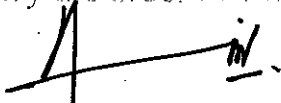


FORM OF ORDER SHEET

Court of _____

Appeal No. 1538/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	25/07/2023	The appeal of Mr. Muhtamim Khan resubmitted today by Mr. Hassam Raoun Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 27-07-2023 .
		By the order of Chairman  REGISTRAR

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

Appeal No. 1538 /2023

Muhtamim Khan.....APPELLANT

VERSUS

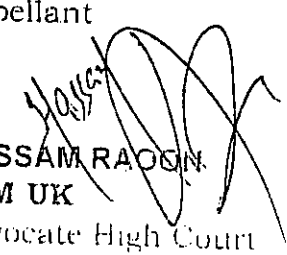
Government of KPK etc.....RESPONDENTS

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2.	Application for Suspension alongwith Affidavit		9-10
3.	Addresses of Parties		11
4.	Copy of notice alongwith receipts to respondents		12
5.	Copy of Pay Slip	A	13-
6.	Copy of the Regulations, 2013	B	14-25
7.	Copy of Relevant Notification No. 4476/GB	C	26-27
8.	Copy of the Impugned Notification dated 22.03.2021 and 21.10.2021	D & E	28-31
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Appellant

Through


HASSAM RAOUN
LLM UK
Advocate High Court

Dated:22.07.2023

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal No. 1538 /2023

MUHTAMIM KHAN S/O HAMESH KHAN
R/o Mohalla Fazal Abad, Dheri Aala Dhand,
Tehsil Batkheila, District Malakand.

..... APPELLANT

VERSUS

- 1- Government of Khyber Pakhtunkhwa,
through Chief Secretary, Khyber Pakhtunkhwa,
Peshawar.
- 2- Secretary Home and Tribal Affairs Department,
Khyber Pakhtunkhwa, Peshawar.
- 3- The District police Officer, District Malakand.
- 4- 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 NOTIFICATION DATED 22-03-2021 and 21-10-2021
WHEREBY THE APPELLANT BEING A CIVIL SERVANT IS BEING
PRE MATURELY RETIRED FROM SERVICE ON REACHING 33
YEARS OF 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 and 21-10-2021, be declared as unreasonable, ultra-vires of law as well as contrary to the settled principles of the age of retirement and contrary to the fundamental rights of appellant guaranteed by the constitution.

That the respondents may very kindly be directed not to retire the appellant prematurely on reaching 33 years of service. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

Respectfully Sheweth:

ON FACTS:

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

- 1- That the appellant is the bona fide & law abiding citizen of Pakistan. The appellant was initially appointed as Sepoy later on he was promoted to the rank of Lance Naik, then to the rank of Naik, Hawaldar and then later Naib Subedar (BPS-11) in the respondent department and was performing his duty on different positions.
(Copy of Pay Slip is attached as "A")
- 2- That it is important to mention here that the appellant's 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 Regulations, 2013 is attached as Appendix "B")
- 3- That after the promulgation of the 25th Constitutional Amendment, 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 notification No.4476/GB and the appellant was re-designated as Assistant Sub Inspector BPS-11.

(Copy of Relevant Notification No. 4476/GB is attached as Appendix "C")

- 4- That astonishingly the respondent no.2 issued the impugned notification dated 21.03.2021 and 21.10.2021 whereby the retirement age of the then Levies Force now Police Force has again been determined as per the regulation, 2013 despite the fact that the Regulation 2013 has no legal status after the promulgation of the Absorption Rule 2019 as the Levies Force has attained the status of the regular police and are now absorbed permanently, so the notification dated 22.03.2021 and 21.10.2021 is null and void ab initio and is issued by an incompetent authority.

(Copy of the Impugned Notification dated 22.03.2021 and 21.10.2021 is attached as Appendix "D" & "E")

- 5- That in light of the impugned notifications dated 22.03.2021 and 21.10.2021 the appellant will stand retired from service on reaching to the age of 33 years of service on 31-07-2023. It is noteworthy to mention that the appellant has now attained 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.

- 6- That the appellant feeling aggrieved from the impugned service rule/notifications dated 22.03.2021 and 21.10.2021, preferred departmental appeal dated 18-03-2023 but no response has been given till date.

(Copy of the Departmental Appeal is attached as Appendix "F")

- 7- That the appellant feeling aggrieved and having no other remedy but to file the instant service appeal on the following grounds inter alia;

GROUNDS:

A- That the impugned notification dated 22.03.2021 and 21.10.2021 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 3, 4, 10-A and 25 of the Constitution of Islamic Republic of Pakistan 1973.

C- That the impugned notification dated 22.03.2021 and 21.10.2021 is issued under the regulation of 2012 and amended service rules 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 the appellant has been discriminated by the respondents on the subject noted above and as such the respondents violated the principle of Natural Justice.

F- That as per the verdict of the Honorable Supreme Court in case titled as *Government of Khyber Pakhtunkhwa through Chief Secretary vs Maqsd Hayat and others* 2023 SCMR Pg.8 para no.7 at pg.12

"When a Tribunal decides any question of law by dint of its judgement, the said judgement is always treated as being in rem, and not in personam".

It is worth mentioning here that the same benefit may also be awarded to the petitioners because the Honorable Khyber Pakhtunkhwa Service Tribunal vide service appeal no. 1026/2018 decided on dated 21-10-2021 in para no.6 had held as following

"Record reveals that Federal Levies Force and Provincial Levies Force were operative in defunct Provincially Administered Tribal Areas (PATA) and in order to regulate their service matters, the Provincial Government with prior approval of the President of Pakistan promulgated PATA Levies Force Regulation, 2012, under which two sets of rules were framed for Federal as well as Provincial Levies Force i.e PATA Federal Levies service rules (Amended), 2013 and PATA Levies Force Service Rules 2012 the appellants _____ Levies Force and rule 16 of the Provincial Levies Force Rules provides for the retirement of the members of the force on attaining the age of superannuation i.e 60 years or he may opt for retirement after completing 25 years of regular service. In 2014, separate Regulations i.e PATA Provincial Levies Force, under which PATA Provincial Levies Rules, 2015 were framed. Rule-16 whereof provides for the uniformed members of the force to be retired as per Schedule-iv, according to which Subedar will get retirement on completion of 35 years service or 60 years of age, whichever is earlier. It was in the year 2016 when amendments were made in Schedule-iv of Rules, 2015 and alter the criteria for the retirement of Subedar and Naib-Subedar only and rest of the members of the force were not touched. Subedar was to be retired on 35 years of service or five years as Subedar 60 years which ever is earlier. The appellants are mainly aggrieved of this amendment, which has rendered them retired on completing five years service as subedar and only 19 years of service at his credit with age of 41 years. It is quite astonishing that such amendments are not even in the interests of respondents retiring quite an energetic and young office at such earlier stage. In response to the departmental appeal submitted by the appellants, The Commandant Levies Forces/Deputy Commissioner, Upper Dir, recommended for maintenance of rules, 2015, relevant portion of the letter is.

7. the Provincial Government was in the process to examine and remove the anomaly but in the meanwhile the appellants were retired from service on completion of five years of service as Subedar and the Provincial Government during the course of the litigation at a belated stage, have taken cognizance of the situation and have noted that the impugned notification dated 26-12-2016 is unreasonable, ultra-vires of law as well as contrary to the settled principles of the age of retirement and contrary to the fundamental rights of the appellants guaranteed by the constitution, hence amendments were brought vide notification dated 14-07-2020, whereupon schedule-iv was deleted and provided that all uniformed force shall retire from service on attaining the age of superannuation i.e. 60 years or they may opt for retirement after completion of 25 years regular service. Such amendments corrected the course for future, but the impugned notification altering the terms and conditions of the service of the appellants adversely affecting their rights already vested in them and have caused damage to the appellants, which was unwarranted and nullity in the eye of law.

8. In the view of the foregoing discussion, the instant, appeals are accepted. The appellants as well as other similarly placed employees stand re-instated in service, who will retire on attaining age of 60 years or they may opt for retirement after the age of completion, of 25 years regular service. Parties are left to bear the own costs. File be consigned to record room.

