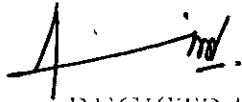


FORM OF ORDER SHEET

Court of _____

Appeal No. _____

1422/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	27/06/2023	<p>The appeal of Mr. Sartaj Muhammad presented today by Syed Asif Iqbal Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

APPEAL NO. 1422 /2023

SARTAJ MUHAMMAD

VS

HOME DEPTT:

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APPELLANT

THROUGH:


SYED ASIF IQBAL

ADVOCATE HIGH COURT

BC: 18-1768

NIC: 15701-6440018-9

CELL: 0315-9925250

EMAIL: 39.jan.123@gmail.com

-1-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

APPEAL NO. 1422 /2023

Mr. Sartaj Muhammad S/o Farid Gul, Ex-Sepoy/Constable, District Malakand.

..... **APPELLANT**

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary Home and Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Deputy Commissioner/Commandant Malakand Levies, District Malakand.

..... **RESPONDENTS**

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ISSUANCE OF THE IMPUGNED NOTIFICATIONS DATED 22.03.2021, 21.10.2021 AND AGAINST THE OFFICE ORDER DATED 03.03.2023 WHEREBY THE APPELLANT HAS BEEN PRE MATURELY RETIRED FROM SERVICE AND AGAINST THE INACTION OF THE RESPONDENTS BY NOT DECIDING THE DEPARMTNAL APPEAL WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:

That on acceptance of this service appeal the impugned notifications dated 22.03.2021, 21.10.2021 and impugned office order dated 03.03.2023 may very kindly be declared as illegal, unconstitutional, void ab initio and ineffective upon the rights of the appellant and may be set aside. That the respondents may very kindly be directed not to retire the appellant on the basis age i.e. 45 years of age. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

Brief facts giving rise to the present appeal are as under:-

- 1- That the appellant is the bonafide & law abiding citizen of Pakistan. The appellant was initially appointed as Sepoy/Constable in the respondent department and was performing his duty on different positions. Copies of appointment order is attached as Annexure **A.**

- 2- That it is important to mentioned here that the appellant terms and conditions of service, prior to the promulgation of the 25th Constitutional Amendment Act, were regulated by the PATA Levies Force Regulation, 2012 (hereafter to be called Regulation of 2012) read with the PATA Federal Levies Force Service (Amendment) Rules, 2013 (hereinafter to be called Regulation of 2013) and vide Rule 17 read with schedule-III of the Regulation, 2013 the retirement age was specified. Copy of the Regulation, 2013 is attached as Annexure **B.**

- 3- That after the promulgation of the 25th Constitutional Amendment Act, 2018 the then FATA and PATA were merged in to the province of Khyber Pakhtunkhwa and the Forces were also absorbed into the regular Police of Khyber Pakhtunkhwa through different enactments. Similarly vide notification dated 14.07.2020 certain amendment were brought in Rule.17 of the rules ibid whereby the age of retirement was fixed as 60 years. Copy of the notification dated 14.07.2020 is attached as Annexure **C.**

- 4- That astonishingly the respondent no.2 issued the impugned notification dated 22.03.2021 whereby the retirement age of the then Levies Force/ appellant has again been amended and was fixed as 25 years of service of 42 years of age in utter violation of the Khyber Pakhtunkhwa Civil Servant Act, 1973. Copy of the impugned notification dated 22.03.2021 is attached as Annexure **D.**

- 5- That astonishingly the respondent No.2 vide impugned notification dated 21.10.2021 further amended the service rules, 2013 whereby sepoy, Lance Naik and Naik has to be retired on completion of twenty five years of service or Forty five years age whichever is earlier. That it is pertinent to mention that after the Constitutional twenty fifth Amendment article 247 has been omitted and as such the PATA Levies Force regulation, 2012 is no more in filed, therefore the status of the ibid impugned notification dated 21.10.2021 is void ab initio in light of law and rules. Copy of the impugned notification 21.10.2021 is attached as Annexure **E.**

- 6- That in light of the impugned notification dated 22.03.2021 and 21.10.2021 the appellant stood retired from service on reaching to the age of forty five years vide impugned office order dated 03.03.2023. That it is pertinent to mention that appellant is now attain the status of civil servant and the respondents have no

authority to retire the appellant prior to reaching the age of superannuation i.e. 60 years. Copy of the order dated 03.03.2023 is attached as annexure F.

7- That the appellant feeling aggrieved from the impugned service rule/notifications dated 22.03.2021, 21.10.2021 and retirement order dated 03.03.2023 preferred departmental appeal but no response has been given till date. Copy of the Departmental Appeal is attached as AnnexureG.

8- That it is pertinent to mention here that some of the colleagues of the appellant file writ petition No.5091-P/2021 before the Honorable Peshawar High Court, Peshawar. Copy of the writ petition is attached as Annexure H.

9- That the Honorable Peshawar High Court, Peshawar constituted larger bench in the matter and vide judgment dated 29.11.2022 dismissed the writ petition of the appellant with a view that as they are civil servant, therefore the matter squarely falls within the jurisdiction of August Service Tribunal hence they may approach the Service Tribunal for the redressal of his grievance if so advised. Copy of the Order dated 29.11.2022 is attached as Annexure I.

10- That the appellant feeling aggrieved and having no other remedy but to file the instant service appeal on the following grounds amongst the others.

GROUND:

A- That the impugned service rules/notifications dated 22.03.2021, 21.10.2021 and impugned retirement order dated 03.03.2023 issued by the respondents is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.

B- That the appellant has not been treated by the respondent department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.

C- That the impugned service rules/notifications dated 22.03.2021 and 21.10.2021 are issued under the regulation of 2012 and regulation 2013 but both of these regulations were declared as inoperative after the promulgation of the 25th constitutional amendment Act and the absorption Rules, 2019 so the notification is null and void.



- D- That the treatment meted out to the appellant is clear violation of the Fundamental Rights of the appellant as enshrined in the Constitution of Pakistan, 1973.
- E- That it is important to mention here that appellant is civil servant and the status of the appellant being civil servant has been declared by the August Peshawar High Court; at Mingora Bench in writ petition No.528-M/2016 decide on 24.03.2021.
- F- That the appellant has been discriminated by the respondents on the subject noted above and as such the respondents violated the principle of Natural Justice.
- G- That under section 13 of Khyber Pakhtunkhwa Civil Servant Act, 1973 the age of retirement of a civil servant has been prescribed, so the act of the respondents by issuing the impugned notification dated 22.03.2021, 21.10.2021 and retirement order dated 03.03.2023 is illegal and unconstitutional.
- H- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

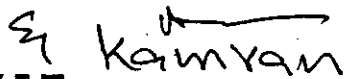
It is therefore, most humbly prayed that the appeal of the appellant may kindly be accepted as prayed for.

Dated: 13.06.2023


APPELLANT
SARTAJ MUHAMMAD

THROUGH:


ASIF IQBAL & 
ADVOCATES


AFFIDAVIT

I, **Sartaj Muhammad**, Sepoy, District Malakand, do hereby solemnly affirm and declare on Oath that the contents of this **Service Appeal** are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Court.


DEPONENT

Annexure - A
-5-

OFFICE OF THE DCO/COMMANDANT
MALAKAND LEVIES MALAKAND

NO. _____ /LC
DATED MALAKAND THE 30/6 /2010

OFFICE ORDER.

