

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 6572/2021.

**Manzoor Ahmad s/o Fazal Rabi r/o village Mansoor Abad Tehsil Khall District Dir Lower
.....Appellant.**

Vs

- 1. Commandant Dir Levies/Deputy Commissioner Dir Upper.**
- 2. Subidar Major Dir Levies, Dir Upper.**
- 3. Government of Khyber Pakhtunkhwa through Secretary Home Civil Secretariat,
Peshawar.....Respondents.**

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Raza Ullah



**Superintendent DC Office
Upper Dir
MOB# 03065748800**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

1

Service Appeal No. 6572/2021.

Manzoor Ahmad s/o Fazal Rabi r/o village Mansoor Abad Tehsil Khall District Dir Lower
.....Appellant.

Vs

1. Commandant Dir Levies/Deputy Commissioner Dir Upper.
2. Subidar Major Dir Levies, Dir Upper.
3. Government of Khyber Pakhtunkhwa through Secretary Home Civil Secretariat,
Peshawar.....Respondents.

AFFIDAVIT

I, Raza Ullah 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. 01. 02 & 03 are true and correct to the best of my knowledge and behalf that nothing has been concealed from this Honorable Court.



Deponent
CNIC 15702-2500720-3
MOB# 03065748800

ATTESTED



06-2023

It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense has been struck off cost.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 6572/2021.

Manzoor Ahmad s/o Fazal Rabi r/o village Mansoor Abad Tehsil Khall District Dir Lower
Appellant.

Vs

1. Commandant Dir Levies/Deputy Commissioner Dir Upper.
2. Subidar Major Dir Levies, Dir Upper.
3. Government of Khyber Pakhtunkhwa through Secretary Home Civil Secretariat,
 Peshawar.....Respondents.

**JOINT PARA -WISE COMMENTS ON BEHALF OF RESPONDENT NO.1, 02 & 03
 RESPECTFULLY SHE WITH THAT THE RESPONDENTS SUBMIT AS UNDER.**

PRELIMINARY OBJECTIONS:

1. That the appellant 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 does not come to the honorable Service Tribunal with clean hands.
5. That the appellant concealed the material fact from the Honorable Tribunal.
6. That the appeal is based on by law and limitation.

ON FACTS

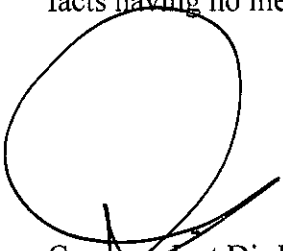
1. Pertains to record.
2. **Correct** to the extent of appointment.
3. **In correct.** The District Coordination Officer Dir Lower vide letter bearing No. 1931/(LHC) dated 21-03-2009 stated that as per the report of Subidar Major Dir Levies District Dir Lower dated 17-03-2009 that sepoy Manzoor Ahmad has failed to make compliance of the order of his superiors and refused to performed squad duty of Commissioner Malakand Division and requested that disciplinary proceedings may be initiated against the accused levy sepoy and his salary may also be stopped (copy enclosed at **Annexure A & B**). Owing to the reason above proper charge sheet and statement of allegation was issued against the petitioner vide letter No.3814 dated 08-04-2009 and 3815-18/DCO/Inquiry dated 08-04-2009 respectively and at the same time the District Officer Revenue & Estate Dir Lower was directed to conduct proper inquiry into the matter. The DOR & E Dir Lower/Inquiry Officer after conducting inquiry into the matter submitted his report/recommendations vide letter No. 1478/Judl:/Inquiry dated 29-04-2009, recommended therein that **“the petitioner may be proceeded against under the NWFP Removal from Service Rules (Special Powers) ordinance 2000 (amended ordinance 2001)”**. The then District Coordination Officer/Commandant Dir Levies was then satisfied to impose major penalty of Removal from Service against the petitioner/Sepoy Manzoor Ahmad w.e.f 17-03-2009 vide letter Endst: No. 5088-91/DCO/LHC dated 11-05-2009 (copies enclosed at **Annexure C, D, E & F** respectively)

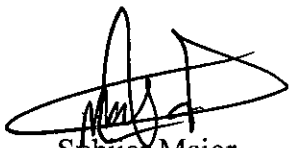
4. **Correct.** As explained above major penalty was imposed against the petitioner after conducting fact finding inquiry and observing all codal/legal formalities.
5. **Correct.** The Secretary Home & Tribal Affairs Department Khyber Pakhtunkhwa Peshawar/Respondent No. 03 rejected the appeal of the petitioner on the grounds that the same was time barred and baseless (copy enclosed at **Annexure "G"**).
6. No comments.