(Copies of Case Law are attached as Annexure "G" & "G/I")

G- That vide Notification No. SO(Police-II)HD/1-3/. Dated 14.07.2020 an amendment was made in the Provincially Administered Tribal Areas (PATA) Federal Levies Force Service (Amended) Rules, 2013 In the following words

(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."

(Copy of Notification is attached as Appendix 'H')

H- 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 notifications dated 22.03.2021 and 21.10.2021 is illegal and unconstitutional.

I- 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.


Appellant

Through


HASSAM RACON
LLM UK
Advocate High Court

Dated:22.07.2023

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal NO. _____/2023

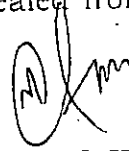
Muhtamim Khan.....**APPELLANT**

VERSUS

Government of KPK etc.....**RESPONDENTS**

AFFIDAVIT

I, Muhtamim Khan S/o Hamesh Khan, Sub-Inspector, 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



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

CM No. _____/2023

In

Appeal No. _____/2023

Muhtamim Khan.....**APPLICANT/APPELLANT**

VERSUS

Government of KPK etc.....**RESPONDENTS**


APPLICATION FOR SUSPENSION OF THE
IMPUGNED NOTIFICATIONS DATED: 22.03.2021
& 21.10.2021 AND RESTRAINING THE
RESPONDENTS FROM PREMATURELY
RETIRING THE APPELLANT FROM HIS
SERVICES, TILL THE FINAL DECISION OF THE
INSTANT SERVICE APPEAL.

Respectfully Sheweth:

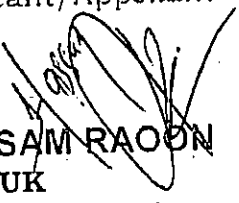
1. That the above noted service appeal is being filed before his Honorable Tribunal, in which no date of hearing has yet been fixed.
2. That the applicant/appellant has got a good prima facie case in his favor, and is sanguine about its success.
3. That the balance of convenience also lies in favor of the applicant/appellant.
4. That if the impugned notifications dated: 21.10.2021 & 22.03.2021 are not suspended, respondents will retire the applicant/appellant causing him irreparable loss.

5. That the facts and grounds of the service appeal may kindly be read as an integral part of this application.

It is, therefore, respectfully prayed, that on acceptance of this application, the impugned notifications dated: 21.10.2021 & 22.03.2023 may kindly be suspended till the final decision of the service appeal.


Applicant/Appellant

Through


HASSAM RAOUN
LLM UK
Advocate High Court

Dated:22.07.2023

AFFIDAVIT

I, Muhtamim Khan S/o Hamesh Khan, Sub-Inspector, 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

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal NO. _____/2023

Muhtamim Khan.....**APPELLANT**

VERSUS

Government of KPK etc.....**RESPONDENTS**

ADDRESSES OF PARTIES

APPELLANT:

MUHTAMIM KHAN S/O HAMESH KHAN
 R/o Mohalla Fazal Abad, Dheri Aala Dhand,
 Tehsil Batkheila, District Malakand.

RESPONDENTS:

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

Appellant

Through


HASSAM RAOON
LLM UK

Advocate High Court

Dated: 22.07.2023

12

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal No. _____/2023

Muhtamim Khan.....**APPELLANT**

VERSUS

Government of KPK etc.....**RESPONDENTS**

NOTICE

To,

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

Please take notice that I am going to file the above titled
appeal before the Khyber Pakhtunkhwa Service Tribunal, Peshawar
on behalf of appellant against you.

Appellant

Through


HASSAM RAOUF
LLM UK
Advocate High Court

Dated:22.07.2023

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Annexure 'A'

Government of Khyber Pakhtunkhwa
District Accounts Office Malakand
Monthly Salary Statement (June-2023)



Personal Information of Mr MUHTAMIM KHAN d/w/s of HAMESH KHAN

Personnel Number: 00243669 CNIC: 1540107061039 NTN:
Date of Birth: 01.08.1971 Entry into Govt. Service: 01.08.1990 Length of Service: 32 Years 11 Months 001 Days

Employment Category: Active Temporary

Designation: ASSISTANT SUB INSPECTOR 30877509-GOVERNMENT OF KHYBER PAKH

DDO Code: MD4294-Levies Malakand

Payroll Section: 003

GPF Section: 003

Cash Center: 06

GPF A/C No: ML MD001859

Interest Applied: Yes

GPF Balance:

370,535.00

Vendor Number: -

Pay and Allowances:

Pay scale: BPS For - 2022

Pay Scale Type: Civil BPS: 11

Pay Stage: 18

Wage type		Amount	Wage type		Amount
0001	Basic Pay	42,230.00	1001	House Rent Allowance 45%	2,778.00
1210	Convey Allowance 2005	2,856.00	1300	Medical Allowance	1,500.00
1547	Ration Allowance	681.00	1567	Washing Allowance	150.00
1646	Constabulary R Allowance	500.00	1902	Special Incentive Allowance	775.00
1911	Compen Allow 20% (1-15)	1,000.00	1933	Special Risk Allowance	4,000.00
2168	Fixed Daily Allowance	2,730.00	2314	Risk Allow Police - 2021	8,600.00
2347	Adhoc Rel At 15% 22(PS17)	4,130.00			0.00

Deductions - General

Wage type		Amount	Wage type		Amount
3011	GPF Subscription	-1,920.00	3530	Police wcl:Fud BS-1 to 18	-845.00
3534	R. Ben & Death Comp Fresh	-600.00	3609	Income Tax	-1,412.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance

Deductions - Income Tax

Payable: 9,700.10 Recovered till June-2023: 9,701.00 Exempted: 0.90 Recoverable: 0.00

Gross Pay (Rs.): 71,930.00 Deductions: (Rs.): -4,777.00 Net Pay: (Rs.): 67,153.00

Payee Name: MUHTAMIM KHAN

Account Number: CA 1479-1

Bank Details: NATIONAL BANK OF PAKISTAN, 231910 Bus Stand Batkhela Malakand Bus Stand Batkhela Malakand, Malakand

Leaves: Opening Balance: Aailed: Earned: Balance:

Permanent Address: D/ALLAHDAND

City: MALAKAND

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City:

Email:

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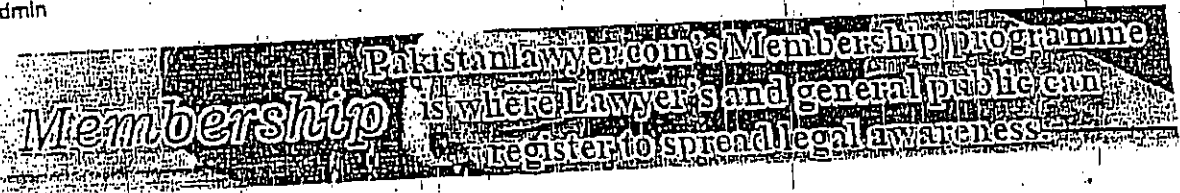
FEDERAL LEVIES FORCE (AMENDED) SERVICE RULES, 2013

Annexure

pakistanlawyer.com/2016/06/27/federal-levies-force-amended-service-rules-2013/

June 27, 2016

admin



NOTIFICATION

FEDERAL LEVIES FORCE (AMENDED) SERVICE RULES, 2013

th June, 2013]

S.R.O. 580 (I)/2013, dated 8.4.2013.—In exercise of the powers conferred by Section 10 of the Federal Levies Force Regulation, 2012 the Federal Government is pleased to make the following rules, namely:—

1. Short title and commencement.—(1) These rules may be called Federal Levies Force (Amended) Service 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 meanings 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 Political Agent of the Agency or, as the case may be, Deputy Commissioner for FRs in their respective jurisdiction;
 - (c) "Director-General" means an officer appointed as such by the Federal Government, to exercise such powers and functions as may be prescribed;
 - (d) "Director" means an officer appointed as such by the FATA Secretariat who shall have practical experience of civil administration in tribal areas and who shall exercise such powers and functions as may be prescribed;
 - (e) "Deputy Commandant (Operations)" means an Assistant Political Agent of a Sub-Division or an Agency or FR or any officer of the District designated as such officer by the Provincial Government, who shall be Deputy Commandant (Operations) of the Force in