Consequent upon the recommendation of Recruitment and Selection Committee of Malakand Levies, Mr. Sartaj Muhammad s/o Farid Gul r/o Khar Is appointed against the post of Technical Sepoy cum Electrician in Malakand Levy (Federal) in BPS-5 (3340-160-8140) plus usual allowances on temporary basis on the following terms and conditions: -

1. The appointee will provide Health and Age certificates from Medical Superintendent of AHQ Hospital Balkhela.
2. His age should not be less than 18 and above 33 years.
3. He will be on probation for a period of one year.
4. The appointee will be governed by such rules and regulation/policy; which may be issued/prescribed by the Government from time to time for the category of Malakand Levies Federal.
5. In case of resignation from service, the appointee shall have to give advance notice for one month; otherwise one month's pay in lieu thereof will be deposited into Government treasury.
6. The appointee shall take over charge within 15 days positively, otherwise his appointment shall be deemed cancelled automatically.
7. Charge report should be submitted to all concerned.
8. He will be entitled to receive all allowances etc admissible to the category of Malakand Levies Federal personnel.

DCO/COMMANDANT
MALAKAND LEVIES MALAKAND

No. 8056-61 /LC

Copy forwarded to the:-

1. Additional Chief Secretary Home, NWFP, Peshawar.
2. Commissioner Malakand Division Saidu Sharif Swat.
3. Deputy Secretary (S&LK) SAFRON Division Islamabad.
4. Agency Accounts Officer, Malakand.
5. Subedar Major, Malakand Levies.
6. Official concerned.

For information & necessary action.


DCO/COMMANDANT
MALAKAND LEVIES MALAKAND

BETTER COPY OF THE PAGE NO.

OFFICE OF THE DCO/COMMANDANT
MALAKAND LEVIES MALAKAN

No. _____/LC

DATED MALAKAND THE 30/06/2010

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7. Charge report should be submitted to all concerned O. He will be entitled to receive all allowances etc admissible in the category of Malakand Levies Federal personnel.

DCO/COMMANDANT
MALAKAND LEVIES MALAKAND

No.8056-6/LC

Copy forwarded to the-

1. Additional Chief Secretary Home, NWFP, Peshawar.
2. Commissioner Malakand Division Saidu Sharif Swat.
3. Deputy Secretary (S&LK) SAFRON Division Islamabad,
4. Agency Accounts Officer, Malakand.
5. Subedar Major, Malakand Levies.
6. Official concerned:

For information & necessary action,

DCO/COMMANDANT
MALAKAND LEVIES MALAKAND

"B" -6-

EXTRAORDINARY
GOVERNMENT



REGISTERED NO. PIII
GAZETTE

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, FRIDAY, 15TH FEBRUARY, 2013.

GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT

NOTIFICATION

Peshawar the 4th February 2013

SERVICE RULES FOR FEDERAL LEVIES FORCE IN PATA

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 make the following rules, namely:-

1. **Short title and commencement.**- (1) These rules may be called Provincially Administered Tribal Areas (PATA) Federal Levies Force Service (Amended) Rules, 2013.

(2) They shall come into force at once.

2. **Definitions.**- (1) In these Rules, unless the context otherwise require, the following expressions shall have the meaning hereby respectively assigned to them, namely:-

(a) "Appointing Authority" means the appointing authority specified in rule-4;

(b) "Commandant" means Commandant of the Force, who shall be the Deputy Commissioner in their respective jurisdiction;

(c) "Deputy Commandant (Operation)" means an Assistant Commissioner or any officer of the District designated as such by the provincial government who shall be Deputy Commandant (Operation) of the Force in PATA, to exercise in his respective jurisdiction such powers and perform such functions as may be prescribed; and who shall be responsible to the Commandant for operational matters of the Force in PATA.

(d) "Deputy Commandant (Administration)" means Deputy Commandant (Administration) of the Force, who shall be an officer of the provincial government or any officer of the District designated as such by the provincial government to exercise in his respective jurisdiction such powers and perform such functions as may be prescribed and who shall be responsible to the Commandant for administration and establishment matters of the Force in PATA.

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

(f) "Home Department" means Provincial Home & Tribal Affairs Department;

(g) "Initial recruitment" means appointment made other than by promotion or by transfer;

(h) "Schedule" means the Schedule appended to these rules;

Handwritten signature and initials

7-

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644 KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 15th FEBRUARY, 2013

- (i) "Selection or Promotion Committee" means a Committee for recruitment or as the case may be, promotion of Force personnel as notified by the Government;
- (j) "Service" means the levies service;

(2) The expression used but not defined herein shall have the same meanings as are assigned to them under the PATA Levies Force Regulation 2012.

3. **Composition and eligibility of the Force.**- (1) The Force shall comprise of the posts specified in Schedule-I and such other posts as may be determined by the Government from time to time.

(2) Recruitment to the Force shall be made in accordance with the requirement specified in Schedule-I. No person shall be appointed unless he fulfills the following conditions:-

- (a) The candidate shall be a citizen of Pakistan and bonafide resident of the respective district of Khyber Pakhtunkhwa.
- (b) The candidate shall be, in good mental and bodily health and free from physical defect, which likely to interfere in the efficient discharge of his duties.
- (c) Medical Superintendent of the respective district headquarter hospital shall issue a certificate of medical fitness to the candidate.
- (d) Recruitment to all ranks of the Force shall be made from amongst those persons having a minimum height of 5'7" and chest measurement of 34"-35 1/2" with an age of not less than eighteen years and not more than twenty-five years on the last date of submission of application;
- (e) No person (except those who are already in Government Service) shall be appointed to the Force unless he produces a certificate of character from the Principal of Academic Institution last attended or a certificate of character from two gazetted officers from respective districts, not being his relative and who are well acquainted with his character; and
- (f) No person who is married to foreign national shall be eligible for appointment in the Force, unless allowed by the Government, in writing.

Appointing Authority.- (1) Commandant shall be the appointing authority for initial recruitment and promotion up to the rank of Subedar. Whereas promotion to the rank of Subedar Major and above, the authority shall rests with the provincial government.

(2) Appointment to the post shall be made in accordance with the provisions contained in Schedule-I read with Rule-3 of these rules.

(3) Appointment either through initial recruitment or by promotion shall be made through duly constituted Selection/promotion Committees.

Provided that in case of raising of force in a new district, the Commandant shall have the authority to recruit ex-servicemen above the rank of sepoy on contract basis for a period of one year extendable for a further period of one year but not exceeding three years in total, with prior approval of the government.

It is further provided that the ex-serviceman so appointed on contract shall not be more than forty five years of age.

5. **Probation.**- Persons appointed to posts by initial recruitment, promotion or transfer shall remain on probation for a period of one year extendable by a further period of one year. If no order is issued on the expiry of the first year of probation period, the period of probation shall be deemed to have been extended for further one year. If no order is issued on the completion of extended period, the probation shall be deemed to have been terminated.

Alister Steel
Deputy Superintendent

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6. **Training.**-(1) All newly recruited personnel of the Force shall undergo six months pre-service training before being assigned duties of the rank for which they selected. Initially, the Appointing Authority shall arrange for appropriate training till a proper Levies Training Center is established.