ON GROUNDS:-

- a. **Incorrect.** As explained in the above paras the orders of the respondent No 1 & 3 are legal and according to law and rules.
- b. **Incorrect.** As explained in above paras.
- c. **Correct.**
- d. Pertains to record. Each and every case has its own circumstances.
- e. **Incorrect.** As explained in above paras proper disciplinary proceedings/inquiry/ Final Show Cause Notice/Notice for Personal Hearing was issued against the appellant as per standing Law/Rules.
- f. **Incorrect.** As explained at above paras the appellant have been treated as per standing Service Rules/policy.
- g. In correct. As explained at above paras.
- h. That the respondents also seek permission to raise further points at the time of arguments.

In light of the above, it is prayed that the service appeal is not based on facts having no merit consideration and may be dismissed with cost please.


 Commandant Dir Levies/
 Deputy Commissioner
 Dir Upper.
 Respondent No. 01
DC/Commandant
Dir Levies


 Subidar Major
 Dir Levies, Upper Dir
 Respondent No.02
SUBIDAR MAJOR
Dir Levies



Secretary Home & Tribal Affairs Department
 Khyber Pakhtunkhwa Peshawar
 Respondent No. 03
 Home Secretary,
 Khyber Pakhtunkhwa

ON-FAX

Annex "A" 4

No. 1931 / (LHC), Dated Timergara the 21/03/2009.

From,

The District Coordination Officer,
Dir Lower, at Timergara.

TO,


The District Coordination Officer,
Dir Upper.

Subject. ABSENCE FROM DUTY.

Memo,

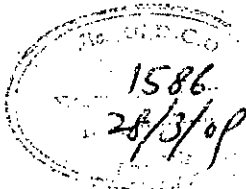
As reported by the Subedar Major Dir Levies, Sepoy Amir Nawaz Reg:No.23 and Sepoy Manzoor Ahmad Reg:No.194 of Dir Levies (Provincial) have intentionally refused the routine emergency duty.

Therefore being the disciplinary force, Legal action against the Sepoys may be initiated and pay stopped under intimation to this office.

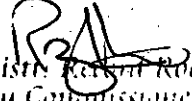

District Coordination Officer,
Dir Lower, at Timergara.

LHC

Handwritten notes:
Mly
D-CPA / Dm
30/3/09



ATTESTED


District Record Room
Deputy Commissioner Office
Dir Upper.

خدمت جناب ڈسٹرکٹ کوارٹر انسپکشن آفیسر صاحب / کمانڈنٹ برائے فورسز ضلع دربار پلین لہور

رپورٹ بر خلاف سپاہی (P) امیر نواز نسہ
سپاہی مدثر جمال یا سپاہی محمد حسین پورہ ڈیوٹی سے اڑا

عنوان

سپاہی 1

Ex: Pw 11
N
Golt, Bin

گزشتہ چھ گزب صاحبان نے حکم زمانہ لیا کہ درپور دربار پلین سے کسٹمر صاحب
سوات ملا کر ڈیوٹی پر لائے بر تعداد 20 کسان نزع ڈیوٹی کے اہل تیار
کئے ہیں جن میں سے آپ صاحبان نے حکم کے مطابق لیٹ تیار کیا۔
جو کہ اس لیٹ میں یوسف دوست خاں / شہزاد نے سپاہی امیر نواز نسہ
سپاہی (P) منظور احمد اور یوسف دوست باڈو لگائے ہیں سپاہی
محمد حسین نسہ یا سپاہی مدثر جمال شامل تھے۔
یہ کہ درج بالا سپاہیوں نے کسٹمر صاحب سوات ملا کر ڈیوٹی پر لائے ڈیوٹی
سے انکار کیا۔

یہ فورسز نے ڈسپلن اور قانون کے خلاف ورزی کی ہے۔

لہذا تحریر رپورٹ برائے مزید قانونی کارروائی کیلئے پیش کرنا ہے۔

نتیجہ

L.H.C.
Issue Show
Cause
2/19/37
260

تاریخ 17-03-2009

ATTESTED

Distt: Peshawar
Deputy Commissioner Office
Dir Upper.

محمد نواز نسہ
سپاہی مدثر جمال

ایف ونگ
17/03/09

Sir
Show Cause Notice in the names
of Federal Levies Sepoys have been
prepared while draft to the address of
DCO Dist (U) for taking legal action
against the provincial sepoy, prepared
and are submitted for signature of
DCO Dist. Sd/-

CHARGE SHEET.