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their respective jurisdiction to exercise such powers and functions as may be prescribed; and

- (f) "Deputy Commandant (Administration)" means an officer of Federal or Provincial civil service or any officer of the District designated as such officer by the Provincial Government in their respective jurisdiction to exercise such powers and functions as may be prescribed and who shall be responsible to the Commandant for administrative and establishment matters of the Force;
- (g) "FR" means Frontier Regions;
- (h) "Government" means the Federal Government;
- (i) "Initial recruitment" means appointment made other than by promotion or by transfer from other services;
- (j) "Schedule" means the Schedule appended to these rules;
- (k) "Selection or Promotion Committee" means a Committee for recruitment or as the case may be, promotion of Force personnel as notified by the Government;
- (l) "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 Federal 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-f. The following conditions shall also be fulfilled, namely:—

- (a) A candidate for appointment shall be a citizen of Pakistan and *bona-fide* resident of the respective district, agency or Frontier Region, as the case may be;
- (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 or Agency Headquarters Hospital shall issue a certificate of medical fitness of the candidate;
- (d) Recruitment to all ranks of the Force shall be made from amongst those persons having a minimum height 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;

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(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 or Academic Officer of the academic institution last attended and also 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 a foreign national shall be eligible for appointment in the Force, unless allowed by the Government, in writing.

4. **Appointing authority.**—(1) Commandant shall be the appointing authority for initial recruitment or promotion of the Force personnel.

(2) Appointment to the post shall be made in accordance with the provision 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 Federal Government;

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

5. **Probation.**—(1) 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.

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 are selected. Initially, the Appointing Authority shall arrange for appropriate training till a proper Levies Training Centre 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 Commandant.

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.

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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 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 Agency/FR/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 Force shall be liable to serve anywhere in their respective District, Agency or Frontier Region. An officer of the force may be transferred to any other District, Agency or Frontier Region in the public interest.

10. **Punishment.**—After satisfying himself regarding punishable act (as referred to in Schedule-II) through a charge duly framed in writing necessary punishment specified in Schedule-III shall be awarded by the respective authority:

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

11. **Appeal.**—If any personnel for 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 be lie against the punishments specified at S. No. (1) and (2) of Schedule-III.

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 or Agency or Frontier Region. Annual Reports of all Havaldars and Junior Commissioned Officers (JCOs) will also be maintained for the purpose of promotion.

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14. **Uniform.**—The levy personnel shall attire black *shalwar qamees* with brown *chappli*, white socks, black *barreteé* cap and black belt whereas the JCOs will wear brpwn 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.

(2) Casual leave may be allowed upto three days by the Subedar Major. Casual leave upto 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-IV 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 Federal Government from time to time.

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

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

(2) Force personnel shall be granted compensation in case of sustaining fatal injury or injuries during the discharge of his duty. If he is declared incapacitated for further service 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.**—(1) 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.

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(2) A special welfare funds for Force personnel shall be created by the Government at Federal level with monthly contribution from all Force personnel at the rate as prescribed by the Commandant, which shall be utilized for the general welfare of Force personnel and their families.

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 the 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 Federal Government.

(2) There shall be levy line in each District, Agency or Frontier Region which shall have all necessary facilities including parade ground, barracks, quarter guards, koth/armory 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 Muharrir.

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

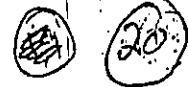
(5) Registers including roznamchas as prescribed by the Commandant shall be maintained in every post/Station/Lines.

(6) Commandant, Deputy Commandant or any other officer of the District Administration shall in the course of their tours in their jurisdiction, may inspect levy 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 (Operation) by In-charge of the Post/Station within twenty four hours for appropriate action.

24. Anomalies.—An Anomaly Committee duly constituted/notified shall be set up in the States & Frontier Regions Division 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 Federal Levies Force, immediately before the commencement of these rules shall stand repealed in so far as those rules, orders or instructions are inconsistent with the rules.

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**SCHEDULE-I**

see Rule 4(2)

A. Uniformed Force

S. No.	Post/Rank	Eligibility for promotion	Promotion Quota	Direct Quota	Qualification
1.	Subedar Major (BS-16)	Three years service as Subedar	100%	—	—
2.	Subedar (BS-13)	Three years service as Naib Subedar	100%	—	—
3.	Naib Subedar (BS-11)	Three years service as Havaldar	100%	—	—
4.	Havaldar (BS-8)	Three years service as Naik	100%	—	—
5.	Naik (BS-7)	Three years service as Lance Naik	100%	—	—
6.	L/Naik (BS-6)	Three years service as Sepoy	100%	—	—
7.	Sepoy (BS-5)	—	—	100%	Middle pass preferably Matric
8.	Head Armourer BPS-5	5 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

B. Ministerial Staff

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S. No.	Post/Rank	Eligibility for promotion	Promotion Quota	Direct Quota	Qualification
10.	Assistant (BS-14)	KPO/Computer Operator/Senior Clerk/Junior Clerk (i) Minimum five years service as KPO/Computer (ii) Five years service as Senior Clerk (iii) Seven 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 in to service
11.	KPO/Computer Operator (BPS-12)	—	—	100%	Intermediate with one year diploma in IT from a recognized institute
12.	Senior Clerk (BS-9)	Five years service as Junior Clerk	100%	—	F.A. or equivalent (Preferably know Typing/Computer)
13.	Junior Clerk (BS-7)	—	10% from lower staff with Matric	90%	Matric with a typing speed of 30 w.p.m./preferably Computer literate
14.	Behishti (BS-5)	—	—	100%	Literate.
15.	Driver (BS-5)	—	—	100%	Driving License/Driving Experience
16.	Pesh Imam (BS-2)	—	—	100%	Moulvi Fazil
17.	Tracker (BS-2)	5 years service in BS-1	10%	90%	Primary Pass.

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18.	Naib Qasid (02)	—	—	100%	—
19.	Sweeper (BS- 2)	—	—	100%	Literate

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 duty, breach of order, disobedience, unruly behavior, passing on official secrets to unauthorized persons, etc;
- (c) is corrupt, or may reasonably be considered as corrupt;
- (d) is guilty of any violation of duty;
- (e) losses, misplaces or causes harm to a weapon through insubordinate or lack of maintenance;
- (f) is insubordinate to his superiors;
- (g) is convicted of a criminal offense;
- (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) attempt collective bargaining, conspiring or attempting to call off duty or take procession to press for the demands, or is guilty of omission and commission under the law and rules;
- (l) is guilty of omission and commission under the law and rules;
- (m) deserts the service;

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- (n) Being a sentry, sleeps upon his post or quits it without being regularly relieved or without leave; or
- (o) Without authority, leave his commanding officer, or his post or party, to go in search of plunder; or
- (p) Quits his guard, pliquet, 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, for plunder, or plunders, destroys, or damages any property of any kind; or
- (r) Internally causes or spreads of false alarm or rumor during action or in post, camp, lines; or quarters.

SCHEDULE-III

(see Rules 10)

Punishment and Competent Authority

S. No.	Punishment	Subedar Major & Subedar	Naib Subedar or Havildar	Naik or Lance Naik	Sepoy
1.	Extra Drill not exceeding fifteen days fatigue or other duties	—	—	Subedar	Naib Subedar
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-	Commandant	Commandant	Commandant

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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 low rank or reduction in pay	-do-	-do-	-do-	-do-
9.	Dismissal or removal from service or compulsory retirement	-do-	-do-	-do-	-do-

SCHEDULE-IV

(SEE Rule§ 17)

S. No.	Post/Rank	Length of service/age
1.	Subedar Major (BS-16)	38 years service or 03 years service as Subedar Major or 60 years of age whichever is earlier
2.	Subedar (BS-13)	35 years service or 03 years service as Subedar or 57 years of age whichever is earlier
3.	Naib Subedar (BS-11)	32 years service or 03 years service as Naib Subedar or 54 years of age whichever is earlier

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4.	Havaldar (BS-8)	29 years service or 03 years service as Havaldar or 51 years of age whichever is earlier
5.	Naik (BS-7)	26 years service or 03 years service as Naik or 48 years of age whichever is earlier
6.	L/Naik (BS-6)	23 years service or 03 years service as L/Naik or 45 years of age whichever is earlier
7.	Sepoy (BS-5)	20 years service or 42 years age whichever is earlier

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Appendix (A)



OFFICE OF THE
INSPECTOR GENERAL OF POLICE,
CENTRAL POLICE OFFICE,
KHYBER PAKHTUNKHWA
PESHAWAR.