(2) The pre-service training mentioned in sub-rule (1) may contain training on basic laws, investigation techniques, mob control, basic intelligence, arrest and detention procedure, jail duties, drill, weapons training, field craft, bomb disposal, counter assault, traffic control, raids, watch & ward etc. Proper training syllabus and modules shall be developed through mutual consultation with local law enforcing agencies by the Home Department.

7. **Resignation.**-No member of the Force shall resign before the expiry of the first three months of his recruitment or he shall deposit an amount equal to his three months pay in lieu of his three months essential service.

8. **Seniority and promotion.**-(1) Promotion shall be strictly on seniority cum fitness basis as well as on the required length of service as specified in Schedule-I.

(2) The service of a personnel by initial recruitment, promotion or transfer may be dispensed with or reverted if, in the opinion of the competent authority his work and conduct is not satisfactory during probation period or due to abolishment of posts, as the case may be.

Provided that in case of dispensing with their service or reversion the concerned authority shall record cogent reasons for such action in writing.

(3) The seniority list of the Force shall be maintained at district level. Commandant shall be responsible for maintaining the seniority list of the force and shall notify annually.

9. **Transfer during service.** - Every member of the service shall be liable to serve anywhere within PATA with the prior approval of the Commissioner Malakand Division.

10. **Punishment.** -After satisfying himself regarding punishable acts (as referred in Schedule-II) through a charge duly framed in writing, necessary punishments specified in Schedule-IV may be awarded by the respective authority.

Provided that punishment so awarded shall be duly incorporated in service rolls / service dossier accordingly.

11. **Appeal.** -If any personnel of the force is aggrieved by any order issued under these rules, within thirty days of communication to him of such order, may prefer an appeal to the competent authority.

Provided that no appeal shall lie against the punishments specified at S.No. (1) and (2) of Schedule-IV.

12. **Awards and commendations.** -(1) Force personnel may be given special award and commendation, certificate for devotion to duty, demonstration of gallantry and such achievement in the performance of duty, in the manners as prescribed by the Commandant, and shall be made part of the service rolls / service dossier.

(2). Force personnel, if embraces martyrdom in the discharge of his duty, will be given proper Guard of Honour at the time of burial.

13. **Service Record.** -Proper service rolls / service dossiers of all Force Personnel shall be maintained in Levy Office of each district. Annual reports of all Havaldars and Junior Commissioned Officers (JCOs) will also be maintained for the purpose of promotion.

14. **Uniform.** The levy personal shall attire black shalwar qamees with brown chappli, white socks, black barrette cap and black belt whereas the JCOs will wear brown belt during duty hours.

15. **Leave.**-(1) Leave may be granted depending on the exigencies and at the discretion of the Commandant. All leave of ten days or above, will be considered as long leave and shall be granted on the recommendations of Subedar Major by the Commandant.

*Accepted
Sd/-
Subedar Major*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 15th FEBRUARY, 2013. 647

24. An Anomaly Committee duly constituted/notified vide Home and Tribal Affairs Department, Khyber Pakhtunkhwa Notification No.SO(Police)/HD/12-19/2012 dated 11th Decembor, 2012 shall consider and remove such anomalies from time to time referred to the competent authority.

25. Repeal-Any rules, orders or Instructions enforce in respect of the PATA Levies Force, immediately before the commencement of these rules shall stand repealed in so far as these rules, orders or instructions are inconsistent with the rules.

Secretary
Home & Tribal Affairs Department
Government of Khyber Pakhtunkhwa

*Allexed
Dada
Sapaki*

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SCHEDULE - I
See rules 4(2) and 8

A. Uniformed Force

The Portion Revised vide Page 112

S.#	Post/Rank	Eligibility for promotion	Promotion Quota	Direct Quota	Qualification
1.	Subedar Major (BS-16)	03 years service as Subedar	100%		
2.	Subedar (BS-13)	03 years service as Naib Subedar	100%		
3.	Naib Subedar (BS-11)	03 years service as Havaldar	100%		
4.	Havaldar (BS-8)	03 years service as Naik	100%		
5.	Naik (BS-7)	03 years service as Lance Naik	100%		
6.	L/Naik (BS-6)	03 years service as Sepoy	100%		
7.	Sepoy (BS-5)			100%	Middle pass preferably Matric
8.	Head Armourer BPS-05	05 years service as Assistant Armourer	100%		
9.	Assistant Armourer BPS-01			100%	Certificate of Armourer

B. Ministerial staff

10.	Assistant (BS-14)	KPO/ Computer Operator/ Senior clerk/ Junior Clerk (i) Minimum 5 years service as KPO/ Computer Operator; (ii) 5 years service as Senior Clerk; (iii) 7 years service as Junior Clerk	50%	50%	B.A. or equivalent for direct recruitment and by promotion seniority-cum-fitness from amongst KPO/Computer Operator/Senior Clerk/Junior Clerk on the basis of their date of entry into service.
11.	KPO/ Computer Operator BPS-12			100%	Intermediate with one year diploma in IT from a recognized institute
12.	Senior Clerk (BS-9)	5 years service as Junior Clerk	100%		
13.	Junior Clerk (BS-7)		10% from lower staff with Matric	90%	Matric with a typing speed of 30 words per minutes / preferably computer literate
14.	Behishtil (BS-5)			100%	Literate
15.	Driver (BS-4)			100%	Driving License / Driving Experience
16.	Pesh Imam BPS-02			100%	Moumi Fazil
17.	Tracker (BS-2)	5 years service in BS-1	10%	90%	Primary Pass
18.	Naib Qasid BPS-01			100%	Literate
19.	Sweeper (BS-1)			100%	Literate

~~101~~

SCHEDULE - III
See Rule 17

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

S.#

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*Ali Akbar
Jadav
Supak*

with page no

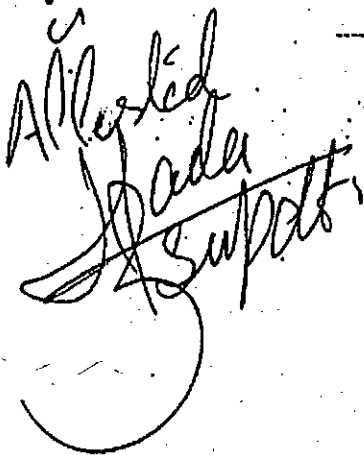
SCHEDULE - II
(see Rule 10)

Grounds of penalty

The concerned authority may impose one or more penalties, where a personnel of the Force, in the opinion of the authority:-

- a. Is inefficient or has ceased to be efficient;
- b. Is guilty of misconduct, like unauthorized absence from leave, breach of order, disobedience, unruly behavior, passing on official secrets to unauthorized persons, etc;
- c. Is corrupt, or may reasonably be considered corrupt;
- d. Is guilty of any violation of duty;
- e. Losses, misplaces or causes harm to a weapon through negligence or lack of maintenance;
- f. Is insubordinate to his superiors;
- g. Is convicted of a criminal offence;
- h. Is guilty of cowardice, or abandons any picket, fortress, post or guard which is committed to his charge or which is his duty to defend;
- i. Is engaged in propagation of sectarian, parochial, anti-state views and controversies;
- j. Is engaged or is reasonably suspected of being engaged to excite, cause or conspire to cause or joins in any mutiny, or being present at any mutiny and does not use his utmost endeavor to suppress it;
- k. Attempts collective bargaining, conspiring or attempting to call off duty or take procession to press for the demands; or
- l. Is guilty of omission and commission under the law and rules.
- m. Deserts the service.
- n. Being a sentry, sleeps upon his post or quits it without being regularly relieved or without leave; or
- o. Without authority, leaves his commanding officer, or his post or party, to go in search of plunder; or
- p. Quits his guard, picket, party or patrol without being regularly relieved or without leave; or
- q. Uses criminal force to, or commits an assault on, any person bringing provisions or other necessaries to camp or quarters, or without authority breaks into any house or any other place for plunder, or plunders, destroys, or damages any property of any kind; or
- r. Internally causes or spreads a false alarm or rumour during action or in post, camp, lines, or quarters.