I, Atif Rahman, District Coordination Officer Upper Dir, as competent authority, hereby charge you Mr. Amir Nawaz Levy Sepoy Reg: No.23 and Mr. Manzoor Ahmad Levy Sepoy Reg: No.194 as under:-

That you, while posted as Levy Sepoys committed the following irregularities:-

"That you intentionally refused the routine emergency duty which shows your un-willingness to perform duty efficiently. This act on the part of you is against the discipline of the force and amounts to mis-conduct".

1. By reasons of the above, you are guilty of mis-conducting under Section-3(1)(a) of the NWFP (Removal from service) Special Powers Ordinance 2000; and have rendered yourself liable to all or any of the penalties specified in Section-3 of the Ordinance ibid.
2. You are, therefore, required to submit your written defense within seven days of the receipt of this Charge Sheet to the Inquiry Officer.
3. Your written defense, if any, should reach the Inquiry Officer within the specified period, failing which it shall be presumed that you have no defense to put in and in that case ex-parte action shall follow against you.
4. Intimate whether you desire to be heard in person.
5. Statement of allegation is enclosed.

No. 3814 / 1

Dated 8 /04/2009.

District Coordination Officer
Upper Dir (Competent Authority)

Statement of allegation
دو سپاہیوں کا چارج ہوا ہے /
ان کے لیے نوٹس جاری کیا گیا ہے /
نوٹس برائے جواب دہ ہے۔

السر
بیشمارہ سے
8/4/09

ATTESTED

Dist. Record Room
Deputy Commissioner Office
Dir Upper.

OFFICE OF THE DISTRICT COORDINATION OFFICER UPPER DIR.

STATEMENT OF ALLEGATIONS.

Whereas I, Atif Rahman, District Coordination Officer Upper Dir, as competent authority, am of the opinion that the following Levy Sepoys (Provincial) Lower Dir has rendered himself liable to be proceeded against as they committed the following acts of omissions within the meaning of section 3(1) (a) of the North West Frontier Province Removal from Service (Special Powers) Ordinance 2000 as amended vide NWFP Removal from Service (Special Powers) (Amendment) Ordinance 2001:-


- 1) Mr. Amir Nawaz Reg: No.23;
- 2) Mr. Manzoor Ahmad Levy Sepoy Reg: No.194.

"That they intentionally refused the routine emergency duty which shows their un-willingness to perform duty efficiently. This act on the part of the officials concerned is against the discipline of the force and amounts to misconduct".

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations, Mr. Gul Wahid DOR/E Lower Dir is appointed as inquiry officer under section 5 of the Ordinance.

3. The Inquiry Officer shall, in accordance with the provisions of the Ordinance, provide reasonable opportunity of hearing to the accused, record its findings and make, within seven days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the department shall join the proceedings on the date, time and place fixed by the inquiry officer/committee.


(Atif Rahman)

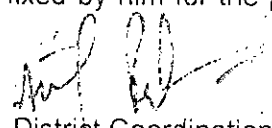
District Coordination Officer
Upper Dir (Competent Authority)

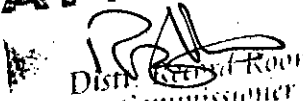
No. 3515-18 /DCO/Inquiry,

Dated Dir the 8/9 /2009.

A copy of the above is forwarded to:-

1. The Commissioner Malakand Division Saidu Sharif Swat for information please.
2. The District Coordination Officer Lower Dir at Timergara with reference to his Memo: No.1931 dated 21-03-2009.
3. Mr. Gul Wahid DOR/E Lower Dir. (Being the Inquiry Officer for initiating proceedings against the accused under the provisions of the NWFP Removal from Service Special Powers) Ordinance 2000 (Amendment) Ordinance 2001).
4. Sepoys concerned with the directions to appear before the Inquiry Officer, on the date, time and place fixed by him for the purpose of inquiry proceedings.


District Coordination Officer
Upper Dir.

ATTESTED

Dist. Control Room
Deputy Commissioner Office
Dir Upper.

OFFICE OF THE
DISTRICT OFFICER, REVENUE & ESTATE
DIR LOWER.

No. 1478 /Judl./Enquiry
Dated Timergara the 29/04/2009.

To
**The District Coordination Officer,
Dir Upper.**

Subject: **STATEMENT OF ALLEGATIONS.**

Please refer to you office Ends: No.3815-18/DCO/Enquiry, dated 8-4-2009, on the subject cited above.