NOTIFICATION

Dated Peshawar the 29/05/2011

No. 4476/GB The Provincial Police Officer, Khyber Pakhtunkhwa is pleased to re-designate the following ranks of Levies and Khasadar Forces for the purpose of recruitment/absorption in Khyber Pakhtunkhwa Police with immediate effect:-

S.No.	Old Rank in Levies / Khasadar	New Rank in Police
1.	Sepoy	Constable (IPS-07)
2.	Lance Naik	Constable A-1 (IPS-07)
3.	Naik	Constable B-1, LIC (IPS-07)
4.	Head Constable	Head Constable (IPS-09)
5.	Naib Subedar	Assistant Sub Inspector (IPS-11)
6.	Subedar	Sub Inspector (IPS-09)
7.	Subedar Major	Inspector (IPS-10)

-sd/-
MULHAMMAD NAEEM KHAN, D.O.
Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar

Encls. Nil & date even.
Copy forwarded to the:-

- Secretary Establishment, Govt. of Khyber Pakhtunkhwa, Peshawar
- Secretary Finance, Govt. of Khyber Pakhtunkhwa, Peshawar
- Secretary Home and Tribal Affairs Department, Govt. of Khyber Pakhtunkhwa, Peshawar.
- All heads of Police, Khyber Pakhtunkhwa.
- PSO to IGP Khyber Pakhtunkhwa, Peshawar.
- Registrar CPO.

(SADIC) BAKI ULLAH
AIG/Establishment
For Inspector General of
Khyber Pakhtunkhwa, P.

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OFFICE OF THE
INSPECTOR GENERAL OF POLICY
CENTRAL POLICE OFFICE
KHYBER PAKHTUNKHWA
PESHAWAR

NOTIFICATION

Dated Peshawar the 29/05/20

No 4476/-GB the provincial Police officer, Khyber Pakhtunkhwa is pleased to re-designate the following ranks of Levies and Khasadar forces for the purpose of the induction/absorption in khyber Pakhtunkhwa Police with immediate effect:-

S No.	From Rank in Levies/ Khasadar	To Ranks in Police
1	Sepoy	Constable (BPS-07)
2	Lance Naik	Constable-A1 (BPS-07)
3	Naik	Constable B-1, LHC (BPS-07)
4	Hawaladar	Head Constable (BPS-09)
5	Naib Subedar	Assistant Sub Inspector (BPS-11)
6	Subedar	Sub-Inspector (BPS-14)
7	Subedar Major	Inspector (BPS-16)

-sd/-

MUHAMMAD NAEEM KHAN, Dr. PS
Inspector General of Police
Khyber Pakhtunkhwa
Peshawar

Endst: No. & date even.

Copy forwarded to the

1. Secretary establishment, Govt of Khyber Pakhtunkhwa, Peshawar.
2. Secretary Finance, Govt of Khyber Pakhtunkhwa, Peshawar
3. Secretary Home and Fool Affairs Department Govt of Khyber Pakhtunkhwa Peshawar
4. All heads of Police, Khyber Pakhtunkhwa
5. PSO to IGP Khyber Pakhtunkhwa, Peshawar
6. Registrar CPO

(SADIQ BALOCH)
AIG/Establishment
For Inspector General Khyber
Pakhtunkhwa
Peshawar

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GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME AND TRIBAL AFFAIRS DEPARTMENT

NOTIFICATION

Peshawar, dated the 31-10-2021

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Amendment "D"

-32-

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

SCHEDULE-11

S. No.	Name of the Post / Rank	Length of Service / Age
1	Subedar Major (AS-16)	Thirty Seven Years of Service or Three Years' Service at Subedar Major or Thirty Years of Age whichever is earlier.
2	Subedar (AS-14)	Thirty Five Years of Service or Two Years' Service as Subedar or Thirty Years of Age whichever is earlier.
3	Head Subedar (AS-11)	Thirty Three Years of Service or Seven Years' Service as Head Subedar or Thirty Years of Age whichever is earlier.
4	Head Constable (AS-07)	Thirty one years of service or thirty one years of age whichever is earlier.
5	Head (AS-09)	Twenty five years of service or thirty five years of age whichever is earlier.
6	L/Head (AS-08)	Twenty seven years of service or thirty seven years of age whichever is earlier.
7	Sopai (AS-07)	Twenty five years of service or thirty five years of age whichever is earlier.

SCHEDULE-1

S.N	Post/ Rank	Eligibility for Promotion	Promotion Quota	Direct Quota	Political Quota
1	Subedar Major (AS-14)	02 years' service at Subedar Or Total 33 years of service	100%		
2	Subedar (AS-14)	02 years' service as Head Subedar Or Total 19 years of service	100%		
3	Head Subedar (AS-11)	01 years' service as Head Constable Or Total 17 years of service	100%		
4	Head Constable (AS-09)	03 years' service as Head Or Total 13 years of service			
5	Head (AS-08)	03 years' service as L/Head Or Total 09 years of service			
6	L/Head (AS-08)	03 years' service as Sopai			
7	Sopai (AS-07)			100%	
8	Head Ambar (AS-3)	03 years' service as Assistant Ambar	100%		ISC Qualification with political of Ambar
9	Assistant Ambar (AS-1)			100%	ISC Qualification with political of Ambar

SECRETARY TO
GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT

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

Peshawar dated 21.10.2021

No. SO(POLICE-II)/HD/1-3/FEDERAL LEVIES 2021:- In exercise of powers conferred by Section-9 of the PATA Levies Force Regulation, 2012 and in continuation of this Department Notification No. SO(POLICE-II)/HD/MKD/ LEVIES/MISC/2020 dated 22.03.2021, the Provincial Government of Khyber Pakhtunkhwa is pleased to direct that 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)	37 Years of Service or 3 years service as Subedar Major or 60 years age whichever is earlier.
2.	Subedar (BS-14)	35 Years of Service or 2 years service as Subedar or 60 years of age whichever is earlier
3.	Naib Subedar (BS-11)	33 Years of Service or 7 years service as Naib Subedar or 60 years of age whichever is earlier
4.	Hawaldar (BS-07)	31 Years of Service or Thirty one years service or 3 years service as Hawaldar or 51 years of age whichever is earlier
5.	Naik (BS-05)	22 Years of Service or 3 years service as Naik or 48 years of age whichever is earlier
6.	L-Naik (BS-08)	27 Years of Service or 3 years service as L.Naik or 45 years of age whichever is earlier
7.	Sepoy (BPS-07)	25 Years of Service or 35 years of age whichever is earlier

Schedule-I

S. No.	Post/ Rank	Eligibility for Promotion	Promotion Quota	Direct Quota	Qualification
1	Subedar Major (BS-16)	Two years service as Subedar or total 21 years of service	100 %		
2	Subedar (BS-14)	Two years service as Naib Subedar or total 19 years of service	100 %		
3	Naib Subedar (BS-11)	Four years service as hawaldar or total 17 years of service	100 %		
4	Hawaldar (BS-07)	Three years service as Naik or total 13 years of service			
5	Naik (BS-05)	Three years service as L.Naik or total 8 years of service			
6	L-Naik (BS-08)	Three years service as Sepoy			
7	Sepoy (BPS-07)			100 %	SSC
8	Head Armorer (BS-03)	03 years of service as Assistant Armorer			SSC Qualification with two years certificate of armorer
9	Assistant Armorer (BS-01)				SSC Qualification with two years certificate of armorer

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Copy forwarded to the:-

1. Principal Secretary to the Governor, Khyber Pakhtunkhwa.
2. Principal Secretary to the Chief Minister, Khyber Pakhtunkhwa.
3. All Administrative Secretaries to Government of Khyber Pakhtunkhwa.
4. Registrar, Peshawar High Court, Peshawar.
5. All Commissioners, Khyber Pakhtunkhwa.
6. All Deputy Commissioners, Khyber Pakhtunkhwa.
7. Provincial Police Officers, Khyber Pakhtunkhwa.
8. All Heads of Attached Department in Khyber Pakhtunkhwa.
9. PSO to the Chief Secretary, Khyber Pakhtunkhwa.
10. Accountant General, Khyber Pakhtunkhwa.
11. Direction Information, Khyber Pakhtunkhwa.
12. The Manger Government Printing & Stationery Department, Khyber Pakhtunkhwa. He is requested to publish the above Notification in the Extra Ordinary Gazette of Khyber Pakhtunkhwa and supply 50 copies (Printed) of the same to the Home Department.