*Alleged
Leader
Supporter*



-14-

9

SCHEDULE - IV
See Rule 10

S.#	Punishment	Subedar Major and Subedar	NaibSubedar or Havaldar	Naik or Lance Naik	Sepoy
1	Extra Drill not exceeding fifteen days fatigue or other duties.			Subedar	NaibSubedar
2	Confinement to quarter guard upto fifteen days.	Commandant	Deputy Commandant	Deputy Commandant	Subedar Major
3	Censure	-do-	-do-	-do-	-do-
4	Forfeiture of approved service upto two years	-do-	-do-	-do-	-do-
5	Stoppage of increment not exceeding one month's pay	-do-	-do-	-do-	-do-
6	Fine to any amount not exceeding one month's pay	-do-	-do-	-do-	-do-
7	Withholding of promotion for one year or less.	-do-	-do-	-do-	-do-
8	Reduction from substantive rank to a lower rank or reduction in pay.	-do-	-do-	-do-	-do-
9	Dismissal or removal from service or compulsory retirement.	-do-	-do-	-do-	-do-

Printed and published by the Manager,
Stacy & Ptg. Depts., Khyber Pakhtunkhwa, Peshawar.

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-15-

Government of Khyber Pakhtunkhwa,
Home & Tribal Affairs Department
Dated Peshawar the 12th December, 2013

10
37

NOTIFICATION

No.Sof(Levies)HD/FLW/1-1/2013/Vol.1. The competent authority has been pleased to approve further amendments in Schedule-I of Rule-4(2) and Schedule-III of Rules-17 under Para-10 of the Regulation for PATA Levies Force, 2012 & Rule-24 of the Provincially Administered Tribal Areas (PATA) Federal Levies Force Service (Amended) Rules, 2013 as under:-

Rule-4(2) Schedule-I

**SCHEDULE-I
See Rule 4 (2)**

A. Unformed Force

S.No	Post/ Rank	Eligibility for promotion	Promotion Quota	Direct Quota	Qualification
1	Subedar Major (BS-16)	One year service as Subedr	100%	-	
2	Subedar (BS-13)	One year service as Naib Subedar	100%	-	
3	Naib Subedar (BS-11)	One year service as Hawaldar	100%	-	
4	Hawaldar (BS-8)	One year service as Naik	100%	-	
5	Naik (BS-7)	One year service as Lance Naik	100%	-	
6	Lance Naik (BS-6)	Five years' service as Sepoy	100%	-	
7	Sepoy (BS-5)			100%	Middle pass preferably Matric
8	Head Armourer (BPS-5)	Five years' service as Assistant Armourer	100%	-	Middle pass preferably Matric with Certificate of Armourer
9	Assistant Armourer (BPS-1)			100%	Middle pass preferably Matric with Certificate of Armourer

Rule-17 (Retirement). (1) All uniform levy personnel shall retire as per Schedule-III or they may opt for retirement after completion of 25 years of regular service and no extension in service beyond retirement shall be granted.

**SCHEDULE-III
Rule-17(Retirement)**

S.No	Post/ Rank	Length of service / age for retirement.
1	Subedar Major(BS-16)	37 years' service or 60 years of age whichever is earlier.
2	Subedar BS-13	35 years' service or 60 years of age whichever earlier.
3	Naib Subedar(BS-11)	33 years' service or 60 years of age whichever earlier.
4	Hawaldar(BS-8)	31 years' service or 60 years of age whichever earlier.
5	Naik(BS-7)	29 years' service or 60 years of age whichever earlier.
6	Lance Naik(BS-6)	27 years' service or 60 years of age whichever earlier.
7	Sepoy(BS-5)	25 years' service or 60 years of age whichever earlier.

Attested
J. Supra

P.T.O

-16-

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(2) All non-uniform personnel shall retire from service on attaining the age of superannuation i.e. 60 years or they may opt for the retirement after completion of 25 years of regular service and no extension in service beyond retirement shall be granted.

Secretary to Government of Khyber Pakhtunkhwa
Home & Tribal Affairs Department

Ends No: & dated of even.

Copy of the above is forwarded for information and further necessary action to:-

1. The Secretary to Government of Pakistan, Ministry of SAFRON, Islamabad with reference to his Notification No. F.10 (5)-LK/2006 dated 05-12-2013.
2. The Commissioner, Malakand Division, Malakand.
3. The Deputy Commissioner/Commandant, Malakand Levies, Malakand.
4. The Deputy Commissioner/Commandant Levies, Chitral.
5. The Deputy Commissioner/Commandant Levies, Dir Upper.
6. The Deputy Commissioner/Commandant Levies, Dir Lower.
7. The Deputy Commissioner/Commandant Levies, Swat.
8. PS to Secretary to Governor to Khyber Pakhtunkhwa.
9. PS to Chief Secretary, Khyber Pakhtunkhwa.
10. PS to A.C.S (FATA) Secretariat Peshawar.
11. PS to Secretary Home & Tribal Affairs Department.
12. The Manager Government Printing Press, Peshawar for publication in the official gazette Peshawar as an extra ordinary copy.

*Allexed
Gades
Supalt*

J. Khan
Section Officer (Levies)

-17-

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GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT



NOTIFICATION

NO. SO (LEVIES)/HD/TLW/1-1/2013/Vol-I In partial modification of this Department Notification of even No. dated 12.12.2013, the Competent Authority has been pleased to approve the recommendations of the Anomaly Committee of its meeting held on 28.02.2014 in the Ministry of SAFRON Islamabad, that amendments made in the PATA Levies Force (Amended) Service Rules 2013 shall be effective from 4th February, 2013.

HOME SECRETARY

Endst. No. SO (Levies) HD / 1 - 1 / 2013 / Vol-I

Dated 17th March, 2014

Copy forwarded to the:-

1. Secretary Ministry of SAFRON, Government of Pakistan, Islamabad.
2. AGPR, Khyber Pakhtunkhwa sub office Peshawar
3. Commissioner Malakand Division at Saidu Sharif Swat
4. The Deputy Commissioner Chitral, Upper Dir, Lower Dir, Malakand & Swat (They are directed to inform all the affectees through special messenger).
5. District Account Officer, Chitral, Upper Dir, Lower Dir, Malakand & Swat.
6. PS to Secretary to Governor Khyber Pakhtunkhwa
7. PS to Chief Secretary Khyber Pakhtunkhwa.
8. Section Officer (Budget) Home Department.
9. Section Officer (Courts) Home Department.
10. PS to Secretary Home, Khyber Pakhtunkhwa.

