or order and to conduct any proceedings that may arise there out; and to apply for and receive payment of any or all sums or submit the above matter to arbitration, and to employ an other legal practitioner authorizing him to exercise the power and authorities hereby conferred on the advocate whenever he may think fit to do so.

AND to do all acts legally necessary to manage and conduct the said case in all respects whether herein specified or not, as may be proper and expedient.

AND I/WE hereby agree to ratify and confirm all lawful acts done on my/our behalf; under or by virtue of these present or of the usual practice in such matter. PROVIDED always that I/WE undertake at the time of calling of the case by the court I/MY authorized agent shall inform the advocate and make him appear in the court, if the case, may be dismissed in default, it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us.

IN WITNESS WHERE OF I/We hereunto set MY/OUR hand to these presents, the contents of which have been explained to and understood by ME/US this 24<sup>th</sup> day of May 2023.

EXECUTANT محمود خان

Accepted subject to the terms regarding fees:

Mansoor Salam  
24/05/2023  
**MANSOOR SALAM**  
ADVOCATE HIGH COURT, PESHAWAR  
BC No.(BC-11-1968)

OFFICE: 15-B, Haroon Mension Plaza, Khyber Bazar, Peshawar.  
Contact#: 0333-9730452