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Section Officer (Police-II)

21/10/2017

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Government of Khyber Pakhtunkhwa

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Annexure E

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:-

- 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."
- 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".
- 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.

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S. No.	Name of the Post / Rank	Qualification for Promotion	Length of Service / Age
4	Hawaldar (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.

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Section Officer (Police-II)

(32)

Annexure - F¹

TO,
THE DEPUTY COMMISSIONER/
COMMANDANT LEVIES
DISTRICT MALAKAND

[Signature]
Place on 16/4/2023

Subject: Appeal against the impugned notification dated 22/3/2021 & 21/10/2021 wherein the appellant/undersigned is being retired from the service on reaching 33 years of service under the PATA Levies Force Service (Amended) Rules, 2013, despite being absorbed in the KPK Police Force.

Respectfully Sheweth,

The undersigned hereby submits,

1. That the appellant was initially appointed as Sepoi in the levies force on 1-8-1990. Later on he was promoted the rank of Lance Naik, then to the rank of Naik, Hawaldar and then finally Naib Subedar.
2. That the levies force was regulated through their own dispensation
3. That after the 25th constitutional amendment the levies personnel were to be absorbed in the KP police department through act namely Khyber Pakhtunkhwa Levies Force Act, 2019.
4. That according to the subject act the services of the appellant/undersigned were absorbed and he was re-designated as Assistant Sub-Inspector (BPS 11) vide notification no 4476/GB. (copy of relevant notification is annexed A)
5. Astonishingly the appellant even though has been absorbed into KP Police department, the Government of KPK Home and Tribal Affairs had issued a notification according to which the appellant/undersigned is being retired on completing his 33 years of service despite the fact that he has now come under the provincial subject through the act ibid and is being dealt as Naib Subedar under the defunct PATA/Federal Levies Force Regulation 2012, and PATA/federal levies force rules 2013. Moreover, the Hon'ble Service Tribunal in Service Appeal no. 168/2023, 1935/2022, had already suspended the subject notification dated 22-03-2021 and 21-10-2021 vide order dated 30-01-2023 on the strength of which the appellant/undersigned is being retired vide impugned notification.

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Therefore, with due responsibility the appellant/undersigned is humbly approaching your good self through this departmental appeal, seeks redressal of the above mentioned grievance and therefore kindly may not be retired on reaching the service length of 33 years despite being absorbed into the regular Police force of KPK and attaining the status of a civil servant. Hence keeping in view the circumstances, the appellant/undersigned may kindly be dealt with in accordance with the law in field.

18/4/2023

(Signature)

APPELLANT

Mohtamin Khan

Assistant Sub-Inspector

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2023 S C M R 8

[Supreme Court of Pakistan]

Present: Umar Ata Bandial, C.J., Amin-ud-Din Khan and Muhammad Ali Mazhar, JJ

CIVIL PETITIONS NOS. 84-P, 377-P, 307-P OF 2020

(Against the judgments dated 11.11.2019, 13.02.2020 and 16.03.2021 passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeals Nos. 1452/2019, 248/2020 and 1260/2016)

AND 469-P, 474-P, 479-P TO 549-P OF 2021

(Against the judgment dated 12.07.2021 passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeals Nos. 12889/2020, 1207/2017, 812-818/2021, 903-914/2021,

3536-3551/2021, 775-795/2021, 797-811/2021)

GOVERNMENT OF KHYBER PAKHTUNKHWA through Chief Secretary, Peshawar and others---Petitioners

Versus

MAQSAD HAYAT and others---Respondents

Civil Petitions Nos. 84-P, 377-P, 307-P of 2020 and 469-P, 474-P, 479-P to 549-P of 2021, decided on 7th July, 2022.

(a) Khyber Pakhtunkhwa Civil Servants Act (XVIII of 1973)---

---Ss. 2(e), 17 & 23, proviso--- Constitution of Pakistan, Art. 3---Fundamental Rules, F.R. 28(b)---Government teachers (BPS-15) serving in the Elementary and Secondary Education Department---Conveyance allowance---Discontinuation of conveyance allowance during summer and winter vacations---Constitutionality and legality---Under section 23 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, it is clearly provided that where the said Act or any rule was applicable to the case of a civil servant the case shall not be dealt with in any manner less favourable to him than that provided by the Act or such rule---Furthermore Fundamental Rule 28(b) showed that vacations counted as duty---Thus, there was no statutory provision under which conveyance allowance of the teachers (respondents) could be stopped or reclaimed---Definition of "pay" provided in section 2(e) of the Act referred to all emoluments, which were being paid to a civil servant under the terms and conditions of service, hence, no action less favourable to the terms and conditions of service could be taken, which otherwise amounted to a violation of the terms and conditions of service of a civil servant---No notification was placed on record to justify the discontinuation of conveyance allowance during summer and winter vacations---Law officer for the Provincial Government failed to point out any document, or any terms and conditions of service of the teachers in which it was ever mentioned that the payment of conveyance allowance was conditional, or that the competent authority in any case reserved the right to discontinue or deduct the amount during summer or winter vacations, nor was it argued that during the vacations the teachers, never attended their duties or during the entire vacations they were never called upon to attend the institutions---Non-payment and/or deduction of conveyance allowance from monthly perks during summer and winter vacations would be tantamount to the violation of fundamental right under Article 3 of the Constitution, which exists an

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unavoidable and inescapable obligation upon the State to ensure the elimination of all forms of exploitation---Petitions for leave to appeal were dismissed and leave was refused. 38

Ikram Bari and 524 others v. National Bank of Pakistan through President and another 2005 SCMR 100 ref.

(b) Khyber Pakhtunkhwa Service Tribunals Act (I of 1974)---

---S. 7(1)---Service Tribunal---Judgment in rem---When a Tribunal decides any question of law by dint of its judgment, the said judgment is always treated as being in rem, and not in personam.

Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan and others 1996 SCMR 1185 ref.

Mian Shafaqat Jan, Additional A.G., Khyber Pakhtunkhwa, Zahid Yousaf Qureshi, Additional A.G., Khyber Pakhtunkhwa for Petitioners (in all cases).

Muhammad Amir Malik, Advocate Supreme Court for Respondents (in all cases)

Date of hearing: 7th July, 2022.

JUDGMENT

MUHAMMAD ALI MAZHAR, J.---These 76 Civil Petitions for leave to appeal are directed against the Judgments dated 11.11.2019, 13.02.2020 and 16.03.2021 passed by the learned Khyber Pakhtunkhwa Service Tribunal, Peshawar ("KP Service Tribunal") in Service Appeals Nos. 1452/2019, 248/2020, 1260/2016 and the common judgment of the KP Service Tribunal dated 12.07.2021 in Service Appeals Nos.12889/ 2020, 1207/2017, 812 to 818/2021, 903 to 914/2021, 3536 to 3551/2021, 775 to 795/2021, 775 to 811/2021, whereby the appeals filed by the respondents were allowed.

2. According to the sequence of events, as narrated by the petitioners, the private respondents are serving as Certified Teachers in the Elementary and Secondary Education Department, Government of Khyber Pakhtunkhwa ("Department") in BPS-15. Though the conveyance allowance was previously admissible to the teachers of the Department, it was later discontinued during summer and winter vacations. The respondents filed service appeals before the learned KP Service Tribunal, which were allowed by the impugned judgments.