*Alleged
Levies
Support*

[Signature]
SECTION OFFICER (LEVIES)

Annexure

HOME DEPARTMENT

NOTIFICATION

Dated Peshawar the 14.07.2020

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

Amendments

In the said rules:-

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

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

(b) Schedule-III shall be deleted.

SECRETARY TO
GOVT. OF KHYBER PAKHTUNKHWA
HOME DEPARTMENT

Copy forwarded to the:-

1. Principal Secretary to Governor's Secretariat, Khyber Pakhtunkhwa, Peshawar.
2. Principal Secretary to Chief Minister's Secretariat, Khyber Pakhtunkhwa, Peshawar.
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 Election Commissioner, Khyber Pakhtunkhwa.
8. Provincial Police Officer, Khyber Pakhtunkhwa.
9. All Heads of Attached Department in Khyber Pakhtunkhwa.
10. PSO to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
11. Aedunjab General of Khyber Pakhtunkhwa.
12. Director Information Khyber Pakhtunkhwa, Peshawar.
13. 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 (Police-II)

14/7/2020

BETTER COPY OF THE PAGE NO.
HOME DEPARTMENT

NOTIFICATION

Dated Peshawar the 14.07.2020

No. SO Police-HD/1-31. In exercise of the powers conferred by Section 9 of the Provincially Administered Tribal Areas Levies Force Regulation 2012, the Government of the Khyber Pakhtunkhwa is pleased to direct that in the Provincially Administered Tribal Areas (PATA) Federal Levies Force Service (Amended) Rules, 2013, the following further amendments shall be made, namely:

Amendments

In the said rules:

- (a) For rule 17, the following shall be substituted, namely:
17. Retirement All Levies Personal shall retire from service on attaining then age of superannuation i.e. sixty (60) years or they may opt for retirement after completion of twenty-five (25) years regular service."; and
- (b) Schedule-III shall be deleted.

SECRETARY TO
GOVT. OF KHYBER PAKITUNKHWA
HOME DEPARTMENT

Copy forwarded to the

1. Principal Secretary to Governor's Secretaries Khyber Pakhtunkhwa, Peshawar
2. Principal Secretary to Chief Minister's Secretariat Khyber Pakhtunkhwa, Peshawar
3. All Administrative Secretaries to Government of Khyber Pakhtunkhwa
4. Registrar Peshawar High Can, Peshawar.
5. All Commissioners, Khyber Pakhtunkhwa
6. All Deputy Commissioners, Khyber Pakhtunkhwa,
7. Provincial Election Commissioner, Khyber Pakhtunkhwa.
8. Provincial Police Officer, Khyber Pakhtunkhwa.
9. All Heads of Attached Department in Khyber Pakhtunkhwa.
10. PSO to Chief Secretary Khyber Pakhtunkhwa, Peshawar.
11. Accountant General of Khyber Pakhtunkhwa.
12. Director Information Khyber Pakhtunkhwa, Peshawar.
13. The Manager Government Printing & Stationary Departments 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)

To be substituted notification of even No & date.

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

NOTIFICATION

Peshawar, dated the 22-3-2021

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

Amendments

In the said rules:-

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 Superintendents 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-III and no extension in service after retirement shall be granted"

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

"Schedule-III
(see rule 17)

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

-20-

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

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

Copy forwarded to the:-

1. Principal Secretary to the Governor, Khyber Pakhtunkhwa.
2. Principal Secretary to the Chief Minister, Khyber Pakhtunkhwa.
3. All Administrative Secretaries to Government of Khyber Pakhtunkhwa.
4. Registrar, Peshawar High Court, Peshawar.
5. All Commissioners, Khyber Pakhtunkhwa.
6. All Deputy Commissioners, Khyber Pakhtunkhwa.
7. Provincial Police Officers, Khyber Pakhtunkhwa.
8. All Heads of Attached Department in Khyber Pakhtunkhwa.
9. PSO to the Chief Secretary, Khyber Pakhtunkhwa.
10. Accountant General, Khyber Pakhtunkhwa.
11. Direction Information, Khyber Pakhtunkhwa.
12. The 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 (Police-II)

1/Naik

Annexure (D)

FROM : KPK HD ME

FAX NO. : 0919210051

22 Oct. 2021 10:45AM P2

by



GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME AND TRIBAL AFFAIRS DEPARTMENT

-21- 1E4

NOTIFICATION

Peshawar, dated the 21-10-2021

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

SCHEDULE-III

S. No.	Name of the Post / Rank	Length of Service / Age
1	Subedar Major (BS-16)	Thirty Seven Years of service or three Years' Service as Subedar Major or Sixty Year of age whichever is earlier.
2	Subedar (BS-14)	Thirty Five Years of service or Five Years' service as Subedar or Sixty years of age whichever is earlier.
3	Naib Subedar (BS-11)	Thirty Three Years of Service or Seven Years' service as Naib Subedar or Sixty Year of age whichever is earlier.
4	Hawaldar (BS-09)	Thirty one years of service or fifty one year of age whichever is earlier.
5	Naik (BS-08)	Twenty nine years of service or forty nine years age whichever is earlier.
6	L/Naik (BS-08)	Twenty seven years of service or forty seven years age whichever is earlier.
7	Sapoy (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 Hawaldar Or Total 17 years of service	100%		
4	Hawaldar (BS-09)	05 years' service as Naik Or Total 13 years of service	100%		
5	Naik (BS-08)	03 years' service as Lance Naik Or Total 08 years of service			
6	L/Naik (BS-08)	05 years' service as Sapoy			
7	Sapoy (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



OFFICE OF THE DC/COMMANDANT
MALAKAND LEVIES MALAKAND

NO. 1980 /LC
DATED MALAKAND THE 03/3 /2023

OFFICE ORDER

In pursuance of Notification No. SO(Police-II)/HD/1-3/Federal Levies 2021 Amended Service Levy Rules 2021 Schedule III dated 21-10-2021, issued by Government of Khyber Pakhtunkhwa Home & Tribal Affairs Department, Peshawar No. 5927 Sepoy Sartaj Muhammad of Malakand Levies, who has completed the requisite 45-years age, stands retired from service with effect from 03-03-2023 (AN) with full pensionary benefits as per relevant pension rules.

Shelo
DC/COMMANDANT
MALAKAND LEVIES MALAKAND

No. 1981-83 /LC.

Copy forwarded to the:-

1. Section Officer (Police-II), Home & TAs Department Khyber Pakhtunkhwa, Peshawar for information with reference to Notification referred above.
2. District Accounts Officer, Malakand
3. Subedar Major Malakand Levies.
4. Official concerned.

For information and necessary action.