In order to conduct enquiry into the misconduct case of levy sepoy's namely Amir Nawaz Reg: No.23 and Manzoor Ahmad Reg: No.194 (on provincial side), both the sepoy's and the following personnel of Dir Levies were summoned for 18-4-2009.:-

1. Mr. Noor Hakim Subder Major Dir Levies.
2. Mr. Nasir Ali, Head Clerk Dir Levies.
3. Mr. Said Badshah Subedar DCO, Guard.
4. Mr. Muhammad Idrees Subedar Levy Post Khal/Shamardin.

On the dated fixed mentioned above, the above named levies officers/officials attended my office/court while the accused/levies sepoy's namely Amir Nawaz and Manzoor Ahmad were remained absent. An opportunity was given to them for hearing and for the said purpose summon/notice was again issued for their attendance on 20-4-2009. on the said date the levy sepoy's under enquiry could not attend the office for their hearing. Statements of Subdar Major Dir Levies, Head Clerk Dir Levies, Subedar DCO Guard, Subedar Levy Post Khal/Shamardin and DFC ~~Amir~~^{Nawaz} Badshah were recorded which are added to the file.

Perusal of the statements of Subedar Major, Subedar DCO guard and Incharge Subedar Levy Post Khal Clearly reveals that sepoy Amir ~~Badshah~~^{Nawaz} and Manzoor Ahmad was intentionally refused to perform the emergency duty on 17-3-2009 without any legal grounds. They have left their station of duty without any permission and according to the said statements the accused/levies constables under enquiry have gone abroad. Sepoy Anwar Badshah is the witness who was entrusted with the service of summon/notice issued for the attendance of the accused/sepoy's under enquiry. Statements of the said DFC/constable Anwar Badshah would show that the accused/sepoy's were not present in their villages/houses and non of their family member was willing to execute/sign the summon. He has also stated in his statement that he has heard that the accused/sepoy's under enquiry have gone abroad.

From hearing the well conversant officers/officials of Dir Levies, I have fully convinced that both the sepoy's of Dir Levies (Provincial) namely Amir Nawaz and Manzoor Ahmad have committed the acts of misconduct and have violated the rules regulations of levy force. Moreover, they have gone abroad without any permission from the competent authorities.

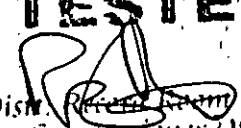
In light of the above, I recommend that both the levy sopoy's namely Amir Nawaz and Manzoor Ahmad may be proceeded against under the NWFP removal from Service Rules (Special Powers) ordinance 2000 (amended Ordinance 2001) please.

(Encl: file)


District Officer,
Revenue & Estate Dir Lower.

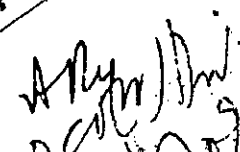
No /judl;/enquiry.
Copy forwarded to the District Coordination Officer, Dir Lower for information please.

ATTESTED


Deputy Commissioner Office
Dir Upper.

22.06.
4-5-09

District Officer,
Revenue & Estate Dir Lower

LHC

4/5/09

OFFICE OF THE DISTRICT COORDINATION OFFICER UPPER DIR.

OFFICER ORDER.

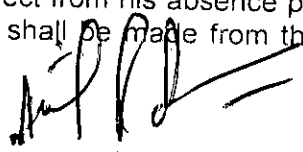
Where as I Atif Rahman, District Coordination Officer Upper Dir in the capacity of competent authority under Section 2 (a) of North West Frontier Province Removal from Service (Special Powers) Ordinance, 2000 as amended vide NWFP Removal from Service (Special Powers) (Amended) Ordinance 2001, read with notification No.SOR-II(S&GAD)2000-Vol-III dated 28-09-2000, am of the considered opinion that Mr. Manzoor Ahmad Levy Sepoy (Provincial) Regimental No.175 Upper Dir has been proceeded against on account of mis-conduct as prescribed in section 3 of the said ordinance for the following acts of omission and commission:-

"That he is absent from duty since 17-03-2009 without sanctioning leave from the competent authority as reported by Subedar Major Dir Levies. This act on the part of the official is against the office discipline and amounts to misconduct."

And whereas, for the purpose of scrutinizing the conduct of the said accused with reference to the above allegations, Mr. Gul Wahid District Officer Revenue & Estate Lower Dir was appointed as Inquiry Officer under Section 5 of the ordinance.