3. The learned Additional Advocate General, Khyber Pakhtunkhwa ("Additional A.G., KPK") argued that the impugned judgments of the KP Service Tribunal suffer from illegality and are factually incorrect; the impugned judgments are in violation of a notification issued for the discontinuation of conveyance allowance during summer and winter vacations. It was argued that the KP Service Tribunal relied solely on the judgment rendered by the learned Peshawar High Court in Writ Petition No. 3162-P/2019, wherein it was held that the High Court has no jurisdiction in the matter, keeping in mind the niceties of Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution"), and dismissed the writ petition of the respondents. It was further contended that the learned KP Service Tribunal also failed to examine the record properly, or consider the financial implications of the payment of conveyance allowance, which was rightly discontinued by the Department during summer and winter vacations.

4. The learned counsel for the respondents argued that the conveyance allowance is admissible to all the civil servants. The respondents had been receiving their conveyance

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allowance in accordance with the law, and the rules framed thereunder, but the petitioners without any valid reason abruptly discontinued the conveyance allowance under misconceived notions. He further averred that an employee of the Education Department in Islamabad filed Service Appeal No. 1888 (R) CS/2016 before the Federal Service Tribunal, Islamabad ("FST") regarding conveyance allowance, which was accepted by the learned FST vide its judgment dated 03.12.2018. It was further contended that the denial of conveyance allowance is tantamount to a violation of Articles 4 and 25 of the Constitution. (36)

5. Heard the arguments. We have noted that in this bunch of civil petitions for leave to appeal, two appeals are time barred and applications have been moved for condonation of delay, but the rest of the petitions are within time. Therefore, instead of engaging in a technical knockout of the aforesaid petitions barred by time, we have taken all the petitions en masse to decide the same on merits; the applications for condonation of delay are therefore allowed and the delay in the said petitions is condoned.

6. In fact, no notification has been placed on record to justify the discontinuation of conveyance allowance during summer and winter vacations. The record reflects that sixteen aggrieved persons, against the cessation and deduction of their conveyance allowance during summer and winter vacations, approached the learned Peshawar High Court, and Writ Petition No.3162-P of 2019 was considered as the leading petition. The learned Peshawar High Court, after discussing the case on merits, eventually dismissed the petitions in view of the bar contained under Article 212 of the Constitution, with the liberty to the respondents, being civil servants, to approach the appropriate forum, which was in fact the KP Service Tribunal. The learned KP Service Tribunal while allowing the appeals, relied predominantly on the judgment of the FST passed in Service Appeal No.1888(R)CS/2016, dated 03.12.2018, wherein the learned FST held that the civil servants are entitled to conveyance allowance during summer and winter vacations, with a further direction to reimburse the deducted amount. Moreover, in its judgment the learned FST relied on its earlier decision passed in Service Appeals Nos. 289 to 298 (R)CS/2015 on 17.10.2017, wherein the learned FST ruled that the conveyance allowance is admissible to government servants during vacations. The above judgment of the learned FST was challenged by the Secretary Finance, Finance Division, Government of Pakistan in this Court by means of Civil Petitions Nos. 4957 to 4966/2017, however leave to appeal was refused on 13.07.2018.

7. The learned Additional A.G., KPK argued that, in the order of the KP Service Tribunal passed in Appeals Nos.1452/2019 and 248/2020, reliance was placed on the order passed by the learned Peshawar High Court in Writ Petition No. 3162-P/2019, which was simply dismissed with the observations that the writ petition was not maintainable under Article 212 of the Constitution, hence the reference was immaterial. In this regard, we are of the firm view that if a learned Tribunal decides any question of law by dint of its judgment, the said judgment is always treated as being in rem, and not in personam. If in two judgments delivered in the service appeals the reference of the Peshawar High Court judgment has been cited, it does not act to washout the effect of the judgments rendered in the other service appeals which have the effect of a judgment in rem. In the case of Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan and others (1996 SCMR 1185), this Court, while remanding the case to the Tribunal, clearly observed that if the Tribunal or this Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of the civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings, in such a case, the dictates of justice and rules of good governance demand that the benefit of the above judgment be extended to other civil servants, who may not be parties to the above litigation.

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instead of compelling them to approach the Tribunal or any other legal forum.

8. All these cases are to be considered in juxtaposition, wherein the pith and substance of the matter is only the discontinuation of conveyance allowance to the teachers during summer and winter vacations. As a reference, the first and foremost is the Civil Servants Act, 1973, wherein under clause (b) of section 2, "pay" is defined as the amount drawn monthly by a civil servant as pay and includes technical pay, special pay, personal pay and any other emoluments declared by the prescribed authority to be pay. Under Section 3 of the same Act, it is provided that the terms and conditions of service of a civil servant shall be as provided in this Act and the rules, whereas subsection (2) explicates that the terms and conditions of service of any person to whom this Act applies shall not be varied to his disadvantage, with a further rider under section 23 that where this Act or any rule is applicable to the case of a civil servant, the case shall not be dealt with in any manner less favourable to him than that provided by this Act or such rule. If we dwell on clause (e) of section 2 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, "pay", is defined as the amount drawn monthly by a civil servant as pay and includes special pay, personal pay and any other emoluments declared by the prescribed authority to be pay. In the same way, section 3 of the Act is related to the terms and conditions of service of a civil servant as provided in this Act and the rules; while section 17 of the Act provides that a civil servant appointed to a post shall be entitled, in accordance with the rules, to the pay sanctioned for such post. Likewise, under section 23 (saving clause), it is clearly provided that where this Act or any rule is applicable to the case of a civil servant the case shall not be dealt with in any manner less favourable to him than that provided by this Act or such rule. A glimpse at Fundamental Rule 28(b) shows that vacations count as duty; there is no statutory provision under which conveyance allowance of the respondent could be stopped or reclaimed. The definition of "pay" refers to all emoluments, which are being paid to a civil servant under the terms and conditions of service, hence, no action less favourable to the terms and conditions of service could be taken, which otherwise amounted to a violation of the terms and conditions of service of a civil servant.

9. The learned Additional A.G., KPK failed to point out any document, or any terms and conditions of service of the respondents in which it was ever mentioned that the payment of conveyance allowance was conditional, or that the authority in any case reserved the right to discontinue or deduct this amount during summer or winter vacations, nor was it argued that during the vacations the respondents, being teachers, never attended their duties or during the entire vacations they were never called upon to attend the institution. No other example has been placed on record to highlight that this unjust decision was taken across the board and included the civil servants of the Province in their entirety, or that their top brass was also disentitled for conveyance allowance during the vacations or public holidays, rather this discriminatory treatment was meted out only to a particular class of teachers, which cannot be construed as a reasonable classification; this type of adventurism is not permissible under the law. Salary or pay is paid to the civil servants/ employees in exchange for the services rendered by them and encompasses distinct components such as basic pay, allowances and other perquisites in a particular pay structure offered to an employee pursuant to the terms and conditions of service. Besides basic pay, certain allowances are also merged in the consolidated remuneration or pay package highlighted under the different heads including conveyance allowance which may also be classified as one of the fringe benefits enjoyed by the employees as a result of their official position. In fact, the pay/salary structure is the fragmentation of the various components that put together the amount of recompense against the services rendered by an employee under the contract of employment which is very

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critical for any employee for understanding his pay package for his livelihood and means of support. The wage structure ought to be crafted in a way that must provide not merely for the bare subsistence of life but also to ensure sincere productivity and proficiency of the employee taking into account the variation in the cost of living. (38)