Shelo
DC/COMMANDANT
MALAKAND LEVIES MALAKAND

بخدمت جناب کمانڈنٹ مالا کنڈ لیویز / ڈپٹی کمشنر مالا کنڈ

-23-

عنوان: درخواست برائے حکمانہ اپیل بابت ریٹائرمنٹ

حکم نامہ نمبر: LC/1980 مورخہ: 03-03-2023

جناب عالی:

بڑے ادب کے ساتھ گزارش کی جاتی ہے کہ میں سر تاج محمد ولد فرید گل رجمنٹ نمبر 5927 مالا کنڈ لیویز میں بطور کنسٹیبل خدمات سرانجام دے رہا ہوں اور میری عمر 45 سال ہے اور میں احسن طریقے سے اپنی فرائض سرانجام دے رہا تھا کہ اچانک آپ کے آفس حکم نامہ نمبر LC/1980 مورخہ 03-03-2023 میرا ریٹائرمنٹ کروایا گیا ہے۔ حالانکہ میں جسمانی طور پر مکمل فٹ ہو اور ریٹائرمنٹ نہیں لینا چاہتا۔ اسکے علاوہ صوبائی اسمبلی نے ایک ایکٹ بھی پاس کیا ہے جو کہ 30 نومبر 2021 کو شائع ہوا ہے۔ اس میں تمام لیویز ملازمین کو بحال کیا گیا ہے جن کو schedule III کی وجہ سے ریٹائرڈ کیا گیا تھا۔ میرے پے سلف میں Constable لکھا ہوا ہے 2019 Levies Force Act کی رو سے میں سول ملازم ہوں اور میری ملازمت 60 سالہ بنتی ہے مگر آپ کے آفس نے میرا قبل از وقت ریٹائرمنٹ جاری کیا ہے۔

لہذا استدعا ہے کہ مجھے نوکری جاری کرنے دیں اور یہ حکم نامہ واپس لیا جائے۔ چونکہ لیویز کو پولیس میں ضم کیا گیا ہے۔ اگر مجھے انصاف نہیں ملا تو میں عدالت عالیہ یا سروس ٹریبونل سے رجوع کرونگا اور پنشن وغیرہ نہیں لوں گا۔

فقط زیادہ آداب

مورخہ: 04-03-2023

العارض

سر تاج محمد
نام: سر تاج محمد ولد فرید گل رجمنٹ نمبر 5927 کنسٹیبل مالا کنڈ لیویز

کاپی برائے اطلاعاتیاتی و فراہمی انصاف:

1. سیکرٹری ہوم ڈیپارٹمنٹ خیبر پختونخوا پشاور
2. سیکشن آفیسر لیویز ہوم ڈیپارٹمنٹ خیبر پختونخوا پشاور

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BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

WRIT PETITION NO. _____ / 2021

- 1) Mr. Nalk bahadar S/O Jehan Bahadar,
- 2) Mr. Lal wazir S/O shah jehan,
- 3) Mr. Tajamul shah S/O rasool shah,
- 4) Mr. Lal khan S/O Muhammad sher,
- 5) Mr. Shah Tamrez S/O Said Afzal,
- 6) Mr. Izzat Gul S/O Salf Ullah,
- 7) Mr. Faqeer Taj S/O mutaber khan,
- 8) Mr. Rasool khan S/O wazeef ullah,
- 9) Mr. Gohar Ali S/O Shah Namrooz Khan,
- 10) Mr. Ameer Zada S/O Muhammad Shah,
- 11) Mr. Aziz Ur Rehman S/O Taleem Muhammad,
- 12) Mr. Wajeeh Ud Din S/O Qazi ghusul haq,
- 13) Mr. Mubarak zeb S/O Ahmad Zarin,
- 14) Mr. Attiq Ullah S/O fateh Rehmat,
- 15) Mr. bahadar sher S/O Zahir Shah,

All care of the Office of the Deputy Commissioner/
Commandant Dir Levies, Upper Dir.

.....PETITIONERS

VERSUS

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

.....RESPONDENTS

**WRIT PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN
1973 AS AMENDED UP TO DATE**

**R/SHEWETH:
ON FACTS:**

- 1- That the petitioners are the bonafide & Law abiding citizens of Pakistan, and were initially appointed as Sepoy/ Constable with the respondent No. 4 and were performing their duties on different positions. Copy of some of the

ATTESTED
EXAMINER
Peshawar High Court

appointments orders and payrolls are attached as annexure

.....A.

2- That it is important to mentioned here that the petitioners terms and conditions of services, prior to the promulgation of the 25th Constitutional Amendment Act, were regulated by the PATA Levies Force Regulation, 2012 (hereinafter to be called Regulation of 2012) read with the PATA Federal Levies Force Service (Amendment) Rules, 2013 (hereinafter to be called Regulation of 2013) and vide Rule 17 read with schedule-III of the Regulation, 2013 the retirement age was specified. Copy of the Regulation, 2013 is attached as annexureB.

3- That after the promulgation of the 25th Constitutional Amendment Act, 2018 the then FATA and PATA were merged in to the province of Khyber Pakhtunkhwa and the Forces were also absorbed into the regular Police of Khyber Pakhtunkhwa through different enactments. Similarly the Levies Forces of the then PATA were also absorbed in the Khyber Pakhtunkhwa Police vide Section 9 of the Khyber Pakhtunkhwa Levies Force Act, 2019 w-e-f 16-09-2019. That it is important to mention her that according to Section 9 (2) of the Act ibid until the absorption in the Police, the Levies Force terms and conditions shall be governed be the Regulation of 2013. Copy of the Khyber Pakhtunkhwa Levies Force Act, 2019 is attached as annexure.....C.

4- That it is pertinent to mention here that through Notification the Khyber Pakhtunkhwa Levies Force (Absorption in the Khyber Pakhtunkhwa Police) Rules, 2019 (hereinafter to be called Absorption Rule, 2019) was promulgated and vide section 3 of the Rules ibid the Levies force were absorbed permanently in the Khyber Pakhtunkhwa Police. That with promulgation of the Rules ibid the already existent service rules i.e. Regulation of 2012 and Regulation of 2013 and all the rules and notification issued under the old rules and regulation became ineffective and inoperative over the petitioners as well as over all the forces of the PATA and the Civil Servant Act, 1973, the Police Act, 2017 and the Police Rules, 1975 became operative over the petitioners and other Levies Forces. Copy of the Khyber Pakhtunkhwa Levies Force (Absorption in the Khyber Pakhtunkhwa Police) Rules 2019 is attached as annexure D.

5- That astonishingly the respondent No. 2 issued the impugned notification dated 22-03-2021 whereby the retirement age of the then Levies Force now Police Force has again been determined as per Rule 17 of the Regulation, 2013 despite the fact that the Regulation 2013 has no legal status after the promulgation of the Absorption

ATTESTED
EXAMINER
Peshawar High Court

Rule, 2019 as the Levies force has attain the status of the regular Police and are now absorbed permanently, so the notification dated 22-03-2021 is null and void ab initio and is issued by an incompetent authority. Copy of the notification dated 22-03-2021 is attached as annexure

E.

6- That astonishingly the respondent No.2 vide Impugned Notification dated 21.10.2021 further amended the already repealed Federal service rules, 2013 whereby sepoy, Lance Naik and Naik has to be retired on completion of twenty five years of service or Forty five years of age whichever is earlier. That it is pertinent to mention that after the Constitutional twenty Fifth Amendment article 247 has been omitted and as such the PATA Levies Force regulation, 2012 is no more in filed, therefore the status of the Ibd Impugned Notification dated 21.10.2021 is void ab initio in light of law and rules. Copy of the Impugned Notification dated 21.10.2021 is attached as annexure

F.

7- That in light of the impugned notifications dated 22-03-2021 and 21.10.2021 the petitioners stood retired from service on reaching to the age of forty-five years. That it is pertinent to mention that petitioners are now attain the status of civil servant and the respondents have no authority to retire the petitioners prior to reaching the age of superannuation i.e. 60 years.