And whereas, the Inquiry Officer recorded his findings and recommendations in his report "recommended him for removal from service". The charge against the accused has been proved in the meaning of section 3 of the said ordinance.

Now therefore, I Atif Rahman DCO Upper Dir in the capacity of competent authority am satisfied, that the charge against the accused has been proved beyond any doubt. I, as a competent authority, under the powers conferred upon me under Section 3 of the NWFP S&GAD Peshawar Notification bearing No.SOS-III(S&GAD)1-80/73 dated 30-11-1973 impose major penalty of removal from service upon Manzoor AHmad Levy Sepoy (Provincial) Regimental No.175 Upper Dir with effect from his absence period i.e. 17-03-2009. Recovery of salary for the absence period shall be made from the official concerned.

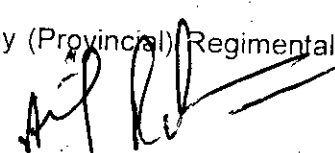


(Atif Rahman)
District Coordination Officer
Upper Dir.

No. 5088-91/DCO/LHC Dated Dir the 11-5 /2009.

Copy forwarded to the:-

- 1) The District Coordination Officer Lower Dir at Timergara.
- 2) The District Accounts Officer Upper Dir.
- 3) The Subedar Major Dir Levies.
- 4) Mr. Manzoor AHmad Levy Sepoy (Provincial) Regimental No.175 Upper Dir.



District Coordination Officer
Upper Dir.

ATTESTED


Deputy Commissioner Office
Dir Upper.



Annex G

10

IN THE COURT OF SECRETARY HOME
KHYBER PAKHTUNKHWA
(APPELLATE AUTHORITY)

CASE TITLE:

APPELLANT: MANZOOR AHMAD, DIR UPPER LEVIES
VERSUS
COMMANDANT LEVIES, DIR UPPER.

INTRODUCTION:-

The applicant submitted an appeal before the Competent Authority on 08.08.2017 for re-instatement into service.

The Deputy Commissioner / Commandant Levies was asked to furnish comments in the instant case. The office of DC/Commandant, Dir Upper submitted that the accused levy official amongst others refused to perform duty with Commissioner, Malakand Division Saidu Sharif Swat & disciplinary action initiated against him for this act.

The District Officer Revenue & Estate Dir Lower was appointed as inquiry officer with the direction to conduct the proper inquiry into the matter and to provide reasonable opportunity of hearing to the accused levy official & submit report within seven days. The District Officer Revenue & Estate recorded the statement of the official. According to the statement Mr. Manzoor Ahmad has committed the act of misconduct & violated the rules & regulation of levy force. Moreover, he has gone abroad without any permission of the Competent Authority.

PROCEEDINGS:-

The applicant was heard in person and supporting documents were also checked / scrutinized in details. The applicant recorded his statement that he is the sole bread earner of his family & prayed for the reinstatement into service on humanitarian basis.

DECISION:-

After perusal of available record and statement of the appellant, the appeal is rejected in light of the comments / views of DC / Commandant Levies Dir Upper. The appellant may be informed accordingly.

9/15/18
(IKRAM ULLAH)
SECRETARY HOME
KHYBER PAKHTUNKHWA

Announced
Dated 25.04.2018

ATTESTED
[Signature]
Dist. Dir Revenue
Deputy Commissioner Office
Dir Upper.



OFFICE OF THE
DEPUTY COMMISSIONER/COMMANDANT DIR
LEVIES UPPER DIR

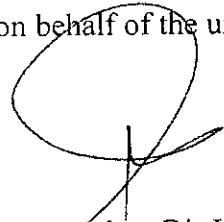


No: 9337 /DC/Dir(U)/LHC

Dated Dir the 20/06/2023

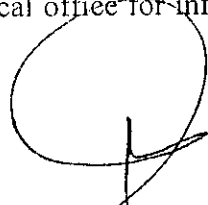
AUTHORITY LETTER

Mr. Raza Ullah Superintendent office of the Deputy Commissioner/Commandant Levies Dir Upper is hereby authorized to attend the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar in service appeal No. 6572/2021 titled as Manzor Ahmad versus Commandant Dir Levies/Deputy Commissioner Dir Upper & others on behalf of the undersigned on 22-06-2023.


Commandant Dir Levies/
Deputy Commissioner
Dir Upper.

Even No & Date.

Copy forwarded to Mr. Raza Ullah Superintendent local office for information & necessary action.


Commandant Dir Levies/
Deputy Commissioner
Dir Upper.