10. To enjoy the protection of law and to be treated in accordance with the law is the inalienable right of every citizen. The purposefulness of Article 4 of the Constitution is to ascribe and integrate the doctrine of equality before law or equal protection of law, and no action detrimental to the life and liberty of any person can be taken without due process of law. Public functionaries are supposed to execute and perform their duty in good faith, honestly and within the precincts of their legally recognized powers so that the person concerned may be treated in accordance with law. The objective of good governance cannot be achieved by exercising discretionary powers unreasonably or arbitrarily without rhyme or reason, and/or without *compos mentis*, but such objective can only be met by adhering to the rules of justness, fairness and openness as enshrined under Articles 4 and 25 of the Constitution. In the case in hand, the non-payment and/or deduction of conveyance allowance from monthly perks during summer and winter vacations would be tantamount to the violation of fundamental rights. Article 3 of the Constitution casts an unavoidable and inescapable obligation upon the State to ensure the elimination of all forms of exploitation, and the gradual fulfillment of fundamental principles from each according to their ability, to each according to their work. Whereas under Article 38, it is provided that the State shall secure the wellbeing of the people, irrespective of sex, caste, creed, or race by raising their standard of living, by preventing concentration of wealth and the means of production and distribution in the hands of a few to the detriment of general interest and by ensuring equitable adjustment of rights between employers and employees, and landlords and tenants. In the case of *Ikram Bari and 524 others v. National Bank of Pakistan through President and another* (2005 SCMR 100), this Court held that an Islamic Welfare State is under an obligation to establish a society which is free from exploitation and wherein social and economic justice is guaranteed to its citizens. By Article 2-A of the Constitution, which has been made its substantive part, it is unequivocally enjoined that in the State of Pakistan principle of equality, social and economic justice as enunciated by Islam shall be fully observed which shall be guaranteed as fundamental right. Whereas in the case of *Pir Imran Sajid and others v. Managing Director/General Manager (Manager Finance) Telephone Industries of Pakistan and others* (2015 SCMR 1257), this Court also held that the whole edifice of governance of the society has its genesis in the Constitution and laws aimed to establish an order, *inter alia*, ensuring the provisions of socio-economic justice, so that the people may have a guarantee and sense of being treated in accordance with the law and that they are not being deprived of their due rights. The provision of Article 4 embodies the concept of equality before law and equal protection of law and saves citizens from arbitrary/discriminatory law and actions by the Governmental authorities. It was further held that the action which is *mala fide* or colourable is not regarded as an action in accordance with law. While discharging official functions, efforts should be made to ensure that no one is prevented from earning his livelihood because of unfair and discriminatory acts on their part. In the case of *Tariq Aziz-ud-Din, Human Rights Cases Nos. 8340, 9504-G, 13936-G, 13635-P and 14306-G to 14309-G of 2009* (2011 PLC (C.S.) 1130), this Court held that all judicial, quasi-judicial and administrative authorities must exercise power in a reasonable manner and also must ensure justice as per spirit of law and instruments regarding exercise of discretion. Ref: *Delhi Transport Corporation v. D.T.C. Mazdoor Congress* AIR 1991 SC 101 and *Mansukhlal Vilaldas Chauhan v. State of Gujarat* 1997(7) SCC 622.

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11. The discriminatory treatment with the teachers is totally ill-founded, prejudicial and inequitable. Instead of providing more congenial working conditions and environment to encourage the noble profession of teaching and to effectively implement and comply with the obligations enshrined under Article 25-A of the Constitution, the teachers' conveyance allowance, being one of the components of the terms and conditions of their service, was discontinued without any rhyme or reason or any written orders/notification. Teachers play an important role in the students' lives by making them successful in their careers; they are considered builders of a better and brighter tomorrow and form one of the main pillars of a civilized and cultured society. The future development and wellbeing of every country is highly dependent on good educationists being a vivid source of learning, achievements and enlightenment for the benefit of their students. The expression "Alma mater" is a Latin phrase currently used to identify a school, college or university that one formerly attended or graduated from. The philosophy and importance of "Alma mater" cannot be achieved without good teachers working wholeheartedly, and with honest devotion and commitment to the sacred duty of imparting education which they ought to have performed sincerely in the best interest of their students by all means to improve the rate of literacy in the country. At the same time, a heavy responsibility lies on the shoulders of teachers to perform their duties honestly, sincerely and diligently for imparting education wholeheartedly for the better future of this country. The founder of our Nation, Quaid-e-Azam Muhammad Ali Jinnah, in his address to the NWFP Muslim Students Federation in April 1943, articulated that "without education, it is complete darkness and with education it is light. Education is a matter of life and death to our nation".

12. In the wake of the above discussion, we do not find any irregularity or perversity in the impugned judgments passed by the learned Khyber Pakhtunkhwa Service Tribunal, Peshawar. Accordingly, these Civil Petitions are dismissed and leave is refused.

MWA/G-21/SC

Petitions dismissed.

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Appendix 61
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**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL AT PESHAWAR**

Service Appeal No. 1028 /2018

Khyber Pakht
Service Trib
Date No. 12
Date 17-6

Mahid Ullah ^{Klan} s/o Malik Jan. r/o Mator, Asbani, Tehsil Adenzai,
District Dir Lower, presently- Subedar (Regimental No.03) Dir
Levies District Dir. Upper Appellant

VS



1. Khyber Pakhtunkhwa through Chief Secretary to Government of Khyber Pakhtunkhwa, at Peshawar;
2. Secretary to Government of Khyber Pakhtunkhwa, Home & Tribal Affairs Department, at Peshawar;
3. Commandant Dir Levies Force District Dir Upper--(Deputy Commissioner District Dir Upper), at Dir Proper;
4. District Account Officer District Dir Upper, at Dir Proper. Respondents

Appeal under section 4 of Khyber Pakhtunkhwa Service Tribunal Act 1974, against the Notification No.57286 dated 26-12-2016 of the Government of Khyber Pakhtunkhwa

Prayer:-

Filed to-day
Registrar
17/8/18

- a. On acceptance of the present appeal -
Declaring the Notification No.57286 dated 26-12-2016 of the Government of Khyber Pakhtunkhwa as illegal, unreasonable, unjust, unfair, without lawful authority, ultra vires the law and Constitution of the Islamic Republic of Pakistan, 1973;
- b. Directing the respondents to restrain from retiring the appellant on completion of five years' service as subedar, per the provisions of the above referred notification, since the same being ineffective upon his rights already accrued to him under the PATA Levies Force Service Rules, 2012 having been prevalent at the time of his promotion as Subedar.

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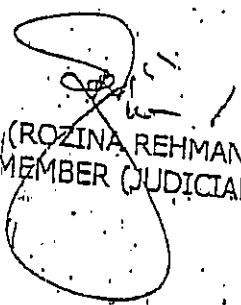


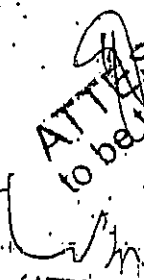
ORDER
20.10.2021


Appellant with counsel present. Mr. Riaz Khan, Pafindakbeli
Assistant Advocate General for respondents present. Arguments heard
and record perused.

Vide our detailed judgment of today, placed on file of Service
Appeal bearing No. 1026/2018 titled "Shah Rafi-ud-Din Versus Khyber
Pakhtunkhwa through Chief Secretary to Government of Khyber
Pakhtunkhwa, at Peshawar and three others", the instant appeal is
accepted. The appellant as well as other similarly placed employees stand
re-instated in service, who will retire on attaining age of 60 years or they
may opt for retirement after completion of 25 years regular service.
Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
20.10.2021


(ROZINA REHMAN)
MEMBER (JUDICIAL)


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(ATIQU-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)

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MEMBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1026/2018

Date of Institution ... 17.08.2018

Date of Decision ... 20.10.2021



Shah Rafi-Ud-Din s/o Muhammad Din r/o Galkor (Osheral Dara) Tehsil Dir, District Dir Upper, presently Subedar (Regimental No.1) Dir Levies District Dir Upper.
(Appellant)

VERSUS

Khyber Pakhtunkhwa through Chief Secretary to Government of Khyber Pakhtunkhwa, at Peshawar, and three others.

(Respondents)

MUHAMMAD YAR MALEZAI
Advocate

For Appellant

RIAZ KHAN PAINDAKHEIL,
Assistant Advocate General

For Respondents

ROZINA REHMAN
ATIQ-UR-REHMAN WAZIR

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):-

This judgment is intended

to dispose of 04 connected service appeals which are:

1. Service Appeal No. 1027/2018
2. Service Appeal No. 1028/2018
3. Service Appeal No. 1029/2018
4. Service Appeal No. 1030/2018

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In view of common questions of law and facts, the above captioned appeals are being disposed of by this order.