8- That petitioners feeling aggrieved from the impugned service rule/ notifications dated 22-03-2021 and 21.10.2021 preferred departmental appeal but no response has been given till date. Copy of the Departmental Appeal is attached as annexure

G.

9- That petitioners feeling aggrieved and having no other option but to file the instant writ petition on the following grounds amongst the others.

GROUNDS:

A- That the impugned service rule/ notifications dated 22-03-2021 and 21.10.2021 are issued by an incompetent authority as well as against the law and rules, facts, norms of natural justice and material on record, and having no legal status hence not tenable and liable to be set aside.

B- That the petitioners have not been treated by the respondents in accordance with law and rules on the subject noted above


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and as such the respondents violated Article 4 and 25 of the constitution of Islamic Republic of Pakistan 1973.

- C- That the impugned notifications dated 22-03-2021 and 21.10.2021 are issued under the regulation of 2012 and regulation of 2013 but both of these regulations were declared as Inoperative after the promulgation of the 25th constitutional amendment Act and the Absorption Rules, 2019 so the notification is null and void.
- D- That, the treatment meted out to the petitioners is clear violation of the Fundamental Rights of the petitioners as enshrined in the Constitution of Pakistan, 1973.
- E- That it is important to mention here that petitioners are civil servant and the status of the petitioners being civil servant has been declared by the August Peshawar High Court; at MINGORA Bench in writ petition No. 528-M/2016 decide on 24-03-2021. Copy of the judgment is attached as annexure H.
- F- That petitioners have been discriminated by the respondents on the subject noted above and as such the respondents violated the Principle of Natural Justice.
- G- That under section 13 of Khyber Pakhtunkhwa Civil servant Act, 1973 the age of retirement of a civil servant has been prescribed, so the act of the respondents by issuing the impugned notification dated 22-03-2021 and 21.10.2021.
- H- That the petitioner seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that on acceptance of this writ petition the impugned action of the respondents by issuing the impugned service rules/ notifications dated 22-03-2021 and 21.10.2021 may kindly be declared as illegal, unconstitutional, void ab initio and Ineffective upon the rights of the petitioners. That the respondents may kindly be directed not to issue retirement order of the petitioners in light of the impugned Notifications dated 22.3.2021 and 21.10.2021. Any other remedy which this august Court deems fit that may also be awarded in favor of the petitioners.

INTERIM RELIEF:

That by way of interim the impugned service rule/ notifications dated 22-03-2021 and 21.10.2021 may very kindly be suspended till the final decision of the instant writ petition.

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PETITIONERS

Naik Bahadar
NAIK BAHADAR & OTHERS

THROUGH:

Noor Mohammad Khattak
NOOR MOHAMMAD KHATTAK

Kamran Khan
KAMRAN KHAN

Umer Farooq
UMER FAROOQ

&

Muhammad Manz Madni
MUHAMMAD MANZ MADNI

Said Khan
SAID KHAN
ADVOCATES

VERIFICATION:

It is verified that no other earlier writ petition was filed between the parties.

LIST OF BOOKS:

1. Constitution of Pakistan.
2. Any other Case law as per need.

DEPONENT

Naik Bahadar
ATTORNEY TO BE TRUE COPY

Notarized at Peshawar
Notary Public, Peshawar
No. 10, Chakrala, Peshawar
Punjab, Pakistan
Date: 06 JAN 2023

06 JAN 2023

"I" - 28 -

Judgment Sheet

PESHA WAR HIGH COURT, PESHAWAR.

(JUDICIAL DEPARTMENT)

W.F.No.5091-P/2021 with I.R.,
CM Nos.2453/2021 & 626/2022.



JUDGMENT

Date of hearing — 29.11.2022.

Mr. Noor Muhammad Khattak, Advocate for the petitioners.

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

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S M ATTIQUE SHAH, J.:- For the reasons recorded in our detailed judgment of even date in W.P.No.367-M/2021 titled "Muhammad Ghafar etc. Vs. Govt of Khyber Pakhtunkhwa" this writ petition is dismissed.

[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.

(S-4000) Court Secretary

[Signature]
CERTIFIED TO BE TRUE COPY
06 JAN 2023



Judgment Sheet

PESHAWAR HIGH COURT, PESHAWAR.

(JUDICIAL DEPARTMENT)

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

JUDGMENT

Date of hearing -- 29.11.2022.

Barrister Dr.Adnan for petitioners.

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

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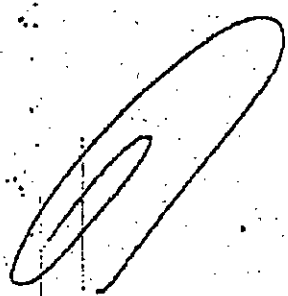
S M ATTIQUE SHAH, J:- Through this single judgment, we shall also decide the connected writ petitions bearing Nos.337-M/2021, 406-M/2021, 503-M/2021, 514-M/2021, 518-M/2021, 450-M/2021, 601-M/2021, 681-M/2021, 632-M/2021, 919-M/2021, 968-M/2021, 980-M/2021, 1221-M/2021, 1222-M/2021, 1252-M/2021, 2210-P/2021, 2913-P/2021, 6092-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 Administrated Tribal Area (FATA) and; absorb them in police and; grant them full pensionary benefits.

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

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

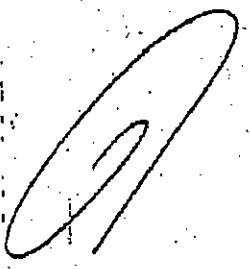


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Similarly, in COC Nos.38-M/2021 in W.P.No.367-M/2021 and COC No.436-P/2022 in W.P.No.1335-P/2022 petitioners seek initiation of contempt of court proceedings against the respondents for violating the order of this court dated 21.04.2021 passed in W.P.No.367-M/2021.

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



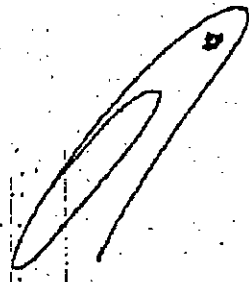
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(Police-II)HD/1-3, rule 17 was further amended by deleting schedule-IV as "All uniformed force shall retire from service on attaining the age of superannuation i.e. Sixty (60) years or they may opt for retirement after completion of twenty-five (25)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

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

4. Being aggrieved from the Ibd 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 25th Constitutional amendment, the said regulation does not hold field, therefore, the Impugned Notification is liable to be set aside.

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




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

8. Heard. Record perused.

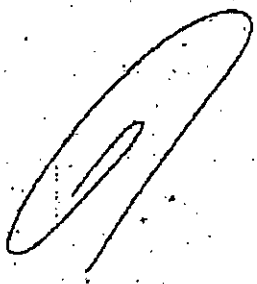
9. Before discussing merits of the case we deem it appropriate to discuss the background of the matter in hand to properly comprehend the issue involved therein. It is worth mentioning that earlier the services of the *Levies Force* were dealt with under the *Frontier Irregular Corps (FIC) rules, 1962*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



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

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



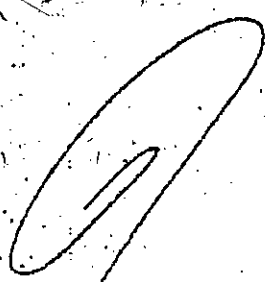
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working in FATA was merged into the regular police of the province. Albeit, in Malakand Division, Levies Force is still regulated by *FATA Federal Levies Force Service (Amended) Rules 2013* in view of the Khyber Pakhtunkhwa Act No 111 of 2019 through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

11. Moving toward the status of the petitioners it is worth mentioning that earlier this court while deciding *W.P No 528-M/2015 (Ikramullah's case)* determined the status of personnel of the *Provincial Levies Force* as that of civil servants in the following terms:-

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



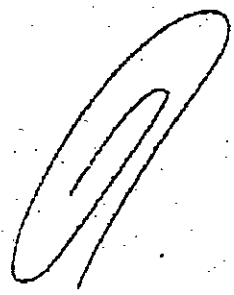
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2014 ("Regulation"). Paragraph No.3 of the Regulation envisages for constitution and establishment of the Force and its functions. For ease reference paragraph Nos. 3 and 4 of the Regulation are reproduced as under:-

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

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

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



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be guided in accordance with this Regulation and the rules.

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

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

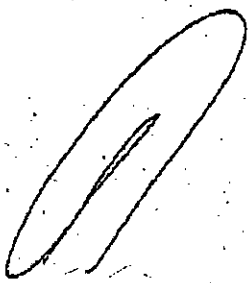
(5) The Force shall consist of such ranks and number of officers and members and shall be constituted in such manner as may be prescribed by rules.

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

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

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

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



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

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



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

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Exchequer and performs the policing service in the erstwhile PATA.

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

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

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

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

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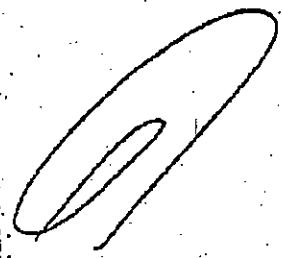
- (i) a person who is on deputation to the Province from the Federation or any other Province or other authority;
- (ii) a person who is employed on contract, or on work charged basis, or who is paid from contingencies; or
- (iii) a person who is a "worker" or "workman" as defined in the Factories Act,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

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

"260.

(1).....

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



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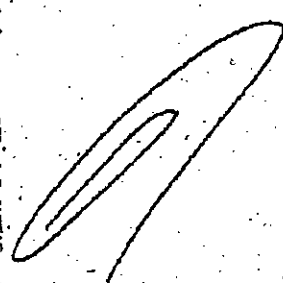
(Parliament)) or of a Provincial Assembly, but does not include service as Speaker, Deputy Speaker, Chairman, Deputy Chairman, Prime Minister, Federal Minister, Minister of State, Chief Minister, Provincial Minister, [Attorney-General], [Advocate-General], [Parliament Secretary] or [Chairman or member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

Whereas Article 240 of the Constitution envisages that:-

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

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

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



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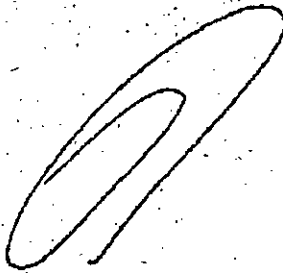
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day or which may be created by Act of [Majlis-e-Shoora (Parliament)]".

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 from 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

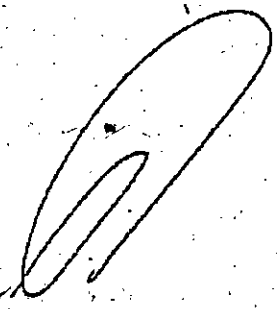


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Federal Government or a Provincial Government".

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...".

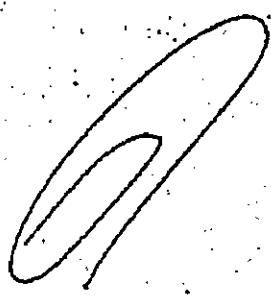
26. Similarly, in the case of Commandant, Frontier Constabulary, Khyber Pakhtunkhwa, Peshawar and

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others vs. Gul Raqlb 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-Saleem case



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

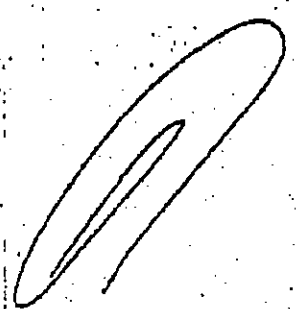
7. Having noticed the qualifying criteria of a civil servant under the law, it is appropriate now to examine the factual matrix of the present controversy. The FC was established by the NWFP Constabulary Act, (Act-XIII) of 1915 ("Constabulary Act"). Section 3 of the Constabulary Act empowers the Federal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



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the better protection and administration of those parts. Section 5(1) of the Act *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

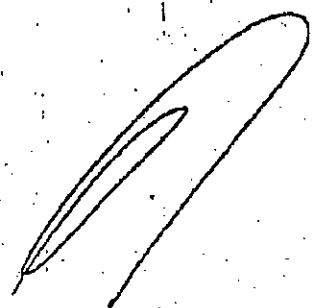
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In the Act and the Rules. The test laid down in Article 240(a) of the Constitution requires that the appointment to and the terms and conditions of service of posts in connection with the affairs of the Federation and of a service of Pakistan shall 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.."

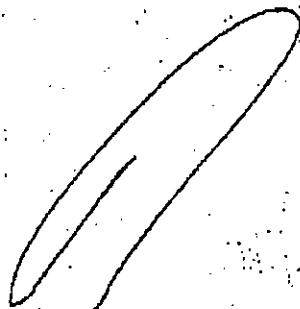
27. Similarly, this Court in the case of Gul Munir vs. The



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



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

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

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

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

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

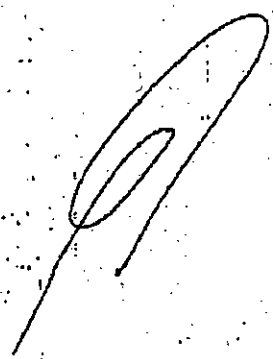


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not distinguish the status of petitioners (PATA Federal Levies Force) vis a vis Provincial Leavy Force in any manner. Both forces are performing their functions in the same area for the same object and purpose, and both are being maintained through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

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



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

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

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

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

[Signature]
JUDGE

[Signature]
JUDGE

[Signature]
JUDGE

Announced.
Dt.29/11/2022.


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

(FOR NAME ONLY SIGNATURE)

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17 DEC 2022

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ایڈوکیٹ:		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل ایسوسی ایشن نمبر: RC-18-1768				
رابطہ نمبر: 0315-9925250				

بعدالت جناب: Before H/Service Tribunal KP

مخاطب: سدا تل	دعویٰ:
	علت نمبر:
سید محمد بنام گورنمنٹ	موردہ:
ہٹلرہ	جرم:
	تھانہ:

باعت تحریر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ

آن مقام پر سید محمد بنام گورنمنٹ کے اصرار پر کارروائی کو مکمل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داخستہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم: 26-6-2023

العواذ العباد

مقام کے لیے منظور ہے۔

Attest & Accepted

نوٹ: اس وکالت نامہ کی کارروائی ناقص ہوگی۔

Mr. Sartaj Muhammad s/o Gul A/O Khay Batkhela Malakand