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MEMBER (EXECUTIVE)
Khyber Pakhtunkhwa Service Tribunal

02. Brief facts of the case are that the appellant joined Dir Levies' Force (Provincially Administered) as Sepoy on 23-11-1999 and in due course earned promotions and finally was promoted to the rank of Subedar on 19-11-2013. The appellant fell victim to the amendments made in service rules vide notification dated 26-12-2016, which were detrimental to his interests and by virtue of which the appellant was retired from service on 19-11-2019 at the age of 41 and holds only 19 years of service at his credit, but well before his retirement, the appellant filed a departmental appeal dated 10-04-2018, with the apprehensions of retirement under the amended rules, which however was not considered by respondents, hence the instant service appeal with prayers to declare notification dated 26-12-2016 as illegal, unreasonable and ultra vires of the law with further prayers to restrain the respondents from retiring the appellant on completion of five years service as Subedar.

03. Learned counsel for the appellants has contended that impugned notification dated 26-12-2016 is illegal, arbitrary, unreasonable and ultra vires of law; that the impugned notification is discriminatory in favor of appellants, as it put no bar on other ranks like Subedar major or Sepoy and allows them to be retired from service on completing 25 years of service or attaining age of 60 years, whereas the appellant being a Subedar is subjected to retirement from his service at the age of 41, which even is not in the interest of respondents retiring quite an energetic and young officer at such earlier stage that terms and conditions of service could not be unilaterally altered by employer to the disadvantage of the employee. Reliance was placed on SCMR-598; that the appellant has got legitimate expectancy and vested rights to continue his service till the age of superannuation and forcing the appellant to retire under the impugned notification renders him to live in lurch and despair that the appellant was promoted as Subedar prior to the impugned notification and he is supposed to be dealt with in accordance with that service rules, under which

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he was promoted; that the impugned notification is having no retrospective effect therefore the same is ineffective upon the rights of the appellant of continuing service till the age of 60 already accrued to him; that the impugned notification altering the terms and conditions of the service of the appellant adverse to rights already accrued to him, is unwarranted and nullity in the eye of law.

04. Learned Assistant Advocate General appearing on behalf respondents has contended that the impugned notification was issued on 26 2016, whereas the appellant filed departmental appeal on 10-04-2018, which is badly time barred and if the departmental appeal is not filed within the statutory period, the appeal before the Tribunal would not be incompetent. Reliance placed on PLJ 2009 SC 1099 and 2007 SCMR 346. The learned Assistant Advocate General referred to Rule-3 of Appeal Rules-1986, which provides for filing of departmental appeal within 30 days of issuance of the impugned order, whereas the appellant has filed such appeal with delay of more than one year; that the departmental appeal was filed jointly by the appellant and others, while it should have been individual and independent under the Khyber Pakhtunkhwa Civil Servant (Appeal) Rules, 1986; that it is prerogative of the government to frame rules, which in the absence of demonstrable mala fide could not be assailed. Reliance was placed on 2015 SCMR 269.

05. We have heard learned counsel for the parties and have perused the record.

06. Record reveals that Federal Levies Force and Provincial Levies Force were operative in defunct Provincially Administered Tribal Areas (PATA) and in order to regulate their service matters, the provincial government with prior approval of the President of Pakistan promulgated PATA Levies Force Regulation 2012, under which two sets of rules were framed for Federal as well as Provincial Levies Force, i.e. PATA Federal Levies Force Service Rules (Amended), 2013 and PATA Levies Force Service Rules, 2017. The appellant...

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[Signature]
Notary Public
Khyber Pakhtunkhwa



Levies Force and Rule-16 of the provincial levies force service rules provides retirement of the members of the force on attaining the age of superannuation 60 years or he may opt for retirement after completing 25 years of regular service. In 2014, separate Regulations i.e. PATA Provincial Levies Force, Regulation, 2014 was promulgated for PATA Provincial Levies Force, under which PATA Provincial Levies Force Rules, 2015 were framed. Rule-16 whereof provides for the retirement of uniformed members of the Force to be retired as per schedule-iv, according to which Subedar will get retirement on completion of 35 years service or 60 years age, whichever is earlier. It was in the year 2016 when amendments were made to schedule-iv of Rules, 2015 and altered the criteria for retirement of Subedar a Naib Subedar only and rest of the members of the force were not touched. Subedar was to be retired on 35 years of service or 5 years service as Subedar 60 years, whichever is earlier. The appellants are mainly aggrieved of the amendment, which has rendered them retired on completing 5 years service Subedar and only 19 years service at his credit with age of 41 years. It is quite astonishing that such amendments even are not in the interest of the respondent retiring quite an energetic and young officer at such earlier stage. In response to the departmental appeals submitted by the appellant, the Commandant Levies Force/Deputy Commissioner, Upper Dir, recommended for maintenance of Rule-2015, relevant portion of the letter is reproduced as under:

It is brought into your kind notice, that Provincial Levies Force Dir Upper has been established in 1999, therefore on the basis of the tenure post very young not commissioned officer, having 19 or 20 years service will retire and as such force will be deprived of JCOs whom age will be at the stage where is due for retirement in November, 2018. On his retirement on one hand they can bitterly command and control. For example, one Lal Bahadur Subedar having 19 years service with age of 38 years. On the basis of tenure, of post is due for retirement in November 2018. On his retirement on one hand, the Force will lose one energetic and young officer, and on the other hand, he will go home with less pension benefits. His pension at that age will be too much less of a class-iv employee. Keeping in view the above

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[Signature]
Subedar
PATA Provincial Levies Force

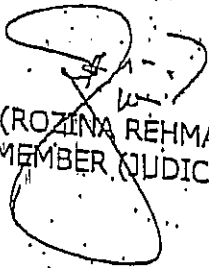
5.
facts, it is therefore, requested to maintain Rules, 2015 withdrawing amended Rules, 2017."

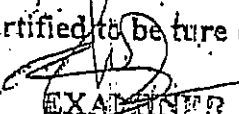
07. The provincial Government was in the process to examine and remove the anomaly but in the meanwhile the appellants were retired from service on completion of five years service as Subedar and the provincial government during the course of litigation at a belated stage, have taken cognizance of the situation and have noted that the impugned notification dated 26-12-2016 is unreasonable, ultra vires of law as well as contrary to the settled principles of law of retirement and contrary to the fundamental rights of the appellants guaranteed by the Constitution, hence amendments were brought vide notification dated 07-2020, whereupon schedule-iv was deleted and provided that all uniformed force shall retire from service on attaining the age of superannuation i.e. 55 years or they may opt for retirement after completion of 25 years regular service. Such amendments corrected the course for future, but the impugned notification altering the terms and conditions of the service of the appellants adversely affecting their rights already vested in them and have caused damage to the appellants, which was unwarranted and nullity in the eye of law.


08. In view of the foregoing discussion, the instant appeal is accepted. The appellants as well as other similarly placed employees standing in the same position as the appellants, who will retire on attaining age of 60 years or they may opt for retirement after completion of 25 years regular service. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
20.10.2021

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(ROZINA REHMAN)
MEMBER (JUDICIAL)

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EXAMINER
Khyber P. Khushwa
Service Tribunal
Peshawar


(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)

HOME DEPARTMENT

NOTIFICATION

Dated Peshawar the 14.07.2020

Annexure "A"

No. SO(Police-II)HD/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. Accountant 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.

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Section officer (Police-II)

14/7/2020

قیمت 50 روپے	79378			
ایڈوکیٹ: حسام الرحمن		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل ایسوسی ایشن نمبر: 6743-16-13				
رابطہ نمبر: 0333-1443400/0319-0926				

بعدالت جناب: محترم جسٹس، محنتخواہ سرورس ٹریڈ ایسوسی ایشن پشاور

مخانب:	دعویٰ: <i>Revival Appeal</i>
<i>Appellant</i>	علت نمبر:
<i>Muhammad Khan</i>	مورخہ:
بنام	جرم:
<i>Government of P etc</i>	تھانہ:

باعت تحریر آگے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ آن مقام پشاور کے لیے حسام الرحمن (ایڈووکیٹ) کو وکیل 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 برحلف 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 باختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم 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

22/7/2023

المقام: _____

مقام کے لیے منظور ہے۔

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

Accepted
[Signature]
[Signature]

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Muhammad Khan/S/O Muhammad Khan